

United Nations Development Programme



*Empowered lives.
Resilient nations.*

Extracting Good Practices

A Guide for Governments and Partners to Integrate Environment
and Human Rights into the Governance of the Mining Sector

Copyright @ UNDP 2018

By the United Nations Development Programme
1 UN Plaza, New York, NY 10017 USA

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted, in any form or by means, electronic, mechanical, photocopying, recording or otherwise, without prior permission.



*Empowered lives.
Resilient nations.*

Extracting Good Practices

Executive Summary

A Guide for Governments and Partners to
Integrate Environment and Human Rights
into the Governance of the Mining Sector

Margaret Wachenfeld,
Themis Research

With support from:
Kathryn Sturman,
University of Queensland,
Centre for Social Responsibility
in Mining

Foreword

Achieving the 2030 Agenda and the Sustainable Development Goals represents both a tremendous challenge and opportunity. Land degradation has reached critical levels and threatens the livelihoods of over 3 billion people. We are losing species 1000 times faster than at the natural extinction rate. Reversing these and similar trends requires a paradigm shift in the way we prioritize investments and balance short-term economic growth with social development and environmental protection.

Mining can make a significant contribution to economic development. Minerals and metals are needed for advancing durable growth and developing green technologies required for a low-carbon future. If managed well, the sector can contribute to accelerating progress towards achieving multiple SDGs, including in the Least Developed Countries and fragile states.

Large-scale mining, however, can also cause great environmental and social harm. It can damage ecosystem services which provide women and men with water, food, fuel, medicine and shelter. Land degradation, and water and air pollution caused by mining often affect community health and livelihoods. Mining also has a large carbon emission footprint at odds with climate goals, and the exploitation of metals and minerals often exacerbates and sustains social and violent conflicts around the globe. These negative impacts harm those who are already furthest behind and have the least power to influence decision-making and demand accountability and redress.

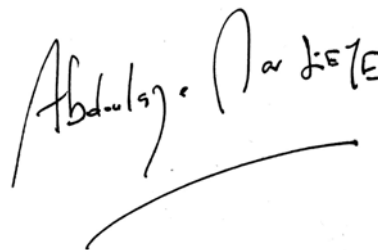
As the demand for metals and minerals continues to grow, greater efforts are needed to protect human rights as well as the biodiversity and ecosystems on which local communities and society more broadly depend.

This joint Guide by the Swedish Environmental Protection Agency and the United Nations Development Programme seeks to support governments and other stakeholders to better manage the environmental and social aspects of mining, in a way that rebalances relations in favour of more just and sustainable outcomes for local communities and vulnerable groups, including women and children, now and in the future.

The Guide provides an overview of tools and approaches for governing the human rights and environmental impacts of the sector in a more integrated and holistic manner. We hope that users of this Guide will find it a valuable tool in their efforts to chart a more inclusive and sustainable course for governance of the mining sector.



Martin Eriksson
Director, Swedish Environmental
Protection Agency



Abdoulaye Mar Dieye
United Nations Assistant Secretary-General
Director, Bureau for Policy and Programme
Support, UNDP

Contents

Purpose of the Guide	5
Core Concepts and Core Definitions Used in the Guide.....	6
Key Messages and Takeaways.....	9
Document Overview.....	10

16

Step 1: Establish the Foundations for Resource Stewardship: Policy, Regulations, Institutions and the Rule of Law



18

Step 2
Participatory Planning For Extractives from Exploration to Closure



20

Step 3
Exploration



21

Step 4
Feasibility and Licensing



23

Step 5
Mine Development and Construction



24

Step 6
Production



26

Step 7
Closure



27

Step 8
Post-Closure





Purpose of the Guide

What is the Challenge?

Mining provides vital commodities for a wide range of products and services and has done so through the centuries. The sector occupies the position at the start of the resource supply chain for many other industries. Managed well, mining creates jobs for lower and higher skilled workers and can “spur innovation and bring investment and infrastructure at a game-changing scale over long time horizons.”¹ Mining has historically often been viewed solely through the lens of the sector’s contribution to economic growth, without considering the broader environmental and social impacts and their associated costs, but that is changing. Large-scale mining has a large footprint that significantly changes the immediate and surrounding environment and community dynamics, with the potential for environmental degradation, exacerbating inequality, increased tensions and even conflict. Some types of mining are significant contributors to climate change, compromising the global community’s commitment to reducing carbon dioxide emissions and other greenhouse gases. As a result, governments and the industry have been under increasing scrutiny, driven by concerns around the environmental, social and human rights impacts of the sector as well as concerns about the impacts of the sector on broader governance and rule of law issues, including its contribution to conflict and corruption.

What is the Opportunity?

Society is calling for a net positive contribution from the mining sector over the long term. In the interim, the protection of the environment and human rights should be core minimum goals for the governance of the sector. The Sustainable Development Goals (SDGs) provide an opportunity to re-evaluate mining governance within its broader context. The mining industry can impact positively and negatively across the SDGs. It can make significant contributions to the SDGs by

providing decent employment, spurring local business development, developing infrastructure links and providing revenues that governments can use to provide public services such health and education and thereby fulfil their human rights obligations. But mining also contributes to many of the challenges that the SDGs are trying to address – environmental degradation, water scarcity, negative impacts on human rights, displacement of populations, worsening economic and social inequality, armed conflicts, gender inequality and gender-based violence, tax evasion and corruption, and increased risk for many health problems.² The SDGs’ broader framework implies two important messages for the governance of the sector: (i) the importance of rebalancing – giving equal weight to the management of the environmental and social impacts of the sector as has been given to economic impacts in the past; and (ii) the importance of interlinkages – the inextricable links among all three dimensions points to the necessity, but also the effectiveness, of managing these impacts in a more integrated manner. Doing so will move the sector closer to the long-term vision of a net positive contribution.

How does the Guide Help Governments Respond?

This Guide helps governments and other stakeholders respond to this demand for net positive benefit from the sector. Committed governments, mining companies, mining initiatives and civil society organizations are moving in that direction. The Guide aims to help government authorities – particularly mining, environmental and human rights authorities – to continue moving in the direction of managing the mining sector to deliver sustainable outcomes by bringing together a wide range of materials in a step-by-step approach that follows the mining cycle. The government authorities responsible for governance of the mining sector increasingly need to

¹ UNDP, World Economic Forum, Columbia Center on Sustainable Investment, the Sustainable Development Solutions Network, “Mapping Mining to the Sustainable Development Goals: An Atlas,” (2016), http://www3.weforum.org/docs/IP/2016/IU/Mapping_Mining_SDGs_An_Atlas.pdf

² Id.



have more than technical knowledge of mining regulations; they need a broad understanding of the economic, environmental, social and human rights issues at every stage of the mining cycle. They also need practical guidance on particular environmental, social and human rights risks at each step and particular tools and approaches to managing those risks and balancing competing interests. This Guide brings together promising tools and approaches that are building blocks of a more holistic approach to the environmental and human rights governance of the sector. It recognizes that there is often no 'best answer' as to how to integrate these tools and approaches to improve mining governance in each country – they must fit within each government's overall strategy and its international obligations.

The Guide in particular prompts government authorities to:

- Integrate the substance of environmental and human rights standards into the regulatory fabric of the sector (its policies, laws and regulations) to make these obligations part and parcel of the way the sector is governed, managed and operated.
- Actively engage the affected public to participate in rulemaking, licensing and monitoring of the sector, acknowledging the value of communities' and civil society participation in improving the governance of the mining sector and strengthening enforcement.
- Put in place a range of processes and mechanisms for holding government and mining companies accountable to the public, including mechanisms that can help resolve disputes and provide effective remedies.

Core Concepts and Core Definitions Used in the Guide

Three Core 'Pillars' of the Guide

The Guide builds on and integrates these three pillars (see Box 3 below for a further explanation of each pillar):

Better Environmental & Human Rights Governance of Mining

1. Protection of the Environment

2. Protection of Human Rights

3. Principle 10 Environmental Procedural Rights

What Does the 'Environmental & Human Rights Governance of the Mining Sector' Mean?

The 'governance of the mining sector' refers to the overall regulatory management of the sector – the institutions and their policies, laws and regulations that play a role in the oversight of the mining sector. The 'environmental and human rights governance' of the sector refers to those institutions, policies, laws and regulations that play a role in governing and managing the impacts of the sector – in particular on the local environment, on local communities and all the people in them, and on workers but also, where relevant, on the broader environment (considering issues such as climate change, for example) and broader society. As noted above, those impacts can be positive and negative. There is typically a range of ministries and related authorities or agencies that have jurisdiction over the mining sector, starting with a mining ministry, but also include notably environment, labour, social ministries and other government authorities with human rights responsibilities.



Environmental governance³ focuses on protecting the natural environment before, during and after mining operations. A human rights-based approach to governing seeks to ensure that the regulatory framework and its implementation serve the public interest, making the protection of human rights against harm from the sector an integral part of managing the sector. Governance is also about how the participants in the sector – local communities, civil society organizations (CSOs), trade unions, mining companies and other stakeholders – play a role in shaping the rules through formal and informal processes. The processes by which environmental and human rights rules emerge play an important role in establishing their legitimacy. Legitimacy leads to greater compliance and ultimately greater protection. Environmental procedural rights (referred to as ‘Principle 10 rights’ for shorthand) – participation, in a transparent and informed way, that reinforces government accountability and provides access to justice to seek redress where harms do occur – should underpin those processes. Together, these approaches reinforce the sustainable governance and management of the mining sector.

Why Does it Make Sense to Address these Environmental and Human Rights Protection Together?

The Guide builds on the increasing recognition of the interlinkages between the environmental and human rights/social impacts of mining.⁴ These two dimensions of impacts are inextricably interlinked (see Box 1 below) and therefore managing them in a more integrated manner makes sense – it is more efficient and effective and provides greater legitimacy to efforts to improve mining governance.

Box 1

Brief Overview of Links Between the Environment & Human Rights

Enjoyment of many human rights is linked to better protection of the environment; conversely, environmental violations can constitute a serious threat to numerous human rights



The protection of ecosystems and the services they provide – food, water, disease management, climate regulation – is a core part of the enjoyment of many human rights (rights to health, water and food)

Promoting environmental sustainability is more effective when it is done within supportive legal frameworks



Better legal frameworks are informed by the exercise of certain human rights – rights to information, public participation in decision-making, access to justice, freedom of speech and assembly

Conflicts fuel environmental degradations & impacts on human rights



Environmental degradation & impacts on human rights fuel conflict

³ <http://staging.unep.org/delc/EnvironmentalGovernance/tabid/54638/Default.aspx>

⁴ See, for example, the work of the UN Environment Agency on the links between environment and human rights: <http://89.31.103.110/explore-topics/environmental-governance/what-we-do/strengthening-institutions/human-rights-and>



What Dimensions of Mining Governance Are Not Covered in the Guide?

There are other dimensions to mining (and broader extractive sector) governance that are very relevant to determining whether the sector ultimately contributes to a nation's development or undermines it through the 'resource curse'.

The management of the substantial revenues that the sector can generate is a crucial part of the overall extractive sector value chain, but this is not the focus of this Guide. Although this important dimension is covered only briefly here, it is the subject of far more extensive guidance elsewhere.⁵



⁵ See, for example, the Extractive Industries Transparency Initiative, www.eiti.org, and Cameron, P. and Stanley, M., "Oil, Gas and Mining – A Sourcebook for the Extractives Industries," World Bank Group 2017, <https://openknowledge.worldbank.org/handle/10986/26130>



Key Messages and Takeaways

The appropriate governance and management of the environmental, social and human rights impacts from mining start from the initial decision to extract mineral resources, rather than leaving them in the ground, and continue through to post-closure.

Governments need to make decisions at each point in the mining cycle about how the costs and benefits associated with those impacts are allocated among the government, companies and society. Failing to make those decisions does not mean the costs of the impacts disappear. Instead, it means the costs are externalized, often falling on those least responsible for them and least able to manage – on society and the environment – rather than being allocated to the companies that generated the impacts or to the government. Appropriate governance of the sector requires allocating the costs and benefits associated with mining more equitably – across all parties, across the country and across generations, recognizing that mining deprives future generations of these non-renewable natural resources, who should be taken into account.

Too often, human rights and environmental concerns are considered to be separate from the governance of the sectors that drive a country's economy.

These decisions should be guided by an approach that integrates environmental and human rights protection into the policy, legal and institutional frameworks that translate the government's international human rights and environmental obligations into the context of the mining sector. Too often, human rights and environmental concerns are considered to be separate from the governance of the sectors that drive a country's economy. This Guide focuses on demonstrating how these obligations can and should be integrated into the governance of the sector.

The Guide also highlights that environmental and human rights issues can – and should – be managed together, in an integrated manner, because the impacts are so often interlinked.

There are numerous tools and approaches that governments can use to make these decisions and balance the long-term contributions of mining to the national economy with competing uses for land and resources, localized preferences for development, a changing context of demography, climate change, etc. As important as some well-known regulatory tools, such as ESIA's, are for mining, these are just one tool in the 'toolbox' set out in the Guide.

The purpose of taking a human rights-based approach to the mining sector is to ensure that the public interest is the primary consideration, grounded in the state's human rights obligations. This Guide highlights mechanisms for doing so throughout the mining cycle, from participatory land planning at the beginning of the cycle through to multi-functional advisory committees that oversee closure at the end of the cycle. Making sure that the voices and rights of all – women, children, indigenous peoples, minorities – are considered in these processes is a core part of a human rights approach. The other significant dimension of a rights-based approach is a focus on accountability, so the Guide highlights different mechanisms to reinforce accountability for delivering on the protection of rights.

The significance of taking an environmental approach to the mining sector is to understand that the long-term viability of the sector is inextricably linked to how well its environmental footprint is managed. The environmental footprints of mines are increasingly seen not only in terms of their local effects, but also in terms of their impact on a country's ability to meet its international environmental obligations regarding climate change, water and biodiversity in particular.

The significance of international obligations and of an increasing range of international standards and initiatives on the mining sector is that there are increasingly clear expectations about the way the mining sector should be governed and managed to deliver more sustainable outcomes. This brings ever more clarity on what should be done, shifting the focus to implementation by governments and by mining companies. They also provide new tools for the affected public and civil society to hold governments and companies to account.



Document Overview

Target Audiences

- Primary audience: Government authorities responsible for the regulation of the mining industry, including its environmental, social and human rights impacts (at national, regional and local level): mining, environmental, social⁶ and human rights⁷ authorities.
- Secondary audience: Civil society representatives, indigenous peoples and their representatives, national human rights institutions (NHRIs), national gender machineries and other development partners and practitioners.
- Not private sector mining companies in particular, although they may find the Guide useful. There is a wealth of other material that is specifically targeted to mining companies (some of which is referenced in the Guide and its annexes).

Types of Mining Covered

- Large-scale mining (LSM).
- Artisanal and small-scale mining (ASM) is only tangentially addressed, recognizing that all scales of mining may benefit from improvements in governance. In addition, ASM relationships with LSM are addressed.

Kinds of Issues Covered

Box 2 lists the typical issues and rights impacted by the mining sector. There may be additional issues, depending on the specific mining operation. The table gives an idea of the types of issues that the Guide means by 'environmental, social and human rights (ESHR)' issues. The Guide does not cover each of these issues individually or in depth and often refers to whole groups of issues.

A note on terminology: These issues can be and sometimes are named or grouped differently, particularly in the 'human rights' column. These issues may often be grouped under the heading 'social' or 'social' and 'labour', but many, if not all, of these issues are international human rights that may be covered by a country's international obligations (see Box 3), national constitutions or national laws.

⁶ In many countries, responsibility for 'social' issues is spread across a number of ministries with a wide range of names. The term 'social authorities', as used in this Guide, indicates two groups of ministries or authorities or agencies: (i) those responsible for social welfare and social protection; and (ii) those responsible for social segments of the population – women, children, indigenous peoples, minorities, disabled people.

⁷ The term 'government authorities with human rights mandates' is used in this Guide to indicate those ministries or authorities or agencies: (i) charged specifically with a human rights mandate – such as a Ministry of Justice, National Human Rights Institution (NHRI), Ombudsperson, etc.; (ii) responsible for the human rights of workers – i.e., labour ministries/authorities; and (iii) having a mandate to protect particular groups of the population – such as women, children or minorities. There may be an overlap among government authorities addressing 'social' issues, depending on how a given government is set up and organizes its internal regulation.



Box 2

Typical Areas of Environmental, Social & Human Rights Issues in the Mining Sector – referred to as ‘ESHR’ issues in the Guide

Environmental Issues

- Water contamination & limiting water availability
- Dam bursts and flooding
- Waste production
- Air pollution
- Soil erosion and contamination
- Stream sedimentation
- Ecosystem destruction
- Biodiversity impacts
- Radioactive radiation
- Submarine/riverine tailings disposal
- Acid Mine Drainage (AMD)
- Long-term impact on environmental capital
- Increased noise, light and dust levels
- Opening new areas to illegal logging and poaching

Human Rights Issues

Procedural rights

- Access to information, public participation, access to justice & access to remedy

Substantive rights

- Right to life
- Right to an adequate standard of living, livelihoods and related land rights to pursue land-based livelihoods
- Right to food
- Right to water
- Right to health
- Right to housing & resettlement
- Right to social security/social protection
- Rights to freedom of expression, association & assembly
- Women's rights
- Children's rights
- Indigenous peoples' rights, minority rights
- Disability rights
- Cultural rights and the protection of cultural property

Human Rights Principles

- Accountability and the rule of law
- Participation and inclusion

Broader Social Issues with Links to Mining & Human Rights

- Community development
- Impacts of in-migration on social cohesion and social services
- Other impacts on social capital
- Social conflict

Labour Issues (Human Rights Issues of Workers)

- Health & safety
- Forced labour/unfair working conditions
- Vulnerable migrant and temporary workers
- Child labour
- Non-discrimination
- Unequal pay for unequal work, unpaid care work
- Sexual harassment



Brief Explanation of the International Frameworks behind the Three Core Pillars of the Guide

Pillar 1: International Environmental Law Framework

International environmental law has evolved into a large body of binding treaties, key concepts and principles of environmental law and non-binding instruments covering a wide range of issues, including:

- Multilateral Environmental Agreements⁸ covering a wide range of environmental topics from biodiversity to chemicals to climate change at the global level.
- Region-Specific Environmental Agreements⁹ covering regional-specific issues such as the protection of species found in particular areas, the protection of particular habitats or specific pollution in regional areas.
- Key concepts and principles of international environmental law, such as sustainable development, intergenerational and intragenerational equity, the precautionary principle, the 'polluter pays' principle, access and benefit-sharing regarding natural resources, common heritage and common concern of humankind. They provide guidance in interpreting legal norms, constitute fundamental norms, fill in gaps in the law and underpin international and national approaches to environmental protection.¹⁰

Pillar 2: The International Human Rights Framework

International human rights law has evolved into a large body of binding treaties and non-binding instruments covering a wide range of issues. They include:

- The International Bill of Human Rights, consisting of the Universal Declaration of Human Rights (UDHR), and the two binding international conventions based on the UDHR: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).¹¹
- Seven further core conventions¹² cover the following areas and are supported by monitoring bodies: (i) the elimination of all forms of racial discrimination; (ii) the elimination of all forms of discrimination against women; (iii) the prohibition of torture and other cruel and inhuman or degrading treatment and punishment; (iv) the rights of the child; (v) the protection of the rights of migrant workers and their families; (vi) the protection from enforced disappearance; and (vii) the rights of persons with disabilities.
- Other universal human rights instruments cover a wide range of topics, such as business and human rights, that also apply to mining companies. Some are binding and others are non-binding guidance.¹³
- Regional human rights instruments such as the European Convention on Human Rights, the Inter-American Convention on Human Rights, the African Charter on Human and Peoples' Rights and other instruments that have been adopted at the regional level, all reflect the particular human rights concerns of the region and provide for specific mechanisms of protection.¹⁴

8 See <https://www.informea.org/en/treaties>

9 Id. See also <https://www.ecolex.org/>

10 <http://web.unep.org/divisions/delc/our-work/environmental-law/international-environmental-law>

11 <http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf>

12 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>

13 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UniversalHumanRightsInstruments.aspx>

14 <http://bangkok.ohchr.org/programme/other-regional-systems.aspx>



- Human rights principles underpinning a human rights-based approach to development: The following principles have been defined in the jurisprudence of international human rights: (i) universality and inalienability; (ii) indivisibility; (iii) interdependence and interrelatedness; (iii) equality and non-discrimination; (iv) participation and inclusion; and (v) accountability and rule of law.

Human Rights Law:

Includes:

- Procedural rights in relation to the environment decision-making, including those covered in Principle 10 (see below).
- Substantive rights that can be impacted by environmental damage, including the rights to life, health, food, water, culture and non-discrimination.¹⁵

Sets out a three-tiered set of obligations:¹⁶

- The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights.
- The obligation to protect requires States to protect individuals and groups against human rights abuses, including abuses by businesses.
- The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights; this can be disaggregated into the obligations to facilitate, promote and provide.¹⁷

Pillar 3: Principle 10 of the 1992 Rio Declaration on Environment and Development¹⁸

Principle 10 of the Rio Declaration on Environment and Development was adopted as part of the 1992 United Nations 'Conference on Environment and Development' (UNCED), informally known as the 'Earth Summit'. The Principle has become a globally recognized framework for the development of national standards and laws on three core procedural rights important to improving environmental governance; these are the most visible expression of the interlinkage between one area of human rights (procedural rights) and environmental protection.¹⁹ They have been translated into regional conventions that turn Principle 10 into binding obligations.²⁰ In many countries, these goals are enshrined as constitutional protections of the rights to a healthy environment, life, health and an adequate standard of living as well as the rights of freedom of expression and association.

- Access to Information about the environment ensures that members of the public are able to know and understand what is happening in the environment around them and can participate meaningfully in public affairs and make informed decisions about their lives. It is therefore important in its own right as well as in the role it plays in enabling meaningful public participation. Rights to information are increasingly recognized more broadly in constitutions, national legislation – often under the heading 'freedom of information' – and initiatives such as the Open Government Partnership.²¹

15 Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/HRC/34/49, (2017), http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/49

16 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx>

17 See, for example, CESCR, "General Comment No. 15 (2002): The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)," E/C.12/2002/11, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2F2002%2F11&Lang=en

18 U.N.G.A., A/CONF.151/26 (Vol. I), 12 August 1992, Annex I.

19 Summarized from: UNEP, "Putting Principle 10 Into Action: Implementation Guide for the UNEP Bali Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters," pp. 9-10, (2015), <http://wedocs.unep.org/handle/20.500.11822/11201> and from the Aarhus Implementation Guide (2nd Edition) (2014), https://www.unece.org/env/pp/implementation_guide.html

20 See the Aarhus Convention, which, as of early 2018, is the only legally binding international instrument on environmental democracy that put Principle 10 of the Rio Declaration on Environment and Development into practice; see <https://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>. Latin American and Caribbean countries are negotiating a regional instrument on access to information, participation and justice in environmental matters; see <https://www.cepal.org/en/subsidiary-bodies/reunion-comite-negociacion-principio-10-america-latina-caribe>

21 The OGP also has a natural resources working group; see <https://www.opengovpartnership.org>



- Public Participation is a human right that benefits citizens and governments alike. Citizens have the opportunity to voice their concerns and have their views taken into account in policymaking, contributing information, analysis and considerations to better decision-making.
- The Access to Justice component promotes accountability and the rule of law through the use of fair and impartial administrative and judicial mechanisms. It backs up these rights with access to justice provisions that go some way towards putting 'teeth' into these principles.

A Quick Note on Implementation of the Three Pillars of the Guide:

Each of these three pillars is in turn comprised of policies, laws and standards that set out the content of what governments should do and often how they should implement them to improve governance in the mining sector. Governments take on international legal obligations when they sign international treaties in the environmental and human rights field. They are expected to honour the requirements of those treaties.

- International standards and principles provide more guidance on protection in particular circumstances. Examples in the environmental area include Principle 10 of the Rio Declaration and well-known principles and concepts of environmental law such as the 'polluter pays' principle. As another example, the UN Guiding Principles on Business and Human Rights provides guidance to governments and companies, including mining companies, on how to protect and respect human rights in the context of business operations, such as mining. Some are binding and some are not.

- Governments adopt constitutions and national policies, laws and regulations that incorporate their international obligations and provide more detailed requirements.
- Governments and mining companies may also participate in and agree to apply voluntary standards regarding environmental and human rights issues in the mining sector.
- An important note on human rights – A fundamental attribute of human rights is that they belong to every human being, – wherever they are in the world, whatever country, political grouping, race, social network, gender, etc. they belong to. They apply to every member of the human family, everywhere. This is the case regardless of whether a given government has formally accepted the principles of or ratified either or both of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. So, while many governments have accepted legally binding obligations on human rights that provide more formal avenues to hold governments accountable, people affected by mining operations also have human rights regardless of whether they are specifically covered by national laws or not. Governments and businesses are expected at a minimum to respect human rights.







Step 01

Establish the Foundations for Resource Stewardship: Policy, Regulations, Institutions and the Rule of Law

In this first step, the government builds the foundations for good governance and stewardship of mineral resources. It is making strategic choices about managing its mining resources, translating those strategic choices into policy and legal frameworks and strengthening institutions to deliver on the mining strategy. It is entering into trade and investment agreements to attract investment to the mining sector. While sustainable development used to be an afterthought, it is now increasingly at the centre of creating mining strategies at this critical stage.

Primary Target Audience

- Mining Authorities
- Government team setting national strategies
- Government team negotiating trade and investment agreements

Additional Targets

- Environmental
- Social and Human Rights Authorities
- Gender Machineries
- Justice Authorities

KEY ACTIONS IN THIS STEP

KEY MESSAGES

A

Develop an Overarching Resource Vision or Strategy – Considering the Full Costs and Benefits

The government should develop, together with its stakeholders, an overall vision for managing the country's national resources that transforms its resource wealth into inclusive, sustainable development. This starts with the question of whether to access resources or leave them in the ground in light of the wider environmental, social and human rights costs and benefits to the country, including for future generations.

B

Establish Mineral Resources Ownership and Endowment

In order to manage the country's mineral resources, the government must first establish what mineral endowments it has and then provide clarity in law and in practice (such as through clear mining cadasters) about who owns the country's mineral resources. It should also clarify how ownership of mineral rights interacts with other rights, particularly surface rights to land.

C

Update Mining Policy and Legal Framework

Governments should consider undertaking a benchmarking exercise to assess whether their mining policy and legal frameworks are updated and aligned with international standards and commitments and fit for purpose in light of their mineral resource endowments.



D**Develop an Investment Strategy to Attract Responsible Mining Investments**

The country's approach to attracting investment can constrain – or promote – more responsible foreign mining investment in the country. Governments should ensure that their investment policies and agreements are updated and aligned with their sustainable development approaches to lay the groundwork for appropriately regulating incoming foreign investment in the mining sector.

E**Strengthen the Coherence and Coordination among Institutions**

There are likely to be various national, regional and local authorities responsible for governing and managing some dimension of mining operations. Clear mandates to avoid overlapping responsibilities and coordinating across relevant government institutions responsible for environmental, social and human rights regulation of mining operations can improve the efficiency and effectiveness of enforcement, even in low-capacity environments.

F**Strengthen Enforcement by Authorities**

Governments will typically have or should create a range of options to provide the right incentives and disincentives so that mining companies comply with the law and licensing obligations. Where government capacity for enforcement is limited, authorities can look for additional options to reinforce capacity, including working with environmental, human rights, trade union and community organizations that take an active interest in monitoring mining operations.

G**Reinforce Access to Information, Public Participation and Access to Justice**

This foundation stage sets the overall direction for mineral development and is therefore a core stage for government to reinforce Principle 10 procedural rights. There should be a legal and institutional framework that ensures transparent and available information on the management and impacts of natural resource exploitation, provides opportunities for an informed public to participate in decision-making on natural resource management, and provides mechanisms to hold decision makers and mining companies accountable to an informed public.²²



²² This is reinforced through Principle 10 as well as international standards on resource governance. See the Natural Resource Charter, Precept 2, <http://www.resourcegovernance.org/approach/natural-resource-charter>





Step 02

Participatory Planning For Extractives from Exploration to Closure

In this second step, relevant departments and levels of government and affected populations should come together to plan where mining should and should not be carried out in the country. Integrated land use planning is a political and administrative process to guide the orderly and sustainable use of land that avoids decision-making in isolation by considering different present and future uses of land together and addressing trade-offs explicitly and early.²³ By making this a participatory that includes the wide range of stakeholders using or potentially using the land – women farmers, local communities, local businesses, environmental groups – governments are not only giving people a voice in determining the kind of social and natural environment they want to see develop, but are also providing for a potentially deeper and longer-lasting legitimacy to dealing with a challenge often at the heart of conflicts around mining operations.

Primary Target Audience

- Land Use Authorities (at different levels of government – national, regional, local)
- Mining Authorities
- Environmental Authorities

Additional Targets

- Social Authorities
- Human Rights Authorities
- Local Government

KEY ACTIONS IN THIS STEP

A Use Participatory & Integrating Land Use Planning Approaches to Help Identify Appropriate Areas for Mining

KEY MESSAGES

Integrated and participatory land use planning seeks to balance out the different uses of land from the earliest stages of planning mining developments, including after mine closure, so that land is used sustainably. By being explicit about the need to manage competing interests, and explicitly including ESHR issues as relevant considerations, governments, together with stakeholders, can start to address relevant trade-offs openly and early and build in appropriate design considerations from the start of mine planning.

²³ J. Southalan, Mining Law and Policy – International Perspectives, p. 73 (2011).



B

Integrate Indigenous Peoples' Rights When Planning Mining in Indigenous Peoples' Territories

As a result of mining operations in many areas of the world, indigenous peoples (IPs) have experienced widespread negative impacts, including environmental degradation and limitations of their social and cultural life and of their possibilities for economic survival. Protecting and respecting IP rights starts from the land use planning stage in considering IPs' rights to land and natural resources that engages IP communities in a process of meaningful, free, prior and informed consent (FPIC) that lays the groundwork for more sustainable relationships with the government and eventually any mining companies.²⁴

C

Integrate Women's Rights When Planning Land Use

Women may be more adversely affected by land use changes and may have fewer options to defend their often weak or non-existent land tenure or access rights. An inclusive land use planning process first consults with women about their views on potential land use planning changes and considers the differentiated control, access and use of land by women and the potential differentiated impacts on women.

D

Use Strategic Assessment Tools to Understand the Bigger Picture

A Strategic Environmental Assessment (SEA) or Strategic Environmental and Social Assessment (SESA) is a tool to assess the potential ESHR impacts of potential programmes and plans (such as plans to develop or reform the mining sector) already at the planning stage. Given the often extensive and well-documented ESHR impacts of mining and the conflicts this can create with local communities, a SESA for the mining sector, if done well, provides early opportunities to understand stakeholders' concerns and to respond to them in planning and permitting subsequent mining operations, paving the way for more sustainable solutions from the design stage.

E

Address Misalignments between Sectoral and Territorial Planning

Where sectoral mine planning and licensing do not involve coordination with the territorial/regional development plans and regional/local authorities where mining will take place, a clash of objectives for territorial/regional land use can arise. Governments should establish mechanisms to ensure vertical coherence in overall land use planning for mining between central – regional and local governments.

F

Include Planning for Closure as Part of the Land Use Planning Process

Land use planning should already consider whether the long-term land uses of the surrounding areas are capable of replacing the mine's contributions once the planned mine is closed. This is the first step in planning for mine closure from the beginning of the mining cycle.



²⁴ UN General Assembly, "Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya", Summary of activities: Progress report on study on extractive industries, A/HRC/21/47 (6 July 2012)





Step 03

Exploration

This third step exploration companies gather information and discover deposits suitable for mining. Early prospecting typically involves large areas of land using very small field teams made up primarily of geologists. It is often carried out by junior (small) exploration companies operating with limited resources that usually hope to sell their discoveries to larger companies that will develop and administer a producing mine. This is not only the first, but also an important step for addressing ESHR issues.

Primary Target Audience

→ Mining Authorities

Additional Targets

- Environmental Authorities
- Social Authorities
- Human Rights Authorities

KEY ACTIONS IN THIS STEP

A

Address ESHR Issues at the Exploration Stage

KEY MESSAGES

Exploration activities (including drilling, excavation and material handling and transport) can adversely impact the environment and communities, depending on how invasive the techniques are,²⁵ and can affect relations well into the life of the mine. While the extent of ESHR conditions attached to exploration permits varies greatly across countries, the trend is towards including basic requirements for the management of ESHR issues.

B

Engage with Communities and Other Stakeholders

Exploration companies should be required to provide basic information to local communities and other interested stakeholders about their activities. Mining authorities and local authorities also have a role to play in providing balanced information that people can trust, presenting realistic information about potential negative and positive impacts.

²⁵ Mineral exploration and evaluation techniques range from the most environmentally benign, such as remote sensing from satellites, to more invasive, such as close-spaced intensive drilling.





Step 04

Feasibility and Licensing

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

Primary Target Audience

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

KEY ACTIONS IN THIS STEP

KEY MESSAGES

A

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

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

B

Know and Understand the Companies Seeking to Invest

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

C

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

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



D

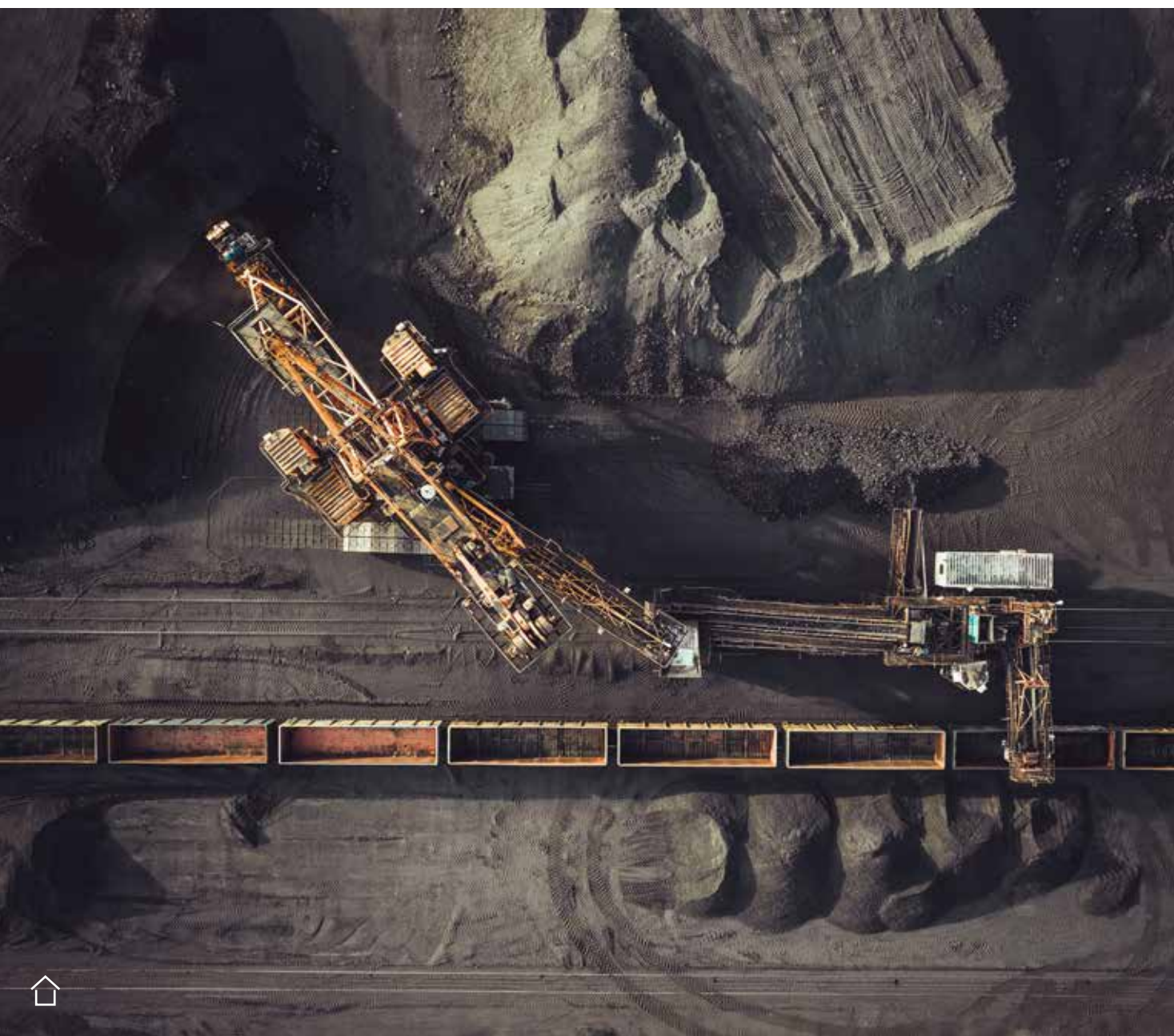
Know and Understand What is in the License/ Contract (and What is Not)

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

E

Know and Understand the Local Context Where Mining Will Take Place

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





Step 05

Mine Development and Construction

At this fifth step, the development and construction phase of a mine can often determine how sustainable the subsequent operational phase will be. This is also the step at which infrastructure, ancillary facilities and access works are constructed (for transport, power and water supply, storage and waste handling). Construction creates significant and visible changes and impacts on the environment and communities and is therefore likely to be the phase with the most intense ESHR impacts. This phase therefore requires clear requirements around ESHR issues, active monitoring from the authorities and regular engagement with the local communities by the authorities and the company.

Primary Target Audience

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

KEY ACTIONS IN THIS STEP

KEY MESSAGES

A

Set ESHR Requirements for the Construction Phase

A well-scoped ESIA should cover the potential ESHR impacts at each phase, starting with the construction phase, including impacts associated with the construction of ancillary facilities and infrastructure. Authorities should remain alert to impacts that are more difficult to anticipate, including in-migration and cumulative impacts. Given the range of authorities involved, a coordination mechanism to facilitate coordinated decision-making and monitoring can be useful.

B

Conduct Regular Monitoring of ESHR Impacts of Construction

Given the wide range of impacts at the construction phase, there should be proportionately scaled-up monitoring of the mining company and its subcontractors. Informing and involving local communities in monitoring can build trust in monitoring outcomes, can augment scarce governmental capacity and is a very direct approach to providing the right to access to information and public participation.

C

Regularize Community Engagement

The mining company and the government should be actively engaging with affected communities and other stakeholders to provide updated information on developments, to address impacts and to respond to concerns and grievances, setting up regular feedback loops to respond to the community and to manage expectations. If not already done, this is a time to develop systematic and sustainable approaches to community development.





Step 06

Production

At this sixth step, the operations phase of the mine can last decades or, in some cases, centuries. It is also the phase when the ESHR planning proves its value, as the mining company will have ESHR impacts to manage over the long term. Given the long-term nature of mining, a mine site will predictably be subject to changes over the life of the mine, so it is important that the authorities and the mining company have clear procedures to continually review and update mining management processes to manage changes and to consult with stakeholders when changes are significant.

Primary Target Audience

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

KEY ACTIONS IN THIS STEP

KEY MESSAGES

A

Update ESHR Requirements Throughout the Production Phase

Given the high level of uncertainty inherent in mining, strengthening capacities and processes for managing change and the potential ESHR impacts that may accompany change should be given a high priority.

B

Conduct Regular Monitoring of ESHR Impacts Throughout the Production Phase

The longer-term monitoring required during the production phase provides the opportunity to set up coordinated and integrated approaches to monitoring and to build longer-term approaches to stakeholder involvement in monitoring.

C

Manage ESHR Impact Events

Mining is a high-risk sector and needs to be managed accordingly. In addition to managing ongoing impacts of production, authorities and the mining companies should be prepared to manage sporadic events that can have significant ESHR impacts – including emergency and security events.



D

**Address Relationships
with ASM**

There is often a significant artisanal and small-scale mining (ASM) sector in many mining countries, often neighbouring or even interwoven with large-scale mining (LSM) enterprises. While, in the past, ASM mining has been discouraged or even criminalized, governments and larger mining companies are beginning to recognize that ASM is often a significant source of livelihood that should be supported to improve rather than being further marginalized.





Step 07

Closure

At this seventh step mines are wound down, operations are closed and rehabilitation is accelerated. All mines close and many close prematurely, so it is important that mine closure planning start from the beginning of the mining cycle. Progressive rehabilitation of areas no longer needed should start during operations rather than during final closure. An integrated approach to mine closure planning integrates environmental, social and economic planning and involves local communities and other stakeholders throughout the process.

Primary Target Audience

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

KEY ACTIONS IN THIS STEP

KEY MESSAGES

A

Plan for Closure and Post-Closure in an Integrated Manner

Integrating ESHR management decisions into strategic closure planning from the start can achieve more effective mine closure and completion. The objective of closure should be to prevent or minimize adverse long-term environmental, physical, social and economic impacts, to create a stable land form suitable for some agreed subsequent land use and to maximize social benefits.

B

Involve Stakeholders as a Core Part of the Closure Process

Community engagement from the earliest possible time and throughout the closure planning process is both an important expression of the right of the public to participation, but is also essential to effective closure planning. The goal should be community ownership of the closure plan, as the community will eventually inherit the project area.

C

Carry Out Progressive Closure throughout Mine Operation

Actions that are part of closure will start in the production phase (Step 6) as progressive rehabilitation of areas no longer needed gets underway. Monitoring these actions to understand their effectiveness and using the results to refine future rehabilitation efforts will be important and should continue through post-closures (Step 8).





Step 08

Post-Closure

At this eighth and final step in the final phase of mining operations, monitoring confirms that all relinquishment targets are met and liabilities are discharged. After they have been, the mining site is turned over to the government and can be put to its planned re-use. For mines that were not closed properly – abandoned or orphaned mines – the government will need to devise a strategy to close them, potentially in partnership with other actors.

Primary Target Audience

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

KEY ACTIONS IN THIS STEP

KEY MESSAGES

A

Monitor the ESHR Impacts of Closure

Monitoring remains a key activity throughout the post-closure period to ensure that the closure and post-closure activities meet their ESHR goals. Involving local communities, environmental organizations and trade unions in monitoring of closure plan completion is one way to build buy-in and trust in the outcomes and is a model of public participation in closure.

B

Incorporate ESHR Targets into Relinquishment Conditions

Putting in place clear criteria for relinquishment that meet regulatory and community expectations and include appropriate ESHR conditions is important not only to give mining companies certainty about the targets that they must meet, but also to ensure that the national and local governments are not left with unfulfilled environmental and social liabilities. There should be appropriate safeguards to ensure accountability for closure and post-closure planning. Community participation is an important part of the relinquishment process.

C

Take a Leadership Role for Orphaned or Abandoned Mines

The government should lead in addressing orphaned and abandoned mines, building partnerships with other actors – including the sector, other governments and international organizations – to develop technological solutions (including the reprocessing of mining wastes) or to contribute expertise or other resources to resolve the legacy issue of orphaned or abandoned mines.



Credits

Text: Margaret Wachenfeld, Themis Research

With support from: Kathryn Sturman, University of Queensland,
Centre for Social Responsibility in Mining

Design: LS – Isgraphicdesign.it

Photos

cover: © iStock.com/DrPAS

p. 3 (left to right, top to bottom):

© Blerina Gjeka

© Kibae Park/UN Photo

© iStock.com/Opla

© iStock.com/Lucyna Koch

© iStock.com/Aarre Rinne

© iStock.com/Obradovic

© Tiago Zenero/UNDP Brazil

© UN Photo/Kibae Park

p. 4: © iStock.com/Aarre Rinne

p. 8: © Tiago Zenero/UNDP Brazil

p. 15: © iStock.com/Lucyna Koch

p. 22: © iStock.com/Agnormark

p. 25: © iStock.com/Opla



Acknowledgements

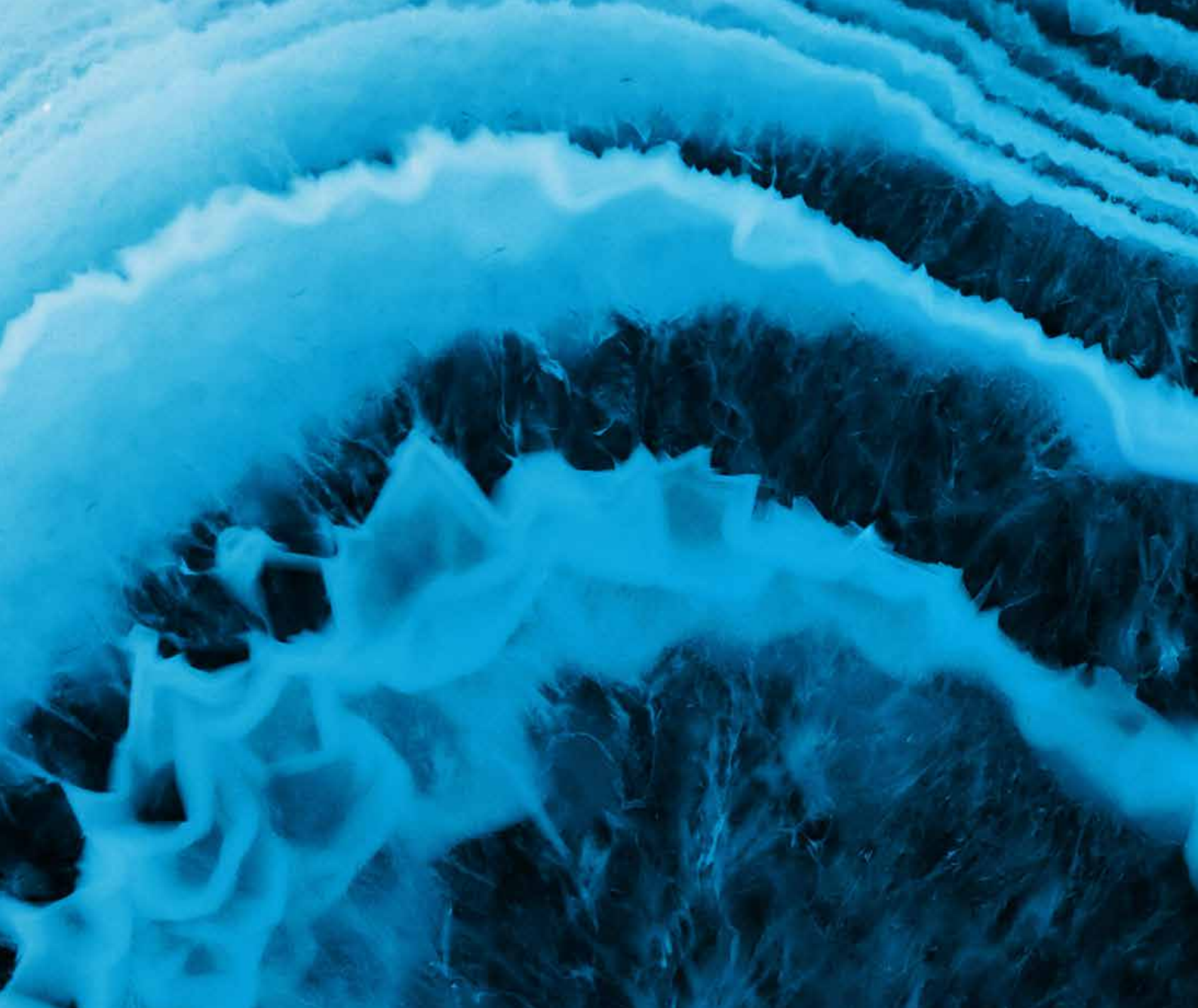
This Guidance Note was developed by the Swedish Environmental Protection Agency and the UNDP Bureau for Policy and Programme Support under the joint Environmental Governance Programme. The drafting of the Note was led by Margaret Wachenfeld of Themis Research with support from Kathryn Sturman, University of Queensland, Sustainable Mining Institute, Centre for Social Responsibility in Mining.

The project team involved in preparing this publication included Ann Cathrin Pedersen, Tim Scott, Casper Sonesson, Pelle Lutken, Sanna Due, Ann-Marie Fällman, Mats Kullberg, Per Strömberg Maria Bang, and Claudia Ituarte Lima.

Drafts of the Guide were reviewed by a peer group comprising Maria Cruz Gonzalez, Uyanga Gankhuyag, Sadamitsu Sakoguchi, Lorena Franco, Shane Quinn, Ciara Daniels, Marianne Kjellen, Sarah Rattray, Simone Ellis Oluoch-Olunya, Carl Bruch, Jon Hobbs, Zamira Djabarova, Sueli Giorgetta, David Jensen, Matthew Bliss and Soo-Young Hwang.

We thank Luis Fernando de Angulo of the Centro Regional de Empresas y Emprendimientos Responsables (CREER), Rose Wangui Kimotho, and Deanna Kemp of the University of Queensland, Sustainable Mining Institute, Centre for Social Responsibility in Mining.

We are also grateful to colleagues and partners in Colombia, Mozambique, Mongolia and Kenya who shared inputs and lessons learned from implementing the Environmental Governance Programme from 2014 to 2018.



United Nations Development Programme

One United Nations Plaza
New York, NY 10017, USA
www.undp.org