



*Empowered lives.  
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# ROLE OF HOST GOVERNMENTS IN ENABLING OR PREVENTING CONFLICT ASSOCIATED WITH MINING

**Abridged version**



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# ROLE OF HOST GOVERNMENTS IN ENABLING OR PREVENTING CONFLICT ASSOCIATED WITH MINING

**Abridged version**

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For:

**The United Nations Development Program (UNDP)**

**The Canadian International Resources and Development Institute (CIRDI)**

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# DOCUMENT OVERVIEW

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This study is the second phase (Phase 2) of an ongoing research project to improve understanding about the rise in conflict associated with mining operations around the world, particularly in developing countries. This is an abridged version of the full-length Phase 2 report on *The Role of Host Governments in Enabling or Preventing Conflict Associated with Mining*, published by UNDP and Canadian Institute for Resource Development (CIRDI). This publication includes summaries of a literature review, a quantitative analysis of a global database on conflict incidents, a field case study conducted in Ghana and a discussion on policy implications for governments. It also draws upon four field case studies from Phase 1 of this research, conducted by Andrews et al. (2016), which investigate specific conflict incidents at mine sites in Tanzania, Madagascar, Peru, and Bolivia.

The purpose of the Phase 2 research is to better understand the role of host governments in conflict creation or prevention, and on this basis to provide possible actions for governments to consider conflict transformation, mitigation and prevention. Using a conflict pathway analytical framework, this publication focuses on a set of policy implications of interest to host governments in mineral producing countries. This work finds that with appropriate attention to the establishment of strategic approaches to mineral development, including an incremental approach to attracting the large-scale mining (LSM) sector to match governance capacity, strengthening local governance institutions, preparing rural communities for the arrival of the large-scale mining industry, reconciling the artisanal and small scale mining (ASM) and LSM sectors, and maintaining a strong regulatory compliance and social development presence in rural mining districts, the negative consequences of destructive conflict can be avoided and a path towards sustainable mineral development established and maintained.

# ACKNOWLEDGEMENTS

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Tony Andrews and David Reyes extend their sincere thanks to the Minerals Commission of Ghana, which approved and supported the field case study in Ghana, in particular Steven Korshi Agbo, Senior Social Scientist with the Minerals Commission, for generously contributing his time and efforts in helping to set up the field research in Ghana. We also extend our appreciation to Toni Aubynn, CEO of the Minerals Commission at the time, for supporting the project and Steven's participation. This report also draws upon four field case studies conducted during Phase 1 of this study and relevant acknowledgments associated with this work may be found in Andrews et al. (2016).

Last but not least we extend our sincere thanks to all of the Ghanaian stakeholders, including community authorities, traditional leaders, artisanal and small-scale mining (ASM) operators, NGOs, mining company representatives and representatives of the central government for their willingness to give their time and share their knowledge and experience, without which the field case study would not have been possible.

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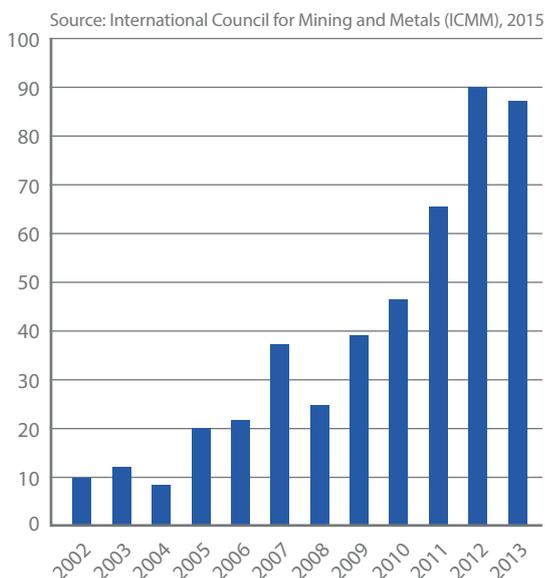
# INTRODUCTION

There has been a dramatic rise in the frequency of conflict incidents associated with mining operations over the past 15 years, which coincided with a worldwide increase in mining industry activity (Figure 1).

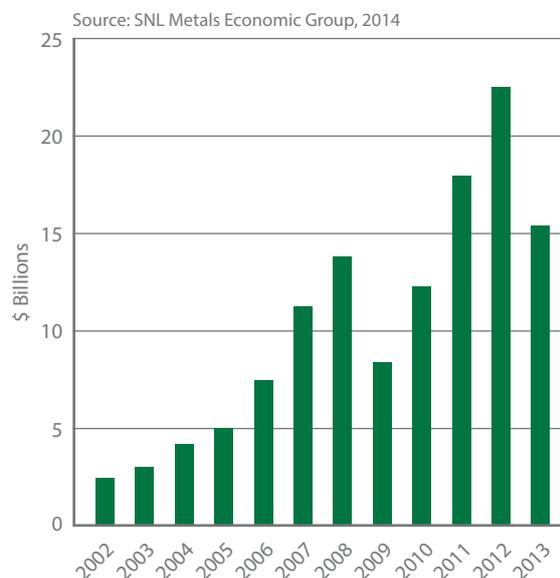
Phase 1 of this global study examined conflict as a process involving the interplay of key players, including government agencies, mining companies and local communities, all of whom contribute to conflict situations in different ways. The Phase 1 study demonstrates that while conflict manifests at the company-community interface, it has a much longer history and trajectory leading up to the point of outbreak. The role of host governments in achieving responsible, sustainable mineral development is the establishment and implementation of appropriate governance regimes that optimize the economic benefits of mining for local communities and society as a whole, while minimizing environmental

Figure 1: Rise in conflict incidents associated with mining coincident with the commodity boom.

## CONFLICT INCIDENTS BY YEAR



## ANNUAL EXPLORATION EXPENDITURES



and social impacts and protecting human rights. The Phase 1 study demonstrated that the ability of host governments to effectively perform this role is a critical determinant in whether or not they create an enabling environment for sustainable development or sustained conflict risk, and pointed towards the need for deeper investigation into how the role of host governments could be optimized towards the former.

## Purpose and Methodology

The Phase 2 study's purpose is to better understand the role of host governments in conflict creation or prevention, and on this basis to provide possible actions for governments to consider for conflict transformation, mitigation and prevention. This research consisted of three components: first, a literature review of over 300 publications relevant to the role of government in conflict linked to mining; second, a quantitative analysis of 334 recorded conflict incidents between 2002 and 2013; and third, five field case studies conducted in Latin America and Africa.<sup>2</sup> This combined approach provides both high-level global observations, based on a relatively large sample base (the literature review and quantitative analysis), and a more specific and detailed ground-truthing based on the field case studies. A broad definition of conflict was employed to encompass the potential for both negative and positive outcomes of the conflict process, as follows:

The interaction of two or more parties with perceived incompatible goals, who engage each other through a range of practices including dialogue, persuasion, negotiation, arbitration, legal action, protest, intimidation and physical violence.

Due to the nature of mining and its inherent social and environmental impacts, the potential for conflict always exists. As in any relationship, tensions that lead to conflict do not always have negative outcomes—they can also have positive outcomes if managed effectively. In this report, the word 'conflict' refers to the process that leads to negative, often destructive outcomes, since that is what the authors are endeavouring to understand. The main objective, therefore, is not the prevention of conflict per se, but the prevention and/or transformation of the negative consequences of destructive conflict to more positive outcomes.

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2. Field case studies were conducted in Bolivia, Madagascar, Peru and Tanzania as part of the Phase 1 study (see Andrews et al., 'The Rise in Conflict Associated with Mining Operations: What Lies Beneath?' Canadian International Resources and Development Institute [CIRDI], Vancouver, B.C. [2016], [cirdi.ca/wp-content/uploads/2017/06/Conflict-Full-Layout-060817.pdf](http://cirdi.ca/wp-content/uploads/2017/06/Conflict-Full-Layout-060817.pdf)), and an additional field case study was conducted in Ghana as part of the Phase 2 study. <http://cirdi.ca/project/the-rise-in-conflict-associated-with-mining-operations-what-lies-beneath/>



## Scope of Research

The authors organized the Phase 1 and Phase 2 investigations into two stages: (a) understanding the causes of conflict and the processes involved, and (b) identifying practical tools for managing and transforming conflict based on improved policies, practices and interventions. This research is ongoing and some important topics that have significant relationships to conflict creation and prevention have yet to be considered in detail. For example, both political dynamics at the national, regional and local levels and involuntary physical resettlement<sup>3/4</sup> are acknowledged contributors to conflict creation in resource-based economies. Likewise, integrated land-use planning and management (ILM)<sup>5</sup> and responsible mineral development initiatives by home governments have important roles to play in conflict management and transformation. An area worthy of further study, but beyond the scope of this project, is how host and home governments can most effectively make use of the tools at their disposal to prevent the escalation of conflict and foster sustainable development.<sup>6</sup> The aforementioned topics are not addressed substantively in this report; the authors intend to focus on these issues as part of ongoing investigations.

- 
3. International Finance Corporation (IFC) of the World Bank Group, 'Performance Standard 5: Land Acquisition and Involuntary Resettlement (2012)'; [www.ifc.org/wps/wcm/connect/topics\\_ext\\_content/ifc\\_external\\_corporate\\_site/sustainability-at-ifc/policies-standards/performance-standards/ps5](http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/performance-standards/ps5); and European Bank for Reconstruction and Development (EBRD), 'Environmental and Social Policy. PR 5: Land Acquisition, Involuntary Resettlement and Economic Displacement,' [www.ebrd.com/downloads/about/sustainability/ESP\\_PRO5\\_Eng.pdf](http://www.ebrd.com/downloads/about/sustainability/ESP_PRO5_Eng.pdf).
  4. For more information and resources on involuntary resettlement, refer to the Centre for Social Responsibility in Mining and Mining Resettlement.org, at [www.miningresettlement.org](http://www.miningresettlement.org).
  5. An opportunity for governments to enhance deliberative approaches for resource management is through integrated landscape management systems (ILM). With the introduction of sophisticated tools for planning and information management, ILM offers a systems approach for cross-sectoral resource management. See Tony Andrews, 'Integrated Landscape Management: Applying Sustainable Development to Land Use', Canadian Integrated Landscape Management Coalition (2005); and Sara Scherr, Seth Shames and Rachel Friedman, 'Defining Integrated Landscape Management for Policy Makers', *Ecoagriculture Policy Focus* No. 10 (2013).
  6. The Institute for Human Rights and Business report series on 'Home Government Incentives Towards Responsible Business Conduct' (2017), available at [www.ihrb.org/focus-areas/commodities/home-government-incentives-toward-responsible-business](http://www.ihrb.org/focus-areas/commodities/home-government-incentives-toward-responsible-business), contains a series of five reports on the following: 1. Overview of Key International Standards; 2. Reporting Requirements; 3. Multi-Stakeholder Initiatives; 4. Innovative New Approaches; and 5. The Role of Capital Markets. These reports include requirements that companies meet responsible business conduct conditions in order to access economic and diplomatic support from the state in accessing third markets.

## Conflict Pathway Analytical Framework

The results of this study are presented through a 'conflict pathway analytical framework' developed by Andrews et al. (2016). They demonstrated that the current reality of the mining sector in any region, including the behaviours of the various players and their relative contributions to an environment that either creates or prevents conflict, can be rationalized and understood in a systematic way through the lens of their historical context and development trajectories. The 'analytical framework' (Figure 2) was developed to show that conflict is a process that occurs over space and time. The process is described as a conflict determinant hierarchy, moving from broad-scale (global, international), long-term *structural factors* and narrowing down in duration and geographic extent through *contextual factors* (national to regional), *conflict drivers* (regional to local) and, finally, *conflict-triggering events* (tipping points) that normally occur at the sites of operations (see highlighted box below for definitions).

### CONFLICT DETERMINANT DEFINITIONS

#### **Structural Factors**

These are conditioning or generic factors (often historical) usually taking place at the global, international or national levels and existing in the medium - to long-term (e.g. the effect of colonialism, income disparity, international commodity prices, lack of trust in government).

#### **Contextual Factors**

Factors defining the broad environment in which specific mining conflict cases reside at the national or subnational levels; preconditions conducive to the onset, continuation or redirection of conflict cases existing over the medium - to long-term (e.g. typically the policy-regulatory space defining the host country governance).

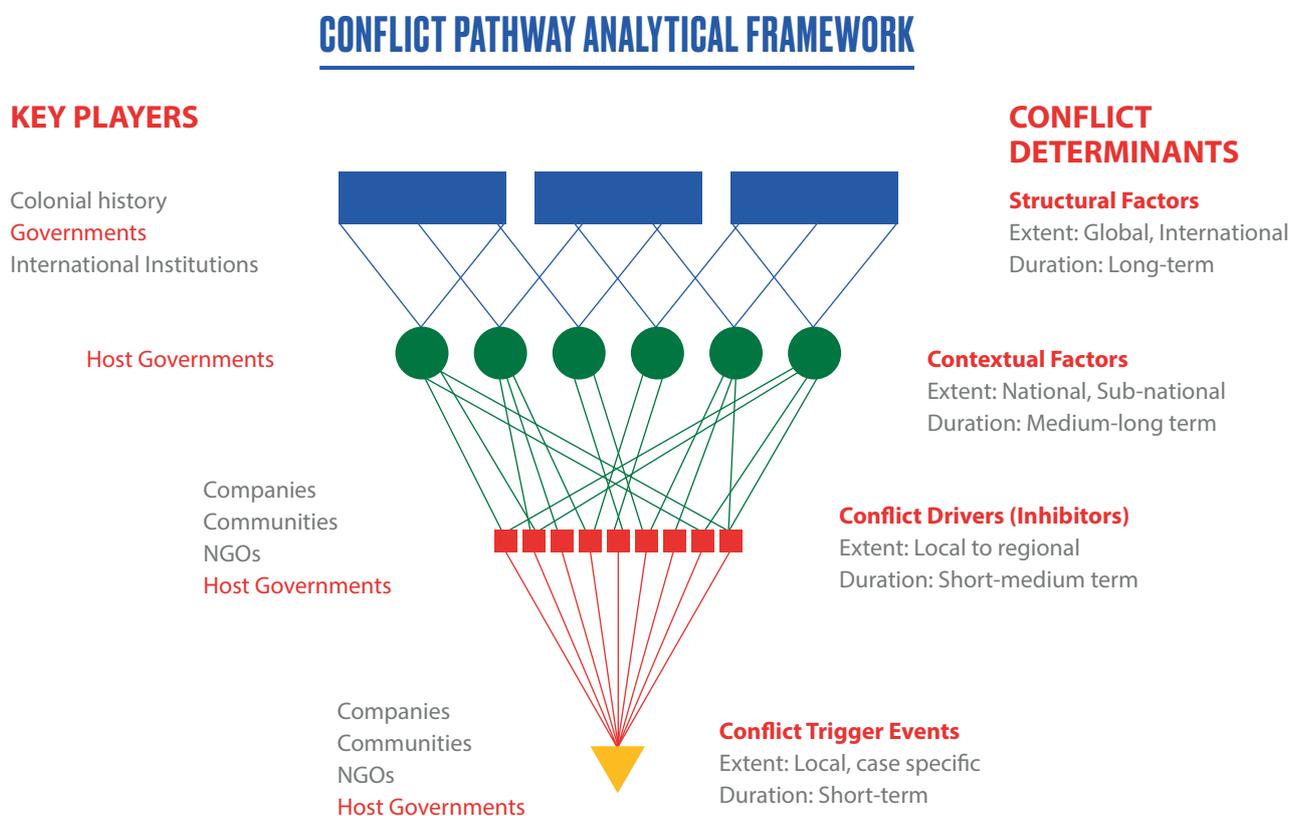
#### **Conflict Drivers**

A condition that exists at the regional and/or local levels that propels a specific (potential) conflict situation in a positive, neutral or negative direction; typically existing in the short - to medium-term (e.g. poor consultation or engagement; a concern over water quality that is not addressed; economic downturn leading to layoffs and community programme cuts).

#### **Conflict-Triggering Events**

An action or event at the local (site) level that acts as a tipping point, transforming otherwise latent tensions into open conflict, or escalating or de-escalating existing conflict; typically existing in the short-term or a moment in time (e.g. death of a community leader; an accident related to traffic; tailings spill affecting a river).

Figure 2: Conflict pathway analytical framework. The key players listed in this figure are reflective of the case studies examined in this study. The conflict determinants are defined in the box above.

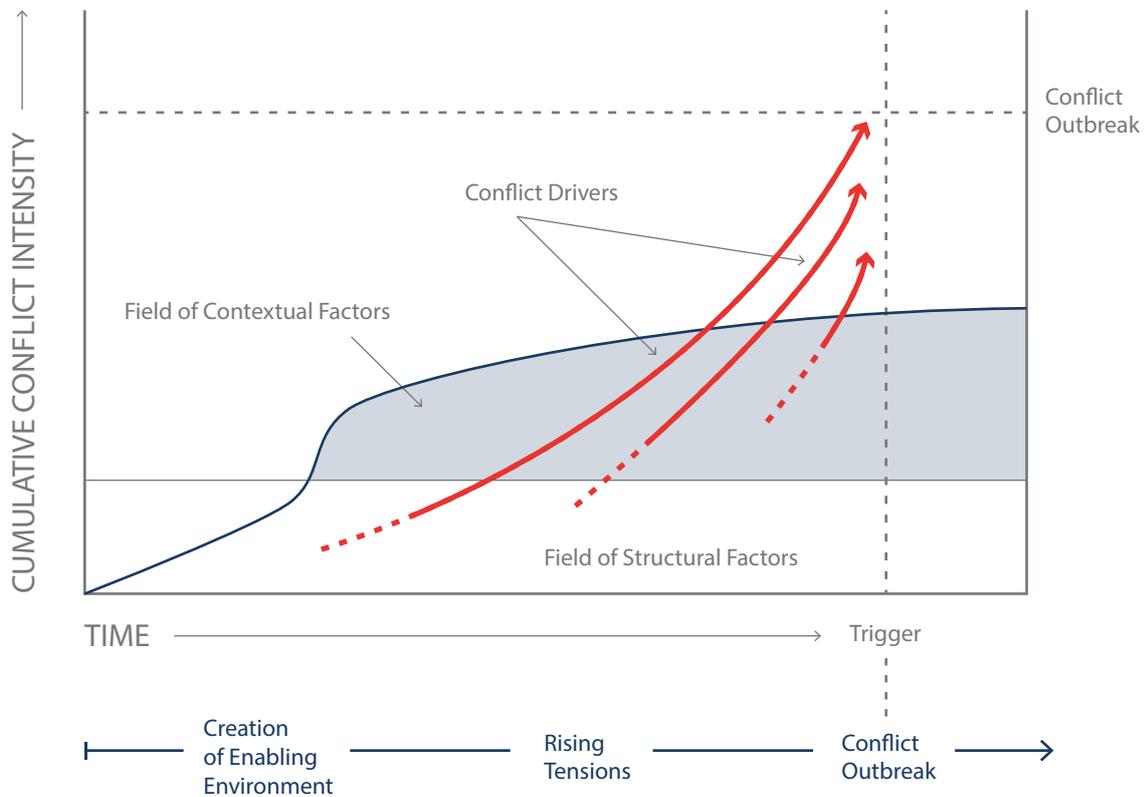


In general, there is connectivity and causative relationships from one layer to the next. The flow is predominantly top to bottom, proceeding from *structural factors* through *contextual factors*, to *conflict drivers* and *conflict-outbreak trigger* events. Central to this flow is the powerful impetus of *path dependency*; that is, the tendency for events and decisions early on in the process to lock-in courses of action that, over time, become more difficult to reverse, and thereby shape the process and its eventual outcomes.

In Figure 3 we show the causes and their interrelationships as a dynamic ‘process’ that evolves as a function of time. The *structural* and *contextual factors* lay the foundation for the existence of long-term tensions and the breeding ground for the emergence of *conflict drivers*. The persistence of *structural* and *contextual factors* produces an enabling environment for *conflict drivers* to expand to the point where conflict erupts, precipitated by *conflict-outbreak trigger events*, which are often highly variable and unpredictable. The *conflict drivers* and *triggers*, combined with historical and cultural features characteristic of the locale, give rise to the reactions and behaviours of the players involved and to the variability of conflict emerging at the company-community interface. As described below, the Phase 2 study revealed that governments have an influence across the whole conflict hierarchy:<sup>7</sup>

7. An important aspect of the role of governments, beyond the scope of the Phase 2 study, is how home governments (the government of the country in which the investing company or parent company is domiciled) contribute to the conditions that enable or inhibit mining-related conflict.

Figure 3: Conflict as a Dynamic Process. In reality, the fields defining the structural and contextual factors do not remain smooth or flat but vary over time in response to changing economic, political and regulatory conditions and company practices.



- Government influence begins through historical and cultural factors, including the imposition of occupying colonial governments, which established patterns and behaviours of governance that shape the present day, including centralist governance and nascent democratic systems.
- Recent and current host governments play a role across the complete hierarchy of the conflict process, from *structural determinants* through to *conflict-triggering events*.
- Recent and current host governments significantly shape *contextual factors*—the policy and regulatory space. They are key players in setting the enabling environment for the creation or prevention of conflict based on the approach they take to initiating, governing and managing the development of their country’s mineral resources.

The conflict pathway analytical framework reveals that conflict is a systematic and understandable process and therefore one that is manageable and preventable. Through their actions and non-actions, governments contribute to the fertile ground for sustainable development or sustained conflict. The Phase 2 study aimed to better understand how the pathway to conflict occurs, and to provide possible actions for governments to consider for conflict transformation, mitigation and prevention.

# 1

Section 1

# LITERATURE REVIEW



The literature review considers the role of government through the frame of negative and positive peace, the former involving policies and activities resulting in conflict aggravation and/or suppression and the latter following a more strategic and deliberative pathway designed to manage and transform the negative consequences of conflict.

There is a clear preference in the literature to investigate examples of negative peace. The pathway to negative peace taken by host governments has its roots in historical *structural factors*, in particular colonialism, authoritarian rule, and, more recently, neo-liberal policy reforms. Many host governments have continued along this trajectory up to the present day. The *structural factors* have given rise to a number of conflict determinants at the level of *contextual factors* and conflict drivers, and include the following:

1. While the role played by the state in enabling conflict is sometimes direct and causal, such as through the tactics it employs in response to outbreaks of open protest (at the levels of *conflict drivers* and *conflict-outbreak triggering events*), many of its roles precede the open conflict stage, and are of an indirect or enabling nature and included in the policy and regulatory space (*contextual factors*).
2. When host governments focus on attracting foreign direct investment (FDI) in the absence of well-designed and implemented mineral development strategies, conditions for contention increase.
3. The move by host governments to act as custodians of subsurface mineral resources, when surface lands are owned by citizens, has given rise to notable determinants of conflict, especially when governments favour policies that promote the large-scale mining industry (LSM) over the needs and aspirations of local communities and the pre-existing artisanal and small-scale mining (ASM) sector.
4. The tendency for host countries of many developing countries to adopt a centralist approach to governance, following, in some mineral-producing countries, many years of authoritarian rule, results in a lack of presence in rural areas, an absence of government-delivered social development programmes, limited regulatory monitoring and enforcement of both the LSM and ASM sectors and a lack of trust in government by rural people.
5. Lack of capacity of central governments to govern in rural areas has been exacerbated by ineffective decentralization initiatives. The result is weak local governance institutions, dependence of communities on mining-company-driven community development programmes and inefficient and/or inequitable distribution of benefits from the LSM sector.
6. The lack of institutional capacity of host governments has led them to employ measures such as coercion, forceful repression and criminalization of protest to manage conflict (negative peace), as opposed to prevention and transformation of conflict through effective policies, governance and deliberative engagement (positive peace). Often, reactive/forceful approaches exacerbate and escalate conflict and stoke resentment towards government authorities.

Capacity-building to improve resource governance, the establishment of a government presence in rural areas to deliver social development programmes, and stronger regulatory monitoring and control are useful elements of a strategic approach to mineral development that governments can adopt to reduce conflict risk. Analysis of the literature revealed the following additional measures to build governance approaches focused on positive peace, which could allow governments to better manage and transform negative consequences of conflict:

- **Institutionalized engagement:** Government-driven initiatives prior to the arrival of the LSM sector, to engage, plan and prepare rural communities for large-scale mining, including the provision of information, dialogue, participatory planning, and free, prior and informed consent.
- **‘No-go’ designations** and non-extractive development models applied in ecologically and socially sensitive areas, and included as key elements of a strategic approach to land-use planning.
- **Attention to the importance of Environmental Impact Assessments (EIAs)** in the process of institutionalized engagement, including by making them more accessible and understandable to rural communities and utilizing the potential of EIAs in participatory decision-making.
- Integrating **government social development initiatives** with company-driven community development programmes to limit community dependency on companies.
- **Government as a neutral convener:** Improvement in the capacity of government not only in regulatory monitoring and enforcement, but also in its role as neutral arbitrator of conflict, defender of human rights and facilitator for directing conflict pathways to positive outcomes.
- Adherence to high standards of **procedural fairness** in all formal interactions with rural communities.
- **Decentralization and devolution of governance responsibility to local authorities,** and strengthening of local governance institutions, including building skills in the areas of municipal planning, administration and mechanisms of transparency and accountability, leading to more equitable distribution of the material benefits of mining, including increased efficiency in the use of resource rents for rural development purposes.



# 2

Section 2

# QUANTITATIVE ANALYSIS



We constructed a longitudinal, global, quantitative database of 453 conflict incidents from around the world, as recorded between 2002 and 2013. Employing regression modelling, we conducted a rigorous, quantitative examination of those occurrences and also of the likelihood of conflict in 98 countries at both the national and property levels,<sup>8</sup> as a function of country-level macroeconomic indicators, quality of governance indicators, foreign ownership, mineral endowment and on-property reserves.

Our observations may be summarized as follows:

- 1.** Conflict associated with mining activities decreases with increasing quality of economic, legal and social development institutions.
- 2.** In all countries, regardless of whether they are developed or developing, host governments have capacity limits with respect to the number of companies they can regulate effectively at any given time.
- 3.** Decreasing scores of country governance quality correlate with increasing numbers of conflict incidents when the ratios of foreign mining companies to the total number of companies increase, and when the total amounts of country mineral reserves increase. This is interpreted to reflect resentment by host country societies and ASM operators towards foreign companies exploiting and benefiting from their natural resources. This resentment may intensify in countries with higher mineral endowment due to the attraction of a larger number of foreign companies.
- 4.** Similar associations emerged from the analysis of data at the mining-property level. In this case decreasing scores of country governance quality correlate with increasing likelihood of conflict when ratios of foreign owners of mining companies to total number of owners increase, and when on-property reserves increase. This association was much more significant in developing countries as compared to developed countries. This implies that in developing countries, decreasing the likelihood of conflict will depend on both government-driven regulatory controls at the country level, as well as industry-driven social development initiatives at the local level. It would also suggest that in developed countries, where standards of regulatory monitoring and enforcement are already relatively high, the mitigation of conflict risk is more effectively addressed through the introduction of company initiatives at the property level.

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8. Property level refers to individual concessions leased from government for the purpose of mineral exploration or mining.

5. While developing countries need to achieve better governance quality in order to lower the risk of conflicts associated with mining activities, progress will take considerable time and effort. The collective results of the quantitative analysis suggest a strategy that host governments can consider in the interim. This strategy would involve the following:
- Limiting the total number of operating companies to match the governance capacity of the host country;
  - Maintaining a low ratio of foreign companies to total number of companies;
  - Empowering and resourcing local government institutions;
  - Ensuring that mining companies possess the ability and experience to implement high quality social development programmes and partner with host government to maintain stability in rural areas; and,
  - Additional attention to how properties with large reserves are managed.

Regarding point 4, the literature review examined the concept of host government selectivity of companies based on their demonstrated ability to reduce conflict risk and concluded that the published literature was not conclusive on this topic. The results of the quantitative analysis, however, suggest this as a potentially viable, interim strategy while host governments take the necessary measures to improve their capacity to govern.



# 3

## Section 3

# APPLYING THE CONFLICT PATHWAY ANALYTICAL FRAMEWORK TO SELECT CASES



## The Case Studies Considered through the Framework

This section considers five field case studies examined through the lens of the conflict pathway analytical framework (Figure 2) and focusing on the role of government. They are highly condensed versions of more detailed and nuanced analyses included in the Phase 1 (Tanzania, Madagascar, Peru and Bolivia) and Phase 2 (Ghana) reports.<sup>9</sup>

Given the objective of this study to understand the historical context and pathways that contributed to eventual conflict outbreak, the case study descriptions below focus primarily on past government decisions and conflict determinants active at the time. In more recent times, some host governments have made progress on governance and conflict prevention as referenced in the discussion below.

The selection of field case studies was based on a number of factors including geographic location, local characteristics and the nature of mining operations (e.g. commodity, underground vs open pit), but emphasis was always placed on the potential insights they would provide for improving understanding of the conflict process.

9. The field case studies in the full reports consider the roles of all key stakeholders, in particular companies, communities and governments. They are available as detailed, independent reports which may be accessed at <http://cirdi.ca/project/the-rise-in-conflict-associated-with-mining-operations-what-lies-beneath/> (Tanzania, Madagascar, Peru and Bolivia) and (Ghana) respectively.

### TANZANIA AND THE CASE OF THE BULYANHULU PROJECT

#### Introduction

In 1994 when a licence to prospect in the Bulyanhulu area in Northern Tanzania was granted to a foreign owned mining company, there was a substantial amount of small-scale, unlicensed mining activity happening on the land. In 1995, the government issued a decree for ASM operators to vacate the land but this was not enforced. In 1996 a final decree called on “unlicensed miners” to vacate. The decree was challenged in the courts and an injunction not to vacate was issued but overturned three days later. This was followed by an allegedly forceful eviction of the ASM operators carried out by the police under the direction of the central government–appointed District Commissioner. The eviction, together with unsubstantiated allegations that artisanal miners were killed in the process<sup>10</sup>, has fueled a long-term, simmering resentment towards the company and a lack of trust in government that have never been effectively reconciled. The Bulyanhulu underground gold mine has operated since 2001. Additional incidents of conflict occurred in 2004, in which an armed payroll robbery took place where people were killed and mine workers implicated, and in 2007 when a major strike took place and the mine was shut down and many workers fired.

10. See report from IFC Compliance Advisor Ombudsman for further details - [http://www.cao-ombudsman.org/cases/case\\_detail.aspx?id=113](http://www.cao-ombudsman.org/cases/case_detail.aspx?id=113)

## Structural Factors

### *Central approach to governance*

At the time of the development of the Bulyanhulu mine in the mid- to late 1990s, Tanzania had a centralized approach to governance, although establishment of regional authorities, known as MADARAKA MIKOANI, commenced in 1972.<sup>11</sup> The centralization of government was an outcome of the colonial approach to governance and influenced the historical approach, which resulted in minimal input by local government institutions to central government decision-making, communities unprepared for the arrival of the LSM sector and competition for land and resources between the ASM and LSM sectors.

### *Mistrust in government*

Mistrust in government had persisted for long periods of time, particularly in rural areas with mining operations. This was propelled by a historical lack of positive presence of government and constructive government initiatives in such areas, forceful interventions by national police and the army, and widespread corruption.

## Contextual Factors

### *Lack of a strategic approach to development of mineral resources*

The intensive ASM activity that followed the discovery of gold at Bulyanhulu in 1976 was encouraged by the central government of President Nyerere, along with a sense of local ownership and entitlement to the mineral resources. However, between 1985 when Nyerere left office to the mid to late 1990s, the central government assumed control over the country's subsurface resources, reformed land laws and initiated a strategy to attract FDI and the large-scale mining industry (LSM). This was not accompanied by adequate build-up of capacities of the Ministry of Energy and Mines for regulating and managing large scale industrial mining, including permit issuance, monitoring and enforcement of social and environmental standards and consultations and engagement with local government and communities.

### *Potential for meaningful decentralization*

Various approaches to decentralization were initiated in Tanzania commencing in 1972<sup>12</sup> through the the declaration of MADARAKA MIKOANI. A new approach was introduced in 1998 through the Local Government Reform Program, founded on the principle of Decentralization by Devolution, and based on a 15-year plan to move political, financial and administrative functions to local government. During this period however, instead of strengthening local government institutions and devolving authority to them, decentralization was directed towards the strengthening of central government control and decision-making within the regions, with regional and local officials appointed by and reporting to the central government. Budgets were controlled by the central government and local authorities had little say in regional planning.<sup>13</sup>

11. The history of decentralization in Tanzania commenced soon after independence but for the most part was characterized by political control from the central government (Mollel and Tollenaar, 2013); Venugopal and Yilmaz, 2010; Massoi and Norman (2009)

12. Mollel, H. A. and Tollenaar, A., (2013). Decentralization in Tanzania: Design and Application in Planning Decisions. International Journal of Public Administration (2013)

13. Ibid.

### *Lack of preparation and planning for ASM & LSM integration*

In 1996, acting on the legal grounds that all mineral resources belong to the state, the central government of the day forced the displacement of the artisanal miners from the site to pave way for large scale mining. At the time, the local economy around Bulyanhulu, including small scale mining, was driven by local investors. It was widely felt that the government should have done more to prepare communities for the shift towards LSM. Instead, perceptions took root that the state was “selling the gold away to foreign investors,” while local small-scale miners and investors were allegedly denied any role in negotiating to recover their losses or find alternative mine sites. If the central government had been more strategic in preparing communities and local miners for the arrival of the LSM sector, this could have resulted in the establishment of mechanisms for a more constructive coexistence of the LSM and ASM sectors.

### **Conflict Drivers**

#### *Dependency on mining company for benefits and social development programmes*

Historically, the central government did not initiate social development programmes in the communities surrounding Bulyanhulu and the mining operation was the only source of this kind of development support. The roots of dependency also likely trace back to the negative circumstances involved with the start of the mine and the community sense that, in exchange for “their gold”, the mine is directly obliged to provide for people’s needs. Rather than the mine taking credit for delivering social programmes, local politicians were reported to have taken credit for mine-delivered development programmes while exploiting frustrations over demands that were not met.

### **The Role of Government Going Forward**

As described in the full-length report, the historical and current levels of conflict risk associated with the Bulyanhulu operation are the result of a combination of factors arising from decisions and actions of past governments, the company, workers and local communities. The risk of open conflict remains high, however, improvements are emerging from recent efforts by the central government to more effectively decentralize power and authority to local government institutions. As a result, local officials are better positioned to create stability by guiding a less top-down and more interest-driven approach to managing conflict. The police have started to do more in terms of using diplomacy rather than force to keep the peace. Preventing corruption will be important to the success of this new direction and it is encouraging that the national government has introduced programmes to that end. As well, the central government endorsed the African Mining Vision in 2009 and recently introduced new laws governing mineral development designed to maximize benefits to the economy of the country<sup>14</sup>. Another key factor for sustaining improvements in the Bulyanhulu case will be efforts by the government and the mining company to address the evictions legacy and the sense that the gold is being stolen without recourse or adequate compensation. In this respect, the central government has an important role to play, working with local government to build on the potential for new relationships and partnering with the company to help address the results of an inconsistent approach to community relations and social development programmes in the past. This in turn will depend on the planning and administrative capacity of local civil servants, along with participation by local people in the economic planning and the political process.

14. <https://www.herbertsmithfreehills.com/latest-thinking/significant-recent-changes-to-tanzanias-mineral-law-regime>

## MADAGASCAR AND THE CASE OF THE AMBATOVY PROJECT

### Introduction

Political turmoil, governance problems, corruption and increasing poverty on the island of Madagascar created a challenging context to build and operate a large, complex mining and refining project like Ambatovy. Construction on the US\$8 billion project began in 2007 and full production was achieved in 2014. A large-scale nickel and cobalt producer, Ambatovy is comprised of a mine facility, a processing plant, a 200 km pipeline for transporting ore slurry from mine to plant, and port infrastructure, all located in north-eastern Madagascar. Given ongoing political instability and weak governance in Madagascar, the Ambatovy project is seen as the leading solution to long-standing socio-economic challenges. This translates to increasing community dependency on the mine, accompanied by high, often unrealistic expectations, contributing to an increased level of conflict risk.<sup>15</sup>

### Structural Factors

#### *A fragile state*

Madagascar is the only country in the world whose real per capita income declined between 1960 and 2010. The average Malagasy was 42 percent poorer in 2010 than in 1960, largely due to debilitating political turmoil. Under French colonization, class and ethnic divisions were exploited, sowing the seeds for a fragmented society, the negative effects of which continue to the present day. Since independence in 1960, the island's politics have been marred by frequent political crises, popular protests, disputed elections, an impeachment, two military coups and the assassination of a president. The island is also prone to frequent natural disasters, including drought, flooding and cyclones.<sup>16</sup>

#### *Lack of trust in government*

Over time, the people of Madagascar have experienced many negative impacts from the mismanagement of several successive governments, leading to a deep mistrust in government and a transfer of expectations and needs to the company and the project. Only the strong culture of tolerance and respect for the law and fear of forceful intervention by the army and police have prevented a high level of tension from translating into conflict outbreak.

15. Information in the case study summary is drawn from the full-length Phase I annex publication; David Reyes and Rames Abhukara, 'Field Case Study 1: Ambatovy, Madagascar', CIRDI (2015), [cirdi.ca/wp-content/uploads/2017/06/Case-Study-1-Ambatovy-Madagascar-060517.pdf](http://cirdi.ca/wp-content/uploads/2017/06/Case-Study-1-Ambatovy-Madagascar-060517.pdf).

16. Anthony Egan, 'Drought, political infighting and unstable neighbors make for ominous 2017 in southern Africa', America: The Jesuit Review, 13 January 2017, [www.americamagazine.org/politics-society/2017/01/13/drought-political-infighting-and-unstable-neighbors-make-ominous-2017](http://www.americamagazine.org/politics-society/2017/01/13/drought-political-infighting-and-unstable-neighbors-make-ominous-2017).

## Contextual Factors

### *Political turmoil and instability*

The mine's construction between 2007 and 2011 coincided with a military coup and downfall of the central government, followed by political uncertainty, economic upheaval, social turmoil, and isolation from the international community. Due to time pressures and the installation of a new management team during the construction stage, the company's approach to community engagement and social development became increasingly transactional, contributing to the relationship of dependency. A conflict 'containment' approach allowed the company to complete a large and complex build in a politically unstable environment. Unfortunately, since the 2009 coup, income inequality, poverty and malnutrition have only worsened. Madagascar's fragility is perpetuated by a political system that mainly serves the elite and provides a persistent role for the army in politics.

### *Weak governance capacity*

Political instability has led to weak, inconsistent approaches to governance, translating to inconsistencies and inefficiencies in the operating environment and representing a key constraint to the country's ability to reach its potential for economic growth. Madagascar's fragility also stems from the fact that the rule of law is not widely respected and the justice system is unable to enforce laws effectively.

### *Lack of preparation of government and communities*

Many Malagasy suggest that most of the drivers of conflict risk around the mine could have been addressed more effectively at a much earlier point in the project's evolution. For example, one person observed that the government granted the mining concession for Ambatovy to the company while apparently giving little consideration to the resulting social issues and then left the mine to deal with the fallout. The government lacked capacity, stability and political will to work effectively with the company and to protect the interests of the population on several issues arising during the mine's construction. These included inadequate consultation with communities, corruption, loss of culturally significant livelihoods, resettlement problems and land ownership disputes. While manoeuvring for power, the government did not take measures to protect public interests. Lack of preparation for the arrival of the LSM sector resulted in a lost opportunity to use mineral wealth efficiently for development. A planned decentralization process remains incomplete and the central government is not empowering local traditional organizational structures.

## Conflict Drivers

### *Dependency on mining company for benefits and social development programmes*

Central and local governments lack the capacity and resources to provide reliable public services covering a wide range of activities from health care to trash collection. This results in local people looking to the company to provide such services and considering them as part of the social license to operate. Local mine staff struggle to create a more nuanced understanding about the role of mining companies as distinct from that of government and the need for partnerships between governments and mining companies in order to achieve sustainable development.

### The Role of Government Going Forward

As pointed out by the Malagasies themselves, it would be easy to misinterpret their strong culture of tolerance and respect for the law and conclude that they are unlikely to escalate conflict around the Ambatovy project. They warn that if tensions continue to rise, the risk of conflict outbreak is high. The key driver for conflict in this case is the singular focus of attention on the Ambatovy project and the expectation that it represents the country's primary solution to the current and historical socio-economic and development challenges. A major challenge will be finding the balance between reducing this focus of attention and dependency while the government slowly, and in the midst of sustained political instability, builds the capacity to play a constructive, contributory role. The government needs to be seen as a partner with the mine operators, international institutions and local NGOs on the delivery of development programmes and social progress to local communities. In other words, to move away from the mine-centric model of development to one that is more collaborative.



## PERU AND THE CASE OF THE HAQUIRA AND LAS BAMBAS PROJECTS

### Introduction

Haquira is an advanced stage copper exploration project located less than 10 km from the large, open-pit Las Bambas copper mine, which commenced production in 2016. They share the same collection of local communities, and the violent conflicts that have affected Las Bambas in recent years have had significant collateral impacts on communities adjacent to the Haquira project. The conflict at Las Bambas was precipitated at least in part by a change in ownership of the mining operation, accompanied by a significant shift in the approach to community relations and decision-making. More fundamentally, however, local communities are grappling with poverty, unresolved conflict over existing land ownership and municipal boundaries, poor design and implementation of natural resource governance by the central government, weak local government institutions and an unsuccessful decentralization process.

### Structural Factors

#### *A fragmented development process*

Following years of colonialism and authoritarian rule, Peru began a transition to neo-liberalism in the 1990s and subsequently moved towards the establishment of democracy. While urban societies experienced the benefits of these developments, the rural people of the Andes, who live where most of the mineral deposits occur, remained isolated and marginalized. The Apurímac Region, where the Haquira and Las Bambas projects occur, was included in the epicentre of the brutal guerrilla war between Shining Path and the military during the 1980s.<sup>17</sup> Thus, recent history has contributed to a deep and persistent lack of trust in the central government by Andean societies.

### Contextual Factors

#### *Lack of strategic planning for mineral development*

In the 1990s, Peru's government focused on economic development, fuelled in part through FDI and the LSM sector, and shifted towards decentralized governance. However, the capacity for governing and managing mineral development and the preparation of society for LSM's impacts and benefits was limited, particularly in remote, mineral-rich regions of the Andes. Legal reforms to facilitate resource development, introduced as part of neo-liberalism, were viewed by communities as protecting the national investment strategy at the expense of the people and fuelled a continuing distrust in government. National economic growth generated by mining projects has not yet resulted in sustainable development in the rural mineral-producing areas, leading to widening inequalities and increasing frustration.

17. The impact of this experience caused the communities to harbour mistrust for outsiders. There were legacies of fragmentation and displacements, and they became prone to violent actions in order to defend themselves from perceived threats (Javier Caravedo, ProDialogo, Lima, Peru, Personal Communication, 2016, as cited in Andrews et al., 'The Rise in Conflict Associated with Mining Operations: What Lies Beneath?').

### *Decentralized authority and problems with subnational revenue sharing*

Devolution of authority was enshrined into law in 2002, outlining the roles of central, regional and municipal governments in the process.<sup>18</sup> However, the effectiveness of decentralization has been limited, especially in remote areas, because responsibilities transferred to regional offices were not accompanied by the administrative and technical capacity-building and resources needed to meet them. Meanwhile, implementation of the *Canon Minero*,<sup>19</sup> part of the central government's system for sharing mineral revenues, has contributed to rising tensions among regional and municipal governments, some of whom view the distribution of *Canon* revenues as unfair.<sup>20</sup> Without adequate capacity to invest in the public works that *Canon* funds are earmarked for, communities' basic needs are left unmet and citizens are given limited opportunity to participate in development planning.

### **Conflict Drivers**

#### *Unresolved issues of land ownership, land use and distribution of benefits*

The legal regime established in the 1990s to promote foreign investment generated uncertainty within communities on land ownership and use. Prior to the establishment of the Las Bambas and Haquira projects, there were pre-existing disputes over the boundaries of private land and municipal districts. The government and Las Bambas project exacerbated this situation by focussing the distribution of mine benefits on communities deemed to be located in the area of direct impact of the mine. External communities felt they should be included in the fair distribution of the mine's wealth and benefits, which include jobs, local procurement and the provision of services, and intercommunity conflict over municipal boundaries escalated. These unresolved issues contributed to rising tensions in the area and provided one of the drivers for violent conflict outbreak in September 2015, when community leaders discovered that the government and the mining company had bypassed them in an important decision.<sup>21</sup> A subsequent protest march got out of control when the police arrived, resulting in three people losing their lives and fifteen injuries.

### **The Role of Government Going Forward**

Peru's central government has developed a number of agencies to better address socio-environmental conflict at an earlier stage, in response to the proliferation of these conflicts. While increased resources and greater inter-agency coordination are needed to ensure effectiveness in cases like Haquira-Las Bambas, some progress has been made in the following ways:

- 1. Focusing on prevention:** Early warning systems have been developed to identify emerging controversies early in their evolution in order to prevent their escalation into conflict, crisis and violence.

18. María Lasa Aresti, 'Mineral Revenue Sharing in Peru', Natural Resource Governance Institute (2016), [resourcegovernance.org/sites/default/files/documents/mineral-revenue-sharing-in-peru\\_0.pdf](https://resourcegovernance.org/sites/default/files/documents/mineral-revenue-sharing-in-peru_0.pdf).

19. The *Canon Minero* is part of Peru's mine resource revenue-sharing framework, allocating 50 percent of the mine's corporate tax revenue to local governments located in the department (ibid.).

20. Aresti, 'Mineral Revenue Sharing in Peru'.

21. For a more detailed description of the factors that contributed to the outbreak of conflict, please refer to Bernarda Elizalde and Maria Jose Gonzalez, 'Field Case Study 3: Haquira-Las Bambas, Peru', CIRDI (2015), [cirdi.ca/wp-content/uploads/2017/06/Case-Study-3-Haquira-Las-Bambas-Peru-060517.pdf](https://cirdi.ca/wp-content/uploads/2017/06/Case-Study-3-Haquira-Las-Bambas-Peru-060517.pdf).

2. **Multi-stakeholder dialogue:** The National Office of Dialogue and Sustainability (ONDS) was created by the Peruvian government in 2012 to analyse and address conflict driven by the extractive sector in Peru, focusing on dialogue as a tool to transform conflict and ensure that public policy more effectively addresses social conflicts. Today, the function and mandate of ONDS is carried out by the vice ministry of territorial governance and generates development and dialogue round-tables set up to address local issues.
3. **Improved intergovernmental coordination:** Long-term programmes have been instituted to find ways to improve the efficiency of and coordination between government agencies mandated to govern mineral development.<sup>22</sup>
4. **Addressing communities' perception of environmental contamination** has led to improved state environmental monitoring and public policy.<sup>23</sup>

While there is still work to be done, the state's renewed efforts and progress since 2012 to strengthen capacities for the sustainable management of extractives are cause for optimism.

22. For example, a platform has been set up to allow for better coordination between regional and central governments to improve capacities at the regional level, while the regulatory framework for dialogue between the state and indigenous organizations has been strengthened, as detailed in United Nations Development Programme (UNDP), 'Dialogue and governance of natural resources in Peru: 24 representative breakthroughs' (2016).

23. Improving state environmental monitoring and public policy was part of a 2012–2018 project funded by the Government of Canada and implemented by UNDP Peru, called the 'Governance of Natural Resources Approach'. This framework included new institutions for environmental management (SEIA), the strengthening of environmental control through participatory environmental policies, building dialogue space for community-based environmental monitoring committees, and the creation of local water authorities (ibid.).



## **BOLIVIA AND THE CASE OF THE SAN CRISTOBAL PROJECT**

### **Introduction**

The San Cristobal zinc, lead and silver mine is located in the historical mining district of Potosi, located in a remote, sparsely populated Altiplano region of Bolivia, 500 km south of La Paz. The mine is a large-scale open-pit operation with a processing plant and related facilities. It is the largest active mine in Bolivia and the third largest silver producer globally. While Bolivia presents a challenging operating environment in general for the LSM sector, broadly similar to the other case studies presented herein, several factors have contributed to the existence of stable, constructive relationships at San Cristobal and the transformation of conflict to positive outcomes. These include a long-standing relationship between the company and local communities based on trust and respect; a constructive role played by the national government in power from 1993–1998 during the early stages of the project development, including the successful implementation of a nationwide decentralization process; and the existence of strong local governance institutions and authorities.

### **Structural Factors**

#### *History of mining*

Bolivia has endured colonial rule and authoritarian governments like many developing countries in Latin America. The country has also experienced a sustained, centuries-long history of mining, including state-owned companies, foreign-owned private companies, ASM operations and mining cooperatives. Cooperatives, formed initially by ASM operators, have evolved over the years to become a powerful political force in the country, now accounting for 88.2 percent of the mining workforce. As a result, communities, particularly in the historical mining regions such as Potosi, are very familiar with the impacts and benefits of mining.

### **Contextual Factors**

#### *Effective decentralization and strong local government*

In 1994, a decentralization process initiated by the central government successfully devolved autonomy, authority, administrative powers and investment to municipal governments. This allowed the central government to focus on the administration of and compliance with national laws associated with mining and to rely on local governments and authorities to deal with local matters. While it took some time for regional and municipal governments to acquire the capacity to effectively manage funds from the San Cristobal operation, eventually they did, which resulted in the provision of basic services to communities in the region. This contributed to the effective management of conflict risk.<sup>24</sup>

The four local communities in the immediate sphere of influence of the San Cristobal mine have strong institutions of collective decision-making through regular general assemblies,

24. See the Phase 1 case study appendix: Bernarda Elizalde and Héctor Córdova, 'Field Case Study 4: Minera San Cristobal, Bolivia', CIRDI (2015), [ciridi.ca/wp-content/uploads/2017/06/Case-Study-4-Minera-San-Cristobal-Bolivia-060517.pdf](http://ciridi.ca/wp-content/uploads/2017/06/Case-Study-4-Minera-San-Cristobal-Bolivia-060517.pdf).

where community members meet to decide on representation and leadership. Each community has a council to keep authorities accountable and compliant with the communities' rules, and to administer disciplinary actions for breaking those rules. They also share a Consejo Consultivo that is responsible for planning and coordinating economic and social development projects on behalf of the local population. While these traditional decision-making structures are outside formal local government, they are effective in enabling communities to reach consensus, and to negotiate effectively with the company towards agreements. Upon reaching agreements, the government role has been to register and certify those agreements. These local governance structures have contributed to a resilient company-community relationship that endured through a number of conflict incidents. Managed effectively, each conflict resulted in new insights, creative solutions to problems and a newly engineered relationship.

#### *Governance capacity to navigate conflict*

A significant conflict erupted in 2011, precipitated by the accidental death of a respected community leader when the vehicle transporting him and his sick child to a distant hospital was involved in an accident. The community responded with outrage against the company, as the leader's request for use of the mine ambulance had been refused, and because the company had not delivered on a previous commitment to build a hospital in San Cristobal. Local women led a protest march and the scale and scope of the conflict rapidly expanded. At the request of the company and communities, the national Ministry of Labour hosted and facilitated a meeting of the parties, which resulted in a resolution to the conflict, a new agreement, and re-establishment of stability. A full-service hospital was constructed in San Cristobal and completed in 2015. The new hospital was a result of collaborative action by the company, the Ministry of Health and the local municipality, with support from a local civil society group.

#### **Conflict Inhibitors<sup>25</sup>**

##### *Equitable benefit distribution & social development programmes*

As outlined above, a number of factors inhibited the rise of tensions leading to the escalation of conflict risk. An important tool in this regard is the use of agreements. The relationship between the company and the communities within the direct sphere of influence of the mine is anchored in an agreement setting out the commitments and the roles and responsibilities of the parties. Another agreement was negotiated between the communities within and outside of the direct sphere of influence of the mine, with the involvement of the company, on a formula for the distribution of mine benefits as a function of distance from the mine. As a result, all communities in the Department of Potosi receive some benefits from the mine. The municipal authorities and the company also agreed on long-term development initiatives, helping the municipality to progress on regulatory monitoring, education, health, sports and land use planning.

25. The term 'conflict inhibitor' is used to describe determinants that propel conflict situations towards positive outcomes, as opposed to 'conflict drivers' (see Figure 2), which propel conflict situations towards negative outcomes.

### The Role of Government Going Forward

The respectful, resilient relationship that has been maintained over the years between the mine operators and local communities has been fundamental to the San Cristobal success story. However, even this extraordinary relationship was challenged on a number of occasions and the fact that it not only survived these conflict incidents but transformed them into positive outcomes is a testament to the fact that sustainable mineral development also depends on constructive, innovative roles contributed by all of the key players, including the national, regional and local governments, traditional authorities, and local institutions. San Cristobal is a success story that the national and local governing bodies should capitalize on, establishing the conditions conducive to this type of outcome in other mining regions of the country. This would include the continuation of capacity-building at the municipal level, the introduction of institutional engagement initiatives with local communities prior to new mining projects, and the establishment of good practice guidelines aligned with international standards, for social responsibility, environmental stewardship and water quality and supply.



## THE CASE OF GHANA

### Introduction

The mining industry in Ghana is made up of the LSM and ASM sectors, both of which are highly significant to the economy. Ghana is now among the world's top 10 producers of gold based on production by both the LSM and ASM sectors. However, the central government exerts little regulatory control over ASM extractive activities, one result of which has been a rapid growth of illegal miners (*galamsey*). The ASM sector employs an estimated one million people and supports 4.5 million more, producing about 35 percent of the country's total output of gold. While the economic impact of ASM gold mining is crucial to the rural economy, it comes at a high price in terms of social and environmental impact and therefore a high level of conflict risk.

### Structural Factors

#### *Centralized approach to mineral governance*

In spite of the establishment of multiparty democracy in Ghana, the impacts of colonialism, followed by many years of civilian and military authoritarian governments, influence the present day in the form of a highly centralized approach to governance, an uneven development pathway favouring urban versus rural Ghana, and the disempowerment of traditional leadership and governance at the local levels.<sup>26</sup> These dynamics have shaped the state's centralized approach to the management of its substantial mineral endowment, contributing to the challenges and high conflict risk that the mining sector faces today.

### Contextual Factors

#### *The need for a strategic approach to mineral development*

Following independence, the central government did not take a strategic approach to mineral development—for example, between 1957 and 1983, Ghana did not have a written policy to guide the exploitation of its mineral resources for the LSM or ASM sectors. This was followed by a period of IFC and World Bank–driven legal reform that emphasized the attraction of FDI and the LSM sector and the establishment of an LSM-focused mineral tenure system. These measures were implemented without consideration of the pre-existing ASM sector or the needs of rural citizens living in mineral prospective areas. A modern Minerals and Mining Policy was introduced in 2014,<sup>27</sup> representing a positive step forward, however, the continuing absence of effective regulatory monitoring and enforcement in rural areas, combined with the sector's growth, resulted in ad hoc decision-making without due consideration for long-term consequences.

26. Paper presented by Dr. Boye Bandie, National Development Planning Commission (NDPC), at the best practices conference on decentralization in Ghana, Institute of Local Government Studies, Madina, Accra, 8 May 2007; Kwame Badu Antwi-Boasiako, 'Public administration: local government and decentralization in Ghana', *Journal of African Studies and Development* 2, no. 7 (2010), pp. 166–75; and Kwamena Ahwoi, 'Rethinking decentralization and local government in Ghana: Proposals for amendment', IEA Ghana, Constitutional Review Series 6 (2010).

27. United Nations Development Programme, Ghana, 'Final Report: Review of Alignment Between the Africa Mining Vision and Ghana's Policy/Legal Frameworks for Solid Minerals' (2015).

*Increased presence of government, along with regulatory monitoring & enforcement*

The Phase 2 study noted that environmental performance by the LSM sector has improved over the past 20 years and there is greater compliance with regulatory requirements, including in the area of environmental impact assessment. However, in rural areas the central government has limited presence, leaving gaps in regulatory monitoring and enforcement. Within the context of these governance gaps, the LSM sector has learned to regulate itself, on the whole maintaining high standards of community relations and social programmes. By contrast, while laws and a permitting process exist to govern the rapidly expanding ASM sector, the lack of government presence in rural areas means that it operates in an environment without regulatory monitoring and enforcement. Exacerbating this situation is the increasingly illegal and rapid mechanization of ASM operations, which contributes to increased and un-remediated environmental damage to land and waterways, and the involvement of corrupt politicians, government officials and local authorities in the supply chain. The fact that conflict has not been more prevalent is a testament to the discipline and high-quality social responsibility programmes of the LSM sector, the economic significance of the ASM sector to rural Ghana and the traditions employed by Ghanaians to avoid conflict through dialogue and negotiation.

**Conflict Drivers***Distribution of benefits*

The Phase 2 study found there was dissatisfaction from many community leaders and authorities who felt that the level of development and the benefits received from the LSM sector were not enough to counteract social and environmental impacts. Mining company representatives noted that long-term benefits from the LSM sector often can't compete with the more immediate and lucrative benefits from the ASM-*galamsey* sector. Community members expressed frustration about the central government's lack of willingness to devolve power, authority, and financial resources to local authorities. By law, the government is required to maintain an efficient process for the transfer of a portion of LSM royalties received to district assemblies, traditional authorities (chiefs), and communities. The Phase 2 study found that district assemblies within the mining regions receive little or none of the royalty revenues they are entitled to from the central government.<sup>28/29</sup>

*Land issues: land and resource ownership, acquisition and livelihood*

Ghanaian farming families legally own most rural land, while the central government owns subsurface and mineral resources. It is the practice of the central government to grant mineral concessions to mining companies and then leave the mining companies to negotiate with communities and farmers to acquire the large amounts of surface lands involved. Much of the land has been acquired without government guidance on the process of negotiation

28. The 2010 and 2011 Ghana Extractive Industry Transparency Initiative (GHEITI) reports showed that actual payments to district assemblies were often smaller than they should have been, where the full sum received was not forwarded to districts and municipalities. The Office of the Administrator of Stool Lands (OASL) agreed to correct the practice in 2013. Measures were outlined by GHEITI to prevent misuse of funds and ensure projects are in line with the communities' development priorities. See Franklin Ashiadey, 'Ghana: Tracing mining royalties to local government', Extractive Industries Transparency Initiative (2015), [progrep.eiti.org/2015/country-focus/ghana](http://progrep.eiti.org/2015/country-focus/ghana).

29. The Natural Resource Governance Institute's '2017 Resource Governance Index' ranked Ghana as poor (37/100) on revenue management. One factor was subpar, subnational revenue-sharing mechanisms, where disclosures for revenue shared are not timely or audited (see [resourcegovernanceindex.org/country-profiles/GHA/mining](http://resourcegovernanceindex.org/country-profiles/GHA/mining)).

and how the land should be valued. This gave rise to serious issues related to land compensation, loss of livelihood, loss of productive agricultural land, and food shortages, and it led to farmers turning to illegal small-scale mining.<sup>30</sup> Thorough planning is required to prepare farmers who consider selling their land to make way for the LSM sector, including information, training and skills development, alternative livelihood programmes and a plan for preserving agricultural productivity for food.

### **The Role of Government Going Forward**

Many of the issues described above that contribute to conflict risk can be resolved by taking a more strategic approach to mineral development and increasing the presence of government in the rural mining districts. This would allow government to prepare rural communities for the arrival of the LSM sector, meaningfully participate in the land acquisition process, exert regulatory control over the ASM sector, and initiate social development programmes in partnership with the LSM sector. Presence of government could be accomplished through a de-consolidation of relevant central government agencies into mining districts, including the Minerals Commission, the Environmental Protection Agency and the Water Resources Commission. This could later evolve into a decentralization process involving provision of funds and devolution of authority, preceded by the strengthening of local government institutions and authorities and training in municipal administration and decision-making.

30. Rules governing the land compensation negotiation process and the methodology for evaluating land have recently been amended and improved. However, communities complain that this came too late because much of the land has been sold under the old system.



# 4

## Section 4

# POLICY IMPLICATIONS FOR GOVERNMENTS



MAPA DEL PERU

Table 1 below lists the full range of topics and related policy implications, which are presented and discussed in the full-length report. The structure and organization of Table 1 reflect the hierarchy of conflict determinants, which comprise the conflict pathway analytical framework illustrated in Figure 2 (see 'Introduction'). The following section presents a distillation of the policy implications discussed in the full report, focused on a smaller set of topics selected from Table 1. An overview of the policy implications explored in this section are highlighted in Figure 4.

Table 1: Summary of Phase 2 study Conflict Determinants Implicating Government Agencies.

<p><b><u>STRUCTURAL FACTORS</u></b></p> <ul style="list-style-type: none"> <li>➤ Colonial history and authoritarian rule</li> <li>➤ Neo-liberalism and democratization</li> <li>➤ Low levels of trust in and reliance on government</li> </ul> <p><b><u>CONTEXTUAL FACTORS</u></b></p> <ul style="list-style-type: none"> <li>➤ Lack of strategic approach to mineral development</li> <li>➤ Lack of preparation of rural communities</li> <li>➤ Weak governance capacity</li> <li>➤ Lack of presence and regulatory oversight by government in rural regions</li> <li>➤ Lack of social development programmes in rural areas</li> <li>➤ Lack of effective decentralization and weak local government institutions</li> <li>➤ Lack of reconciliation between the LSM and ASM sectors</li> </ul> <p><b><u>CONFLICT DRIVERS</u></b></p> <ul style="list-style-type: none"> <li>➤ Land and resource ownership, compensation and livelihood issues</li> <li>➤ Dependency of local communities on mining companies</li> </ul>	<ul style="list-style-type: none"> <li>➤ Distribution of benefits from the large-scale mining sector (LSM)</li> <li>➤ Environmental degradation and threats to water quality and supply</li> <li>➤ Lack of transparency and accountability in central government and local government</li> </ul> <p><b><u>CONFLICT-OUTBREAK TRIGGERING EVENTS</u></b></p> <p>Note: there are a large variety of circumstances, instigated by any or all stakeholders, that can act as triggering events once an environment conducive to escalating tensions and resentment over unresolved issues has been created. Two examples precipitated by governments drawn from the case studies are as follows:</p> <ul style="list-style-type: none"> <li>➤ Forced displacement of artisanal and small-scale miners from mining concessions</li> <li>➤ Unilateral decisions by government to change policies, rules or procedures associated with mining operations without consultation or warning to local people</li> </ul>
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# 1. STRUCTURAL FACTORS

Structural factors are conditioning or foundational in nature; global, international or national in geographic scope; and medium- to long-term in duration. Andrews et al. (2016) present a number of structural factors of relevance to conflict associated with mining. One factor in particular—lack of trust in government—is highlighted here. Lack of trust in government is characterized by its pervasiveness, deep historical roots, persistence over time and critical influence to the present day.<sup>31</sup>

## 1.A Building Trust Between Government and Communities

### The Issue

In many mineral-producing countries, the mistrust within the affected communities towards government has been fostered by legacies of colonialism, authoritarian rule, and subsequent centralized governance approaches that focused development initiatives in urban as opposed to rural areas. Communities' experiences of forceful intervention by the police and the army have led to lasting fear and suspicion in mineral-rich rural and remote areas. In addition, communities in mineral-producing areas may not experience benefits from mining, nor improvements in public services or the presence of government. In other cases, there is a lack of transparency and evidence of the mismanagement of resources. This mistrust represents a special determinant that reverberates at every level in the conflict hierarchy, from the structural factors where the seeds are planted, through to the localized events that manifest as conflict-outbreak triggers.

### Role of Government

As discussed in the literature review, when central authorities of governments forcefully suppress community opposition to mineral development, it heightens the risk of sustained conflict. Forceful suppression can be motivated by a number of factors, including rent-seeking by government officials and a government's desire to protect the investment climate. Foreign mining companies entering these environments face major social challenges; they can be perceived as aligned with the governments that granted their licenses and thus can be viewed with suspicion and mistrust. Mineral development in environments characterized by continuing fear of suppression are vulnerable to conflict. Low levels of reliance and trust in government, often stemming from a history of marginalization, mistreatment or broken com-

31. Britt Banks, 'Fostering Dialogue across Stakeholders in Natural Resource Management', in World Economic Forum (WEF), 'Natural Riches: Perspectives on Responsible Natural Resource Management in Conflict-affected Countries', Geneva, Switzerland (2013); Mely Caballero-Anthony, 'Community Engagement and Environmental Management', in WEF, 'Natural Riches'; Ann Helwege, 'Challenges with resolving mining conflicts in Latin America', *The Extractive Industries and Society* 2, no. 1 (2015), pp. 73–84; Suzana Sawyer and Terence Gomez, 'Transnational governmentality and resource extraction: Indigenous peoples, multinational corporations, multinational institutions and the state', Geneva, UNRISD, Programme 13 (2008); and Secretariat of the United Nations Permanent Forum on Indigenous Issues (UNPFII/DSPD/DESA), 'Resource Kit on Indigenous Peoples' Issues', New York, UN Publications (2008).

mitments to communities on the part of the government, can lead to a growing dependency of local communities on mining companies for the delivery of services. This is discussed further, at the conflict driver level, under ‘Equitable Distribution of Benefits’ below.

### Policy Implications

#### *The role of government in institutionalized, ongoing dialogue spaces*

Building trust among communities, companies and governments is necessary for creating the conditions for mining operations to develop in a peaceful, constructive manner. Institutionalizing and supporting both formal and informal spaces for fair and transparent dialogue throughout the life cycle of a mining operation is widely recognized as the path towards building trust and more peaceful interactions between companies, communities and host governments.<sup>32</sup> To be effective, deliberative mechanisms ought to create space for third-party oversight and active civil society involvement (especially the participation of vulnerable and marginalized groups such as women and indigenous communities), and find ways to bridge imbalances in information and resources. Governments can also encourage and enable companies and communities to have ongoing, informal dialogue throughout the life of a mining project.

Host governments have important roles to play not only in institutionalizing and supporting the creation of deliberative space, but also in actively participating as parties in dialogue and engagement. To date, many governments have been reactive, only convening dialogue tables following major outbreaks of conflict when the political costs become too high to ignore. Starting early can ensure informed consultation processes and the integration of diverse values into mineral development planning.<sup>33</sup> Poor implementation of deliberative space can itself contribute to conflict, with communities resorting to protest and escalation to demand greater representation and inclusion.<sup>34</sup> Dialogue processes are most effective when sustained over time and reinitiated after breakdowns until decisions are made about a project’s future and progress. Governments can help by providing safe conditions for reinitiating deliberation, as well as by ensuring participants implement their part of agreements made. This requires governments to maintain ‘active neutrality’ in conflicts and not side with companies through repressive crackdowns on opposition.

#### *Free Prior Informed Consent (FPIC)*

The process of community preparation, implemented prior to the arrival of the LSM sector (institutionalized engagement), can include the application of FPIC,<sup>35</sup> dialogue, shared decision-making and collaborative planning. While FPIC evolved in the context of international indigenous peoples’ rights, it is increasingly being considered and used as an approach

32. Ibid.

33. Diana Arbeláez-Ruiz and Daniel M. Franks, ‘Getting to the table’, *Americas Quarterly* 8, no. 2 (2014), pp. 111–13.

34. Eduardo Cáceres and Jaime Rojas, *Minería, desarrollo y gestión municipal en Espinar*, Lima, Peru, Asociación Servicios Educativos Rurales (2013); Isabelle Anguelovski, ‘Understanding the dynamics of community engagement of corporations in communities: The iterative relationship between dialogue processes and local protest at the Tintaya copper mine in Peru’, *Society and Natural Resources* 24, no. 4 (2011), pp. 384–99; José De Echave et al., *Minería y conflicto social*, Lima, IEP, CIPCA, CBC, CIES (2009); and Brooke Barton, ‘A global/local approach to conflict resolution in the mining sector: The case of the Tintaya dialogue table’, MA Thesis, Fletcher School, Tufts University, Boston, Mass. (2005).

35. While there are numerous definitions of FPIC, the International Finance Corporation’s Performance Standard 7 (PS7) states: “Indigenous peoples (IPs) may be particularly vulnerable to the adverse impacts associated with project development, including risk of impoverishment and loss of identity, culture, and natural resource-based livelihoods. PS7 seeks to ensure that business activities minimize negative impacts, foster respect for human rights, dignity and culture of indigenous populations, and promote development benefits in culturally appropriate ways. Informed consultation and participation with IPs throughout the project process is a core requirement and may include Free, Prior and Informed Consent under certain circumstances” (IFC Performance Standard 7).

to non-indigenous communities. While many host governments have eschewed FPIC for fear of discouraging investments, it can be a useful tool to ensure and demonstrate that national authorities are respecting the rights, views and opinions of local peoples. Studies demonstrate that community members wish to feel heard and have their needs considered, and among the consent mechanisms, FPIC is arguably the most robust in terms of its ability to safeguard the active participation and voice of affected groups at a crucial stage in the mining life cycle.<sup>36</sup> Host governments can examine how to implement and support FPIC protocols to ensure communities and indigenous peoples have adequate participation in decision-making on mineral development affecting their territories.

#### *Multi-stakeholder spaces based on procedural fairness*

Host governments must actively support and participate in deliberative multi-stakeholder space at the national, regional, local—and even operational—levels. Furthermore, while host government support for democratic deliberation is key, to be effective, research suggests that dialogue institutions must be procedurally fair in order to decrease the risk of community-company conflict.<sup>37</sup> Strengthened procedural fairness can be enshrined in instruments such as formal laws, in agreements between companies and communities, and in the government-mandated environmental social impact assessment (ESIA) process. One approach to strengthening procedural fairness in mandated ESIA is to have them conducted by neutral third parties with no vested interest in the outcome, which enhances the credibility of the information provided to stakeholders. This is one of several approaches governments can take to help build trust between mining-affected communities and host governments.<sup>38</sup>

36. Kieren Moffat and Airon Zhang, 'The paths to social license to operate: An integrative model explaining community acceptance of mining', *Resources Policy* 39 (2014), pp. 61–70; John Owen and Deanne Kemp, 'Free prior and informed consent', social complexity and the mining industry: Establishing a knowledge base', *Resources Policy* 41 (2014), pp. 91–100; Luc Zandvliet and Mary Anderson, *Getting it right: Making corporate-community relations work* (Greenleaf Publishing, 2009); Leah Horowitz, 'Twenty years is yesterday': Science, multinational mining, and the political ecology of trust in New Caledonia', *Geoforum* 41 (2010), pp. 617–26; and Barton, 'A global/local approach to conflict resolution in the mining sector' (2005).
37. Procedural fairness refers to decision-making rules, regulations and institutions that individuals or groups perceive as just, and that facilitate active participation and voice (Moffat and Zhang, 'The paths to social license to operate' [2014]).
38. For further discussion of strengthening procedural fairness in ESIA, see Policy Implication section 3.C "Build Capacity Among all Actors for Implementing Environmental Regulations & Prevent Environmental Degradation".



## 2. CONTEXTUAL FACTORS

In testing the application of the conflict pathway analytical framework on the basis of field case studies in the Phase 1 study, Andrews et al. (2016) demonstrated that contextual factors reside mainly in the policy and regulatory space. Addressing conflict determinants at this level will primarily involve initiatives by government agencies. As the Phase 1 research suggests, if host governments are to effectively perform their role in supporting responsible and sustainable mineral development, it will be important to enhance the resource governance capacity at all levels of government. This will better equip host governments to address the range of factors that both enable and trigger conflict outbreaks. Based on the Phase 2 research, this strategy can be useful to established resource economies seeking to peacefully transform resource conflicts into constructive outcomes, and to those jurisdictions about to embark on the journey of resource development. This abridged report highlights several areas where governments can play a constructive role.<sup>39</sup>

### 2.A **Employ a Strategic Approach to Mineral Development**

#### **The Issue**

The Phase 1 study found the lack of a strategic approach to mineral development to be a primary conflict determinant for host governments in developing countries, based on the literature review and the case studies examined. The 1980s and 1990s were characterized by the rise of neo-liberalism in developing countries, combined with the imposition of International Monetary Fund economic reforms and World Bank structural adjustment programmes, particularly in Latin American countries. These programmes were premised on attracting FDI to strengthen mineral resource development as a means of economic growth, development and poverty alleviation. The attraction of FDI was often accompanied by a move towards a market-based economy, including privatization of state-owned mining entities, new mining codes, and investment incentives featuring competitive corporate tax rates.<sup>40</sup>

#### **The Role of Government**

While all of these measures were designed to invigorate the national economy, host governments often did not take a strategic approach to the highly complex task of mineral development. In spite of new mining codes, many countries did not take the steps necessary to build governance capacity in the areas of administration, permit issuance, social and environmental standards and the process of regulating, monitoring and enforcement. For example, in the mid-1980s the government of Ghana opened its doors to FDI, resulting in

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39. For a full exploration of contextual factors contributing to the risk of mining conflict, refer to the full Phase 2 research publication.

40. Often required by IMF stabilization policies and World Bank structural adjustment programmes.

an unprecedented expansion of the large-scale mining sector. At the same time the government decided to legalize the ASM sector and encourage its growth, with the result that it expanded rapidly beyond existing regulatory controls. The case study research indicated that a strategic approach was not taken by the central government. Instead, ad hoc decisions were made with regards to the LSM and ASM sectors that have had sustained negative consequences on communities, the environment and the economy.

### Policy Implications

When host country governments are preparing for mineral development, or improving an existing mining sector, a strategic approach to mineral development is critical to improving the likelihood of minerals contributing to sustainable development as opposed to sustained conflict. Elements of this strategy include:

- Building the governance capacity of the host government in the areas of administration, regulation, monitoring and enforcement across government agencies responsible for mining, but also across agencies responsible for social development, labour, and the environment;
- Strengthening development planning with rural societies and communities, including preparation for arrival of the LSM sector, particularly in the regions of high mineral potential; and improved coordination of mineral development planning, with territorial planning across government ministries;<sup>41</sup>
- Strengthening and building the capacity of local government institutions; and,
- Developing mechanisms to enable the LSM and ASM sectors to coexist.<sup>42</sup>

## 2.B Improve Planning and Preparation for Coexistence of ASM and LSM

### The Issue

The ASM sector represents a key economic foundation for rural people in the developing world. World Bank estimates suggest that over 40 million people across 80 countries work directly in the sector, while a total of about 150 million are economically dependent on this activity.<sup>43</sup> ASM activities have often pre-existed the arrival of the LSM sector by many decades. However, mineral governance frameworks have tended to favour foreign direct investment by multinational companies over ASM, resulting in the potential disruption of an established economic base serving a large segment of the rural population. In most cases the location of ASM activity is a strong indicator of high mineral potential, in particular for gold, which means that when the LSM sector arrives, they will be sharing the same land base, minerals, infrastructure and social fabric. Given that the LSM sector usually comes with a large footprint in terms of land required for concessions, their arrival will often translate to a reduction of available land for use by the ASM operators. All of this will combine to cause a

41. Refer to section 2.B for further discussion on planning for ASM and LSM.

42. Refer to section 2.B for further discussion.

43. Girard Victoire, 'Gold in the dust: When artisanal mines shine', World Bank (blog), 11 January 2018, [blogs.worldbank.org/developmenttalk/gold-dust-when-artisanal-mines-shine](https://blogs.worldbank.org/developmenttalk/gold-dust-when-artisanal-mines-shine).

significant increase in the likelihood of conflict over access to land and resources.<sup>44</sup> In order to avoid such conflict, significant accommodations and adjustments will be required so the two sectors can coexist peacefully.

### The Role of Government

Where emerging mineral-producing countries decide to develop the LSM sector, early planning and the preparation of rural societies and the ASM sector for the arrival of LSM are key components of a strategic approach to mineral development and managing conflict risk. Many emerging producer countries have sown the seeds for conflict risk by not paying attention to strategies for coexistence and resorting instead to the forceful removal of ASM operators to make way for the LSM sector.<sup>45</sup> A report from the Intergovernmental Forum on Mining (IGF) notes that removing ASM miners from LSM concessions is at best a short-term solution that does not produce sustainable outcomes.<sup>46/47</sup> A constructive and strategic approach to mineral development requires host governments to carefully plan and prepare, prior to the arrival of the LSM sector, for how the ASM and LSM sectors will coexist, and thereby avoid conflict that arises from competition for land and access to mineral resources.

### Policy Implications

#### *Mechanisms for coexistence*

The Phase 2 study highlights that in most developing resource economies, mineral tenure systems have been designed exclusively for the LSM sector. It stresses the importance of developing systems that serve both the ASM and LSM sectors and apportion prospective lands in a fair and systematic way.<sup>48</sup> It suggests that attracting FDI and the LSM sector does not have to wait until formalization of the ASM sector is complete. The granting of concessions to the LSM sector can proceed incrementally and in parallel with formalization of the ASM sector, as long as certain preconditions are applied, as follows:

- A mineral tenure system is designed that serves both the ASM and LSM sectors.
- Formalization of ASM activities to limit both informal and illegal mining.
- Geological mapping and gold assaying services are provided to assist in the identification and designation of prospective lands for the ASM sector.
- An ASM mine closure and reclamation system is designed and implemented.
- Central governments increase their presence and capacity in mining districts.
- The above process is initiated in preselected areas where conditions support the likelihood of success. The selected areas can be expanded as capacity is built.

44. Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development, 'Global Trends in Artisanal and Small-Scale Mining (ASM): A review of key numbers and issues', Winnipeg, IISD (2017).

45. Cristina Echavarria, "What is legal?": Formalizing artisanal and small scale mining in Colombia", London, International Institute for Environment and Development (2014).

46. Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development, 'Global Trends in Artisanal and Small-Scale Mining' (2017).

47. Rajendra Jadhav, 'Ghana's gold, diamond output to drop as govt curbs small-scale mining', *Reuters*, 12 August 2017, [af.reuters.com/article/africaTech/idAFKBN1ASOLZ-OZABS](http://af.reuters.com/article/africaTech/idAFKBN1ASOLZ-OZABS).

48. Personal Interview, Christina Villegas, of Pact, and Marcin Piersiak, of the Alliance for Responsible Mining, 7 March 2018.

Cooperation can be fostered between LSM and ASM operators through buy-back arrangements, concession-sharing and facility-sharing agreements, technical assistance for optimizing small-scale mining efficiencies and environmental stewardship, and ‘tributing’, whereby LSM companies subcontract areas to ASM miners.<sup>49/50</sup>

### *ASM formalization*

There is widespread acknowledgement among developing countries that formalization of the ASM sector is essential—the objective is clear, but achieving it is highly complex and remains a significant challenge. Host governments play the lead role in formalizing ASM activities within their sovereign boundaries and there is broad agreement that formalization should involve a mix of education, technical assistance, and incentives to improve practices. Formalization should be accessible, enabling a more effective implementation of regulations, tax payments and mitigation of environmental impacts, and a more consistent application of the rule of law. Three steps for governments to consider when creating a conflict-sensitive approach towards ASM formalization are as follows:

1. **Promoting professionalization and improvement** for ASM miners when building a legal framework in order to incentivize miners to join the formal space. The legal framework must be accessible to ASM miners in terms of registration fees and requirements.
2. **Use of incentives to foster formalization** will enable capacity-building for ASM miners, while governments focus on providing services to help ASM miners formalize. When ASM miners have the opportunity to identify needs and shape tailor-made approaches to support formalization, it increases the likelihood that the initiatives implemented will have uptake.<sup>51</sup>
3. **Decentralized government approach.** Governments can make use of regional offices in producing areas as part of the regulatory environment by providing formalization services to ASM miners at the mine level. This would support miners in meeting regulatory burdens, while governments would be better positioned to carry out their responsibility to protect property rights and monitor concession claims.<sup>52</sup>

49. Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development, ‘Global Trends in Artisanal and Small-Scale Mining’ (2017).

50. This type of arrangement was implemented by Continental Gold in Buritica, Colombia, where informal and illegal mines surrounding an LSM concession came into agreement to subcontract from the company, allowing more than 500 local miners to operate legally in this area. Created in 2014, the subcontracts signed between miners and the company, and overseen by the government, assure technical assistance to the beneficiaries and remain valid for four years. Organisation for Economic Co-operation and Development (OECD), ‘Due Diligence in Colombia’s Gold Supply Chain’ (2016), [mneguidelines.oecd.org/Antioquia-Colombia-Gold-Baseline-EN.pdf](https://mneguidelines.oecd.org/Antioquia-Colombia-Gold-Baseline-EN.pdf); and Personal Interview, Christina Villegas and Marcin Piersiak, 7 March 2018.

51. An example of the use of incentive towards formalization of ASM and co-existence with LSM was Minera Yanaquihua, a gold mine (LSM) in Colombia that partnered with Solidaridad to integrate artisanal production into its operations using local artisanal miners as part of its sourcing practices. Documented in Renzo Mori Junior and Saleem H. Ali, ‘Designing Sustainability Certification for Greater Impact: Case Studies’, Centre for Social Responsibility in Mining (CSRSM), University of Queensland, Brisbane (2016).

52. Personal Interview, Christina Villegas and Marcin Piersiak, 7 March 2018.



## 2.C Strengthen Central Governance Capacity

### The Issue

The Phase 2 study found weak governance capacity to be high on the list of conflict determinants operating at the contextual level. Some governments have created fertile conditions for conflict through a lack of capacity in the areas of regulatory clarity, monitoring, enforcement, planning and administration; and through a limited ability and/or willingness to participate in engagements between mining companies and stakeholders, including when required to act as neutral convener. The point is also made that the transition from governments feeling beholden to FDI to a more balanced policy objective that reconciles the needs of both the national economy and individual rural regions and local communities, is critical.

### The Role of Government

As illustrated in the case studies described above, governance capacity in many developing countries is focused predominantly on the political and socio-economic centre of the country at the expense of rural areas. Rural areas often comprise a large percentage of the population and host the majority of mineral resources. While many central governments have established regulatory regimes governing mineral development based on modern mining codes, often modelled after those in developed countries, the challenges reside in their effective implementation, particularly in rural areas and with application to both the LSM and ASM sectors.

The Phase 2 study's quantitative analysis revealed interesting relationships between governance quality, governance capacity and conflict risk. As previously described, data analysed at the country level indicated that (a) the number of conflicts increases with an increasing number of mining companies operating in a country, regardless of governance quality.<sup>53</sup> This indicates that there is

53. As measured by a composite of World Bank indicators.

a limit to the number of operating mining companies that host governments can effectively regulate at any given time, and (b) in countries with low governance quality, the frequency of conflict incidents increases with an increased ratio of foreign companies to total number of companies, and also increases with total country reserves (mineral endowment).<sup>54</sup> Similar associations emerged from the analysis of data at the mine-property level. Local landowners and small-scale miners may feel an inherent right to the land and resources, and they can harbour resentment towards foreign mining companies that acquire significant mineral concessions from central governments. This was identified as a significant factor in both the Bulyanhulu (Tanzania) and Ghana case studies described above.

The capacity shortfalls of host governments can lead them to employ reactive measures such as coercion, forceful repression and criminalization of protest to manage conflict (negative peace), as opposed to prevention and transformation of conflict through good governance, protection of the human rights of citizens and deliberative engagement (positive peace).<sup>55</sup> The reactive approach often exacerbates and further escalates resentment towards government authorities and with it the level of conflict risk.

Domestic rule of law plays a significant role in conflict reduction. The presence of an effective judicial system and credible courts is a strong deterrent to conflict; when local communities do not confront persistent barriers to accessing legal remedy, they are less likely to adopt extralegal means to express grievances. In many resource-rich developing countries, however, there exists a lack of capacity, effectiveness and accessibility in judicial systems and a frequent sense among local communities that state authorities, private capital (normally private investment funds that are not publicly traded and whose investors are typically large institutions or wealthy individuals), subsidiaries (companies with most of its stock controlled by a parent or holding company), and security forces operate with impunity. As a result, the application of justice for abuses committed by governments, mining companies, contractors and other parties can be ad hoc, if applied at all, which ensures that conflict remains an option for those whose experiences have undermined their trust in the government and judiciary. Thus, judicial reform combined with state- and non-state-based grievance mechanisms is an important part of improving government capacity to address mining disputes at an early stage.<sup>56</sup>

54. See complete phase 2 study for details of this analysis at – footnote TB completed when report is posted.

55. Positive and negative peace are the frames used in the literature survey (Section 1) to describe destructive and constructive approaches to managing conflict respectively.

56. Non-judicial grievance mechanisms are institutionalized and organized methods consisting of specified roles, rules and procedures for systematically resolving complaints, grievances, disputes or conflicts operating outside the formal, traditional justice system. In his role as UN Special Representative on Business and Human Rights, Professor John Ruggie brought attention to the need for forms of 'access to remedy', including grievance mechanisms to address human rights abuses. Grievance mechanisms can also play a transitional role while judicial institutions are being developed. See John Ruggie, "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework", Report of the Special Representative on Human Rights, Transnational Corporations and Other Business Enterprises" (2011); and Brian Ganson and Achim Wennmann, *Business and Conflict in Fragile States: The Case for Pragmatic Solutions* (International Institute for Strategic Studies and Routledge, 2016).

### Policy Implications

#### *Gradually developing mining sector while enhancing governance*

Doing what is necessary to strengthen governance capacity both prior to attracting FDI and during subsequent expansion of the mining sector is an integral part of the strategic approach to mineral development. Building governance capacity is a long-term process subject to political agendas and the cycles of successive governments. While host governments gradually build governance capacity at the national and local levels, they can limit the total number of companies operating in the country at any given time, commensurate with their capacity to effectively govern them, and also make use of high quality mining companies as constructive partners in maintaining peaceful relations at the local level. However, this is a transitional measure, not a permanent solution, and it carries the risks linked with increasing the dependency of communities on company support and with companies becoming proxies for government.

#### *Prevention and early warning systems*

Another tool governments can use is a focus on prevention and early warning. This involves identifying unresolved resentments and controversies at an early stage to avoid conflict escalating into crisis and violence. In Peru, the dramatic rise in conflict linked to the commodity boom of the 2000s led to the introduction of a new approach by the government in 2012. The state shifted to consider conflicts linked to mining as opportunities to transform itself to better address the communities' needs for sustainable development. Government efforts to improve its architecture to manage conflict led to the creation of two early warning systems for conflicts linked to the extractive sector.<sup>57</sup>

## 2.D Effective Decentralization and Strengthening Local Government

### The Issue

The Phase 2 study revealed that weak governance at the local level is strongly linked to the centralist approach to governance together with the lack of capacity of central government described in the previous section. Weak local governance has thus been a significant contributing factor to the risk of conflict associated with mining. Given that mining operations are often widely distributed across countries' rural regions, the presence of functioning, effective, local government institutions empowered with appropriate authority and resources can make a significant difference to the success of both mining activities and the socio-economic viability of communities. Local government institutions are the most knowledgeable about local needs, problems and challenges, and therefore best able to deal with them, but only if appropriately equipped. In many developing countries, however, decentralization and the devolution of authority, resources and capacity to local government agencies have not been implemented effectively.

57. UNDP, 'Dialogue and governance of natural resources in Peru' (2016).

### The Role of Government

The issue of decentralization and the level of success (or lack thereof) in the creation of effective local government proved to be of central importance in conflict creation and prevention in all of the case studies investigated, including Tanzania, Madagascar, Peru, Bolivia and Ghana.<sup>58</sup> The approaches taken by central governments in Tanzania, Madagascar, Peru and Ghana all had limited impact and contributed in significant ways to conflict risk associated with mining. The case of Bolivia and the San Cristobal mine was the exception. The negative consequences of conflict incidents at the San Cristobal mine were prevented and transformed due to a combination of factors, as documented above. One important factor was decentralization reform initiated in the mid-1990s,<sup>59</sup> which resulted in a high degree of autonomy in the municipalities, increased investments at the local level, decreased poverty and more effective local governance, with systems in place for accountability and the prevention of corruption. Decentralized government was functional—mining royalties in the Department of Potosi were used for the provision of social infrastructure and services locally and regionally.

On the contrary, the Peruvian case illustrates the adverse effects that fiscal decentralization can have when implemented in the context of weak and inexperienced subnational governing capacities. The literature also points to the fact that local government institutions are often not supported by the existence of a professional class of civil servants. Instead, municipal administrators are appointed through patronage and replaced in accordance with the election cycle, thereby preventing local governments from retaining technical organizational knowledge across administrations.<sup>60</sup>

### Policy Implications

#### *Decentralization and deconsolidation*

Phase 2 research indicated that strengthening local government institutions is a critical part of a host government's efforts to improve governance capacity and reduce conflict risk. Devolution of administrative authority, capacity and resources through decentralization is a long-term, complex approach towards strengthening local governments. Mineral-producing governments can consider, as a first step, a *deconsolidation* process, whereby they build the necessary presence and capacity of *central government* departments in mining regions and districts (similar to what was outlined in the section dealing with ASM-LSM formalization). Later, central governments may consider moving to *decentralization*, accompanied by the development of politically autonomous local governments supported by their own administrative bodies.

58. Effective decentralization is significant because local government agencies play specific roles in aspects of mining governance. Depending on the country's mineral governance regime, these roles can include the issuance of licenses, responsibilities for mandated EIAs, monitoring and compliance, and management of a portion of mining revenues. Clarity in responsibility and the capacity to carry out local government roles accordingly, has an influence on conflict risk.

59. For example, Jean-Paul Faguet, 'Decentralization and Local Government in Bolivia: An Overview from the Bottom Up', Working Paper No. 29, Development Studies Institute, London School of Economics and Political Science (2003), [eprints.lse.ac.uk/481/1/crisis\\_WP29.pdf](https://eprints.lse.ac.uk/481/1/crisis_WP29.pdf).

60. Jonathan Gamu, 'Corporate security governance: Multinational mining companies and the local political economy of violence in Peru', PhD dissertation, University of British Columbia (2016).

As the Phase 2 literature review found, national governments have utilized fiscal decentralization schemes to reduce the occurrence of conflict by enhancing locals' access to, and authority over, the spending of mining revenues.<sup>61/62/63</sup> Decentralization is viewed as a strategy for offsetting the tendency for LSM to generate socio-economic stress for local communities by disrupting subsistence livelihoods; instead, it positions local authorities to make decisions on the use of revenues to achieve sustainable development.<sup>64</sup> The devolution of revenues and decision-making to subnational governments has been implemented in countries following neoliberal models, such as Bolivia, the Democratic Republic of Congo, Indonesia, Madagascar, Nigeria, Peru, the Philippines and South Africa. Global experience shows that resource revenue-sharing is not a panacea in countries where natural resources and conflict coincide. Revenue-sharing systems can contribute to the resumption of conflict if they are not well designed. Decentralization, subnational resource management and the greater distribution of benefits are most effective when they include fiscal decentralization and devolution of authority and the building of stakeholder consensus around local resource management and "fair" distribution of benefits (see below for the policy implication section on the 'Equitable Distribution of Benefits').<sup>65</sup>

#### *Strengthen local governance capacity as part of development planning*

To be effective in reducing poverty, and by extension functioning as a conflict management tool,<sup>66</sup> fiscal decentralization must be accompanied by capacity-building for local administrators in the areas of planning, management of revenues, and mechanisms for transparency and accountability. Citizen oversight is important to ensuring accountability for spending decisions and democratization of the development process through participatory budgeting and regional development planning.

Capacity-building is most effective as part of a larger multi-stakeholder development process. National governments, with the support of multi-stakeholder and intergovernmental mechanisms (such as the Extractive Industries Transparency Initiative, the Organisation for Economic Co-operation and Development, IGF, and the Open Government Partnership), mining companies and multilateral developmental organizations, have crucial roles to play in support of administrative capacity-building and technical training for municipal- and regional-level government civil servants and authorities.<sup>67</sup>

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61. Anne Larson, "Formal decentralisation and the imperative of decentralisation 'from below': a case study of natural resource management in Nicaragua", *European Journal of Development Research* 16, no. 1 (2004), pp. 55–70.
62. Jesse Ribot, *Waiting for democracy: The politics of choice in natural resource decentralization* (Washington, D.C.: World Resources Institute, 2004).
63. Chris Ballard and Glenn Banks, "Resource wars: The anthropology of mining," *Annual Review of Anthropology* 32 (2003), pp. 287–313.
64. Jonathan Gamu, Philippe Le Billon and Samuel Spiegel, 'Extractive industries and poverty: A review of recent findings and linkage mechanisms', *Extractive Industries and Society* 2 no.1 (2015), pp. 162–76.
65. Subnational revenue management has been advocated, under certain conditions, by prominent international development organizations such as UNDP. See UNDP and NREGI, 'Natural Resource Revenue Sharing' (2016).
66. The Phase 1 literature review identified poverty as a potent conflict risk multiplier with mechanisms operating at both the individual and collective levels. At the individual level, poverty can reduce the opportunity-costs for those contemplating participating in risky protest activities, while collectively it can heighten perceptions of relative deprivation both between communities and between companies and stakeholders.
67. Aldo Ponce and Cynthia McClintock, 'The Explosive Combination of Ineffective Local Bureaucracies and Mining Production: Evidence from Localized Societal Protests in Peru', *Latin American Politics and Society* 56, no. 3 (2014), pp. 118–40; Isabel Buitrago-Franco and Tathagata Chatterji, 'Planning for Mining Regions: Building Local Government's Capacity in a Multi-Stakeholder Collaboration Scenario', 49th ISOCARP Congress 2013, pp. 1–10; and Kathryn McPhail, 'The challenge of mineral wealth: Using resource endowments to foster sustainable development', in Jeremy Richards, *Mining, society, and a sustainable world* (Heidelberg: Springer, 2009), pp. 61–74.

### 3. CONFLICT DRIVER LEVEL

Conflict drivers occupy the third tier in the conflict determinant hierarchy of the analytical framework. An important distinction between contextual factors and conflict drivers is that while the former is primarily the domain of host governments (a policy and regulatory space), conflict drivers involve multiple actors, including industry, communities, NGOs and government agencies. Some determinants arising at the structural or contextual levels, discussed previously, persist down through successive layers of the conflict hierarchy to manifest as conflict drivers and conflict-outbreak triggering events, including lack of trust in government, lack of presence and oversight of government in rural regions, and the gaps in social programmes in these regions. The following section presents three policy implications for governments, selected from the more comprehensive analysis in the Phase 2 study, which operate at the conflict driver level.



### 3.A Land Issues — Land Ownership, Acquisition and Livelihood

#### The Issue

Most countries with established mining industries have separated the rights and title to surface lands from those of the subsurface and the contained minerals. Government assumes ownership of the subsurface mineral rights in order to regulate mineral development for the benefit of the country as a whole. This measure often accompanies the implementation of new mining codes, in preparation for attracting FDI and the LSM sector. However, severing surface rights from mineral rights has been a significant determinant for conflict in many countries, arising from the competing needs of those who own and use the land's surface versus the government owners of the subsurface resources, and, by extension, the mining companies who have acquired from government the rights to mine subsurface resources.

Companies require access to mineral resources and therefore need to acquire the right to enter the surface lands from the legal owners, frequently subsistence or small-scale commercial farmers. Often, mining companies must also engage informal land users or artisanal miners, who do not have legal title to the lands or resources but have a strong sense of an inherent right to the land. This engagement is made more difficult in countries with underdeveloped land titling systems for surface rights. If the government does not carefully control the land acquisition process, consistent with good practice, it can lead to conflict between companies and surface landowners and users. Inadequate recognition of traditional or customary land ownership and use, including access to natural resources on the land, and unjust compensation for land and loss of livelihood are strong conflict drivers.<sup>68</sup>

#### The Role of Government

Governments have a crucial role to play in land acquisition negotiations involving companies and landholders. One of the principle sources of power imbalance in these exchanges is the lack of authoritative information about the monetary value of land. As a result, companies have been accused of misleading local landowners as to the land's true monetary value. The role of government here is in establishing the laws and procedures governing land acquisition and compensation, as well as in creating and maintaining up-to-date land value registries, allowing the parties negotiating to have equal access to the information. For example, in the Ghana field case study, compensation for land acquired for concessions by mining companies is one of the most challenging issues facing the LSM sector. Until recently, there was a lack of clarity of the rules set by the central government, which guided the compensation negotiation process and the methodology employed to evaluate the land and crops, affecting the compensation that many landholders received under the old system.<sup>69</sup>

68. As noted in the Introduction, the Phase 2 research did not analyse involuntary physical resettlement as a conflict driver. Please see the Centre for Social Responsibility in Mining and MiningResettlement.org microsite ([www.miningresettlement.org](http://www.miningresettlement.org)) for resources.

69. Rules governing the land compensation negotiation process and the methodology for evaluating land have recently been amended and improved. However, communities complain that this came too late because much of the land had been sold under the old system.

### Policy Implications

Given the deep connection with and livelihood dependence on land by rural people, unresolved land issues can be a springboard to conflict, both at the conflict driver level and as a conflict-triggering event. The decision to attract FDI and develop mineral resources for the benefit of the country as a whole must be balanced against the needs of local people that own and use the land where the resources are located.

#### *Improved practices for acquiring mining concessions*

In the near- to medium-term, host governments can consider developing requirements and clear processes for companies and landowners to follow for the valuation of lands and crops and for the land acquisition negotiation and resettlement process. It is essential that governments play a direct role in this as overseer and neutral convener, either through locally-based central government offices or experienced administrators from functional local government institutions. Governments can also partner with the mining companies to build development programmes that offset the impacts that follow the land acquisition process. As discussed above, when the capacity of government is a limiting factor it may be useful for host governments to limit the number of regions approved for mineral development and the number of mining companies that are granted concessions, until governance capacity improves.

## 3.B Equitable Distribution of Benefits from the Large-Scale Mining Sector

### The Issue

Benefits from LSM operations include taxes and royalties normally paid to central governments, and material benefits such as employment, procurement and various components of social development programmes that benefit local communities. In some cases, communities perceive or experience unfair or uneven distribution of LSM-sector benefits. The unfair distribution of benefits is an important conflict driver, as recognized in the five case studies discussed above.

### Role of Government

Host governments are responsible for setting appropriate levels of mining taxes and royalties, with legislation to mandate the collection, deployment and investment of these revenues. Governments play a central role in transforming mineral wealth to citizen well-being by maximizing affected communities' access to material benefits, such as jobs, tax revenues, and social investments. The Phase 2 literature review examined the role of government in terms of subnational revenue-sharing and fiscal decentralization. Natural resource revenue-sharing regimes—the legal right of regions to either directly collect some taxes from oil or mining companies or for the central government to distribute resource revenues to different regions according to a formula—can contribute to stability in conflict-affected regions. As documented in a recent report,<sup>70</sup> this approach has been used with some success

70. United Nations Development Programme (UNDP) and Natural Resource Governance Institute (NRGI), 'Natural Resource Revenue Sharing' (2016), [www.undp.org/content/undp/en/home/librarypage/poverty-reduction/nrgi-undp-natural-resource-revenue-sharing.html](http://www.undp.org/content/undp/en/home/librarypage/poverty-reduction/nrgi-undp-natural-resource-revenue-sharing.html).



## CONFLICT DRIVER LEVEL

in resource-rich regions such as Indonesia's Aceh and Papua New Guinea's Bougainville region to defuse resource-fuelled civil wars, reduce poverty and promote economic development. As noted above, resource revenue-sharing is not a panacea in countries where natural resources and conflict coincide. A recent study of the Natural Resource Governance Institute (NRGI) and UNDP found that many resource revenue-sharing systems suffer from flaws in design and implementation, as observed for example in Peru. Resource-based conflicts can lead to demand for a degree of local resource ownership, a larger share of benefits, or for specific grievances to be addressed.<sup>71</sup> The Phase 2 study observed that, in practice, the redistribution of revenues by central governments back to mining districts is not always dependable and local government administrators are not always equipped to manage these revenues. Complications can also arise due to the existence of patronage and corruption at central, regional and local levels of government along with gaps in systems and procedures to ensure transparency and accountability.

### Policy Implications

Leveraging and maximizing access to material benefits for local communities in rural areas is closely tied to the successful implementation of fiscal decentralization programmes. This requires central governments to have legislation in place governing subnational revenue-sharing, with mechanisms for monitoring the portion of LSM revenues distributed and received by local government authorities in mining districts. Fiscal decentralization must be accompanied by capacity-building for local administrators, as discussed above under the section dealing with 'Effective Decentralization and Strengthening Local Government'.

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71. Ibid.

### 3.C Build Capacity Among all Actors to Implement Environmental Regulation & Prevent Environmental Degradation

#### The Issue

Real and perceived threats of environmental degradation to land, and to both the quality and supply of water, are potent conflict determinants at the conflict driver level. The Phase 2 study documented the reactions and concerns of rural communities when they learned about plans for the construction of a mine nearby, particularly when community engagement by government and industry had been inadequate. In these situations, communities feared the negative impacts to their health and livelihoods and when combined with long-standing mistrust in government, these fears form a powerful recipe for conflict outbreak when local communities do not see their perceived threats as being adequately addressed, especially in sensitive ecosystems or areas with limited water supplies. More widespread societal reactions to perceived environmental threats are increasing in frequency, alongside growing global concerns over renewable resource depletion, biodiversity loss, extinctions and climate change.

#### Role of Government

While the protection of the environment, including water quality and supply, is a responsibility shared by all stakeholders, governments have the primary responsibility for designing and implementing a functioning environmental regulatory regime. These regimes include an environmental and social impact assessment (ESIA) process; permitting procedures; regulatory compliance, including monitoring and the enforcement of Environmental Management Plans; land use planning; and the designation of protected areas. Some host governments have contributed to the conditions for conflict by granting permits in ecologically sensitive regions, where there are pre-existing concerns over renewable resources, local resource-based livelihoods and biodiversity conservation.

#### Policy Implications

Maintaining environmental integrity is central to preventing the escalation of conflict associated with mining. The Phase 2 study observed that mitigating the environmental impacts to land and waterways in many mineral-producing countries will require a focus on a number of challenging areas, including (a) lack of preparation of rural societies for the arrival of the LSM sector, following the decision by government to attract FDI for mineral development; (b) lack of governance capacity of both central government and local authorities to implement regulatory compliance monitoring and enforcement in mining regions; and (c) the absence of systematic approaches to land use planning for development and for the protection of ecosystems. As previously outlined, the preparation of rural societies should be an integral part of a strategic approach to mineral development.

#### *Land use planning and 'no-go' areas*

As previously discussed (see 'The role of government in institutionalized, ongoing dialogue spaces'), institutional engagement is necessary to adequately plan and prepare with rural societies, as part of a strategic approach to mineral development. Community planning will

be more effective when it includes information-sharing, the application of FPIC, dialogue, shared decision-making, and capacity-building of local government institutions. Ecological, cultural, and local livelihood risks posed by LSM have led some governments to consider a policy of restricting investments in select areas and pursuing non-extractive modes of development as conflict prevention strategies. The rise of ‘no-go’ mining areas follows previous land use regulations, such as protected natural areas (ecological no-go zones) or national heritage sites<sup>72</sup> (cultural no-go zones). A new, grass-roots-led category of alternative-use no-go zones can include indigenous peoples’ reserves, war zones, fragile watersheds, high-biodiversity habitats and ‘wildlands’, small islands, and cultural properties.<sup>73</sup> A conflict-sensitive approach to no-go zoning would identify areas of high conflict likelihood and community resistance, and respond through pre-emptive zoning, dissuading companies from exploring and operating in these areas.<sup>74/75</sup> For example, partial bans on mining have been implemented in certain regions of Latin America.<sup>76</sup>

Land use planning should allow for designated no-go areas for situations of high environmental and/or social sensitivity. The option of non-extractive development strategies should be explored for such areas.

#### *Enhance procedural fairness in the environmental and social impact assessment process*

ESIAs consist of a series of technical studies and stakeholder consultations to outline projects’ risks and benefits, as well as mitigation, adaptation and compensation measures. Often, they are the only formal mechanism available for affected communities to participate in approving or rejecting a project proposal.<sup>77</sup> Yet studies have found “serious deficiencies” in the information they provide to communities, as well as in their current capacity to create fair and transparent deliberative spaces for resource governance.<sup>78</sup> Company-organized community information sessions allow companies to control the agenda, while deliberations tend to be very technical in nature, making it difficult for some affected communities to be

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72. In 2003, members of the International Council on Mining and Metals (ICMM) agreed to set UNESCO World Heritage Sites as off limits to mineral development.
73. Robert Goodland, “Responsible mining: The key to profitable resource development,” *Sustainability* 4, no. 9 (2012), pp. 2099–126.
74. Marta Condé and Philippe Le Billon, “Why do some communities resist mining projects while others do not?” *Extractive Industries and Society* 4, no. 3 (2017), pp. 681–97. Several governments have specifically declared or considered ‘no-go’ zoning, including Australia, Canada, India and the Philippines.
75. Sources on Integrated Landscape Management Systems Box: Scherr, Shames and Friedman, ‘Defining Integrated Landscape Management for Policy Makers’ (2013); German Society for International Cooperation (GIZ), ‘Integrated landscape management for biodiversity protection in the Sierra Madre Oriental’, [www.giz.de/en/worldwide/57127.html](http://www.giz.de/en/worldwide/57127.html); and Andrews, ‘Integrated Landscape Management’ (2005).
76. Such as in Panama in order to protect certain indigenous communities; in Argentina, where provincial governments (supported by national authorities) have banned open-pit mining in glacial regions, as well as the use of cyanide in gold mining; and in Chile where, despite the country’s prominent mining sector, Congress has been debating whether to declare a moratorium in glacier-fed headwater regions. In addition, Costa Rica has a country wide ban on mining, regulated by the central government.
77. Maiah Jaskoski, ‘Environmental licensing and conflict in Peru’s mining sector: A path-dependent analysis’, *World Development* 64 (2014), pp. 873–83.
78. Keith Slack, ‘Mission Impossible? Adopting a CSR-based business model for extractive industries in developing countries’, *Resources Policy* 37, no. 2 (2012), pp. 179–84; Alan Septoff, Ann Maest and Jim Kuipers, ‘Predicting water quality problems at hardrock mines: A failure of science, oversight, and good practice’, Earthworks white paper (2006); and Shidi Dong, Roger Burritt and Wei Qian, ‘Salient stakeholders in corporate social responsibility reporting by Chinese mining and minerals companies’, *Journal of Cleaner Production* 84 (2014), pp. 59–69.

fully informed of potential risks and benefits.<sup>79</sup> When ESIA's are part of the process of government-convened institutionalized engagement, and when they are more accessible and understandable to rural communities, their full potential for participatory decision-making is realized. It also enables ESIA's to be a tool in preventing the escalation of conflict.

For example, in Peru, addressing a major conflict driver based on communities' perception of environmental contamination from extractives has led to improved state environmental monitoring and public policy. Referred to as the 'Governance of Natural Resources Approach', this framework includes new institutions for environmental management (Strategic Environmental Assessments), strengthening of environmental control, participatory environmental policies, a dialogue space for community-based environmental monitoring committees, and the creation of local water authorities.<sup>80</sup>

#### *Institutional support for participatory environmental monitoring committees*

In 2016, Peru's Ombudsman's Office noted that the majority of active social conflicts involved communities and mining companies and were related to water issues. One result of the round-table discussions that followed was the creation of Participatory Environmental and Social Monitoring and Surveillance Committees to prevent these conflicts. In some cases, these monitoring committees have contributed to transforming relationships among the stakeholders (the community, mining company and state).<sup>81</sup> The work completed in Peru demonstrated that meaningful and systematic participatory monitoring can provide a dialogue space to better navigate environmental issues and social conflict.<sup>82</sup>

While more research and understanding are necessary, government support for participatory environmental monitoring committees is a potential tool to improve the capacity of communities to access information and participate in environmental decision-making about mining projects that affect them.<sup>83</sup>

79. José De Echave and Alejandro Díez, *Más allá de Conga*, CooperAcción (2013); Mauricio Zavaleta, 'La Política de lo Técnico: Una Aproximación al Desarrollo Conflicto Conga', in *Los Límites de la Expansión Minera en el Perú*, Asociación Servicios Educativos Rurales (2013), pp. 109–52; and Martín Tanaka and Carlos Melendez, 'Yanacocha y los reiterados desencuentros: gran afectación, débiles capacidades de acción colectiva', in De Echave et al., *Minería y Conflicto Social* (2009).

80. UNDP, 'Dialogue and governance of natural resources in Peru' (2016).

81. Alexandra Carlier, Aldo Leon and Andre Xavier, 'The Third National Conference on Participatory Environmental Monitoring and Surveillance Committees in Mining', CIRDI (2016).

82. Ibid.

83. UNDP is currently studying Participatory Environmental Monitoring Committees in Latin America (2018).

# SUMMARY OF THE POLICY IMPLICATIONS FOR HOST GOVERNMENTS



ENVIRONMENT



HUMAN RIGHTS



EQUITY

## LEVELS

## AREAS OF CONCERN

## POLICY IMPLICATIONS

### 1. STRUCTURAL



A. Trust between Governments and Communities

→ Government convenes, supports and participates in *institutionalized* dialogue processes with communities, commencing prior to the arrival of the LSM sector, and continuing throughout the mining cycle; these deliberative spaces are based on procedural fairness.

### 2. CONTEXTUAL



A. Implementing a Strategic Approach to Mineral Development

→ Improve planning and preparation for coexistence of ASM and LSM sectors; work towards formalization of ASM  
 → Strengthen central governance capacity of host government in administration, regulation, monitoring and enforcement  
 → Improve development planning with rural communities prior to the arrival of the LSM sector  
 → Effective decentralization and strengthening local government

### 3. CONFLICT DRIVER



A. Land Ownership, Acquisition & Livelihood

→ Develop clear rules to govern acquisition of surface lands for mining concessions  
 → Government oversight of land acquisition process  
 → Government partnerships with companies to mitigate the impacts of land acquisition and develop alternative livelihoods

B. Equitable Benefit Distributions

→ Central government develops and implements legislation governing subnational revenue-sharing  
 → Implementation of fiscal decentralization with mechanisms to monitor subnational revenue sharing, accompanied by capacity building for local government administrators

C. Capacity Among all Actors for Implementing Environmental Regulations & Preventing Environmental Degradation

→ Strengthen governance capacity for regulatory compliance monitoring and enforcement  
 → Improve land use planning and designate 'no-go' areas  
 → Enhance procedural fairness in ESIA processes  
 → Institutional support for participatory environmental monitoring

# CONCLUSION

Over the past 20 years there has been considerable focus placed on the mining industry and individual mining companies to seek continual improvement in the areas of ethical practice, social responsibility and environmental stewardship. However, in spite of significant progress in mining industry practice, evidence has shown that in recent times, conflict associated with mining operations has experienced a dramatic rise in frequency and intensity (see Figure 1). It is clear that depending on improvements in industry practices alone is only a partial solution.

The Phase 2 study investigations demonstrated the central importance of the role of host governments in establishing the appropriate governance and management regimes to achieve sustainable mineral development and prevent the negative outcomes of destructive conflict. This lies at the heart of the challenge and also the solution.

With appropriate attention provided by host governments to the establishment of strategic approaches to mineral development, including an incremental approach to attracting the LSM sector to match governance capacity, strengthening local governance institutions, preparing rural communities for the arrival of the large-scale mining industry, reconciling the ASM and LSM sectors, and maintaining a strong regulatory compliance and social development presence in rural mining districts, the negative consequences of destructive conflict can be avoided and a path towards sustainable mineral development established and maintained.

With appropriate host-country governance, safeguards exist to counter the potential for conflict instigated at the sites of mining operations through mistakes or inappropriate practices.

In the past, many host governments were not able to provide the pillars of effective governance for mineral development, but they felt compelled to embark on the journey nevertheless. Now, effective governance is within the grasp of host governments either preparing for this complex journey, or looking to redirect their efforts in mineral development. In order to make progress towards sustainable mineral development and the reduction of conflict, the focus must now be placed on effective governance.



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