



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

Summary of Step 3: Exploration

KEY ACTIONS IN THIS STEP

KEY MESSAGES

A

Address ESHR Issues at the Exploration Stage

Exploration activities (including drilling, excavation and material handling and transport) can adversely impact the environment and communities, depending on how invasive the techniques are,¹⁷⁴ 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.

¹⁷⁴ 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.

A Address ESHR Issues at the Exploration Stage

In most jurisdictions, prospecting and exploration requires a permit that typically allows the company to explore for mineral deposits. In the exploration stage, the authorities are likely dealing with a wide range of small companies, potentially operating in the country on a very short-term basis, with the possibility that many of the companies will not be successful and therefore may not remain. Exploration comes with considerable risk: as noted in one estimate,

“[i]t sometimes [...] takes 500 –1,000 grassroots exploration projects to identify 100 targets for advanced exploration, which in turn lead to 10 development projects, 1 of which becomes a profitable mine.”¹⁷⁵ Companies will therefore want to minimize time and resources spent on meeting ESHR requirements. The challenge is to regulate exploration adequately without deterring prospectors who could uncover future development potential for the country.¹⁷⁶

ESHR Requirements – ESIA or Permit Requirements

Do the mining authorities have requirements for some level of ESHR assessment for the exploration phase that is tied to the potential level of impacts?

- Do the authorities require an ESIA or at least have criteria for when an ESIA for exploration would be required?
 - ESIA requirements that provide specific criteria for when an ESIA is required for exploration (depending, for example on the scope and scale and invasiveness of the techniques used) help provide predictability to the ESIA process for exploration.
- Even if an ESIA or other assessment in advance of carrying out exploration activities is not required, do the mining or environmental authorities nonetheless impose basic ESHR conditions as part of an exploration permit? (See Box 35 for an example from Kenya’s recent mining regulations.)
 - The extent of ESHR conditions attached to exploration permits varies greatly across countries. Because the exploration stage is a high-risk, low-reward activity, mining authorities should seek to apply appropriate, but not overly costly ESHR requirements where exploration techniques are not expected to have a high environmental or social impact.¹⁷⁷
 - Including some requirements at this early stage also signals to mining companies that these issues are important to the mining authority.
- Exploration permits should serve to:
 - Provide permission to carry out the activities
 - Ensure that the exploration activities will not pose a significant or unnecessary threat to the environment
 - Require consultation with local communities

175 Fraser Institute, “Permit Times for Mining Exploration: How Long Are They?” p. 1 (2016), <https://www.fraserinstitute.org/sites/default/files/permit-times-for-mining-exploration-how-long-are-they.pdf>

176 J. Southalan, “Mining Law and Policy – International Perspectives,” (2012), p. 109. If the permitting process lacks transparency or is uncertain, it adds additional risk and therefore additional costs to exploration for companies, thereby potentially reducing a jurisdiction’s competitiveness.

177 J. Southalan, “Mining Law and Policy – International Perspectives,” (2012), p. 111.

International Good Practice

Even if the mining authorities do not have national ESHR requirements at the exploration stage, do they instead require or set expectations about applying international standards with respect to ESHR impacts for exploration?

- Where the mining authorities do not have national requirements for exploration, they can nonetheless consider setting out clear expectations that exploration companies abide by international good practices concerning due diligence to anticipate and manage their potential impacts.
- There is an increasing range of guidance materials specifically directed to exploration companies, including junior, small-scale mining exploration companies, to improve their ESHR practices, recognizing that they are unlikely to have the expertise, resources or policies and practices of larger-scale mining companies. (See Box 37 for a sample TOR for a mining ESIA.)
 - These guidance materials are often grounded in lessons learned ‘the hard way’ – from repeated experiences about the costs of failing to take such steps – and are developed by mining organizations or well-known mining countries.

Box 36

Kenya Mining Regulations (2016) – Environmental & Social Requirements as a Condition of Permitting for Exploration and Prospecting

Application for an exploration license

- Section 59(2)(h): an environmental and social screening report comprising a plan describing how, on an ongoing basis, local government traditional authorities and communities will be informed and consulted about those reconnaissance operations that require physical entry onto the land within their jurisdiction.

Application for a prospecting license

- 68(2) (j) & Section 72 (2) (k): details of any significant adverse effects that carrying out the programme of prospecting operations is likely to have on the environment, gender impact and on any monument, cultural heritage, artefacts or relic in the proposed prospecting area, measures to be taken to mitigate such effects and an estimate of the cost of mitigating such impacts.

Box 37

Example Terms of Reference (TOR) for a Mining ESIA at the Exploration Phase – Central America

As part of the environmental cooperation agreements under the Central America and Dominican Republic Free Trade Agreements with the United States, regional experts prepared a guidance TOR for each of the exploration and exploitation phases

for non-metal and metal mining projects. The TOR is intended for use by the countries to adopt or adapt for their EIA program requirements.¹⁷⁸ It sets out a detailed list of issues to be covered for an ESIA for the exploration phase.

¹⁷⁸ United States Environmental Protection Agency (U.S. EPA), U.S. Agency for International Development (U.S. AID), and/or the Central American Commission on Environment and Development (CCAD), “EIA Technical Review Guideline: Non-Metal and Metal Mining, Volume I Part 2: Example Terms of Reference,” (2011), <https://www.epa.gov/sites/production/files/2014-04/documents/miningvol1part2.pdf>

B Engage with Communities and Stakeholders

The exploration stage is the first step in interaction with communities about the potential for mining in their areas. Poor early environmental and community relations practices by exploration companies that do not have a vested interest in the longer term can affect relations well into the life of the mine. As such, exploration companies can prompt rising and unrealistic

community expectations about immediate benefits or fears and misconceptions. The absence of information from either the government or companies may be filled in by rumour and speculation that may have little relationship to reality. (For further discussion, see [Step 5 - Mine Development and Construction - Key Action 3 on Community Engagement and Managing Conflict.](#))

Expected community engagement

Do the mining authorities specifically require or encourage exploration companies to engage with local communities during exploration, beyond whatever transactional engagement is necessary to gain access to land?

- The mining authorities should consider setting clear expectations, if not requirements, about community engagement so that dialogues start early about the potential trajectory of mining development.
- Where IPs are involved the process of obtaining FPIC starts already at this early stage.
- They should encourage exploration companies to engage with all segments of the population, including women, youth, any marginalized and IP groups, to ensure their views are heard. (See [Step 2- Participatory Planning, Key Action 2 on integrating IP rights.](#))

Provide access to information

Is the process of exploration licensing transparent to local communities who may be impacted or other interested stakeholders? Do they have access to information about the permitting process?

- Given the uncertainties involved in exploration, public consultation will not always be required as part of the exploration permitting process. However, even if there is no public participation at this stage, mining authorities can develop internet platforms that provide a full range of permitting information, the identity and information about the companies granted exploration permits, and the conditions attached to the permit.
- It is the government role to provide balanced information that people can trust, presenting realistic, evidence-based information about potential negative and positive impacts, particularly where such information from exploration companies is lacking or unbalanced.

Addressing Community Expectations

Do the mining, environmental, social and human rights authorities engage with local communities to help address community expectation and concerns?

- The mining or other authorities may consider a number of mechanisms for addressing expectations and community concerns about the impacts of exploration, the potential for future development and potential opportunities for communities to benefit if the resource is developed:
 - NHRIs and ombudsman are often trusted intermediaries.

Addressing Community Expectations

- Providing spaces for dialogue early in the process when exploration becomes more invasive can help build understanding, highlight concerns and explore options for alternatives when potential changes can be made and before positions become entrenched or large amounts of funds spent. (See Box 34 on an example from Colombia (AngloGold).) These spaces can provide an early-warning sign to governments and companies about deeply rooted community concerns that should be taken into account and addressed early, even before the launch of major studies. They need to be prepared to address community expectations early, including differentiated community expectations from women and youth, for example.

Protecting the Human Rights of Communities during Protests

Are the authorities (including mining and local authorities) and security services aware of and trained in protecting human rights during social protests? Has the government made clear statements about protecting environmental and human rights defenders even when they are advocating against further mining or other economically significant sectors of the economy?

- Governments and companies must be prepared to manage interactions with communities in line with their international human rights commitments, including the right to freedom of expression and assembly.
- Governments should be prepared to address social protest and even potentially violent conflict around mining operations in a manner that protects communities from harm, including environmental activists/human rights defenders,¹⁷⁹ while addressing their underlying concerns and respecting their rights.¹⁸⁰ (See Boxes 21 and 40 on increasing threats to human rights defenders.)
- Given the increasing trends of conflict around mining, a number of initiatives focus on improving security of operations in a manner that respects and protects human rights. (See Box 68 on initiatives and toolkits to help manage security concerns around extractive operations.)

Box 38

International Good Practice Guidance for Exploration Companies on Environmental, Social and Human Rights Issues at the Exploration Stage

Prospectors and Developers Association of Canada

- **e3 Plus: A Framework for Responsible Exploration** was developed to help exploration companies continuously improve their social, environmental, and health and safety performance.¹⁸¹
- **First Engagement – A Field Guide for Explorers** (2015)¹⁸² specifically focuses on community engagement at the exploration stage.

IFC – ‘**A Strategic Approach to Early Stakeholder Engagement - A Good Practice Handbook for Junior Companies in the Extractive Industries**’ also focuses on community engagement during the exploration phase.¹⁸³ Australian Centre for Sustainable Mining Practices, ‘**Leading Practice Sustainable Development Program for the Mining Industry**’¹⁸⁴ (2011) contains a chapter on exploration.

179 OHCHR, “Report on the Situation of human rights defenders working in the field of business and human rights”, (October 2017), <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/ReportBusinessHR.aspx>

180 See also the Human Rights Council Resolution (res 31/32), which requires States to ensure the rights and safety of human rights defenders working towards the realization of economic, social and cultural rights.

181 <http://www.pdac.ca/programs/e3-plus/principles>

182 <http://www.pdac.ca/pdf-viewer?doc=/docs/default-source/default-document-library/first-engagement---a-field-guide-for-explorers.pdf>

183 https://www.commddev.org/userfiles/FINAL_IFC_131208_ESSE_Handbook_web_1013.pdf

184 <https://industry.gov.au/resource/Programs/LPSD/Pages/default.aspx>

Box 39

Examples of Transparent Exploration Licensing Process

When Mongolia first started implementing the EITI in 2005, the government managed its licenses using a handwritten-ledger license register, operating a first-come-first-served system highly prone to human discretion. It now has a cadastral portal and a one-window registration service for exploration

license applications, providing for real-time public oversight of the status of applications. But online systems, while more transparent, are not without risks: UNDP's June 2016 report on corruption risks in Mongolia's mining sector noted risks in the license allocation and approval processes.¹⁸⁵

Box 40

Increasing Threats to Environmental and Human Rights Defenders

The UN and numerous organizations have noted the rise in threats, attacks and murders of human rights defenders – individuals and groups who, in their personal or professional capacity and in a peaceful manner, work to protect and promote human rights relating to the environment, including water, air, land, flora and fauna.¹⁸⁶ They are characterized by their actions to protect environmental and land rights. In many cases, they are indigenous leaders or community members who defend their traditional lands from use for other purposes, including mining. As the global demand for natural resources grows, the protection of the environment and traditional

livelihoods is becoming a source of conflict and contention. This Guide highlights the importance of providing meaningful avenues for social dialogue and debate as part of the government's implementation of Principle 10 about the important choices to be made in deciding whether to mine, where and how. In addition to the actions highlighted throughout the Guide that will help support constructive engagement and shared solutions, recent trends indicate the need for governments to take active, targeted measures to protect human rights and environmental defenders that can build on good practices.¹⁸⁷

185 Summarized from EITI, "Managing mining leases in Mongolia," (2017) - <https://eiti.org/news/managing-mining-leases-in-mongolia>

186 UN Special Rapporteur on Human Rights Defenders, "Environmental human rights defenders," (2016), Report A/71/281, <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/AnnualReports.aspx>

187 UN Special Rapporteur on Human Rights Defenders, "Good Practices in the Protection of Human Rights Defenders," A/HRC/31/55, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/015/56/PDF/G1601556.pdf?OpenElement>