



# Step 04

## Feasibility and Licensing

At this fourth step, all major studies for mining operations are conducted, including the ESIA and the feasibility study, both of which will help shape the management of ESHR impacts for the life of the mine. Permitting is underway and any agreements with governments and communities are being negotiated. It is also at this stage that the government may be selecting and contracting mining companies competitively – providing an important opportunity to emphasize the government’s expectation that it is looking for responsible mining partners. This is a key point in the mining cycle, as it provides clear and accessible information to stakeholders about the mining operations and involves them through robust public participation processes aligned with Principle 10 and in fulfilment of their procedural rights.

### Primary Target Audience

- Mining Authorities
- Environmental Authorities
- Social Authorities & Human Rights Authorities

### Summary of Step 4: Feasibility and Licensing

#### KEY ACTIONS IN THIS STEP

#### KEY MESSAGES

#### A Know and Understand What is in the Law (and What is Not)

Officials in the mining, environment and relevant labour/social authorities should have a basic understanding of what is in their laws on controlling the ESHR impacts of mining and what is not, compared to good international regulatory practice. This can be facilitated by regularly sharing information and approaches across authorities.

#### B Know and Understand the Companies Seeking to Invest

When governments get to the point of licensing for long-term mineral development, they are looking at mining companies that may be operating in their country for decades. Mining authorities are often rightfully focused on technical competence in extracting minerals, but they should also be asking questions that help them judge the companies’ approach to and capacity for responsible ESHR management of mining operations.

#### C Know and Understand What is in Company Proposals (and What is Not)

This is a key moment for understanding the specific details of a company’s approach to developing and operating the mine. The country’s legal framework and the specific regulations or TORs for ESIA and feasibility studies will to a large extent determine the scope and coverage of the studies presented for consideration – and hence the need to ensure they remain up-to-date and aligned with the country’s vision on sustainable mining. This is also a key moment for inclusive and meaningful public participation in the important ESIA process.

## D

### Know and Understand What is in the License/Contract (and What is Not)

While the trend is to move towards standard-form licensing for mining, some countries use negotiated contracts to fill gaps in legal frameworks, but they need the necessary capacity and resources to negotiate and implement the deals to ensure that they benefit wider society. Disclosing mining contracts is an important step in improving transparency and accountability in the sector and provides an important way of putting relevant information on the governance of the sector into the public domain.

## E

### Know and Understand the Local Context Where Mining Will Take Place

Where central mining authorities are permitting mining operations in areas where they have little information about the local context or local governance, this can lead to conflicts between central and local governments. While land use planning in Step 2 should help to reduce such conflicts, there should be coordination between local and central levels.

## A Know and Understand What is in the Law (and What is Not)

Government licensing authorities should well understand what is in their laws on controlling the ESHR impacts of mining and what is not – i.e., what the gaps are compared to good international regulatory practice. Gaps in the national legal framework can potentially be addressed by

including requirements in the license/contract. If the issues are not covered in the law or license/contracts, officials must encourage and rely on mining companies' own commitments (if any) to address these impacts.

### Benchmarking to Identify Strengths and Weaknesses

#### Have the authorities benchmarked their national framework against relevant international standards?

- Have the authorities benchmarked their national mining policy framework to understand the comparison with international frameworks and to identify gaps?
  - There is an increasing wealth of information available on-line from specialist information sources, highlighted in this Guide. (See, in particular, Annex II, which lists many of the relevant international standards to consider and Box 10 that lists support services for governments on the extractive sector.)
- Has the government requested an assessment from several sources? This would include:
  - A Mining Policy Framework Assessment from IGF. (See Box 9 on the IGF Framework and assessments.)
  - A Mining Investment and Governance Review from the World Bank. (See Box 9 on the World Bank Framework and Assessments.)

## B Know and Understand the Companies Seeking to Invest

Mineral extraction is a long-term process and it is in the country's interest to have a responsible partner. While technical competence and financial soundness are clearly important, governments should be actively and carefully assessing the companies behind the proposals, their com-

mitment to environmental and social sustainability and their track record on ESHR issues. Companies that do not have existing commitments to and practices governing ESHR issues will, at best, be on a steep learning curve and, at worst, pose a risk to the environment and communities.

### Information to Request from Bidders

#### Do mining authorities ask the following questions of companies seeking to invest?

- Who owns the company? Is it private, publically listed or state-owned? Who are the beneficial owners (the ultimate owners) of the company? Is this transparent or is it difficult to find out who will ultimately profit?
- Where is it registered? What are the relevant laws in the jurisdiction where the company is registered relating, for example, to taxation, foreign bribery and labour laws?
- How long has the company operated? Does it have a history of speculative investments or 'flipping' mining concessions?
- Does the company have appropriate policies on sustainability, human rights and gender equality<sup>188</sup> – for example, a thorough management system to manage ESHR issues? (See Box 41 on company environmental and social systems and Box 42 on the application of the UNGPs to mining companies.) What is its ESHR track record in other countries? What is the company's safety record?
- Does the company report on its sustainability performance? Are the reports independently verified or ensured?
- Who is financing the company? Is that difficult to find out?
- Is the project partially financed by a multilateral development bank that has its own detailed environmental and social requirements, such as the International Finance Corporation (IFC),<sup>189</sup> the African Development Bank<sup>190</sup> or a private sector bank that is part of the Equator Principles<sup>191</sup> that apply the IFC requirements applicable to the mining company?
  - This provides extra assurance that there will be a third party (the bank) also reviewing the company's compliance with the international environmental and social performance standards.

<sup>188</sup> For example, the Women's Empowerment Principles, <http://www.wepinciples.org/>.

<sup>189</sup> IFC Environmental and Social Performance Standards [http://www.ifc.org/wps/wcm/connect/topics\\_ext\\_content/ifc\\_external\\_corporate\\_site/ifc+sustainability/our+approach/risk+management/performance+standards/environmental+and+social+performance+standards+and+guidance+notes](http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/our+approach/risk+management/performance+standards/environmental+and+social+performance+standards+and+guidance+notes), and the World Bank Group Environmental, Health and Safety Guidelines for Mining [http://www.ifc.org/wps/wcm/connect/topics\\_ext\\_content/ifc\\_external\\_corporate\\_site/ifc+sustainability/our+approach/risk+management/ehsguidelines](http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/our+approach/risk+management/ehsguidelines)

<sup>190</sup> AfDB Integrated Safeguards System, [https://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/December\\_2013\\_-\\_AfDB%E2%80%99S\\_Integrated\\_Safeguards\\_System\\_-\\_Policy\\_Statement\\_and\\_Operational\\_Safeguards.pdf](https://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/December_2013_-_AfDB%E2%80%99S_Integrated_Safeguards_System_-_Policy_Statement_and_Operational_Safeguards.pdf)

<sup>191</sup> <http://equator-principles.com/>

## Government Due Diligence on Bidders

### Has the mining authority done its own due diligence on companies seeking to invest?

- Mining authorities should also consider doing their own due diligence for major investments, looking into:
  - The company's ability to perform its obligations, such as the company's financial capacity to fund the mining project, its level of expertise and experience, including on managing ESHR issues and its capacity to reimburse financing.
  - The company's commitment to extracting the resource rather than to just treating it as a speculative investment opportunity.<sup>192</sup>
  - Red-flag items signal warnings that, once identified, should prompt further investigation, including interviewing the company management, auditors and lawyers:<sup>193</sup>
    - Large unfunded reserves for potential losses
    - Ongoing criminal investigations concerning corruption, money laundering or other alleged crimes
    - Credible allegations of human rights abuses or environmental pollution
    - Other reputational, financial or legal issues
    - Corruption (see Box 43 on Twelve Red Flags on Corruption in Natural Resource Transactions, Box 44 on Combatting Corruption and Box 45 on Resources to Address Corruption in the Extractive Sector)

## Consider ESHR Issues in the Bidding

### Are ESHR requirements included as part of bidding and pre-qualification requirements?

- Has the government considered including specific ESHR requirements in bidding or pre-qualification requirements? Doing so:
  - Sends a signal early on to potential bidders that the government considers these issues important
  - Provides a basis for obtaining information from bidders about whether they have any ESHR policies and processes.
  - Provides an opportunity to ask about the company's history of ESHR performance in other countries – past accidents, legal claims, significant protests against their operations in other countries, etc.
  - Provides a legitimate basis for comparing performance on these issues across companies as part of the scoring system

## Guarding against Bribery and Corruption

### Does the government have rules and guidance to limit the possibility of bribery and corruption throughout the mining cycle?

- The natural resources sector can be a high revenue-generating sector – regardless of whether that revenue is generated and used legally or illegally. Some of the unique characteristics of extractive industries, such as the volume of financial resources involved, the high level of discretionary political control, limited competition, opaque contractual arrangements, etc., make the industry particularly vulnerable to corruption and illicit financial transactions.<sup>194</sup>
- Does the government provide transparency about requirements for all by reducing the possibilities of corruption associated with closed-door negotiations?

192 As NRGi points out, countries should also consider whether the company is purchasing extraction rights to speculate on their value rather than extract the resource. NRGi Reader: "Granting Rights to Natural Resources: Determining Who Takes Natural Resources Out of the Ground," (2015), [http://www.resourcegovernance.org/sites/default/files/nrgi\\_Granting-Rights.pdf](http://www.resourcegovernance.org/sites/default/files/nrgi_Granting-Rights.pdf)

193 From Revenue Watch, et al., "Mining Contracts How to Read Them," <https://eiti.org/sites/default/files/documents/mining-contracts-how-to-read-and-understand-them.pdf>

194 UNDP, "A Practitioner's Guide For Corruption Risk Mitigation In Extractive Industries," (201x), p. 3, [www.xxx](http://www.xxx) [UNDP TO PROVIDE LINK]

- Initiatives to bring maximum transparency to the sector, such as the EITI (which is expanding its focus on improving transparency across the whole extractive sector value chain), play an important role in limiting the opportunities for bribery and corruption.
- Additional steps to specifically address bribery and corruption can be built into each step of the mining cycle and be part of the government's approach to strengthening the rule of law. (See Box 43 on Twelve Red Flags on Corruption in Natural Resource Transactions, Box 44 on Combating Corruption and Box 45 on Resources to Address Corruption in the Extractive Sector.)
- Corruption also has an impact on the ESHR governance of the sector:
  - Bribery to obtain environmental approvals has an impact on the environment and the rule of law.
  - Closed-door contracting can increase the risk of important ESHR requirements being negotiated away.

## Box 41

### Company-Integrated Environmental and Social Management Systems (ESMS)

Many mining companies, particularly the larger ones, have developed integrated management systems to address sustainability issues that often started with an environmental management system, but have expanded to deal with other sustainability issues in a more integrated way: health and safety, social issues including community relations, indigenous peoples, gender, security, health and, more recently, human rights. These systems may be audited regularly by internal auditors or by external auditors commissioned by the company and may also be audited by the lending institutions funding mining operations.<sup>195</sup>

There is significant industry,<sup>196</sup> academic<sup>197</sup> and civil society<sup>198</sup> interest and attention to the development and performance of mining companies' ESMS. However, while an ESIA might be the most visible and systematic investigation of the issues, within the mining cycle, this is often well after companies have started interacting with communities and workers – and having impacts. An ESMS should also include processes to identify and manage ESHR issues from these early stages.

<sup>195</sup> See, for example, IFC guidance on environmental and social management systems, which provides a very basic explanation for companies just starting to develop their ESMS and which may be relevant for smaller, local mining companies. LSM companies will have far more detailed and specific ESMS. [http://www.ifc.org/wps/wcm/connect/topics\\_ext\\_content/ifc\\_external\\_corporate\\_site/ifc+sustainability/learning+and+adapting/knowledge+products/publications/publications\\_handbook\\_esms-general](http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/learning+and+adapting/knowledge+products/publications/publications_handbook_esms-general)

<sup>196</sup> See, for example, ICMM: <http://www.icmm.com/en-gb/about-us/member-commitments/icmm-10-principles/the-principles> and PDAC: <http://www.pdac.ca/programs/e3-plus/principles>

<sup>197</sup> See, for example, the Sustainable Mineral Institute at the University of Queensland: <http://www.smi.uq.edu.au/>

<sup>198</sup> See, for example, the Business and Human Rights Resources Centre pages on the mining sector: <https://business-humanrights.org/en/sectors/natural-resources/mining>

## The UN Guiding Principles on Business and Human Rights (UNGPs) and the Mining Sector (see also Boxes 6 and 22 on the UNGPs)

The adoption of the UN Guiding Principles on Business and Human Rights in 2011<sup>199</sup> ushered in a new global standard of expected conduct that all businesses, including mining companies, should respect human rights. This is also incorporated into the OECD Guidelines on Multinational Enterprises<sup>200</sup> that apply to the operations of mining companies headquartered in an OECD country, wherever they have operations. The normative expectation is that businesses do no harm to human rights – but this is not equivalent to doing nothing. This means that companies are expected to develop a proactive and systematic approach to respecting human rights that includes:<sup>201</sup>

- Adopting a **policy commitment to respecting human rights** that then steers the company's approach
- Carrying out **human rights due diligence** to assess whether they may have actual or potential adverse impacts on human rights and, if so, to act on these findings, track the results and communicate about how they were addressed. As mining companies are routinely required to carry out ESIA's and have ESMS to support these processes, many have taken the approach of integrating human rights issues into these processes (see below).

- **Providing or collaborating in remedy for negative human rights impacts** where prevention or mitigation has not been successful (see Step 9, Key Action 3).

**ICMM**, a global mining association, has developed guidance to help mining companies implement this step of the UN Guiding Principles by incorporating human rights due diligence into corporate risk management processes, including ESIA's:<sup>202</sup> **'Human rights in the mining and metals industry: Integrating human rights due diligence into corporate risk management processes'** (2012).

Human rights and environmental organizations, investors and other stakeholders of the mining sector<sup>203</sup> are taking an increasing interest in mining company performance on human rights. The largest mining companies are now being individually benchmarked on their commitments and practices on human rights and other environmental, social and governance issues.<sup>204</sup>

199 See [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

200 <http://mneguidelines.oecd.org/themes/human-rights.htm>

201 For a detailed explanation of the UN Guiding Principles and their application to the oil & gas sector (there is no similar comprehensive guide for mining but this gives an overview that could be adapted by mining companies), see: European Commission, "Oil and Gas Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights," (2013), <http://bookshop.europa.eu/en/oil-and-gas-sector-guide-on-implementing-the-un-guiding-principles-on-business-and-human-rights-pbNB0413166/>

202 <https://www.icmm.com/website/publications/pdfs/3308.pdf>

203 See <https://business-humanrights.org/en/sectors/natural-resources/mining>

204 See the Corporate Human Rights Benchmark, which ranks the largest global extractive companies on their human rights policies and performance, <https://www.corporatebenchmark.org/extractives>, and the forthcoming Responsible Mining Index, which will transparently rank the performance of some of the world's largest mining companies on economic, environmental, social and governance (EESG) issues, <http://responsibleminingindex.org/index/>

## Box 43

## Twelve Red Flags: Corruption Risks in the Award of Extractive Sector Licenses and Contracts<sup>205</sup>

NRGI recently examined over 100 real-world cases of license or contract awards in the oil, gas and mining sectors in which accusations of corruption arose. Based on this work, it developed a list of 12 'red flags' of corruption in extractive sector license and contract awards:

1. The government allows a **seemingly unqualified company** to compete for, or win an award.
2. A company or individual with a **history of controversy or criminal behaviour** competes for, or wins, an award.
3. A competing or winning company has a **shareholder or other business relationship** with a **politically exposed person (PEP)** or with a company in which a PEP has an interest.
4. A competing or winning company shows signs of having a **PEP as a hidden beneficial owner**.
5. An official **intervenes in the award process**, resulting in benefit to a particular company.
6. A company provides **payments, gifts or favours to a PEP with influence over the selection process**.
7. An official with influence over the selection process has a **conflict of interest**.
8. **Competition is deliberately constrained** in the award process.
9. A company uses a **third-party intermediary to gain an advantage** in the award.
10. A **payment** made by the winning company is **diverted** away from the appropriate government account.
11. The **agreed terms of the award deviate significantly** from industry or market norms.
12. The winning company or its owners **sell out for a large profit without having done substantial work**.

## Box 44

## Combatting Corruption in Mining Approvals: Assessing the Risks in 18 Resource-Rich Countries<sup>206</sup>

This global snapshot from Transparency International explores where and how corruption can get a foothold in mining approvals processes – before ground is even broken. It found that vulnerabilities to corruption exist in the mining approval regimes of jurisdictions across the world, irrespective of their stage of economic development, political context, geographic region or the size and maturity of their mining sectors. The report is framed around six key questions that help identify where and how an approvals regime is vulnerable to corruption and gives a series of indicators for each that highlight risks.

1. **Who benefits from mining approval decisions?**
  - Decisions about whether to approve a particular mining project must put the public interest first and conflicts of interest need to be declared and addressed.
2. **How ethical and fair is the process for opening land to mining?**
  - Decisions about which land is opened to mining and under what conditions have flow-on effects for the integrity of licencing decisions and other mining-related approvals.
3. **How fair and transparent is the licencing process?**
  - A fair and transparent licencing process has clear rules and effective institutions, with a complete and accurate register of licences (mining cadastre). If information in the mining cadastre is incomplete, officials can manipulate applications and breach the 'first come, first served' principle for granting licences.
4. **Who gets the right to mine?**
  - Governments need to conduct effective due diligence on the past conduct and compliance, financial resources, beneficial owners and technical capacity of licence applicants and their principals.

<sup>205</sup> NRGI, <https://www.resourcegovernance.org/sites/default/files/documents/corruption-risks-in-the-award-of-extractive-sector-licenses-and-contracts.pdf>

<sup>206</sup> Transparency International, [https://www.transparency.org/news/feature/unearting\\_corruption\\_risks\\_in\\_mining\\_approvals](https://www.transparency.org/news/feature/unearting_corruption_risks_in_mining_approvals)

Otherwise, companies can deliberately provide misleading information and mining rights can fall into the wrong hands.

**5. How accountable are companies for their environmental and social impacts?**

- Effective verification of environmental and social impact assessments (ESIAs) is needed to guard against the risk of licence applicants knowingly providing incorrect information

about the potential impacts of their projects.

**6. How meaningful is community consultation?**

- Ensuring genuine consultation and negotiations with communities is critical to securing the legitimacy of mining approvals. If there are no clear or binding requirements for consultation, it is more likely that the duty to consult will be ignored or carried out superficially.

**Box 45**

**Resources to Address Corruption in the Extractive Sector**

**OECD, *Corruption in the Extractive Value Chain - Typology of Risks, Mitigation Measures and Incentives***

This report is intended to help policymakers, law enforcement officials and stakeholders strengthen prevention efforts at the public and private levels through improved understanding and enhanced awareness of corruption risk and mechanisms to address those risks.<sup>207</sup>

**I4MDC, *Constructing a Diagnostic Framework on Corruption Risks in Mining Sector Licensing***<sup>208</sup>

Breaking down mining sector licensing into its key components, each section of the paper contains two sets of suggested questions that can be used by mining authorities to construct a 'traffic light' approach to highlight where corruption risks may be at their greatest in the mining licensing process (red lights), through to areas that demonstrate very low corruption risks (green lights).

**C Know and Understand What is in Company Proposals (and What is Not)**

Feasibility studies and ESIAs for larger mines set out the considerations and approaches a mining company plans to take in developing the mine and provides far more detailed indications of how companies will address ESHR issues. While the regulatory frameworks are a core part of the process, the assessments and the participation processes that go with them are a significant safeguard to

protect society's broader interest in a balanced outcome and "help avoid biases towards the groups most represented in the formal regulatory processes or the groups with more voice or power."<sup>209</sup> Participation and the public accountability that come with it are key mechanisms for social inclusion and are an important, and practical expression of the protection of human rights.

207 OECD, "Corruption in the Extractive Value Chain - Typology of Risks, Mitigation Measures and Incentives," (2016), <http://www.oecd.org/dev/Corruption-in-the-extractive-value-chain.pdf>

208 A. Wolfe, A. Williams. "Constructing a Diagnostic Framework on Corruption Risks in Mining Sector Licensing," (2015), <http://im4dc.org/wp-content/uploads/2015/07/Corruption-Risks-in-the-Mining-Chain-Final-Completed-Report.pdf>

209 D. Arbelaez-Ruiz, J.M. Benavidez, B. Oñate Santibáñez, R. Ramsay, "Institutional and Political Frameworks of Environmental Licensing Processes," (2013), p. 7, <http://im4dc.org/wp-content/uploads/2013/09/Institutional-and-Political-Frameworks-of-Environmental-Licensing-Processes1.pdf>



## Consider ESHR Issues in Feasibility Studies/ Investment Proposals

### Are ESHR risks and benefits included as part of the formal evaluation of mining investment proposals or feasibility studies? Has the government updated the TORs for feasibility studies to include relevant ESHR issues?

- This stage typically includes a detailed ESIA & the accompanying environmental and social management plan (ESMP) and additional relevant ESHR studies plans, such as resettlement plans, indigenous people's plans and emergency plans. There would typically be numerous agencies involved in reviewing the feasibility study for relevant ESHR issues:
  - Environmental authorities are reviewing the ESIA and ESMP and the reclamation and closure plan.
  - The ministry in charge of labour is reviewing the training, recruitment and employment plans and closure plan.
  - Public health authorities are reviewing the ESIA and ESMP for potential health impacts and reviewing design plans for clinics and health facilities.
  - The ministry in charge of women's affairs is addressing the gender analysis and proposals in the studies.
  - The ministry in charge of infrastructure and/or local government is overseeing any plans for changes to road, township, water supply and sanitary systems.<sup>210</sup>
- Does the government have a process for coordinating the review and decision-making on the feasibility study so that:
  - It is assured of a comprehensive review without topics falling 'between the cracks'? This can also be an opportunity to build further understanding and links across all government departments dealing with mining.
  - Alternatives are considered and evaluated at this stage. This is a crucial moment for choosing among options; authorities must review and consider how well supported the preferred option is, whether sufficient evidence has been put forward and whether there has been sufficient consultation on the options that have provided stakeholders with credible and thorough information to understand options and express a choice.
  - It has a process to capture all the requirements from the review in one place so that requirements are reflected as appropriate in licensing/contracting and monitoring.
  - Governments may also consider conducting their own feasibility study to be better informed for negotiations with mining companies.<sup>211</sup>

## Include Environmental and Social Costs

### Does the government require the inclusion of environmental and social costs as part of the feasibility study and estimates of mineral reserve?

- Regardless of who makes the evaluation of a mineral reserve, be it the mining company or the mining authorities, this should include estimated environmental and social costs already from the first estimations of the size of the mineral reserve. For large-scale mining, ESHR management costs may be a significant component of overall project costs. When the mineral reserve is revised due to more available information, the environmental and social costs may also need to be revised.
  - Mining authorities should be aware of the risk that cost estimates might be too low in the early evaluations, with a corresponding overestimation of the mineral reserve, as it will be difficult to correct later on.
- The challenge is to ensure that correct and transparent estimations of the environmental and social costs based on the policies, laws and regulations of the country are used for evaluating the mineral reserve from the start.

210 See section on feasibility studies in Mining Contracts: How to Read and Understand Them, (2013), <https://eiti.org/sites/default/files/documents/mining-contracts-how-to-read-and-understand-them.pdf>

211 Negotiation Support Portal for Host Governments, Feasibility Study Stage, <http://negotiationsupport.org/roadmap/conduct-feasibility-studies>

- The basis for making the estimates, including assumptions, should be explained clearly in the feasibility study.
- The permitting process should make clear what obligations, expectations and corresponding costs follow the project and will be covered as part of the project cost.
- Project costs should also cover all costs related with closure and the cost of mining waste – from the design of mine waste facilities to ensure safe and orderly closure once mining has ceased through to post-closure.<sup>212</sup> (See Box 49 on Closure Issues to Cover in Feasibility Studies.)
- In addition, particularly in countries where the laws governing the mining sector have not been updated, complying with the law may not be sufficient for a project to address the full scope of mining impacts and thus estimated costs based on national law alone may not be sufficient. In the absence of robust national laws, mining companies should be required or at least encouraged to apply relevant international standards (see Annex II on International Standards and Guidance) to ensure that they are addressing sustainability issues in line with good international industry practice and to make their cost estimates based on those standards.
  - The cost estimates for meeting these standards can also be included in a transparent manner in feasibility studies to ensure that these costs are also considered as part of overall project costs.
- This is an area where more work needs to be done to develop tools and methodologies to provide more robust and comparable calculations of the costs of environmental and social compliance.
  - The uncertainties around costs translate directly into budgets and whether funds are available to address ESHR issues, particularly later in the production cycle.
  - Given these uncertainties, this is all the more reason to require clear and transparent information about the calculations made and to consider engaging independent experts to review mining proposals. This will at least help mining authorities gain a better understanding of the magnitude of uncertainties. (See Box 48 for a short explanation of CIRSCO.)
- Governments also need sound assessments of the proposed benefits projected in feasibility studies.
  - For example, the potential employment creation of mining investments should consider not only the number of jobs created, but also their timing, quality and security, likely beneficiaries, impact on livelihoods, and other socio-economic effects.<sup>213</sup>

## Coverage of ESHR Issues in the ESIA TOR

### Has the government updated its ESIA laws or regulations/TOR for ESIA's?

- Has the government updated its ESIA laws and procedures recently?
  - If not, it should consider doing so in light of the increasing range of materials available that are particularly focused on the mining sector, to ensure that it is building on good international practice for the sector. (See Box 50 on Resources to Improve ESIA's in the Mining Sector.)
- Is it up to date on the expanded scope of issues included within ESIA's since the early days of EIA practice, which focused exclusively on environmental issues?
  - They now routinely cover social and health issues and, more recently, human rights issues, even if they are not always labelled as 'human rights' such as gender, indigenous peoples' rights, land & water rights,

212 See Goxi Learning Series, "Management of Mining Waste and Design for Closure," (2017), [http://api.ning.com/files/zBuXAPjY2N7fQLQH6Hwmus3kO3S\\*zOZsqiRG4kkRfw0eN2kfX9UvHnhvBzdwUTsEozw0KloSAV-nwnoB4jwQOn6tv2mqP\\*gf/EGPKnowledgeProductwebinaronmanagementofminingwaste.pdf](http://api.ning.com/files/zBuXAPjY2N7fQLQH6Hwmus3kO3S*zOZsqiRG4kkRfw0eN2kfX9UvHnhvBzdwUTsEozw0KloSAV-nwnoB4jwQOn6tv2mqP*gf/EGPKnowledgeProductwebinaronmanagementofminingwaste.pdf)

213 P. Toledano, O. Östenson and K. Cordes, "Parsing the myth and reality of employment creation through resource investments," Columbia FDI Perspectives, No. 213, November 20, 2017. Columbia Center on Sustainable Investment, <http://www.ccsi.columbia.edu>

security and protection from harm, right to participation and express opinions, other vulnerable groups, etc. Mining companies and mining associations are also beginning to routinely incorporate human rights into their assessments.<sup>214</sup>

- In particular, there has been growing recognition of the need to address the mining sector's impacts on women (see Box 46 on Addressing Mining Impacts on Women) and, more recently, children (see Box 47 on Addressing Mining Impacts on Children), which often starts with an appropriate gender analysis in the ESIA.
- Does the ESIA process cover all relevant ESHR issues or just those topics that are listed in the ESIA regulation/TOR?
  - ESIA regulations/TORs should include a wide range of indicative issues to be considered, but specify that all ESHR issues relevant to the local context should be covered (see Box 2 on Typical ESHR Issues for the Mining Sector), regardless of whether they have been identified in the TOR.
  - It will be important for the authorities to require the mining company to develop a full baseline (with information disaggregated by sex and other relevant markers of identity, such as age) about the communities and others likely to be affected by the mining operations and the associated infrastructure (including all the projected ESHR impacts – project-affected people) to provide solid evidence of the pre-mining state and as a starting point for assessing potential impacts and developing prevention and mitigation steps. The baseline will also play an important role in monitoring (see Steps 5-8), providing an evidence base to measure changes as a result of mining operations.
  - The ESIA should assess and address ESHR impacts on the different populations who may be impacted directly and indirectly by the mining operations – women, children/youth, IPs, land-based marginalized communities, etc. The ESMP also develop actions to strengthen positive impacts. (See Box 45 on Addressing Mining Impacts on Women and Box 47 on Addressing Mining Impacts on Children.)
  - A thorough ESIA should identify early on issues that, if unaddressed, could develop into more difficult issues to resolve once project construction or operations are underway – such as the presence of indigenous peoples, the long-standing use by communities of water and grazing in the proposed mining area, the potential to spread disease through construction practices, etc.

## Access to Information, Public Participation and Access to Justice in Connection with ESIA

**Do the law and practice provide for meaningful public access to information, participation and access to justice in connection with ESIA? (See also Annex I – Background on Principle 10 for more specific information and questions on this topic.)**

- Do the law and practice reflect international law and international good practice on access to information around ESIA?
  - ESIA laws should provide for access to draft and then final ESIA, including draft and final ESMPs so that there is an opportunity to comment on the assessment and the proposed prevention and mitigation measures
    - Yet a recent comparison found that governments generally do not provide easy access to comprehensive information on mining operations or related environmental and social impacts and a majority of countries provided limited or no access to ESIA.<sup>215</sup> (See Box 17 on the Environmental Democracy Index.)

<sup>214</sup> See for example, ICMM, "Integrating human rights due diligence into corporate risk management processes," (2012), <https://www.icmm.com/website/publications/pdfs/3308.pdf>

<sup>215</sup> Environmental Democracy Index, <http://www.environmentaldemocracyindex.org/>

- Feasibility studies and ESIA/ESMP for large mines are lengthy and technical – and therefore difficult for all but trained specialists to understand. It will be particularly important for there to be non-technical explanations of the full scope of ESIA and wider feasibility studies in local languages as necessary to ensure access to relevant information and support participation.
- Who provides the information and who delivers the message is important. Will stakeholders see the government or the project proponent as the more legitimate source of information? The government role should be to ensure transparency, accountability and participation in the process, but that will depend on the local context. Where distrust is high, neutral third parties may be required to ensure that participation is meaningful and balanced, rather than a tick-box exercise.
- Do the law and practice reflect international law and international good practice on public participation around ESIA?
  - Public participation in ESIA studies before feasibility studies and licenses/contracts are approved is important to give project-affected peoples and the wider public a chance to influence decision-making before final decisions are made about the plans for the mine.
  - Participation should be inclusive. The baseline can be used to identify particular groups within the community that may require specific measures to engage them in the consultation. This will include not only women and children/youth, but also other persons or groups within the community that might be vulnerable to impacts, e.g., marginalized groups and disabled persons.
  - If there are IPs that may be affected, consultations with this group require particular processes to engage in FPIC (see [Step 2 on Participation Planning, Key Action 2 on IP](#)).
  - Consultations should also be open to representatives of these groups, community-based organizations and CSOs with an interest in the project.
  - The company and the authorities should provide feedback to explain how concerns have been taken into account or, if they have not been taken into account, why.
- Does the law reflect international law and international good practice on access to justice around ESIA?
  - Can anyone who has been denied or restricted information on the ESIA or from participating in an ESIA by public authorities ask for a review? Is the review heard by a court of law or other independent, impartial body?
  - Can anyone bring an action to prompt the mining authority to require an ESIA where it was required by the law to do so but did not?

## Box 46

## Assessing and Addressing Mining Impacts on Women and Opportunities for Gender Empowerment

There is an increasing range of guidance for and about the gender dimensions of the mining sector for governments and companies to draw on in improving attention to impacts on women and improving opportunities for gender empowerment within the sector and the businesses supplying the sector. (See also Box 16 on a gender-sensitive approach to mining.) Steps include:

- Undertaking a gender-responsive baseline survey and social mapping exercise to understand the gender-related impacts of extractive industry operations, drawing on specific guidance on the impacts of extractive industries on women and men, boys and girls
- Analysing the implications of policies that encourage women to go into the formal workforce and understanding how these interact with household level needs
- Ensuring that consultations as part of the ESIA process around specific mining projects include specific and targeted consultations with a cross-section of women from various social strata of the community, to ensure that their voices and priorities are taken into account
- Ensuring that the ESIA & ESMP or associated action plans assess and address gender-related impacts of mining such as the prevalence of gender-based discrimination and violence, risks of women's time poverty,<sup>216</sup> resettlement and compensation plans and putting in place gender-responsive steps
- The ESIA & ESMP should also identify where women's empowerment may be specifically enhanced, such as local content plans/local procurement requirements with specific hiring targets for women, and community development agreements where there can be specific commitments to supporting women's enterprises.<sup>217</sup>

## Box 47

## Assessing and Addressing Mining Impacts on Children – UNICEF Child Rights and Mining Toolkit<sup>218</sup>

Currently, the range of impacts of mining on children is not well understood by the mining industry or mining authorities and, as such, are not being managed. The exception to this is around child labour, which is less of a risk in industrial mining itself, given the skilled demands of the job, but is more of a risk in supply chain management, particularly during the construction phase of a mine, when more third parties, e.g., labour brokers, commonly become involved.

Recent research has shown that children are more vulnerable to the impacts of mining than adults, particularly between birth and 5 years when expe-

riencing formative physical development. These impacts occur in relation to resettlement, in-migration, environment, safety and security, among other issues. The **UNICEF Child Rights and Mining Toolkit** is particularly targeted to mining companies, but also provides very relevant information for environmental, health and child protection authorities and ministries in charge of child welfare. The Toolkit highlights that children's vulnerabilities and the specific impacts they experience as a result of mining activities are regularly overlooked by companies in their environmental, social and human rights due diligence practices, including the associated impact assessments.

216 IFC and Lonmin, "Women in Mining, A Guide to Integrating Women into the Workforce," (2009), and Minerals Council of Australia, "Unearthing new resources: attracting and retaining women in the Australian minerals industry," (2000).

217 Keenan, J. C. and D. L. Kemp (2014). Mining and local-level development: Examining the gender dimensions of agreements between companies and communities. Brisbane, Australia: Centre for Social Responsibility in Mining, The University of Queensland, <https://www.csr.uq.edu.au/component/content/article/15-publications/684-mining-and-local-level-development-examining-the-gender-dimensions-of-agreements-between-companies-and-communities?highlight=WjJnZW5kZlxiQ==>

218 UNICEF, Child Rights and Mining Toolkit (2017), [https://www.unicef.org/csr/files/FINAL\\_Child\\_Rights\\_and\\_Mining\\_Toolkit\\_060217.pdf](https://www.unicef.org/csr/files/FINAL_Child_Rights_and_Mining_Toolkit_060217.pdf). These are based on the children's rights and business principles. <http://childrenandbusiness.org/>

## Box 48

## Committee for Mineral Reserves International Reporting Standards (CRIRSCO)

The aim of CRIRSCO is to promote high standards of reporting of mineral deposit estimates ('Mineral Resources' and 'Mineral Reserves') and exploration progress ('Exploration Results') for investors or potential investors and their advisers.<sup>219</sup> This includes reporting through annual and quarterly company reports, press releases, information memoranda, technical papers, website postings and public presentations.

The CRIRSCO International Reporting Template<sup>220</sup> is a guideline that helps countries establish their own reporting standard and helps promote harmonized approaches to reporting on key terms. With respect to the environmental and social dimensions of mining, these are not currently analysed in sufficient detail, given the growing impact that they have on the potential viability, development and sustainability of projects.<sup>221</sup> The reported results may therefore not accurately reflect the environmental and social costs of mining operations – something that national authorities should consider.

## Box 49

## Closure Issues to Cover in Feasibility Studies

Typical closure issues that should be included in a feasibility assessment include:

- Regulatory requirements for design and closure
- Potential area of disturbance
- Environmental sensitivity of flora and fauna, surface and groundwater quality
- Characterization, volumes and types of wastes to be stored, including waste rock and tailings
- Appropriate locations and required capacity of water storage facilities for potable consumption, process supply and site water management
- Geotechnical stability of ground surface and engineered structures
- Proposed designs for waste storage facilities and costs to rehabilitate and close
- Social and economic development and sustainability issues, such as local enterprise, post-closure use of land and infrastructure, and other community development programmes<sup>222</sup>

219 <http://crirSCO.com/welcome.asp>

220 [http://crirSCO.com/templates/international\\_reporting\\_template\\_november\\_2013.pdf](http://crirSCO.com/templates/international_reporting_template_november_2013.pdf)

221 For work on the Australian reporting code, see J. Heyes, G. Corder, "Strengthening the community and environmental aspects of the JORC and VALMIN Codes – Providing guidance on community and environmental aspects for professionals applying JORC and VALMIN," Bulletin Magazine, December 2015.

222 Australia, "Leading Practice Sustainable Development Program for the Mining Industry – Mine Closure Handbook," (2016), <https://industry.gov.au/resource/Programs/LPSD/Pages/LPSDhandbooks.aspx>

## Resources to Improve ESIA in the Mining Sector

- **Example Terms of Reference (TOR) for a Mining ESIA – Central America:** Regional experts prepared a guidance TOR for each of the exploration and exploitation phases for non-metal and metal mining projects. The TOR is intended for use by the countries to adopt or adapt for their EIA programme requirements.<sup>223</sup>
  - **Subnational level: the Mining and Environmental Impact Guide from the Gauteng Department of Agriculture, Environment and Conservation,** Gauteng Provincial Government of South Africa provides a detailed explanation of mining operations, their impacts and the environmental laws that apply.
- The manual is particularly targeted to providing important information regarding the environmental issues and impacts of the mining industry in Gauteng and to help their environmental officers to evaluate mining license applications.<sup>224</sup>
- **Guidebook for Evaluating Mining Project EIAs:** The Guidebook explains how to understand the EIA process and how to review mining project EIAs, with an emphasis on environmental and social issues.<sup>225</sup>
  - **A Comparison of EIA Laws** can be found here: <https://www.elaw.org/elm>

## D Know and Understand What is in the License/Contract (and What is Not)

Licenses or contracts are the legal documents that govern the rights and responsibilities of the government and companies for mining projects and allocate the risks between them for the duration of the investment (some countries may use both). It is important that those involved in the negotiations understand which type of document is used, how it fits within the broader legal framework in the country and the legal and political considerations and implications behind the choices. (See Box 50 on considerations in de-

veloping a licensing or contracting system and Boxes 51 & 52 on tools for government negotiators and good international practice on mining contracts). These license/contracts are particularly important when the State party's legal framework is underdeveloped. In such situations, contracts often either supplement or supplant the legal framework and provide an opportunity to include additional ESHR requirements or in worst case scenarios, override national ESHR requirements.

223 United States Environmental Protection Agency (U.S. EPA), U.S. Agency for International Development (U.S. AID), and/or the Central American Commission on Environment and Development (CCAD), "EIA Technical Review Guideline: Non-Metal and Metal Mining, Volume I Part 2: Example Terms of Reference," (2011), <https://www.epa.gov/sites/production/files/2014-04/documents/miningvol1part2.pdf>

224 <http://www.gdard.gpg.gov.za/Documents1/MiningandEnvironmentalImpactGuide.pdf>

225 See also regional specific guidance for the Mekong region: [https://www.earthrights.org/sites/default/files/documents/eia\\_manual\\_final\\_0.pdf](https://www.earthrights.org/sites/default/files/documents/eia_manual_final_0.pdf)

## Updated & Aligned with Sustainable Development Commitments

### Has the government updated its standard form license/contracts so that they are aligned with its approach to sustainable development?

- If standard form licenses/contract (concession, service, investment agreements) are not updated periodically, they may be out of step with the government's commitments to sustainable development, good international practice and updates in its own domestic framework covering ESHR issues. There is a range of support tools for governments seeking to improve their contracting models and approaches<sup>226</sup> and approaches to supporting licensing in resource-constrained countries.<sup>227</sup>
- Where governments do not have well-developed domestic frameworks in place governing the ESHR dimensions of mining, they can consider:
  - Adopting a model contract with clearly defined ESHR provisions. This will reduce the risk of these obligations being open for negotiation between companies and government and potentially being negotiated away.
  - Including contractual requirements to comply with well-established international environmental and social standards, such as the IFC Environmental & Social Performance Standards which are well-known to extractive companies and the banks that finance them. (See Annex II.)
- As noted in *Step 1 – Establishing the Foundations, Key Action 4*, governments must also consider what they include in their international investment agreements (IIA), including with respect to investor-state dispute settlements (ISDS), as these will also potentially constrain a government's approach to include sustainable development requirements in mining contracts.

## Coverage of ESHR Issues

### If national laws on ESHR are not well developed, does the license/contract cover ESHR issues? (See also Box 54 on the provisions in the IGF Mining Policy Framework on Licensing and Permitting.)

- The terms should include ESHR requirements or refer to national law requirements or international standards around these issues, including:<sup>228</sup>
  - Requirements to properly prepare or procure the ESIA, required management of all issues in the ESIA/EMP
  - Environmental and social compliance,<sup>229</sup> which might include requirements to comply with national ESHR laws and specific international standards such as the IFC Environmental & Social Performance Standards
  - General requirement to prevent, control, mitigate, rehabilitate, remediate and compensate for the negative impact of mining activities
  - Additional social and economic responsibilities, such as gender hiring targets
  - Health and safety standards
  - Infrastructure & sharing of infrastructure
  - Land acquisition
  - Any resettlement and expected standards of resettlement

226 H. Mann (IISD), *WIISD Handbook on Mining Contract Negotiations for Developing Countries Volume 1: Preparing for Success*, (2015), <http://www.iisd.org/library/iisd-handbook-mining-contract-negotiations-developing-countries-volume-1-preparing-success>

227 See EITI blog on mining licensing in Sierra Leone, "Wanted: Reputable Mining Investors in Sierra Leone," (2017), <https://eiti.org/blog/wanted-reputable-mining-investors-in-sierra-leone>

228 See the Negotiations Support Portal, which aims to strengthen the accessibility and visibility of available tools & resources and technical support to assist host governments planning, preparing for, negotiating, monitoring and implementing large-scale investment projects in the extractive industry, land & agriculture and infrastructure sectors. <http://negotiationsupport.org/> See also "Mining Contracts – How to Read and Understand Them," <https://eiti.org/sites/default/files/documents/mining-contracts-how-to-read-and-understand-them.pdf>

229 If compliance with environmental and social requirements is included in a mining contract, then a breach of those laws is considered to be a breach of the mining contract, with a potential loss of mining rights. Alternatively, mining authorities can request a legally binding commitment from the project proponent that the approved ESIA will be implemented as presented. Such a commitment adds to the legal enforceability of the outcomes of the EIA process. See, for example, United States Environmental Protection Agency (U.S. EPA), U.S. Agency for International Development (U.S. AID) and/or the Central American Commission on Environment and Development (CCAD), "EIA Technical Review Guideline: Non-Metal and Metal Mining, Volume I Part 2: Example Terms of Reference," (2011), <https://www.epa.gov/sites/production/files/2014-04/documents/miningvol1part2.pdf>



- Community engagement
- Community safety and security
- Benefit-sharing
- Indigenous peoples
- Other ethnic groups or vulnerable/disadvantaged groups and individuals
- Cultural heritage
- Company-based grievance mechanisms
- Closure/post-closure environmental rehabilitation, retraining and community development
- Arrangements to cover the financial cost of closure/post-closure
- Oversight/monitoring by the government and other monitoring arrangements such as independent third parties, community monitoring
- Access to land and water, including compensation for use of these resources, considerations of balancing use with communities or compensating communities (such as through replacement water resources)
- Use of security forces and their compliance with human rights standards or specific international standards such as the Voluntary Principles on Security and Human Rights or use only of security firms that are members of the International Code of Conduct for Private Security Providers. (See Box 68 on initiatives and toolkits to help manage security around extractive operations.)

### Providing Access to Mining Licenses/Contracts

#### Does the government make the mining license/investment contracts or at least their key terms available to the public?

- There is a growing body of international guidance calling for the disclosure of contract terms with only limited exceptions. (See Box 55 on recent trends in mining contract disclosure.)
- This is an important step in ensuring that the public, and particularly project-affected people, have access to the terms and conditions being granted for access to the country's mineral resources. Such transparency:
  - Gives the public tools to assess and discuss whether the government has negotiated a good deal for the country
  - Helps reduce corruption and makes it more likely that rights are allocated on the basis of merit (see Boxes 43, 44 and 45 on corruption red flags in mining licensing and permitting)
  - Provides a basis for holding mining companies accountable, as it makes transparent the commitments that a company has made, including on ESHR and community issues

## Box 51

### What are Some of the Considerations in Developing a Licensing System or Negotiating a Mining Contract?

- **A license (or permit)** is typically a standard-form legal document that the state uses to grant exploration or extraction rights according to a generally applicable set of terms, with limited variation from one project to another.
- **A contract (or agreement)** is a negotiated agreement. Contracts are often created from standard templates, but, in contrast to licenses, many resource-rich countries negotiate contracts that deviate substantially from potentially applicable rules in the laws, regulations or model contracts.<sup>230</sup>

230 From NRG, NRG Reader: "Granting Rights to Natural Resources: Determining Who Takes Natural Resources Out of the Ground" (2015), p. 1.

When significant geological data is available and investor interest is high, governments often conduct competitive auctions. But, when geological information is limited or not immediately encouraging, governments often resort to an open-door, first-come-first-served licensing procedure or to direct negotiation with a limited number of companies.<sup>231</sup>

A recent study found that countries with a well-developed legal system typically grant licenses with little, if any, room for negotiation of key provisions.

At the other end of the spectrum, and particularly in countries with weak or inadequate legal frameworks, countries may grant mineral rights to mining companies through individually negotiated contracts that contain most, if not all, the rights and obligations of the parties. In such cases, countries “regularly end up with poorly negotiated deals that confer limited benefits to the country and the communities affected by the mining investment.”<sup>232</sup> For this reason, among others, countries increasingly favour licensing regimes that limit the types of and extent to which terms can be negotiated.

## Box 52

### Tools for Government Negotiators on Integrating Environmental & Human Rights Risks into Contracts with Investors

**The Sustainability Toolkit for Trade Negotiators**,<sup>233</sup> developed by UNEP and the International Institute for Sustainable Development, is targeted to the trade and environment ministries. It explains the major areas of any trade or investment agreement that will have environmental implications, whether intentionally or incidentally, and tries to identify what could be considered best practices and provides an assessment of the various options available, their strengths and their weaknesses.

**The Principles for Responsible Contracts: Integrating the Management Of Human Rights Risks into State-Investor Contract Negotiations: Guidance For Negotiators**<sup>234</sup> identifies 10 key principles to help integrate the management of human rights risks into contract negotiations on investment projects between host State entities and foreign business investors. It is targeted to government teams negotiating investment agreements.

231 From NRG, NRG Reader: “Granting Rights to Natural Resources: Determining Who Takes Natural Resources Out of the Ground,” (2015), p. 1.

232 German Federal Ministry for Economic Cooperation and Development, “Natural Resource Contracts as a Tool for Managing the Mining Sector,” p. 1, <http://ccsi.columbia.edu/files/2015/07/Natural-Resource-Contracts-as-a-Tool-for-Managing-the-Mining-Sector.pdf>

233 <https://www.iisd.org/toolkits/sustainability-toolkit-for-trade-negotiators/>

234 [http://www.ohchr.org/Documents/Publications/Principles\\_ResponsibleContracts\\_HR\\_PUB\\_15\\_1\\_EN.pdf](http://www.ohchr.org/Documents/Publications/Principles_ResponsibleContracts_HR_PUB_15_1_EN.pdf)

## Box 53

## Good International Practice on Mining Contracts

There are a number of places to look for guidance on the types of ESHR clauses to include in mining contracts:

- The International Bar Association's **Model Mining Development Agreement** (available in multiple languages) for mining companies and host governments is aimed primarily as a tool for use with and in developing countries that have no mature mining code.<sup>235</sup>
- **ResourceContracts.org is a repository of publicly available oil, gas and mining contracts** that provides plain-language summaries

of each contract's key ESHR and fiscal and operational terms, and tools for searching and comparing contracts.

- **Guidance on Reading and Understanding Mining Contracts: Mining Contracts: How to Read and Understand Them** (2013) is a general guide to mining contracts that highlights strong contract clauses and explores how weaker clauses can be improved. It goes beyond legal considerations to explore the policy questions and company interests underlying contract provisions.<sup>236</sup>

## Box 54

## IGF Mining Policy Framework on Licenses and Permitting

The IGF Framework provides that a permitting process should require:

- Mining entities, in preparing their applications for a mining permit, to **consult with communities and other stakeholders at all stages** of the assessment and planning process and to document the nature and results of their engagement programme in the permit application
- The submission of **integrated social, economic and environmental assessments**. In addition to a baseline description of current conditions, permit submissions should describe possible risks and impacts of the mining activities together with proposed mitigation or management measures.
- The permit submissions to identify and quantify opportunities and propose programmes that lead to the creation of **sustainable benefits over the life of the project**
- The permit application to be considered complete only when it includes acceptable plans for the eventual **closure of the mine and the provision of adequate financial assurance** to cover the costs of closure and any ongoing monitoring
- The permit applications, when applicable, to address **indigenous peoples, cultural heritage, resettlement, and community safety and security issues**
- Mining entities to have a process of **consultation** that provides **affected communities** with an opportunity to express **their views on project risks and impacts** and to be consulted on the development of **mitigation measures**
- **Completion of the process** in a timely, transparent, unambiguous and consistent manner<sup>237</sup>

<sup>235</sup> <http://www.mmdaproject.org/>

<sup>236</sup> <https://s3.amazonaws.com/s3.documentcloud.org/documents/1279596/mining-contracts-how-to-read-and-understand-them.pdf>

<sup>237</sup> IGF, Mining Policy Framework (2013), Legal and Policy Environment Chapter, <http://igfmining.org/mining-policy-framework/>

## International Developments on Mining Contract Disclosure and Reporting

More and more international standards and governments require the disclosure of natural resource contracts with only narrowly defined exceptions for non-disclosure of particular provisions:

- The **EITI Standard**, requires countries to publish: a registry of all license holders, the location and duration of licenses, information on licensing processes, and encourages the publication of information on beneficial ownership<sup>238</sup>
- The **Open Government Partnership**<sup>239</sup>
- The **IFC's Policy on Environmental and Social Sustainability**<sup>240</sup>
- The **UN Principles for Responsible Contracts**<sup>241</sup>
- An increasing number of **governments**,<sup>242</sup> and the EU<sup>243</sup> **require reporting on payments to governments by extractive companies**<sup>244</sup>

## E Know and Understand the Local Context Where Mining Will Take Place

When the licensing processes for large mining projects are carried out by national agencies with little presence in the territories, far away from where the mining takes place, this can hamper access to information necessary for an appropriate understanding of the kinds of environmental or social conditions in which the mining will take place. It may also hamper a clear understanding of complex political and institutional forces at play that may mean that these processes are not considered sufficient or relevant to those opposing projects.<sup>245</sup>

For all these reasons, it will also be important that participation processes be actively inclusive with respect to where the consultations are held – i.e., national government authorities should facilitate regional, municipal and local-level consultation to ensure that local perspectives and consensus are the grounding for national strategies. Governments may have to protect stakeholders as part of their obligations to protect the rights of freedom of expression and association, including from threats by private actors. Those seeking to express opposition to mining projects are often targeted, harassed and even killed. States should take affirmative steps to protect them, including by investigating threats and by prosecuting violations.

238 [https://eiti.org/sites/default/files/documents/english-eiti-standard\\_0.pdf](https://eiti.org/sites/default/files/documents/english-eiti-standard_0.pdf), EITI Standard 2.

239 See on the Open Government Partnership's Natural Resources Working Group, which focuses on: (a) disclosure of contracts, beneficial ownership and environmental data / information, (b) adherence to data standards, and (c) implementation of the Extractive Industries Transparency Initiative (EITI). <https://www.opengovpartnership.org/groups/naturalresources>. See also: <https://www.opengovpartnership.org/blog/marie-lintzer/2016/02/26/great-ideas-ogp-action-plans-improving-resource-governance>

240 See para. 49-50, [http://www.ifc.org/wps/wcm/connect/7540778049a792dcb87efaa8c6a8312a/SP\\_English\\_2012.pdf?MOD=AJPERES](http://www.ifc.org/wps/wcm/connect/7540778049a792dcb87efaa8c6a8312a/SP_English_2012.pdf?MOD=AJPERES)

241 [http://www.ohchr.org/Documents/Publications/Principles\\_ResponsibleContracts\\_HR\\_PUB\\_15\\_1\\_EN.pdf](http://www.ohchr.org/Documents/Publications/Principles_ResponsibleContracts_HR_PUB_15_1_EN.pdf)

242 <http://www.resourcecontracts.org/> and see IHRB, "Home Government Series: Reporting Requirements," (2017), <https://www.ihrb.org/focus-areas/commodities/home-governments-series-reporting-requirements>

243 [http://ec.europa.eu/internal\\_market/accounting/country-reporting/index\\_en.htm](http://ec.europa.eu/internal_market/accounting/country-reporting/index_en.htm)

244 <http://www.nrcan.gc.ca/mining-materials/estma/18198>

245 D. Arbelaez-Ruiz, J.M. Benavidez, B. Oñate Santibáñez, R. Ramsay, "Institutional and Political Frameworks of Environmental Licensing Processes," (2013), p. 8, <http://im4dc.org/wp-content/uploads/2013/09/Institutional-and-Political-Frameworks-of-Environmental-Licensing-Processes1.pdf>

## Relevant Knowledge about Where Mining will take place

**Do the mining and environment and social authorities try to improve their knowledge of key ESHR issues of concern in the areas around where mining will take place in order to better anticipate and then regulate the forthcoming stages in light of the operating context?**

- Do the authorities:
  - Commission or consult independent studies in addition to the ESIA to gain a better understanding of ESHR issues?
  - Have access to environmental and social baseline data on the areas where mining will take place? Is the data disaggregated by sex and age to permit more refined analysis of potential impacts?
  - Have access to GIS data or baseline data? If not or if it is outdated and neither the national government nor the local government has resources to conduct studies covering all potential mining areas, do the mining authorities carry out local consultation to acquire such localized understanding? For example, integrated ecosystem valuations may require local participation.
  - Tap into local and indigenous knowledge of the environment and social issues in the areas where mining will take place?
  - Work with local authorities (see [Step 2 – Planning](#) on the misalignment between Sectorial and Territorial Planning) to understand local issues and local concerns?
  - Use the ESIA process to open contacts with stakeholders to better understand concerns and potential prevention and mitigation steps – issues such as concerns about water use, infrastructure use, jobs for local community members, etc.?

