

# MINING SECTOR DIAGNOSTIC PERU





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*Photo:* Close up of iron ore and copper texture - natural minerals in the mine. Open pit stone texture.





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## Prologue

The economic reforms of the 1990s helped reverse Peru's harsh economic, social and political crisis of the previous decade. Along with its geological potential, Peru's legal security positioned it among the top countries in the region in terms of mining investment, growth and economic stability. In recent years, however, questions have arisen about the sustainability and loss of competitiveness of mining investment in the country.

Currently, the sector faces the challenge of creating the necessary conditions to move forward with the development of an extensive mining project pipeline within a context of social legitimacy. The profile of the mining investment portfolio requires it: 90 percent of Peru's 48 projects totaling US \$ 57 billion are located in areas with no previous formal mining operations and almost 60 percent are open pit mines. Implementing these high-impact projects in new areas will require social acceptance by communities and regions.

Promoting exploration, making the projects in the pipeline viable and ensuring the normal operation of current activities require strengthening environmental sustainability and improving the socioeconomic impact of mining projects. Mining investment has suffered from a lack of social legitimacy and acceptance, which is expressed in direct actions and protests against mining projects in several regions. In some cases, despite having all the necessary permits, new mining projects could not be developed, thereby slowing implementation of the pipeline of new investments totaling some US \$ 57 billion. In recent years, social conflicts have delayed several projects worth US \$12 billion.

Taking full advantage of the mining sector's potential for sustainable, inclusive development requires improving the quality of Peru's mining institutions, regulatory framework and infrastructure. Additionally, it calls for the creation of an efficient model where the wealth generated by mining activity contributes to the well-being

of the inhabitants of mining communities and regions, generating shared prosperity.

It was in response to this challenge that the country's Ministry of Energy and Mines and the Ministry of Economy and Finance requested a Mining Sector Diagnostic (MSD) from the World Bank. This tool provides a comprehensive assessment of current regulations and policies in the mining sector and the gap between policy and practice. It is a systematic, practical assessment that provides data-driven, evidence-based conclusions. It also offers a structured analysis of the perspectives of the three main stakeholders: Government, industry and civil society.

The MSD explains why the current management framework, focused mainly on attracting mining investment, will no longer suffice for the future development of the industry, and above all, of Peru. To reach this conclusion, it carefully analyzes the management and each of the stages of the sector's value chain, identifying areas that can be improved, both in the regulations and their enforcement.

The final section of the MSD outlines a potential change agenda and recommendations for harmonizing competitiveness with sustainability, the goal being to boost national economic development and, especially, territorial development in mining regions.

The MSD's most important recommendation is to design a long-term, concerted national mining policy that provides guidance to regulators and stakeholders and enables constructive inter-ministerial coordination for improved competitiveness, sustainability and development impact.

We invite all interested parties to read the report and its recommendations. We hope that it will serve the government administration in the 2021-2026 period and that it will help the Peruvian mining sector promote inclusive, equitable development.

**Marianne Fay**

World Bank Director for  
Bolivia, Chile, Ecuador and Peru

# Executive Summary

The facts and events that have shaped the strengths of the Peruvian mining industry are well established. Among these are the steadily high level of investment in both exploration and exploitation; increased volumes of polymetallic production led by copper, present in most Peruvian regions; a significant number of large-scale projects and large national and international companies with a high number of the International Council on Mining and Metals (ICMM) members; and high export volumes and their contribution to the budget and public spending in mining districts via the mining canon, significantly boosting formal private economic activity in remote rural areas. These features make Peruvian mining a global competitive player and position Peru as a country that is expected to continue attracting investments for ensuring a supply of minerals that will meet the strong global demand for minerals in the next two to three decades.

Private mining investment has flowed in during the last decade, making Peru the second most popular destination (after Chile) for mining investment in Latin America. Investments received a strong boost of US\$21 billion in the first half of the last decade, rallying once again from 2017 to 2020 with US \$8.3 billion for copper projects. In the last two decades, Peru has increased its annual copper production five times from approximately half a million to two and a half million metric tons of fine copper, moving from being only a major producer of gold to becoming also the second largest producer of copper in the world.

According to the Peruvian Institute of Economy (Instituto Peruano de Economía, IPE), every direct job in mining generates an additional 6.25 jobs in the rest of the economy: 1 from an indirect effect, 3.25 from the effect on consumption, and 2 from the effect on investment. This gives an estimated direct and indirect mining employment figure of 1.46 million people.

None of this would have been possible if, on the basis of its enormous geological potential, the country had not consistently and steadily enforced the 1992 Mining Law which has clearly successfully achieved its main goal: to expand industrial mining and make it one of the country's most important pillars of economic growth. The legal framework for mining in Peru has remained stable in the last two decades, with major progress registered in environmental management, taxation, and protection of the rights of indigenous peoples. Yet, in essence, the goal of ensuring legal certainty for investors and providing a favorable regulatory framework for attracting mining investment has been maintained. The critical question is whether the policies that led to good results in the last three decades are adequate for meeting the future challenges of mining in Peru.

The mining sector needs to create the necessary conditions, within a context of social legitimacy, to move forward successfully with the development of an extensive mining project pipeline. Of 48 projects in the pipeline for US\$ 57 billion, some 90% are greenfield and almost 60% are open pit. Promoting exploration, making the projects in the pipeline viable, and ensuring the normal operation of current activities requires strengthening environmental sustainability and improving the socioeconomic impact of mining projects. This is because, beyond the situation in global markets affected by the pandemic,

mining investment has been penalized by a lack of social legitimacy and acceptance expressed in direct actions and protests against mining projects in several regions. In certain cases, it has been impossible to develop new projects that had obtained all the needed legal permits, delaying the pace of implementation of the pipeline of new investments, that at the end of 2019 bordered some US \$57 billion. Several projects, totaling an investment of US \$12 billion, have been put off in recent years as a result of social conflicts.

The country now faces the challenge of improving the sector's policies and management to guarantee its long-term contribution to the country's sustainable development. The government also faces the major challenge of artisanal and small-scale mining formalization and elimination of illegal mining, which has destroyed 53,000 hectares of Amazon jungle with mercury, especially in the Amazonian Madre de Dios region. ASM is given low priority, however, and the policy for this sector has been inconsistent over time. In the current context of high gold prices, therefore, the lessons of the last two decades must be remembered and a holistic policy must be prepared for ASM.

The Mining Sector Diagnostic (MSD) is a tool that the World Bank has developed to analyze the rules and policies that exist in the mining sector and the gap between these rules and their implementation in practice. It reviews the sector performance from the perspective of the three main stakeholder groups (government, companies, CSOs), and analyzes their priorities to improve mining sector performance. The MSD was requested by Peru's Ministry of Energy and Mines (MINEM) and Ministry of Economy and Finance (MEF). A wide range of government entities were interviewed, and interviews of Peru's mining industry stakeholders included the Peruvian National Society of Mining, Petroleum and Energy (SNMPE), individual mining companies, and civil society organizations (CSOs).

# 1. MSD RESULTS DASHBOARD

The Mining Sector Diagnostic results dashboard for Peru presents an overview of the mining sector’s performance along the extractive industries value chain and with respect to the sector management framework (See section III. MSD Results Dashboard and Annexes I and II for the details on how the dashboard was constructed). The overview shows that out of the 14 dimensions assessed (each of the cells with scores of 1.00 to 4.00 in the dashboard), five obtained a very high score, five obtained a high score, and four obtained a low score. None of the analyzed dimensions scored very low (less than 1.75).

Mining Sector Diagnostic					
I. Mining Sector Management					
Sector Policy	Sector Dialogue		Rules and Responsibilities	Intra-Governmental Coordination	
II. Extractive Industries Value Chain					
	Contracts, Licenses and Exploration	Mining Operations	Mining Taxation	Revenue Management and Distribution	Local Impact
De Jure Performance	Rules for License Allocation, Oversight, and Transfer	Mining Legislation & Processes/ Land Compensation & Resettlement/ Environmental and Social Impact Management/ Transport of Minerals/ ASM/ Occupational Health and Safety/ Mine Closure - Rules	Tax Policy and Tax Administration Rules	Revenue Sharing and Fiscal Stabilization-Rules	Local Content, Employment, Community Engagement, CSR and Social Issues - Rules
De facto Performance	Collection & Maintenance of Geological Information/ Effective License Allocation and Management	Mining Legislation & Processes/ Land Compensation & Resettlement/ Environmental and Social Impact Management/ Transport of Minerals/ ASM/ Occupational Health and Safety/ Mine Closure - Practice	Mining Tax Administration and Auditing - Practice	Revenue Sharing, Fiscal Stabilization and Resource Revenue Transparency-Practice	Local Supplier Development, Employment, Community Engagement, CSR and Social Issues-Practice

Scoring Key:	Very low (1.00-1.75)	Low (>1.75-2.50)	High (>2.50-3.25)	Very High (>3.25-4.00)
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The report takes a detailed look at each dimension and presents an updated analysis of the issues each dimension is facing, discussing the main reasons behind the results and noting opportunities for improvement. A notable feature is that in the majority of the extractive industries value chain components there are major gaps between the legislation, policy and regulation (de jure factors) and the institutional capacity and effectiveness for their implementation (de facto), as shown in the Figure 8 of this report. The gaps lead to outcomes that hinder the plans of mining investors and foster distrust in mining regions and communities.

## 2. ASSESSMENT OF THE SECTOR MANAGEMENT FRAMEWORK

The analysis of the sector management framework's four components showed a notorious variance in its performance. Its strength lies in a clear definition of the "Roles and Responsibilities" of the government agencies involved in mining (3.90). Most of the interviewed respondents feel that the current "Sector Policy" (2.76) - though successful in attracting investment in the last two decades - is inadequate for meeting the challenges facing the country and the sector in the medium to long term. This analysis also shows that the main weaknesses of the mining management framework are found in the incipient "Sector Dialogue" (2.27) and the problematic "Intergovernmental Coordination" (2.20) that often results in inter-ministerial disputes on how mining regulation should be conducted.

The **roles and responsibilities** of the different public agencies involved in mining are well defined in the regulations. In practice, however, there are areas where clarity is missing on the roles, mandates, and coordination between the national government and regional and municipal authorities. In recent years, the Peruvian government has implemented a series of institutional reforms setting in motion a decentralization of the traditional top-down management of the sector and a transition towards multisectoral management, primarily with respect to environmental oversight and certification and social management. The companies feel that these institutional changes in roles and responsibilities, although necessary and positive, have been inadequately planned and implemented. Their effectiveness has been constrained by the institutional weakness of public agencies in matters of human, technological and financial resources. Institutional capacity at the Ministry of Energy and Mines (MINEM) has been declining in the last decade and its management and leadership has lagged compared to other state agencies. MINEM's instability, with 10 ministers in 4 years has greatly contributed to that. The capacity gap between MINEM and the large-scale mining companies is also widening.

**Mining policy** in Peru is implicit in the General Mining Law and its regulations and is geared to creating attractive legal certainty and favorable tax regime conditions for investments. Over the last two decades, other non-mining policies have been changing and complementing the mining policy in key areas such as environmental and social matters, Indigenous peoples, water, and revenue transfers to the regions. Implementation of these policies has resulted in a labyrinth of permits, authorizations, and opinions from a variety of government agencies. The industry has responded with a strong narrative focused on the need to improve competitiveness, alluding to the fact that the government has created bureaucratic obstacles and excessive red tape that creates uncertainty in the permitting process and discourages investment. In practice, the government lacks a coordinated mining policy that sets medium- and long-term goals and defines government strategies and guidelines for achieving those goals, making it possible to dissipate the tensions between regulation, competitiveness, and sustainability. Added to this is the absence of policies for driving and leveraging mining's contribution to the country and, especially, to the development of the mining regions.

The quality of **sector dialogue** at the government level is undermined by a high turnover of authorities, which prevents regulators from building effective management capacity. Many companies believe that the MEF has been effective in recent years in promoting sector dialogue, while MINEM has had limited

decision-making capacity and a reduced influence on government decisions. Although some companies believe that the vision of the Peruvian National Society of Mining, Petroleum and Energy (SNMPE) can at times be short-sighted, which limits its leadership and alliances with other major sectoral entities, they feel SNMPE has been more proactive and focused in recent years. They also see the Peruvian Institute of Mining Engineers (IIMP) as an active organization with potential for driving a medium- and long-term agenda to integrate mining within the country's development agenda. With respect to civil society, the industry feels that dialogue is unfortunately not based on trust. Some elements of civil society, however, perceive that progress has been made, that the mutual distrust that existed in the past has been toned down and the industry is more willing to engage in dialogue. However, they also believe that the multiple dialogue spaces often do not lead to solutions, and that there are too many unfulfilled promises by both industry and government.

Although the laws, regulations, roles and responsibilities for mining management are well defined, **intergovernmental coordination** has its hurdles. Without a harmonized government mining policy, each sector has its own regulatory space, and, in practice, a lack of common mandate persists among the different sector policies, plans, and development strategies. For example, Peru has struggled to reconcile investment promotion initiatives with effective and efficient environmental protection and socioeconomic development policies. In addition, coordination between the Ministry of Culture (MINCUL) and MINEM on prior consultation matters could be improved. The regulations are compartmentalized, and no strict timeline or planning is followed for prior consultation. This report confirms the OECD claim<sup>1</sup> that the Peruvian government suffers from poor collaboration and coordination between ministries and government levels and that this poses a serious obstacle to policy formulation and implementation.

### 3. CONTRACTS, LICENSES AND EXPLORATION

Regarding the **gathering and maintenance of geological data**, although INGEMMET's performance on compiling and maintaining geological data (3.24) is good, no updated geophysical data exists for all the high Andean areas. Nor is good use put to the abundant valuable geological data accumulated in the last two decades by mining companies who carried out exploration and later gave up their concessions. License holders deliver the geological data from their exploration activities to MINEM's DGM, but the data is kept as a physical, uncoded repository that is not available to the public so therefore cannot be used.

The **mining license allocation** system has been successfully maintained for more than 25 years. The allocation procedure is lauded for its simplicity, transparency, non-discretionary nature, accessibility, and for the legal certainty it provides, giving Peru a competitive advantage over other countries with more complicated procedures and higher eligibility requirements. The main criticism is that there is little control over who gets the mining licenses and that an unlimited number of mining concessions can be held without investment or production. Regulatory adjustments have been made over time as a disincentive to speculation, with increased penalties for failing to reach minimum production becoming

<sup>1</sup> Comisión Económica para América Latina y el Caribe (CEPAL)/ Organización de Cooperación y Desarrollo Económicos (OCDE), Evaluaciones del desempeño ambiental: Perú, Santiago, 2017.

an economic disincentive to keeping a mining concession “idle”. Although most large companies are comfortable with the rules, small-scale miners complain that they reduce their ability to access prospective land and develop projects on areas occupied by concessions that remain “idle”.

An important finding, however, is the wide gap between the quality of licensing regulations (3.90) and institutional capacity and effectiveness for putting these regulations into practice (3.15), leading, in many cases, to huge delays for obtaining mining licenses. According to INGEMMET, in 2010 the allocation of a mining concession took an average of four months, while it currently takes an average of twelve months. The main reason for this is the requirement to have the Forestry Service (SERFOR) verify the existence of forest and wildlife resources in the area of the concession and getting a favorable opinion confirming that there is no overlap with a forest concession. It takes on average six to twelve months to obtain this opinion, depending on the procedures and way of managing information for each region. It should be noted that this procedure, whose term has been lengthening, is only to obtain the concession, that is, it does not allow to start works in field. This requires several environmental permits, which take years.

## 4. MINING OPERATIONS

A review of the **mining legislation and procedures** shows that the proliferation of administrative procedures has driven up regulatory costs significantly for exploration and production. The big problem with the enforcement of environmental and mining procedures’ rules and regulations is that although there are well-established deadlines for the processes, in practice those deadlines are not met, and they take too long. According to some companies, government approval for exploration work (diamond drilling) can take from one and a half to two years. The causes of are wide-ranging: delays by the agencies involved in providing opinions in the process, lack of financial and human resources for handling the process effectively, procedures that emphasize pre-controls instead of ex- post controls, unreasonable application of administrative liability, lack of integrated procedures, incomplete submission of project data by the companies, and even political or social considerations. It should be noted however that to establish competitive mining regulations, a country needs to do more than just ensure reasonable permit processing times. It also has to make sure the process is transparent, predictable, and non-discretionary, and that mining permits are processed with the necessary rigor to ensure proper management of social and environmental impacts as well as safeguarding of the rights of impacted communities.

With regard to **resettlement and land compensation rules**, the mechanism for purchasing land through a transaction between private parties has often led to much higher asking prices than the land’s market value. This could arrest mining development, especially for medium-scale mining projects with low profit margins. With regard to access to land, compensation, and resettlement, a strong point made by interview respondents from industry was that government monitoring of these processes was notably missing, and that most often government only acts when the situation turns into a social conflict. This is a major challenge for the MINEM’s OGGs (Social Management Office)

**Environmental management**, together with mining procedures, is an area where Peruvian mining regulation has evolved the most. Increasingly demanding standards and regulations have caused investment delays, despite specific efforts to make procedures more efficient. One noteworthy effort is SENACE's (the National Environmental Certification Service for Sustainable Investments) global environmental authorization, which makes it possible to obtain other permits in addition to the environmental approval. Respondents from industry also noted the excessive processing time for obtaining water concessions. They noted that ANA is understaffed for complying on time with the review of applications and approval, monitoring and inspection of water concessions.

Transparency is key to the understanding of mining projects by communities and citizens. Relevant project information needs to be made available for the interested and affected population so they can reach a reasoned opinion and effectively take part in the participatory or consultation process established by the National Environmental Impact Assessment System (SEIA). However, neither the key information turned in by companies for their environmental certification, the comments made by the environmental authority, or the company responses are published in the National Environmental Information System (SINIA). Finally, although rules exist for identifying and assigning responsibilities for eventual mining environmental liabilities, the task of identifying them is still a work in progress and MINEM continues to find new liabilities. The environmental liabilities legacy undoubtedly affects the image of the modern mining industry, which is blamed for past errors when there were not many environmental requirements. In most cases, those responsible for the liabilities no longer exist.

The rules and regulations for **social management**, monitoring and resolution of conflicts are scattered. A variety of public agencies intervene in social impact monitoring, conflict prevention, and conflict resolution, and there is no protocol that clearly defines when the different agencies should intervene. A review of two examples where the water and mining nexus led to conflict showed that mining companies should not only have their sectoral and environmental permits in order but also build community acceptance for their projects. Several social conflicts involving mining (of the 188 social conflicts reported by the Public Ombudsman's Office in April 2020, 64% correspond to mining-related conflicts) demonstrate that the social management instruments available in the SEIA are not sufficient to prevent, detect, and manage social conflicts. Some civil society respondents perceive that the assessments made in the SEIA put excessive emphasis on the technical aspects when they should emphasize more citizen participation and community relations to obtain social impact assessments that inspire confidence. The citizen participation process should be revised since it does not prevent conflicts or ensure the incorporation of citizens' opinions in participation and consultation processes. Both citizen participation and prior consultation are inclusion mechanisms that, when they apply, are implemented at different times in the permit processing cycle. While the EIA is being prepared and approved, the respective citizen participation mechanisms are implemented first, so that later, if necessary, the prior consultation can be implemented. To harmonize these mechanisms, an alternative that could be considered is to allow projects to conduct prior consultation for exploitation while the EIA is being processed, together with the implementation of citizen participation.

The biggest issue with **mineral transportation** is defining how far the project's area of influence extends when the mineral's destination is several hundreds of kilometers away from the mine, and

how inclusive the citizen consultations should be with all the populations involved. This is not clearly defined in the environmental rules. Infrastructure gaps in general, and especially of roads and railroads, are unquestionably holding back the country and the mining sector development.

Overall, the government scored the rules for formalizing **artisanal and small-scale mining (ASM)** very high, even though this activity has created a myriad of conflicts. Over the last decade the rule which exceptionally permitted informal miners to start the formalization process and then regularize their situation has been repeatedly extended. In practice, any interested party can simply register in a concession area and continue its activity without much of any obligation, in the expectation that deadlines will continue to be extended. Most large-scale companies feel the constant extension of the formalization process is creating an incentive for informal miners to invade more concessions. In any case, most conflicts related to formalization are not with large-scale mining but rather with small-scale mining concessionaires. With MINEM having transferred most of its ASM mandate to the regional governments, informal mining has amassed strong territorial power and political importance.

The fight against illegal mining is now led by different entities, but MINEM's leading role is shared with the Presidency of the Council of Ministers (PCM), the Ministry of Environment (MINAM), and the Ministry of the Interior, with the National Superintendence of Customs and Tax Administration (SUNAT) participation. Despite efforts at interinstitutional coordination, the main approach is still reactive. A gap exists in data production and integration and no clear traceability policy exists.

A notable fact with regard to **occupational health and safety** is that two public agencies, the Supervisory Agency for Investment in Energy and Mining (OSINERGMIN) and the National Labor Inspection Superintendence (SUNAFIL) oversee the same rules (the Regulation of Occupational Health and Safety in Mining), leading to a potential lack of clarity as to the authority of each agency. As a result, certain areas may not be supervised, and there may be overlaps in the inspection of other areas, leaving companies unsure about which agency they should answer to in the event of a potential noncompliance. SUNAFIL and OSINERGMIN are working on an agreement clarifying each agency's mandate to reduce gaps or duplication. In the different stages of mining project approval for environmental and sectoral permits, neither agency reviews and assesses the projects ex ante from the safety standpoint; projects are only reviewed ex post to see if they comply with regulations.

With regard to **mine closure and financial sureties**, there is evidence that the financial surety system for mine closure is inadequate. For example, there have been situations where mining operations were abandoned before the project's life cycle was concluded and the sureties were insufficient for resolving the environmental problem. The information on the approved closure plan surety amounts in favor of MINEM is not public. This does not help build public trust as to whether the sureties currently provided by the companies are sufficient for covering closure costs if a company abandons a project before its estimated closure date. It was noted that there is no regulation or detailed guidance for calculating closure costs and determining the size of the surety. Furthermore, various civil society respondents emphasized the lack of clarity as to how the authority checks and verifies that the mine closure costs submitted by a company are correct and supported by invoices, contracts, quotations, etc. They also noted the lack of coordination between the environmental and sectoral authorities for reviewing, assessing, and approving mine closure plans. There may therefore be inconsistencies in the closure plans submitted to the environmental and mining authorities.

## 5. TAX REGIME

The performance of this segment of the value chain shows that although tax instruments and policy (3.07) outline an adequate and sufficiently competitive tax regime, a wide gap exists between good quality rules for mining tax administration (3.44) and implementation capacity (2.54). Likewise, institutional capacities for mining tax auditing (2.92) have much room for improvement.

Regarding mining tax management, it is noted that mining companies' tax obligations constitute one of the sector's biggest contributions to the national budget. Based on an international comparison, the industry feels the tax burden is not a disincentive for mining investment (42-52% of operating profit). The tax regime is initially regressive (minimum royalty of 1% of sales) but starting at 30% profitability it becomes slightly progressive. This is attractive for the companies. According to the industry, the fiscal regime is competitive. The problem lies in the frequent changes of the legislation without proper dialogue with the private sector. SUNAT considers the definitions of the General Mining Law to be extremely general and out of sync with the sector's reality, leading to many demands for consultation due to outdated concepts.

No specific tax administration rules or guidelines exist for the mining sector, except for institutional consultations made by the companies for specific measures. The progress made on transparent collection and payment of taxes and royalties, as well as publication and accessibility of stability and investment agreements, constitutes a significant achievement for the mining sector. The industry feels that the Works for Taxes ("Obras por Impuestos", or OxI is a mechanism whereby private companies may execute public works and offset the costs against future tax payments under conditions approved by government) is positive, though it is not as effective as it could be. Some companies see continued uncertainty in the project pre-prioritization process and the bidding and subsequent awarding of the projects. An investment project databank exists in the MEF's Invierte Perú (former National Public Investment System, or SNIP) with data sheets and investment needs. The data sheets do not always have the necessary quality, however, and it is difficult to add new projects to the database. The industry feels that the approval process is very slow. Certification of completed works is complicated, and maintenance of the works is also challenging.

There is frequent mining tax auditing of large companies. Companies are selected for auditing on the basis of risk, share of the economy, and other confidential criteria. Inspection programs are a major part of the audits. SUNAT has a specialized team, but its staffing is limited. The scope of protection granted by stability agreements and other incentives is currently under debate. For instance, SUNAT has interpreted tax stability agreements as exclusively covering activities related to investments that were submitted and approved through the feasibility study but not any future extensions that are made. Given these circumstances, some companies have taken their cases to the courts.

## 6. REVENUE DISTRIBUTION AND MANAGEMENT

The performance on **distribution and management of tax revenue** generated by mining is the lowest in the entire value chain. Although the rules for distribution (4.00) and fiscal stability (4.00) are extremely well rated, in practice the implementation gap is quite large, with a serious problem of institutional capacity for revenue distribution (2.06) and major challenges in tax stability fund management (2.13). Distribution and tax stability transparency is adequate (3.00), though it should continue to improve.

The **rules for mining canon and royalty revenue sharing** are the result of a combination of three policies: a mining approach to sector policy that prioritizes investment attraction, macroeconomic policies that have been highly successful in Managing public finance management, and a decentralization policy whose agenda is still not finished. This is one of the issues most commonly criticized by interview respondents from industry and civil society organizations (CSO), since large amounts of funds are transferred to local governments but there is no evidence the funds are being used adequately. Rather than just a problem of distribution, it is more one of execution for which no solution has been found in more than a decade. The central government imposed strong fiduciary requirements for spending and strict administrative controls through the SNIP (now Invierte Perú). These restrictions have improved fiscal responsibility and helped reduce corruption, but many municipal governments have often been unable to spend their budgets. The allocation system creates enormous differences in mining revenue transfers to regional and local governments of producing versus non-producing regions.

There are no publicly available evaluations of the effectiveness of these revenue sharing mechanisms. However, during the metal price boom that started in 2004, these funds have obviously revitalized regional and municipal public spending. They have also led to financial vulnerability, though, in the producing regions that lack cushioning mechanisms to cope with eventual price drops (such as stabilization or savings funds). The legislation does not provide any mechanism for saving regional and municipal surpluses in high commodity price years. The debate over mining canon-sharing reforms is therefore on the public agenda. Government and industry agree that changing the rules for sharing mining revenues is a political exercise that will require time. Nevertheless, any reform must necessarily be accompanied by capacity building of regional and local governments for identifying good investment opportunities and managing and implementing public works.

The **fiscal stability rules** led to the creation of the Fiscal Stabilization Fund (FEF) with the objective of accumulating funds during economic booms that can be used in times of recession or emergency (such as natural disasters). The Peruvian tax system depends on few taxes and the tax pressure is generally low (14-16%) compared to other countries in the region and even lower compared to OECD countries. Public revenue is very sensitive to the metals business cycle, showing the importance of the mining sector in generating tax income. From its creation in 1999 until 2014, the FEF grew steadily in terms of both balance and percentage of GDP, increasing to US \$9,159 million (4.5% of the GDP). The economic slowdown after 2014 has kept the fund from continuing to grow. At the end of 2019, the fund's balance was US \$5.4 billion, a significant amount that nevertheless appears insufficient for responding to the coronavirus crisis.

In the framework of revenue transparency rules, dissemination of information on mining projects is essential for preventing their potential impact on social conflict. Access to information in Peru is guaranteed by the Law on Transparency and Access to Public Information. In addition, Peru is still an active member of the Extractive Industries Transparency Initiative (EITI), the global standard for good governance of oil, gas, and minerals. Within the framework of innovation and strengthening of the EITI process, Peru is currently developing a subnational program in five priority regions to improve transparent management of the resources allocated to the regional and local governments. Fourteen reports have already been published: three in Apurímac, two in Arequipa, one in Loreto, four in Moquegua, and four in Piura. The reports contain abundant data on mining canon transfers and regional sharing (districts, municipalities, and universities) and added categories on how the funds are spent. There is room for working with the regions to put these reports into a more user-friendly format that is more geared to monitoring and accountability.

## 7. LOCAL IMPACT

The objective of this local impact section is to see how the government regulates and if it has policies for making sure mining projects generate benefits for the community. With the exception of direct employment policies (4.00), the local impact section scores the lowest on some rules, mainly those on local content (2.50) and corporate social responsibility (2.50), issues that strongly affect company-community relations. Equally inadequate are institutional capacities for implementing different local impact policies, especially with regard to community participation (2.20) and corporate social responsibility (2.39).

The country's main **employment policy** is reflected in the General Labor Law which limits the hiring of foreign nationals to a maximum of 20% and total payroll payments to foreign employees to a maximum of 30%. In addition, before a mining concession is granted the applicant must promise in their sworn declaration to give preference to local hiring. According to MINEM statistics for 2018, some 52.2% of mining employees are from the same region as the mining operation and 47.8% come from other regions. In general, local hires are for jobs that require no special skills or training. These statistics reflect a significant challenge for the government and the mining sector in general, including mining companies and suppliers, namely training local workers in mining techniques, which increasingly demand highly skilled personnel. Rules requiring mining companies to give preference to local hiring are not enough. Local communities must also have sufficiently skilled, competent workers for performing the tasks inherent to the mining industry.

Having mining operations in remote areas gives companies an opportunity to support local or regional economic development activities and help build job skills in their area of influence. Growing automation in the mining industry will gradually reduce job opportunities for unskilled or semiskilled laborers but will also give the industry an opportunity to become a hub for spreading technology, innovation, and knowledge. Also, the use of technology will support the improved profitability of operations, which would translate into a greater fiscal contribution and the extension of current mines, and existing jobs. Local content policies work better when they are flexible, without undermining investment

and international trade agreements, and are implemented through promotion and incentives via policies, programs, and projects, rather than through requirements. Peru lacks **local content and supplier development rules**, policies, programs, and projects that would be part of a national strategy contributing to employability, industrial capacity, regional infrastructure, and technological innovation. What exists are individual, voluntary undertakings by some mining companies that are poorly coordinated. This means that even if individual contributions are sizeable, their effectiveness is limited. With its huge mining potential, Peru would benefit from the development and implementation of a long-term policy that provides incentives, guidelines, and directives on how mining should contribute to local social and economic development and defines the best mechanisms for deciding how the public and private funds mobilized around that long-term policy should be spent.

In terms of the **rules on community participation**, conflicting opinions exist among the respondents on when the prior consultation should be carried out - before, during, or after the environmental assessment. At any rate, even though the results of the prior consultation are non-binding, what is set forth in the EIA is indeed binding. The opinion of some industry respondents was that prior consultation should not apply for exploration, since this is more of a temporary research activity rather than a mining project development involving construction, operation, and closure. They pointed out that, in practice, there are no substantive problems with prior consultation and its results, but that there are serious setbacks in the management of the process. The prior consultation process should take a maximum of 120 days, but it averages 150-200 days, according to this group of respondents. The main delay is in the identification of the Indigenous peoples to be consulted. With regard to citizen participation, the biggest shortcoming identified is the lack of public access to all the information delivered by mining companies to SEIA for evaluation and to the consultations or requests for additional information made to SENACE, as well as the company responses.

The private sector views the government as a source of support in the management of **CSR and its social relations** with their communities of influence, especially in case of conflict. In recent years, however, the government has lost credibility with investors and civil society as a standard-setting, regulatory, and managing entity. The lack of a structure giving it a deconcentrated presence for early intervention in mining regions has limited its ability to effectively handle social conflicts. This has contributed to the lack of social acceptance of several technically and financially feasible ventures. Mining projects today cannot be conceived without early planning, during project design, of their long-term direct contribution to the region's territorial development and without agreement with local communities throughout the consultation or participation processes on how long-term transformations would be promoted to improve the wellbeing of residents in the project's area of influence. A strategy of contributing to territorial development based on the capacities and resources of the different communities and geographical areas would complement existing job creation and supplier development mechanisms and help generate transformations that could sustain shared prosperity in a more integrated territory, respecting local, regional, and national government responsibilities and authority.

## 8. STAKEHOLDER PRIORITIES

During the interview phase of the MSD, all respondents were asked to identify their top priorities for the sector. Specifically, they received a voting template, and each respondent picked the topics evaluated in the MSD that they considered most important. Priority areas were defined as areas where reforms would be most likely to significantly improve the management of the sector with the aim of increasing its contribution to overall sustainable development. It should be taken into account that by definition each priority area is an indicator in the MSD framework.

Seven topics were shared by the three stakeholder groups as top priorities. Addressing the room for improvement in “Intergovernmental Coordination” is the government’s top priority. It is also of great interest for the industry, but it is not one of the top priorities for civil society, which instead picked “Environmental Impact Management” as its chief concern.

The report has identified a notable convergence of priority themes and areas with room for improvement. That is to say, in the dashboard with the scores obtained on each of the topics in this evaluation, we can see that both “Social Impact Management” and “Community Engagement” were assessed as areas with room for improvement with regard to implementation of the rules.

Interestingly, these same areas were also confirmed as being priorities for the government as well as for industry and civil society. This convergence could be very positive when the time comes to propose an agenda for improvement, since if there is consensus on the fundamental importance of the social acceptance of projects, it would seem right to concentrate efforts on optimizing the mining management institutions with emphasis on social and environmental impact and citizen participation. A reform agenda would entail a consolidation of efforts and initiatives for explicit public policy improvements that could lead to concrete short-, medium- and long-term changes.

## 9. REFORM AGENDA

This Mining Sector Diagnostic has identified areas with room for improvement, both in the sector rules and their implementation. The progress made by mining in the last twenty years in Peru raises the need for the Peruvian government to strengthen its mining policy so that, building on the current objective of attracting investment to propel exploration and mineral production (**more mining**), it reinforces the sector agenda for **better mining** in terms of sustainability and a mining sector that generates **more development**, especially territorial development.

These last two premises, aimed at addressing the biggest challenges facing the growth of mining in Peru, would seek to: i) enhance and achieve the conditions for environmental and social sustainability, with a proper balance of mining rights and citizen rights, leading to improved credibility and legitimacy of the mining promotion agencies, regulators, and auditors (**better mining**); and ii) complement policies for mining growth with proactive, sustained public policies that channel that mining growth

into more local, regional, and national development (**more development**), identifying and taking advantage of its potential for generating socioeconomic benefits for the population, especially in the areas of mining activity.

The final section of this report outlines a potential change agenda and improvements aimed at harmonizing competitiveness with sustainability, the goal being to boost sustainable economic development and, especially, territorial development in mining regions. **The single most important general improvement proposed by the MSD is: to initiate the formulation of a long-term concerted national mineral policy, that provides direction to regulators and stakeholders and enables constructive inter-ministerial coordination for improved competitiveness, sustainability, and development impact.**

The proposed improvements lay out an agenda for actionable sector reforms and are grouped in four pillars aiming to improve social sustainability, local economic development, institutional efficiency and address ASM and illegal mining:

#### **A. Improve trust in institutions to ensure social sustainability in mining regions**

*In the short term:*

1. Prepare and approve guidelines for prior consultation applied to mining exploration which focus mainly on access to surface land and potential impacts on surface and groundwater.
2. Provide support to the Ministry of Culture for updating and completing the indigenous peoples database, that is causing the main delays with permitting a mine and concluding the consultations in line with the time frames provided by the law.
3. Strengthen MINEM's social management function allowing the sector to undertake prior consultations timely and effectively and ensuring that government-community engagement in mining regions starts early, remains sustained and becomes inclusive.
4. Make funding and technical assistance available to the Forestry Services for them to perform efficiently its role on granting concessions.

*In the medium term:*

5. Undertake an assessment of prior consultation and citizen participation experiences, outcomes and lessons, and retrofit regulations.
6. Assess environmental and social safeguards to ensure they are “proportional” to environmental and social impacts and risks to the wide range of exploration and mining activities.
7. Upgrade the environmental certification processes and oversight and make them fully transparent to the public.

8. Support the government environmental agencies to adopt the generation of baseline data for Environmental Impact Assessment as its own responsibility.
9. MINEM sets up “Regional mining documentation and information centers” as part of its sustained geographical presence in mining regions.

### **B. Develop policies to leverage mining investments for territorial and national development**

10. Review the mining value chain for sales tax return and strengthen anti-tax-avoidance measures.
11. Assess the feasibility of establishing a complementary alternative execution agency for subnational public investment in mining regions.
12. Adopt a multisectoral approach to invest on economic corridors in mining regions for territorial development.
13. Set up the low-carbon economy agenda for greening the mining value chain, assess carbon emissions and water footprint from mining value chain, and identify opportunities for greening the mining value chain.

#### *In the medium term:*

14. Incentivize education services that match industry needs focused on transferable competencies to other sector like agriculture, construction, and manufacture.
15. Introduce a set of diverse sectoral and cross-cutting public policies to seize opportunities generated by mining projects for investing on broad-based and inclusive economic development.
16. Make the “Mining Technological Roadmap” a national long-term policy.
17. Develop and put in place incentives for mining companies to plan and execute shared infrastructure among several mining projects when feasible and convenient.
18. Agree on the design and implementation of a roadmap for greening the mining value chain.
19. Track evolution of carbon emissions and water footprint from the mining value chain.

### **C. Improve institutional efficiency to revitalize mining investment**

#### *In the short term:*

20. Develop and operate a mining project permitting dashboard and an accountability scorecard to track and evaluate mining projects’ investment progress, systematically and in real time.

21. Invest on institutional strengthening, modernization and capacity building of MINEM and the Regional Directories of Mines.
22. Develop and launch an ambitious and well-funded national geology plan under INGEMMET for improving geological knowledge, especially on the critical minerals for a low carbon economy and the energy transition.
23. Ensure that INGEMMET accesses and processes mining companies' exploration data and disclose it openly to the public.

#### **D. Develop ASM and combat illegal mining.**

*In the short term:*

24. Design and implement a new licensing and permit scheme for artisanal and small-scale mining conducive to formalization and better environmental and social practices.
25. Improve incentives, equip and train regional governments to provide support and oversight to artisanal and small-scale mining.
26. Strengthen data integration and interoperability among different government agencies involved in the combat of illegal mining.

# I. Introduction

The Mining Sector Diagnostic (MSD) is a tool that the World Bank has developed, firstly to comprehensively assess a country's mining sector laws, rules and regulations, and secondly to identify the strengths and weaknesses of the institutions that implement those laws, rules and regulations and administer and oversee the sector. The MSD addresses the “rules” in place (“de jure” situation) as well as the extent to which these “rules” are implemented in practice (“de facto” performance).

The assessment is based on information compiled from legislation, interviews, secondary sources, and surveys, the results of which are assessed and summarized around the extractive industries (EI) value chain links<sup>2</sup> and key issues for mining investment and governance.

The MSD considers the views of the three main stakeholder groups – government, mining companies and civil society - in a structured manner. It is a systematic and practical diagnostic tool that reports its main conclusions objectively. The results of an MSD can form the basis for a reform agenda that leads to a more dynamic mining sector, contributing not only to economic growth but also the wellbeing of the population, especially in mining regions.

It should be noted that this is the second diagnostic that has been carried out in this country. Peru was the first country in Latin America in which the Mining Investment and Governance Review (MinGov) methodology was piloted in 2015. Although the tool had another name and slightly different features, the results of that work have served to put the mining sector's evolution over these last five years into perspective and have contributed to the formulation of recommendations for strengthening sector governance and, therefore, its investment climate and impact on development.

The Peru MSD compiles and shares information on the mining sector management structure and governance at the central and regional government levels. It analyses the rules and policies that exist in the mining sector and the gap between these rules and their implementation in practice. It not only reviews sector performance from the perspective of the three main stakeholder groups, but also provides their priorities to improve mining sector performance.

The MSD was requested by Peru's Ministry of Energy and Mines (MINEM) and Ministry of Economy and Finance (MEF). The original plan was for the World Bank mission to travel to Lima in April 2020 and visit some of the regions to carry out the diagnostic, but the COVID-19 pandemic forced a change of plans and logistics. Workshops that would be organized to review a preliminary draft report with each of the three interviewed group of stakeholders were therefore conducted remotely through different online platforms and the review workshops were suspended. A wide range of government entities were interviewed, including MINEM, MEF, the Ministry of Environment (MINAM), the Presidency of the Council of Ministers (PCM), the National Environmental Certification Service for

<sup>2</sup> The Extractive Industries Value Chain is a methodology adopted by the World Bank to systematize the different mining sector management dimensions from the mining regulator's viewpoint, which differs from the industry's global value chain viewpoint. See Alba (2009). The term “extractive industries” refers to mining and hydrocarbons, since this same methodology is used to assess both sectors. In this report, every time we speak of extractive industries we are referring solely to mining.

Sustainable Investments (SENACE), the Supervisory Agency for Investment in Energy and Mining (OSINERGMIN), the Agency for Environmental Assessment and Enforcement (OEFA), the National Labor Inspection Superintendence (SUNAFIL), the National Superintendence of Customs and Tax Administration (SUNAT), the Institute of Geology, Mining and Metallurgy (INGEMMET), the National Water Authority (ANA), the Ministry of Culture (MINCUL), and the Public Ombudsman's Office, among others.

Interviews of Peru's mining industry stakeholders included the Peruvian National Society of Mining, Petroleum and Energy (SNMPE) and 12 individual companies. Eight civil society organizations (CSOs) were also interviewed. Many other stakeholders filled out exhaustive surveys and provided information on their sectoral priorities (twelve from the industry and seven from CSOs). In most cases, follow-up interviews were conducted to clarify survey answers and explore several topics in greater depth.

Several aspects should be considered to put the results of the report into perspective. With respect to the purpose of the evaluation of mining management, the snapshot offered here is not reduced to an evaluation of any particular Peruvian government administration's performance. The results reflect government rules, policies, management decisions and actions accumulated over the last two decades. Likewise, the analysis considers the current complexities involved in mining management which go beyond the boundaries of the mining sector authority and involve several other government entities. It also reflects the country's decentralized structure resulting from the combination of national and regional (and in some cases, municipal) government competencies, which require a certain amount of consensus among public, private, and civil society stakeholders at all levels. In addition to these essential aspects, the report takes into account the perspective of global competitiveness and good practices in mining policy management. This implies that the analysis parameter for Peruvian mining management is the regulatory efficiency and the management quality of other countries in Latin America and the in world, with which Peru competes for more and better investment in mineral exploration and production.

This report summarizes the analysis and findings of the MSD and is organized as follows. Chapter I provides the general introduction to the Peru MSD. Chapter II contextualizes the diagnostic, describing the mining sector's management in Peru, its importance in the overall economy, the main institutional roles and responsibilities, and providing an overview of the legal and regulatory framework governing the sector. Chapter III presents a comprehensive summary of the results, discussing the data as aggregated into the MSD dashboard and analyzing implementation gaps between de jure situation and de facto performance.

Chapter IV analyzes the de jure situation and de facto performance of the Peruvian mining sector management framework and identifies its weaknesses. Chapter V analyzes the de jure situation and de facto performance of the five stages of the EI value chain: (i) contracts, licenses, and exploration; (ii) mining operations; (iii) taxation; (iv) revenue management and distribution; and (v) local impact. For each of these stages, the MSD evaluates the de jure situation (legislation, rules and regulations) and de facto performance (institutional capacity and effectiveness), describing the observed areas for improvement. Chapter VI analyzes the sectoral stakeholder priorities defined as the key priority areas

identified by respondents—reforms that would have a significant impact on improving the mining sector’s contribution to sustainable economic development and wellbeing for the entire population. Chapter VII concludes with a summary of sector strengths and challenges and presents an agenda of improvements.

This report has five annexes. Annex I is a brief overview of the MSD methodology. Annex II contains the MSD questionnaire and the scores for all individual questions that form the basis for this report. Annex III explains the role of MINEM. Annex IV lists the key environmental rules and regulations for the mining sector. Annex V shows the voting template used to elicit stakeholder priorities. At the end of this report are the references used for this report. This report and the underlying data will be made publicly available on the World Bank’s MSD website.

# II. Peru Mining Sector

## II.1 MINING SECTOR IMPORTANCE

### Macroeconomic Performance

Mining has played an essential role in Peru's economy since ancestral times. After the country's severe economic, social, and political crisis in the 1980s, the structural reforms and economic liberalization in the 1990s helped reverse that scenario. Mining made an essential contribution to that recovery, making Peru one of the countries with the highest level of mining investment, growth, and economic stability in the region.

Since 2006, Peru has benefited from an exceptional international situation caused by increased demand for metallic minerals, primarily from China. Peru's economic growth has in turn generated considerable per capita income growth and reduced multidimensional poverty from 48.5% in 2014 to 20.5% in 2018, while extreme poverty fell from 17.4% to 2.8% during that same period (EY, 2019).

Economic development and poverty reduction are explained, on the one hand, by internal factors such as the continuity of democratic governance and the ability to foster and maintain the rule of law and economic and social stability despite a complex sequence of political events. On the other hand, Peru's competent fiscal and monetary policy has resulted in lower levels of public debt (from 44.7% of gross domestic product (GDP) in 2004 to 26.8% in 2019), foreign reserves of US \$68.3 billion in December 2019, a positive trade balance, a relatively low current account deficit, and a stabilization fund endowed with more than US \$5.4 billion at the end of 2019.

As of end 2019, Peru's country risk was one of the lowest in the region (125 basis points), helping it maintain investment grade status and ensuring good access conditions to the international financial market. Fiscal and external stability nurtured by mining revenue is the foundation for price, exchange rate, and interest rate stability, which in turn strengthens savings and investment (Cooper 2019).

Mining is the primary generator of foreign exchange through exports and foreign direct investment (FDI) capital flows. However, Peru's excessive dependence on minerals and metals makes its economy vulnerable to global price volatility, raising the challenge of greater economic diversification.

### Impact of the COVID-19 Crisis<sup>3</sup>

Although its growth slowed to 2.2% in 2019, Peru has capacity for dealing with the economic crisis brought on by the COVID-19 pandemic. On March 15, 2020, Peru declared a state of national emergency as a result of COVID-19. The government approved a 1.1 billion-sole recovery package (equivalent to 0.14% of GDP) to address the health emergency and 10 billion soles (equivalent to 1.3% of GDP) in direct transfers to help vulnerable households during the national lockdown period. The total approved fiscal

<sup>3</sup> As of October 2020.

support package reached more than 7% of GDP. In October 2020, the IMF foresaw a fall in GDP of 13.9% in 2020, far higher than its August prediction of a 6.5% contraction. The most recent predictions of the World Bank (June 2020) suggested a 12% contraction, the same as the forecast of the Ministry of Economy and Finance (MEF).

On March 15, 2020, then-President Martín Vizcarra declared in his Message to the Nation a state of national emergency as a result of COVID-19. But Lima's population density, with ample sectors of poverty and informal labor, has limited the effectiveness of the strict isolation measures, eroding the scope of government aid and exacerbating the economic shutdown.

With the weight of the economic crisis, the country has set its sights on the mining sector and its capacity to improve the national macroeconomy and help the country recover. To combat the pandemic Peru took the extraordinary step of closing its mines, the base of its economy. However, on March 17, 2020, at the request of the MINEM, the MEF authorized mining companies to take the respective actions needed to ensure the maintenance of their critical operations with the minimum indispensable staff. Many companies announced increased health and safety measures for their workers and the government issued specific health and safety guidelines and protocols.

The sector's economic reactivation was organized in phases. On May 2, 2020, the government issued a decree specifying the first phase, which included large-scale mining activities. On June 4, 2020, a new decree was issued for a second phase in which medium- and small-scale mining activities were included along with formalized artisanal mining. Full operational capacity was reached in phase III (July 2020) when all other mining sector activities started up again. At the same time, the government has extended the deadlines for compliance with certain mining obligations. For example, the deadline for submitting accreditation of minimum production for 2019 was put off until September 30, 2020, while the deadline for payment of the validity fee ("derechos de vigencia") and penalties was also extended to September 30.

The main impact of the coronavirus pandemic on the mining sector has been a production slowdown, particularly for copper. The fall in mineral production from 2019 to 2020 was -12.5% for copper and -32% for gold.<sup>4</sup> In 2020, mining investment totaled US \$4,334 million, down by 29.6% from 2019 (US \$6,157 million). This change is primarily due to less investment in mine development and preparation (-66.8%), exploration (-37.5%), and mine equipment (-28.2%). Additionally, from January to November 2020 mining exports were at US \$22,470 million, down by 11.3% from the same period in 2019 (US \$25,321 million). The drop was notable for zinc (-32.4%) and, to a lesser extent, copper (-8.9%) and gold (-11%). In July, copper prices bounced back to their early 2020 levels, while gold and silver prices continued to climb. This has renewed expectations for the mining sector to lead a broader economic recovery in Peru.

On the other hand, illegal mining may have increased during the health crisis. The special prosecutor's office for environmental matters (FEMA), together with agents from the Peruvian National Police and War Marines, carried out 75 interdictions (machinery confiscations and destruction) against illegal mining in Madre de Dios from the start of the national COVID-19 emergency (March 16) to the end of

4 See SNMPE, Boletín Estadístico Mensual Minería (December 2020).

June 2020. The number of operations surpassed that of previous months. In addition to damaging the Amazon forest, illegal mining created many COVID-19 hot spots in native communities.

Social conflict surrounding mining has continued during the unprecedented circumstances created by the state of emergency. Of the 188 social conflicts reported by the Public Ombudsman's Office in April 2020, 128 are classified as socio-environmental, the most common causes being fear or risk of potential environmental damage, relationship problems, and, to a lesser extent, potential harm to property and land ownership.<sup>5</sup> In addition, 64% (82) of the cases correspond to mining-related conflicts. In geographical terms, the country's southern regions recorded the highest number of mining-related social conflicts. These regions are also the ones with the highest share of mining production. Perceived environmental pollution and unfulfilled promises by the government and companies are considered the main reasons for the mining-related social conflicts.

The Ombudsman's Office recommended that the 90 dialogue roundtables in place at the time the report was published, but suspended due to the state of emergency, should be reactivated. The report added 36 additional cases to the already existing mining conflicts in Peru, arising from disagreements between companies and workers on health protocols, since at the time almost 3,000 mine workers had tested positive for coronavirus (MINEM, 2020).

On another front, in 2020, regional and local governments have received S/ 4,164 million in mining canon and royalty transfers, according to MINEM's Boletín Estadístico Minero. COVID-19 directly affected third- and fourth-quarter mining royalties, while the impact on the transfers of the income tax (mining "canon") will not be seen until the 2021 distribution.

## Mining Sector Performance

Peru is considered one of the world's top ten richest countries in terms of mineral endowment. In 2019, it ranked as the world's second largest producer of copper (after Chile), silver, and zinc, and the largest producer of gold, lead, and tin in Latin America. According to the most recent data published by the US Geological Survey (USGS), Peru has 10% of the world's copper reserves, 4.8% of the gold, 19.6% of the silver (the largest reserves in the entire world), 9% of the zinc, 7% of the lead, and 2.3% of the tin.

5 <https://www.defensoria.gob.pe/wp-content/uploads/2020/05/Reporte-Mensual-de-Conflictos-Sociales-N%C2%B0194-abril-2020.pdf>

Figure 1: Peruvian Mining Figures

MAIN EXPLOITED MINERALS, ANNUAL PRODUCTION, AND GLOBAL RANKING (2019, MINEM)



Over the last ten years, mining in Peru went from a gold rush to a copper boom. Investment peaked between 2011 and 2014, when approximately US \$21 billion were spent in the construction of large (mainly copper) mining projects: Las Bambas (US \$10 billion); expansion of Toquepala (US \$1.2 billion); expansion of Cerro Verde (US \$4.6 billion); Constancia (US \$1.8 billion); and Toromocho (US \$3.5 billion). According to MINEM, Chinese investment in the Peruvian mining sector totaled close to US \$15 billion between 2009 and July 2020.

The operational startup of these projects caused a significant increase in mining production from 2015 to 2017, while mining investments decreased as a result of the flagging international situation. In the second half of 2016, however, the growth of mining production began to falter as new mines reached their maximum operating levels, leveling off metallic mineral production's contribution to GDP. The post-2017 period is characterized by an uptick in investment, given the rebound in metal prices and the improved financial position of mining companies.

At the beginning of 2020, just before the pandemic, the sector was in full productive recovery. Beyond the situation in global markets, mining investment has been penalized by a lack of social legitimacy and acceptance expressed in direct actions and protests against mining projects in several regions. In certain cases, it has been impossible to develop new projects that had obtained all the needed legal permits, delaying the pace of implementation of the pipeline of new investments, that at the end of 2019 bordered some US \$59 billion.<sup>6</sup> Several projects, totaling an investment of US \$12 billion, have been put off in recent years as a result of social conflicts. Such is the case of the conflict in the Cajamarca region that brought to a standstill the Conga project of the Yanacocha mining company (US \$4.8 billion), the Galena project (US \$3.5 billion), and, more recently, the Tía María project in the Arequipa region (US \$1.4 billion). Figure 2 shows the main minerals extracted in 2019 and their production.<sup>7</sup>

<sup>6</sup> The data in this section was obtained from "Cartera de Proyectos de Construcción de Mina 2019, Ministerio de Energía y Minas", prepared by the Ministry of Energy and Mines.

<sup>7</sup> Source: Mineral Commodity Summaries 2020, USGS.

Figure 2: Main Minerals Extracted in Peru in 2019

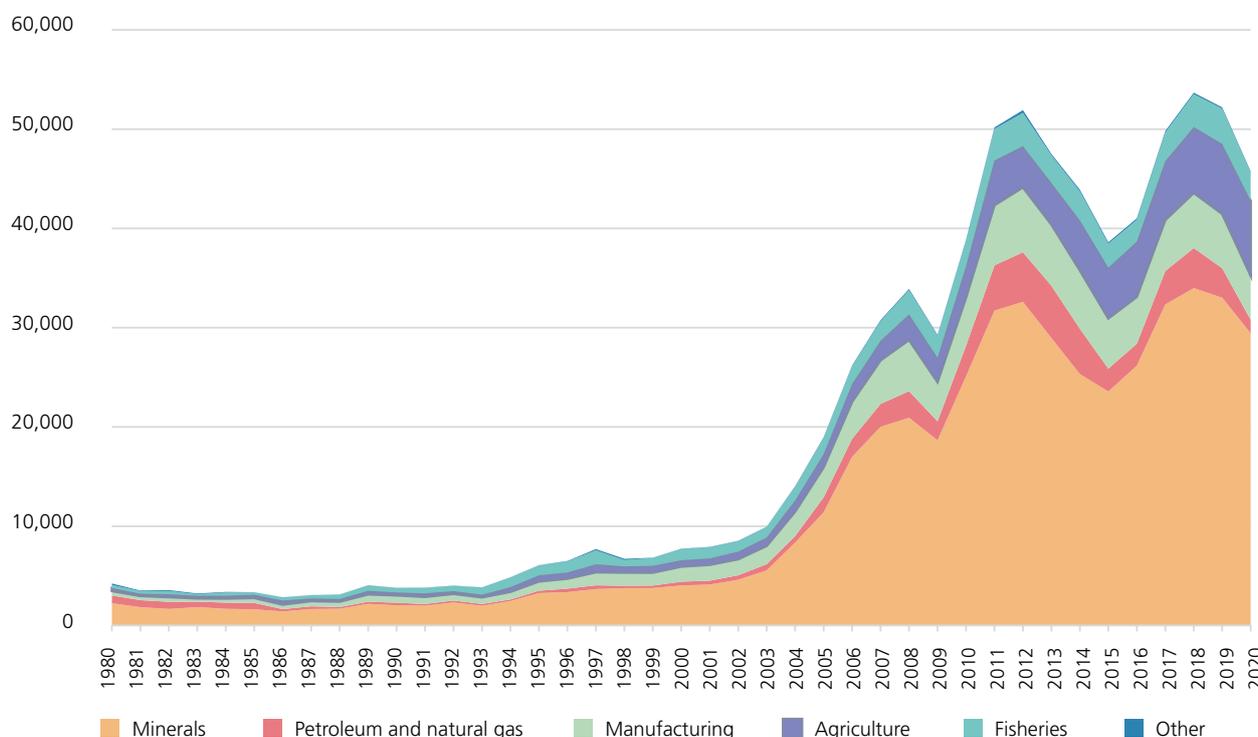
Mineral	Share of Mineral Reserves	Global Production Ranking	Mining Production 2019 (metric tons)
Gold	4%	7th	130
Silver	21%	2nd	3,800
Copper	10%	2nd	2,400
Zinc	8%	2nd	1,400
Lead	7%	3rd	290

Source: USGS

In 2019, the metallic mining subsector contributed 9.1% of the total GDP of US \$229 billion (compared to 9.8% in 2018), with copper accounting for 50% of the subsector’s GDP. Mining-linked manufacturing, such as the refining of iron and steel, precious metals and non-ferrous minerals, together with the cement industry, accounted for an additional 2% of GDP,<sup>8</sup> bringing the total direct share to 11% of GDP. Mining sector purchases also accounted for 4% of GDP (CCD 2019).

Mining sector exports totaled US \$28.7 billion in 2019, representing 60% of the country’s total exports. Copper exports comprised 50% of total mining exports, while gold accounted for 18%, followed by zinc, lead, iron, molybdenum, tin, and silver. In other words, copper represented, in terms of value, 30% of Peru’s exports in 2019, followed by gold (18%), zinc (5%), and lead (3%).

Figure 3: Exports by Sector (Millions of US\$, FOB)



Source: MINEM

8 MINEM (2019), Anuario Minero 2018, June 2019.

Investment and mining production growth, together with rising metal prices, has considerably boosted tax revenue over the last 15 years. Between 2009 and 2018, mining generated 11% of the country's tax revenues and some US \$12 billion were transferred via the mining canon to regional and municipal governments. However, tax revenue from mining has dropped off in recent years, reinforcing the need for greater tax revenue diversification. The sector continues to generate substantial revenue for the government, though, with mining taxes accounting for 2.3% of GDP in 2019 and totaling close to US \$5 billion, or 8.1% of the national total (SUNAT).

Direct jobs in the mining sector in 2019 reached 208,716 (4.5% of the formal EAP, or economically active population), falling slightly to 198,389 in 2020. With regard to the geographical location of regional mining employment, Arequipa ranked first in 2019 with 31,628 workers, accounting for 14.9% of the total. Junín took second place with 21,673 workers, and Moquegua came in third with 17,559 workers.

According to the Peruvian Institute of Economy (Instituto Peruano de Economía, IPE), every direct job in mining generates an additional 6.25 jobs in the rest of the economy: 1 from an indirect effect, 3.25 from the effect on consumption, and 2 from the effect on investment. This gives an estimated direct and indirect mining employment figure of 1.46 million people. Artisanal and small-scale mining (ASM) data, for its part, is highly imprecise, but in 2014 was estimated as providing direct employment for some 100,000 individuals (of which 15,000 were women) and indirect employment for some 500,000, mostly in the regions of Puno, Madre de Dios, Ica, and Piura. Informality is estimated at around 80% in small-scale mining (Faulkner 2019). In practice, MINEM has focused its efforts on formalization and transferred its formalization mandate to the regional governments. As of May 2020, MINEM's General Directorate of Mining Formalization had encouraged the formalization by regional governments of slightly more than 8,000 miners out of a total of some 60,000 (counting individuals regrouped in mining cooperatives) in a process that should conclude by December 2021.

Peru is one of the Latin American countries with the greatest unexploited geological potential. Significant undeveloped mineral resources give it a major competitive advantage and have helped the country attract one of the highest investment budgets for mineral exploration and development in the world. Private mining investment has increased by twenty-five times in the last decade, making Peru the second most popular destination (after Chile) for mining investment in Latin America. High production rates have attracted investment inflows of US \$60 billion in Peru's mining sector in the last 10 years, reaching US \$4,947 million in 2018 and US \$6,157 million in 2019, a growth of approximately 25% over the previous year's investment. Mining investment in 2020 reached US \$4,334 million (down by 29.6% from 2019).

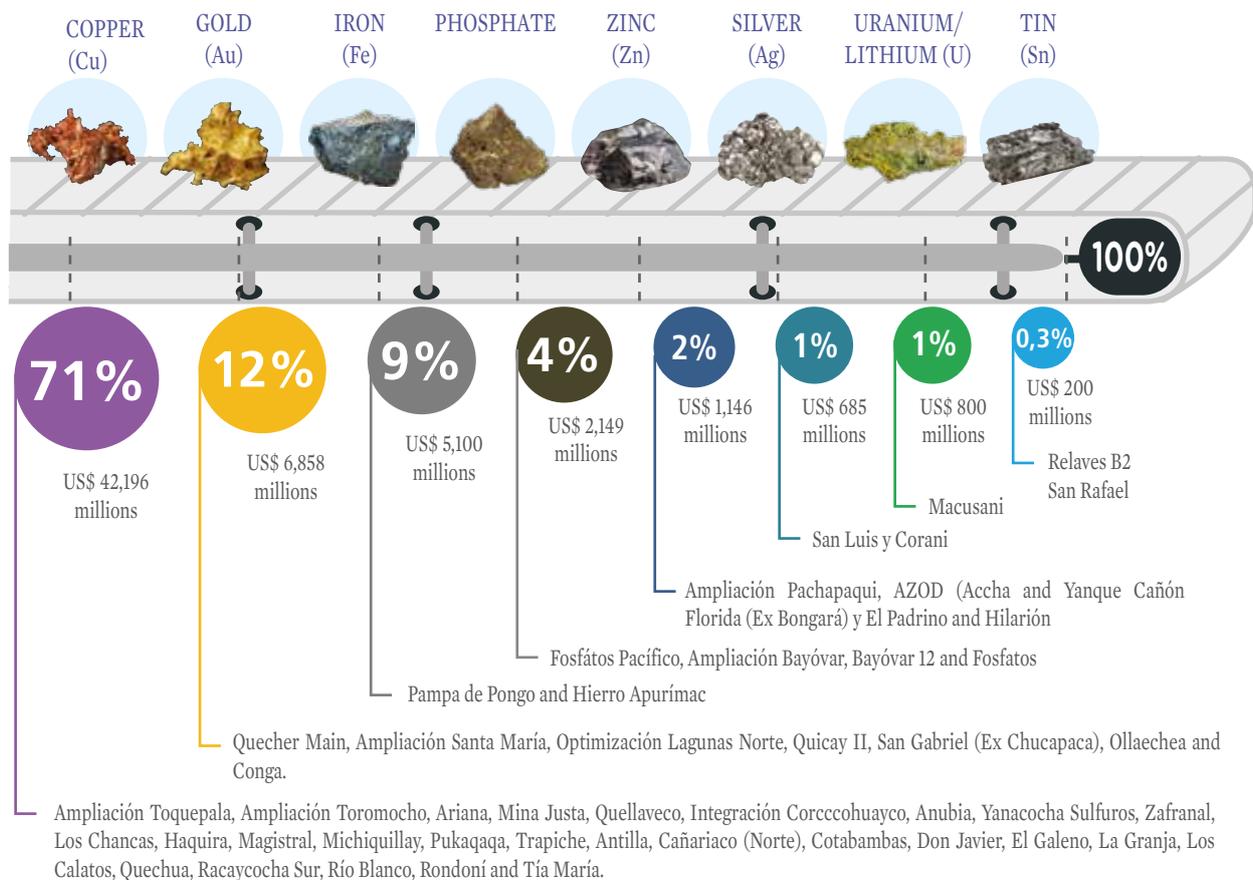
Peru is expected to be able to significantly increase its current level of production, especially in copper. According to MINEM, in 2019 the exploitation pipeline, including new mine construction, expansion, or replacement projects, plus projects for reuse of tailings (Mine Construction Project Pipeline 2019) consists of 48 projects totaling US \$57,772 million (Figure 4).

This pipeline has three parts: exploration, implementation of ongoing projects, and reinvestment in existing mines to maintain their production with the latter representing 50% of the projection. The following large projects are currently under construction: (i) Quellaveco (Anglo American) - US \$5,300

million (300,000 tonnes of copper); (ii) Mina Justa (Marcobre) - US \$1,600 million (102,000 tons of copper); and (iii) the Toromocho expansion (Chinalco) - US \$1,355 million (72,000 tons of copper). The next wave will include Yanacocha Sulfuros (joint venture of Newmont and Compañía de Minas Buenaventura), San Gabriel (Buenaventura), Corani (Bear Creek Mining), Integración Coroccohuayco (Compañía Minera Antapaccay, a Glencore subsidiary) and the Inmaculada (Hochschild) mine optimization. Also, in the medium term, are the Magistral project (ProInversión), the Pachapaqui expansion (Fosfatos del Pacífico), and the Bayóvar expansion. Of the 48 projects in the mine construction pipeline, 19 have approved EIAs, four have EIAs in process, and two need more work with the communities to be socially accepted.

The potential for copper is one of the strongest in the world (25 projects). Ongoing projects are falling behind, however, due to social problems and setbacks in permits and certifications, increasing industry uncertainty over the goal of producing up to five million tons of copper in the next 10-15 years. Large-scale gold production, for its part, is currently in decline, marked emblematically by the freezing of the Conga project in Cajamarca. Extracted resources are not being replaced and more exploration is needed to reverse the lack of new significant discoveries in recent times.

Figure 4: Mine Project Development Pipeline 2019-2030



Source: MINEM

With regard to the geographical location of ongoing mines, Cajamarca takes first place with 31.5% of the projects. In 2019, some US \$18,200 million were invested in this region by six mining projects. Apurímac comes in second with 17.9% of the investment, US \$10,343 million having been used in six mining projects up to 2019. In third place is Moquegua, with 11.1% and US \$6,386 million spread over three mining projects. Regions such as Arequipa, Piura, Junín, Cusco, Áncash, Puno, Ica, Lambayeque, Huancavelica, Pasco, Huánuco, Amazonas and La Libertad are also recognized for having at least one mining project and a minimum investment of US \$110 million.

How competitive is Peru, however, for attracting mining investment in the coming years? Peru is recognized by its mineral resources and low production costs, but resource reserves are not enough to ensure competitiveness. According to the Fraser Institute, in 2018 Peru was the second most attractive country in Latin America for mining investment, coming in eighth place on geological potential and fourteenth on the general global ranking. However, in the 2019 ranking the country has fallen by ten places in the general global ranking, from 14th to 24th out of a total of 76 jurisdictions evaluated, ranking 12th on geological potential and 45th on policy perception, behind Chile, Brazil, and several Argentinian provinces. In the latest Fraser Institute report (2020), Peru saw its general global ranking score drop again by 10 points to the 34th position (out of 77 jurisdictions), due to greater uncertainty concerning the enforcement of environmental regulations, as well as certain inconsistencies in the regulation of mining permits. In addition, Peru's performance is considered unsatisfactory on other points such as infrastructure quality, socioeconomic agreements with communities, uncertainty concerning disputed land claims, political stability, and labor regulations (IIMP, 2019).

Although Peru's economy has notably improved over the last 20 years, the country still faces opportunities for improvement that hinder its competitiveness. These include improving the quality of the country's mining institutions, regulatory framework, and infrastructure and setting up an effective system where part of the wealth from mining returns to the surrounding communities and regions to aid their development and reduce social conflict, as Peru has never had a medium- and long-term view of infrastructure investment. Mining investment is the hardest hit by this constraint since mineral and metal companies need access to transportation facilities to deliver their products to domestic and international markets. Major efforts have recently been made to identify the governance and competitiveness shortcomings of Peruvian mining. Of these efforts, two of the most important are the PCM Sustainability Committee report, the RIMAY project, and the IIMP competitiveness study.

## II.2 MINING SECTOR MANAGEMENT

Since the 1990s, the government's role in mining focused on promoting, regulating, and overseeing the sector. Large private Peruvian and foreign mining companies control the large-scale mining operations, while private Peruvian companies own most of the medium- and small-scale operations.

Institutional responsibilities are well defined by Peruvian law and administrative authorities such as the Mining Council exist for handling appeals. In practice, multiple institutions exist with specific mining sector management responsibilities. Figure 5 presents the main institutions for medium- and large-scale mining.

Figure 5: Main Institutions

Ministry of Energy and Mines (MINEM)* INGEMMET, DGM, DGAAM, DGFM, DGPSM	Ministry of the Environment (MINAM)	Ministry of Labor SUNAFIL: safety
OSINERGMIN: Energy and mining safety inspections	SENACE: EIA evaluation	Ministry of Culture (MINCUL) indigenous people, archeological remains
	OEFA: environmental inspection	PRODUCE: species collection authorization
	Ministry of Agriculture / ANA: water SERFOR: forestry	

\*See Annex III

## Role of MINEM

Today, one of MINEM’s main responsibilities is to promote investments through the monitoring of a pipeline of projects for which it does not have full decision control. The main objective is to increase the volume of mineral production through a greater number of projects and higher amounts of investment. MINEM’s other duties cover sector rules and regulations, administrative procedures for permits and authorizations, technical and economic monitoring and control, mining formalization and information, and coordination, dissemination, and promotion of sustainable mining, in addition to the coordination for harmonious relations and sustainable mining through an advisory office (OGGS). MINEM is organized in four general directorates: General Directorate of Mining, or DGM; General Directorate of Mining Environmental Affairs, or DGAAM; General Directorate of Mining Formalization, or DGFM; and General Directorate of Mining Promotion and Sustainability, or DGPSM.

In addition, the management of regular concession procedures is handled by INGEMMET, supported by the Geological and Mining Cadaster Information System (GEOCATMIN) and the Mining Rights and Cadaster System (SIDEMCAT), where INGEMMET and regional governments keep an entry record to determine the priority order of the submission of mining applications.

## Environmental Management Crosscutting Institutions

MINEM’s roles and responsibilities as mining sector regulator have changed with the enactment in December 2012 of Law 29968, which transferred the evaluation of detailed environmental impact assessments, which had previously been handled in-house, to SENACE (a MINAM agency). Today, MINAM is the governing body of environmental management and, as such, has the authority to formulate and implement national environmental policies and, in coordination with MINEM, issue mining environmental regulations. MINEM still handles approval of the environmental licenses for smaller projects and exploration activities, through the evaluation of semi-detailed environmental

impact assessments, environmental impact statements, data sheets, technical reports, and mine closure plans, among other things.

After the creation of MINAM and prior to SENACE, other technical agencies specializing in environmental matters had been created, such as OEFA, responsible for environmental inspections, ANA, the water regulator, the Supervisory Agency for Investment in Forestry and Wildlife Resources (OSINFOR), the National Forestry and Wildlife Service (SERFOR), the National Service for State-Protected Natural Areas (SERNANP), and the National Institute for Research on Glaciers and Mountain Ecosystems (INAIGEM).

SENACE has sought to consolidate the sectoral environmental evaluation into a unified, crosscutting model to ensure standardized criteria and procedures and to minimize potential conflicts of interest by separating environmental evaluation from mining sector promotion. Currently, SENACE's responsibility is incomplete, since it only assesses the impact of projects that cause significant negative environmental impacts and require detailed environmental impact assessments (EIA-d) in accordance with the classification approved in environmental regulations. In addition, as part of the decentralization process, the sector authorities have transferred their ASM-related environmental responsibilities to the regional and local governments, with uneven results due to the different capacities and resources (ECLAC/OECD 2017). MINAM coordinates with subnational authorities primarily through regional and municipal environmental committees, which are a dialogue and consensus space where government agencies and civil society can address environmental issues. Regional and municipal governments are also empowered to grant or deny land use permits and influence critical soil use planning (land management) questions.

## II.3 LEGAL FRAMEWORK

### Sectoral Legal Framework

In Peru, the State retains ownership of all mineral resources. The country's legal framework clearly defines the rights, obligations and responsibilities for all stages of mineral resource development. For almost three decades, guaranteeing the legal security of investors and providing an attractive legal framework for mining investment have been at the heart the mining legislation. The following legal norms are the most relevant for the mining sector:

- Ordered Unique Text of the General Mining Law approved by Supreme Decree No. 014-92-EM (TUO- Texto Único Ordenado de la Ley General de Minería) and its amendments;
- Law No. 27651: Law for the Formalization and Promotion of Artisanal and Small-scale Mining(2001);
- Supreme Decree No. 042-2017-EM of December 22, 2017, approving the Environmental Regulations for Mining Exploration Activities; and
- Supreme Decree No. 020-2020-EM of August 7, 2020, updating the Mining Regulations.

Although most mining and mining-related legislation is published on institutional websites, it is dispersed, not regularly updated, and unobtainable from a single source. Despite this, MINEM makes much of this information available on its website.

Peruvian mining is classified into four categories according to the concession size and installed productive capacity: large-scale, medium-scale, small-scale, and artisanal (see Figure 6). Large-scale mining consists primarily of highly mechanized opencast mining and includes prospecting, exploring, developing, extracting, concentrating, refining, and shipping activities. Medium-scale mining is concentrated in some 100 companies. Mechanized and essentially underground, it consists primarily of mineral extraction and concentration. Small-scale and artisanal mining is mostly dedicated to extracting and processing gold from underground mines and alluvial deposits.

**Figure 6: Classification of Mining Activity**

Category	Concession Size	Installed Productive Capacity
Large-scale mining	Unlimited	More than 5,000 MT/day
Medium-scale mining	Unlimited	From 350 to 5,000 MT/day
Small-scale mining	Up to 2,000 ha (in the country)	Up to 350 MT/day
Artisanal mining	Up to 1,000 ha (in the region)	Up to 25 MT/day

Peruvian law does not discriminate between domestic and foreign companies. Foreign investors, both individuals and companies, enjoy the same rights as Peruvian citizens or companies (Article 71 of the Constitution). Furthermore, foreign investors enjoy free movement of capital and the ability to remit royalties and access domestic and foreign credit. There are no constraints on the marketing of mining products in Peru.

Foreign investors are protected against currency inconvertibility, expropriation, and other risks through multilateral and bilateral agreements with institutions such as the Overseas Private Investment Corporation (OPIC) and the Multilateral Investment Guarantee Agency (MIGA). In addition, Peru has joined the International Centre for Settlement of Investment Disputes (ICSID) and signed more than thirty bilateral investment treaties with different countries around the world.

### Mining Environmental Legislation

In recent years, Peru has enacted environmental laws for different stages of mining development, from exploration to mine closure, establishing the country’s main environmental principles and guidelines. In accordance with these laws, MINEM and MINAM have issued regulations approving environmental standards for the mining industry and requiring environmental assessments for mining operations. (See Annex IV on the key environmental rules and regulations for the sector)

Except for exploration and prospecting (when drilling is not involved), mining activities in Peru first require an environmental certificate (“certificación ambiental”), which is issued with the approval of the respective environmental management instrument.

The new legislation has significantly increased the number of environmental rules in effect in Peru. Within this context, beginning in 2013 different measures have been taken to rationalize administrative procedures and promote private investment in mining. On May 16, 2013, for instance, the government issued Supreme Decree No. 054-2013-PCM prescribing that changes to projects with an insignificant environmental impact would only require a Supporting Technical Report (ITS), the processing of which does not require public consultation. The environmental assessment authority is competent for approving ITS applications. In addition, Supreme Decree No. 060-2013-PCM sets common terms of reference for the EIA-d and EIA-sd and prohibits requests for additional information or comments on topics not included in the common terms of reference. The agencies have up to 30 business days to issue an opinion. Once the replies to the comments have been submitted, they have 10 more days to issue a final opinion.

Also, in 2013, as provided by Supreme Decree No. 001-2012-MC, the Regulation to the Law on the Right to Prior Consultation of Indigenous or Original Peoples, Ministerial Resolution No. 003-2013-MEM/DM, was published, requiring prior consultation for the exploration, exploitation and beneficiation phases of mining projects as a note to MINEM’s Ordered Unique Text of Administrative Procedures.

In addition, on November 12, 2014, the Environmental Management and Protection Regulation for Exploitation, Beneficiation, Transportation and Mining Storage Activities (Supreme Decree No. 040-2014-EM) was issued providing for the environmental authority’s assistance in the preparation of the EIA so that less time is needed for evaluating it after it is submitted, since the number of comments would be reduced.

This Decree was later amended to allow the environmental authority to request information from other authorities in its evaluation of the ITS. In addition, before initiating an activity, the holder of the ITS must inform the population of the area under social influence of its approval. Furthermore, the amendment added exceptions that do not require approval of an EIA modification or an ITS, only prior notification to the environmental assessment authority and the environmental inspection authority.

Additionally, Supreme Decree No. 042-2017-EM approved the Environmental Protection Regulation for Mining Exploration Activities. Accordingly, negative administrative silence was universally implemented for the total process. On July 30, 2020, this regulation was amended by Supreme Decree No. 019-2020-EM, which established that the Environmental Fact Sheet (FTA) will also be subject to affirmative administrative silence.

With the COVID-19 pandemic, the Peruvian government has added new changes to environmental management regulations to expedite exploration investment and improve investment attraction competitiveness. On May 10, 2020, for example, the president approved Legislative Decree No. 1500 (D Leg 1500) concerning public and private investment projects and the measures needed for starting operations during the coronavirus pandemic. D Leg 1500 adapts several existing regulatory procedures to the emergency context, including environmental sanctions and permits and citizen participation. These measures apply to all investment projects.

Finally, other important changes have been made to the mine closure plan. Supreme Decree No. 013-2019-EM, which took force on May 30, 2019, establishes that this plan should be revised and updated every five years from its approval. It also changes the time frame and annual amount required for paying the closure plan surety bond, establishing that it should be paid within the first 20 business days starting the day after the owner of the mining activity has been notified of the exploration, exploitation or beneficiation concession authorization. The surety bond must be renewed or updated within the first 20 business days of each year, regardless of the date on which it was paid. With mining exploration, the time indicated in the timeline approved for the project's environmental certification is considered the useful life.

## Public Debate on Updating of the General Mining Law

In July 2019, then-President Martin Vizcarra announced that his government would seek to adjust the General Mining Law to update taxation, rights, and duties of mining concessionaires, the idea being to create greater visibility for investors. He also reiterated his administration's commitment to socially responsible mining. The initiative also came out of political concerns, however, and was intended as a response to the demands of several governors in the southern regions.

To that end, the Committee for Sustainable Mining Development was created on September 23, 2019 (Supreme Resolution No. 145-2019-PCM) and delivered a report to the government on February 13, 2020, which posted it on its website in June 2020. The report concluded that the main challenges lie at the sectoral and multi sectoral policy level. General Mining Law did not require major structural reforms, but it did acknowledge that legal and regulatory changes would be needed for the implementation of a new national mining policy. It proposed non-substantive legal adjustments and, most of all, changes to other laws (revenue sharing and prior consultation).

In the short term, influenced by the Committee's recommendations, the government approved a new regulation of mining procedures to speed up procedures aimed at providing predictability, driving private investment, and promoting respect for the rights of indigenous peoples. In the medium term, the Committee's proposals, together with those of the Center for the Convergence of Good Mining and Energy Practices (RIMAY), will be used by MINEM to formulate a long-term vision for sustainable mining sector development.

Many central government and industry representatives feel that the key principles of the General Mining Law should be maintained but the Law needs to be updated to clarify various outdated concepts. In addition, they believe that the pressure to change the General Mining Law poses a serious challenge to MINEM's ability to ensure the top-down management of the sector. Consequently, given the ongoing political crisis, changes of substance were not seen as a priority.

On the other hand, many civil society representatives feel that the legal and institutional framework dating back to the 90s does not address current challenges created by the expansion of mining activities. Formulated to attract mining investment to Peru after a widespread economic and political collapse, the legislation is no longer adapted to reality, according to them. It is useful to attract investment but is incompatible with the new environmental and social rules promoting sustainability (citizen protection, human rights, etc.) of the industry and the country.

## III. MSD Results Dashboard

This section presents a summary of the Peru MSD key findings. The results are aggregated into the dashboard (Figure 7), which presents an overview of the performance of the mining sector along the extractive industries value chain as well as with respect to the sector management framework, as defined earlier. Each cell in the dashboard consists of one or more indicators and each indicator is scored based on a set of questions included on the questionnaires.<sup>9</sup> The details behind each indicator (i.e., the underlying questions and their scoring) can be found separately in Annexes I and II. The overview shows that of the 14 dimensions assessed (each of the cells in the dashboard), 10 obtained a very high or high score, only four obtained a low score, and none received a very low score. The following sections will take a detailed look at each dimension and present an updated analysis of the issues each dimension is facing, discussing the main reasons behind the results. The dashboard can be seen from two different perspectives: horizontally and vertically. From the vertical perspective the assessment has three thematic blocks:

1. Mining sector management framework, which evaluates sector policy, sector dialogue, roles and responsibilities, and intergovernmental coordination;
2. De jure performance, which includes legislation, rules and regulations along the five stages of the extractive industries value chain; and
3. De facto performance, which includes institutional capacity and effectiveness along the five stages of the extractive industries value chain.

<sup>9</sup> The scores for each element in the sector management framework derive from a set of relevant questions. Annex II provides a complete list of the underlying questions for each element, as well as the disaggregated scoring for each question.

Figure 7: Mining Sector Diagnostic Dashboard

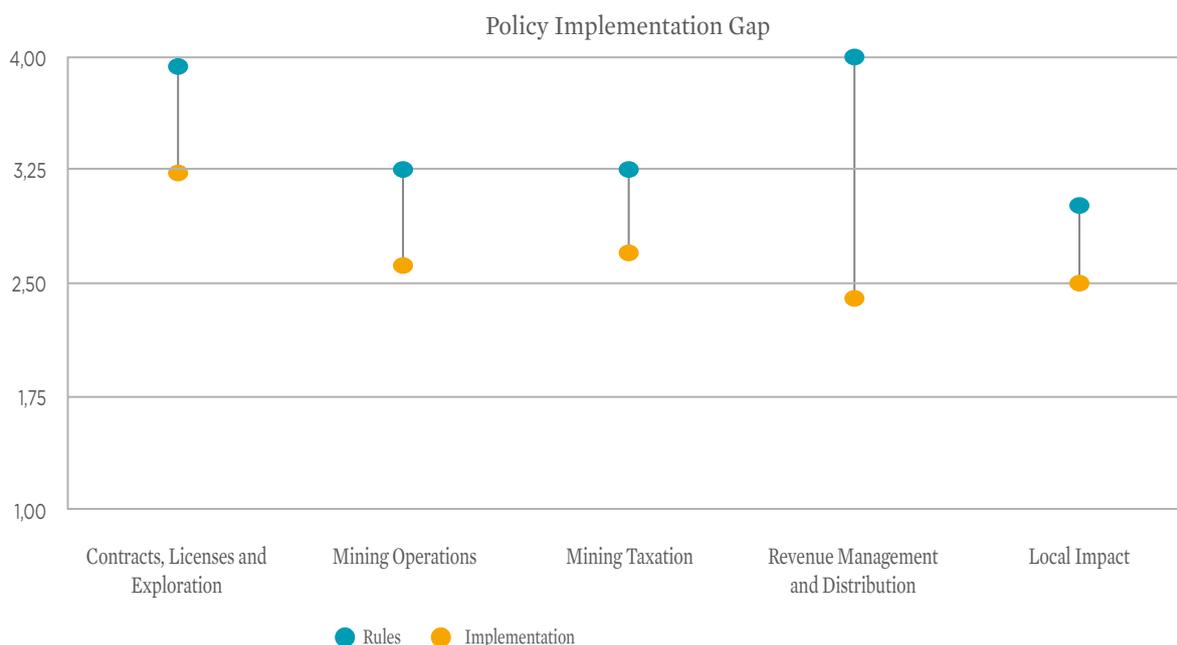
Mining Sector Diagnostic					
I. Mining Sector Management					
Sector Policy	Sector Dialogue	Rules and Responsibilities	Intra-Governmental Coordination		
II. Extractive Industries Value Chain					
	Contracts, Licenses and Exploration	Mining Operations	Mining Taxation	Revenue Management and Distribution	Local Impact
De Jure Performance	Rules for License Allocation, Oversight, and Transfer	Mining Legislation & Processes/ Land Compensation & Resettlement/ Environmental and Social Impact Management/ Transport of Minerals/ ASM/ Occupational Health and Safety/ Mine Closure - Rules	Tax Policy and Tax Administration Rules	Revenue Sharing and Fiscal Stabilization-Rules	Local Content, Employment, Community Engagement, CSR and Social Issues - Rules
De facto Performance	Collection & Maintenance of Geological Information/ Effective License Allocation and Management	Mining Legislation & Processes/ Land Compensation & Resettlement/ Environmental and Social Impact Management/ Transport of Minerals/ ASM/ Occupational Health and Safety/ Mine Closure - Practice	Mining Tax Administration and Auditing - Practice	Revenue Sharing, Fiscal Stabilization and Resource Revenue Transparency-Practice	Local Supplier Development, Employment, Community Engagement, CSR and Social Issues-Practice
Scoring Key:	Very low (1.00-1.75)	Low (>1.75-2.50)	High (>2.50-3.25)	Very High (>3.25-4.00)	

The dashboard shows the following:

- Regarding the sector management framework, while the institutional “Roles and Responsibilities” are very clearly assigned, there is a need for improvement of the “Sector Policy”. The greatest weaknesses in this area are in “Intra-Governmental Coordination” and “Sector Dialogue”.
- In terms of de jure performance, Peru has very good norms in line with good international practices in all value chain components except for “Local Impact”, which needs to improve its current regulations and policies.
- In terms of de facto performance none of the components received a very high score, indicating the need for improvement in “Contracts, Licenses and Exploration”, “Mining Operations”, and “Taxation”. The “Revenue Distribution and Management” and “Local Impact” links are the weakest, raising serious challenges about the capacity for extending mining benefits to the local communities and mining regions.

Another reading of the assessment summarized in the above dashboard provides an aggregated horizontal overview of each of the five stages of the extractive industries value chain. The most significant implementation gap is found in “Revenue Distribution and Management”, although what stands out is that in all the extractive industries value chain components there are major gaps between “Legislation, Policy and Regulation” and “Institutional Capacity and Effectiveness”. These gaps lead to consequences that hinder the plans of mining investors and foster distrust in the mining regions and communities. The most significant aspects of these gaps are discussed throughout the following section of this report.

**Figure 8: Implementation Gap Analysis**



In general, the results of the Peru MSD position the country as being very favorable for mining investment, although it has dropped in the Fraser ranking due to unpredictability in the enforcement of certain environmental, social and licensing regulations. Fraser rankings are based on the perceptions of the investors. This MSD has more inclusive respondent coverage, reflects the contributions of three different stakeholder groups (government, companies, and civil society), and provides information on mining sector performance along the extractive industries (EI) value chain.

# IV. Assessment of the Sector Management Framework

The review of the dashboard and the gap analysis in the preceding section provide a birds-eye view of the sector’s de jure and de facto performance but does not give specific information on the strengths and weaknesses identified through the MSD. The current and the following sections provide a more detailed look at the sector management framework and performance along the EI value chain – including identifying potential areas for improvement, whether to policy and regulations or their implementation. The following discussion starts with the sector management framework (Figure 9).

Figure 9: Mining Sector Management Framework



The management framework for the Peruvian mining sector scores high, on the whole (2.77). When we break down the management framework into its four components, “Sector Policy” also receives a high score (2.73) from the respondents. The clear definition of “Roles and Responsibilities” is the sector management framework’s greatest strength (3.88), while “Sector Dialogue” (2.27) and “Intra-governmental Coordination” (2.20) score low. The remainder of this section and the following section summarize the main findings of the mining sector diagnostic. The MSD questionnaire used to collect the data aims for a high degree of objectivity by asking respondents very specific and detailed questions. Reasonably, there are instances where the views of the different stakeholder groups differ on various issues and this report takes into account these differences.

## Sector Policy (2.73)

In 2013, faced with falling metal prices, mining companies in Peru started demanding a revision of various sector regulations with the aim of maintaining investment and increasing production and export volumes. In addition, a vigorous narrative around the need to “improve competitiveness” emerged, influencing the nature of the sector’s public policy. The core idea was that the government had created bureaucratic obstacles and excessive paperwork requirements that were discouraging mining investment, making the permitting process unreasonably slow and breeding uncertainty among investors. The growing pressure coined the term “tramitología” (excessive red tape) to explain how environmental and social regulations were discouraging investment (NRGI 2020). The industry feels, for instance, that exploration suffers from disproportionately strict requirements and studies that often are disproportionate to the limited impacts it generates. Moreover, with the issuing

of Ministerial Resolution No. 003-2013-MEM/DM in January 2013, as provided by Supreme Decree No. 001-2012-MC, the Regulation to the Law on the Right to Prior Consultation of Indigenous or Original Peoples, the industry now feels that delays in implementing prior consultation in the exploration stage are the activity's main holdup.

After almost 30 years of launching reforms that laid the foundations for promoting mining sector investment, Peru now faces the challenge of improving the sector's policies and management to guarantee its long-term contribution to the country's sustainable development. The government also faces the major challenge of artisanal and small-scale mining formalization and elimination of illegal mining, which has destroyed 53,000 hectares of Amazon jungle with mercury, especially in the Amazonian Madre de Dios region. ASM is given low priority, however, and the policy for this sector has been inconsistent over time. In the current context of high gold prices, therefore, the lessons of the last two decades must be remembered and a holistic policy must be prepared for ASM.

Yet, Peru lacks an explicit government policy and a national strategy that are accepted by all key stakeholders. The Peruvian government has a general government policy until 2021 and one of its priority areas is equitable, competitive and sustainable economic growth. The policy is implemented through a national competitiveness and productivity plan, a set of measures aimed at fostering the country's medium- and long-term growth. Although the plan coordinates both public and private sector competitiveness and productivity efforts, it does not set guidelines for the private investment promotion strategy and the monitoring mechanisms needed for adapting it to changes in the domestic economic situation.

CEPLAN is the public agency charged with leading the preparation of the strategic plan for national development, which was approved by Supreme Decree No. 054-2011-PCM. The plan aims at greater productive diversification and promotes a territorial approach. Its update, the Bicentennial Plan, version 2015, is ambivalent with regard to mining. At the sector level the basic tool is MINEM's five-year Strategic Multi-year Sectoral Plan (PESEM). However, the plan is not coordinated with the strategic plans of related sectors, and mining issues are overlooked in the strategic planning of Peru's 26 regions.

Given the lack of a formal document effectively defining the government's priorities, the backbone of the sector policy continues to be the reforms of the 1990s, with a focus on the promotion of mining as the country's engine of growth and key factor for investment attraction and revenue generation (as translated in the slogan "Peru the Mining Country"). MINEM's room for maneuver in defining the sector policy lies in the area of investment promotion, with a focus on support for specific projects (cutting through red tape and addressing social conflicts with impacted communities). Consequently, MINEM's biannual investment report can be considered, in practice, as the closest document to a formal mining policy. However, to some civil society representatives, MINEM's dual mandate of mining promotion and regulatory enforcement can sometimes create an inherent conflict of interest.

The mining sector is facing the challenge of creating the necessary conditions, within a context of social legitimacy, to move forward successfully with the development of an extensive mining project pipeline. Of 48 projects in the pipeline for US\$ 57 billion, some 90% are greenfield and almost 60% are open pit. Promoting exploration, making the projects in the pipeline viable, and ensuring the normal

operation of current activities requires strengthening environmental sustainability and improving the socioeconomic impact of mining projects.

Today, more than ever, it is necessary to create and enhance the social, environmental, economic and political conditions for social acceptance - from the earliest stages of development - of mining activities in their areas of influence. If this is to happen, Peru needs to approve and implement long-term policies and adopt more sustainable practices and ensure the consistency of its social, economic and environmental policies and goals. Meeting this challenge is considered the shared responsibility of the government, companies, and civil society.

In a context where infrastructure and essential public services are lacking, the central government's sporadic territorial presence and its late relationship with mining area communities contribute to the lack of social acceptance of mining projects that are technically and financially feasible. Some problems stem from specific sector issues such as water use and access to surface land. However, there are also major implementation challenges regarding policies with strong impact on mining, such as the land-use planning policy, regulated by the General Environmental Law, under MINAM; the policy for formalization of informal land ownership, led by COFOPRI; and the policy for the titling of community-owned property, among others.

Moreover, a shared vision is lacking among the different stakeholders (both at the local and central levels) on the role the mining sector should play in national development. Several former MINEM authorities feel that at present MINEM's specific objectives are defined by each successive minister, and that the credibility of the institution depends more and more on the intrinsic qualities of its leader. Contrary to the example of Chile, Peru lacks a long-term government policy on mining development fostering sustained commercial and technical research. The encouragement of investment and growth has been quite successful in the last 30 years, but this might not be enough in the long term.

Digitalization and technological development, boosting efficiency, competitiveness and decarbonization of the mining value chain, would have to be an integral part of a mining policy in Peru. Despite the efforts of the Committee for Sustainable Mining Development and the Rima group, the lack of an explicit long-term policy in place prevented the identification of the key strategic challenges for the country's mining development. The lines of action for countering and taking advantage of technological change, innovation, and productivity improvements are still incipient. There has been no identification of the challenges for future human resources and training of talent needed in the long term; the impacts of automation; the challenges and opportunities of climate change; or the opportunities provided by clean energy and the circular economy. Nor has there been any planning for monitoring and adapting these trends to the country's reality.

The government has failed to promote an agenda for change with public policies that coordinate industry, government, and academia for fostering mining clusters, supplier development, and innovation. The initiatives rather come from companies such as Anglo American, which is working with the DGM to regulate the technology of the future. No clear infrastructure development strategy based on economic corridors in mining regions has emerged, to guide cooperation among companies and between the industry and the government. The mining cluster in southern Peru, promoted by the Chamber of

Commerce and Industry of Arequipa and the mining companies Anglo American, Hudbay Peru, Cerro Verde, and Southern Peru, was created to drive a local development-based technological innovation pole for mining challenges. In addition, Moquegua could become the country's second mining technology cluster with the support of Anglo American. Although it is thought that different government agencies might eventually join, the cluster is not government driven.

Finally, management instruments have still not been outlined for coordinating mining projects with territorial economic development paths and the productive potential of the regions where they operate, based on an effective evaluation of the resources, capacities, and potential of the territories involved. There is also much concern over the way local and regional governments administer the revenue generated by the mining sector that is transferred to them. Poor or inadequate investment of these funds adversely affects the perception of the mining sector's contribution to regional development. The lack of integrated long-term territorial development planning that goes beyond the turnover of regional leaders makes it difficult to pursue greater efficiency, effectiveness and coordination of public and private spending and the investment of mining-generated revenues, following local development priorities. This compromises the fundamental premise that mining-generated wealth should be transformed into regional and local economic development.

### Sector Dialogue (2.27)

To achieve good mining management, the government needs to enforce its legal, political, and administrative authority for handling sector matters, interacting with different stakeholders or pressure groups. On the other hand, citizens and companies should be provided with the mechanisms, procedures and institutions required to influence policy decisions, exercise their rights, comply with their obligations, and resolve their differences.

The quality of sector dialogue is undermined at the government level by a relatively high turnover of public authorities, which prevents building effective management capacity and limits public officials' technical, legal, and social capacity and/or experience in the sector. Moreover, it creates a fear of decision-making, either because of their potential administrative implications or the political and social effects they might generate. Public officials often have misgivings about discussions with the private sector, partly because of the Comptroller Office's frequent controls, primarily after the Odebrecht scandal. Some government respondents mentioned a concern for avoiding being captured by business associations, which they view as having unilateral stances that make it difficult to negotiate with. On balance, many companies believe that the MEF has been effective in recent years in promoting mining investment, while MINEM has had limited decision-making capacity and a diminished influence on government decisions.

Most companies think the role of the Peruvian National Society of Mining, Petroleum and Energy (SNMPE) is too difficult because it represents three economic sectors whose interests do not always align. In mining alone, it incorporates many companies of different origins and sizes with different production volumes for distinct commodities. SNMPE's members include large-scale mining companies that adopt international standards and are members of the International Council on Mining and Metals (ICMM) and medium-scale mining companies with different standards and different levels of commitment to

good practices. This has an impact on the effectiveness of SNMPE's intervention. Junior explorers, for instance, say they do not feel adequately represented, because SNMPE has historically not taken enough interest in exploration.

Some companies believe SNMPE's vision is short-term, which limits its leadership and alliances with other major sectoral entities (engineer guilds, research centers, NGOs, regional governments, etc.). They feel SNMPE has been more proactive and purposeful in recent years, and they also see the Peruvian Institute of Mining Engineers (IIMP) as an active organization with potential for driving a medium- and long-term agenda to associate mining with the country's development. Other companies believe SNMPE may be transitioning from a pure lobbying role to a more proactive one, with an attempt at greater consensus. This shift has laid the groundwork for a change in SNMPE's role. At present, SNMPE is making an effort to contribute to the public's understanding of the Peruvian mining sector's problems. It has made substantial headway in such areas as data collection and dialogue with population groups and has strengthened its presence in the public debate on fundamental industry issues, as well as on the MEF-led Executive Mining Board for Productive Development of the Country, an initiative to coordinate efforts to unblock institutional barriers to priority investments in the country.

The government also feels that SNMPE lacks vision on small-scale mining, while small-scale producers have difficulty coordinating institutionally. Artisanal mining associations often represent specific interests and have no national impact or federated representation.

With respect to civil society, the industry feels that dialogue is unfortunately not based on trust. Some civil society respondents, however, perceive that progress has been made, that the mutual distrust of the past has been toned down and the industry is more willing to engage in dialogue. A level of communication has been reached whereby each party knows what to expect from the other, although the possibilities of mutual agreement are still limited. The industry feels that the political parties and regional and municipal government authorities often have little interest in dialogue.

Peruvian civil society is extremely active and has a strong public presence and capacity for analysis, follow-up, monitoring and evaluation. Civil society organizations (CSOs) feel that, with the exception of EITI, they are not represented in the public policy debate, and that mining policy guidance is not within the scope of EITI. For this reason, they find the Rimay group's initiative, "Mining Vision of Peru to 2030," interesting. The initiative sought to consolidate an inclusive, territorially and socially integrated, environmentally sustainable, competitive and innovative vision of mining that operates within a framework of good governance. After the proposal was formulated, it was presented to the respective central government agencies. The effort was one-off, however, and suffers from lack of continuity. The proposal should have been presented to the regions, but due to political instability and COVID-19 this effort has been interrupted. Yet, the process is valuable and its dissemination among the mining regions should be completed to provide guidelines for national consensus. Civil society views the existence of dialogue spaces positively, but it also criticizes the fact that the multiple dialogue spaces usually do not lead to solutions and that there are too many unfulfilled promises by the other stakeholders. One civil society criticism is the poor collaboration and coordination among different government stakeholders for better implementation of the agreements negotiated during conflicts.

## Roles and Responsibilities (3.88)

The roles and responsibilities of the different public agencies involved in mining are well defined in the laws and regulations. In practice, however, there are some areas where the roles of the institutions are not clear, where there are coordination and jurisdictional problems between the central government and regional and municipal governments, and where sectoral and environmental authorities lack resources and capacities, a situation aggravated by public procurement roadblocks.

Good governance of the mining industry requires a decision-making system that is horizontally multi-sectoral (with more than one ministry responsible for creating weights and counterweights), vertically multi-level (with regional and municipal government management and participation), and multi-stakeholder (with civil society, mining company, academia, and local population participation), supported by inter-operable and integrated information systems and adequate institutional resources and capacities for it to function effectively.

In recent years, the Peruvian government has implemented a series of institutional reforms setting in motion a decentralization of the top-down management of mining and a transition towards multisectoral management, primarily with respect to environmental inspection and certification and social management. In practice, these reforms have resulted in a progressive transfer of mandates and influence by MINEM in such matters as: (a) crosscutting regulation of environmental management; (b) oversight of mining operations; (c) management of ASM and combat of illegal mining; and (d) management of social conflict in mining areas.

The weakness of management and information systems also contributes to ineffective sectoral management. MINEM's management and information systems, for instance, are still not integrated. Formal mechanisms are also limited for sharing information between MINEM senior management and the different general directorates and between MINEM and other land use and land access, environmental, social protection, risk mitigation, and national and regional government authorities.

Peru has no central data storage and database system in place to effectively support mining sector data maintenance, verification and sharing and contribute to better decision-making. At present, formal information request mechanisms are processed by requesting access to public information, which is not immediate, and there is usually little coordination between the specialists for providing this information. The MINEM databases contain factual information but require much ad-hoc processing for preparing statistical reports and even more processing for preparing assessment or analytical reports. The information systems are isolated and do not talk to each other (SEAL, ESTAMIN, and DAC) when information involving all of them is needed.

Overall, in the view of most respondents, MINEM has been declining institutionally in the last decade and its management and leadership capacity has lagged compared to other state agencies. The capacity gap between MINEM and the large-scale mining companies it regulates is also widening.

Another clear example of institutional problems with respect to roles and responsibilities is the transfer outside of MINEM of competencies for environmental, health and safety oversight of mining. This has caused problems for the mining companies due to limited coordination and the lack of common criteria among the competent agencies, such as OEFA, OSINERGMIN, and SUNAFIL. The lack of protocols for interrelations among these agencies leads to delays, duplication, confusion, and, in short, loss of efficiency. The companies feel that the institutional changes and transfer of roles and responsibilities for monitoring of operations, though necessary and positive, have been inadequately planned and implemented and have still not been able to overcome the institutional weakness of public agencies in matters of human, technological and financial resources.

The institutional structure is young, however, and therefore can be improved. The process has suffered several setbacks, including changes to environmental rules that reassigned responsibilities among the agencies involved, and has had to overcome several hurdles, including funding, which delayed the agencies' institutional strengthening. Nevertheless, there have been concrete achievements, such as a reduction in recent years of the number of fatalities due to workplace accidents.

Additionally, ASM formalization is led by MINEM, but not intersectorally, except for specific cases, and with a different approach from that of MINAM. In 2016, for example, the government implemented an integrated plan against illegal mining in Madre de Dios that involved army and national police intervention in emergency areas such as La Pampa and the participation of different sectors such as the Ministry of Women (for human trafficking), MEF (for budget purposes), MINEM (for mining formalization), and the public prosecutor's office, among others. In 2019, the plan's consolidation phase was initiated under the supervision of the environment, interior, and defense ministers. Moreover, the constant extensions of mining formalization deadlines reveal the dearth of resources in regional governments for formalization and in the Ministry of the Interior for tackling illegal mining and reflect the absence of an oversight body with sufficient incentive and legal, political, and operational capacity to lead the task.

With decentralization came a transformation of the Peruvian government's centralist matrix. However, decentralization has been often used as a justification for not directly addressing burning issues by different entities that regulate mining activities. Incipient vertical coordination among the different national government authorities, combined with functional decentralization, has hindered action and coordination between the different government levels. For the regional governments to assume their responsibilities regarding mining, their officers need to be brought up to speed and trained properly on the granting of ASM licenses and performing of environmental audits, and the effective performance of and funding for these tasks needs to be ensured (ECLAC/OECD 2017).

### **Intra-governmental Coordination (2.20)**

Although the laws, regulations, roles and responsibilities for mining management are well defined, there are problems with coordination, collaboration, and information sharing among central government agencies and between them and the different regional and local government levels. Without a coordinated government mining policy, each sector has its own regulatory space, and, in practice, a lack

of common mandate persists among the different sector policies, plans, and development strategies. For example, it has been notably difficult to reconcile investment promotion measures with effective and efficient environmental protection and socioeconomic development policies. In addition, coordination between MINCUL and MINEM on prior consultation matters could be improved. MINCUL is the governing body; it defines the regulations and is the specialized technical agency regulating the prior consultation processes carried out by MINEM. Moreover, the regulations are compartmentalized, and no strict timeline or planning is followed for prior consultation.

According to the Organization for Economic Co-ordination and Development (OECD), Peru suffers from poor collaboration and coordination between ministries and government levels, and this poses a serious obstacle to policy formulation and implementation. An effort is needed to align the different ministries and government levels behind a common policy and reduce the influence of sectoral views where integrated mandates and views may prevail.

MEF, for its part, has taken a lead role in promoting mining investment and coordinating efforts to break down administrative barriers in the mining sector. To this respect, MEF works along two action lines. On the one hand, it monitors mining projects with a special team. On the other, it works to improve regulation and the capacity of the government agencies involved in mining sector administration through executive boards or forums that bring together the public and private sectors to identify areas for improvement and promote investment in strategic sectors.

In October 2018, the government created the Executive Mining-Energy Sector Board for Peru's Productive Development, led by MEF, as a transparent space for public-private coordination with a focus on eliminating administrative barriers, including monitoring of the implementation of proposed solutions. Composing the roundtable are 17 public and private entities, including SNMPE. The main topics dealt with at this roundtable concerned facilitating the procedures for promoting mining investment, such as improving the regulation of mineral exploration and other mining procedures, the guidelines for sampling and baseline studies. The group identified issues concerning regulatory problems and then proposed solutions, many of which have been considered in the new regulation of mining procedures. It also identified the need to fund a complete identification database of original peoples in MINCUL.

It should be noted, however, that the executive roundtable has no authority over the coordination, facilitation, planning, and implementation of large-scale mining projects and focuses primarily on administrative procedures. Its role is to provide support for finding eventual solutions to specific issues through coordination with the sector or sectors involved. In addition, issues entailing broader reforms, such as ASM formalization and socioenvironmental conflicts, have still not been dealt with by the Board.

The role of overall "coordinator" corresponds to the Presidency of the Council of Ministers (PCM), primarily for the prevention and resolution of social conflict. The PCM is the coordinating and articulating ministry of the 18 ministries. In recent years mining took a prominent position on the PCM's agenda, reinforced by the frequent changes of MINEM ministers, the PCM playing a key role in the

coordination of MINEM, MINAM and MINCUL. The weakening of MINEM and growing prominence of the PCM has led to a situation where there are two supervisors and enforcers of social conflict mitigation measures in Peru. Resources (staff and funding) are needed to do the work properly in both institutions, but it is also important to decide what the respective roles, responsibilities and scope are with regard to early relationship-building with the communities, strengthening of citizen participation, and mediation for overcoming open and latent social conflict.

The public agencies are integrated through functional systems created for implementing public policy. For example, for environmental management the National Environmental Management System (SNGA) is used to articulate and coordinate central and subnational environmental authorities. However, the system has yet to deliver an integrating approach that facilitates access to the information of these agencies.

More recently, an effort has been made to foster intersectoral coordination and system efficiency. For example, through Supreme Decree No. 016-2019-EM, published on September 19, 2019, the One-stop Digital Shop for the Mining Sector (VUD-MINEM) was created. MINEM as administrator and participating agencies are taking all necessary actions for implementing and operating the VUD-MINEM in the framework of the regulation for Legislative Decree No. 1211, which approves measures for strengthening and implementing integrated services and shared spaces and services.

All oversight agencies active in the sector should share information with the MINEM on the plans and results of their activities and operate under the guidance of information-sharing protocols. There is a consensus that the sector should be regulated and supervised since this generates both credibility and public confidence in the authorities and companies. Although specialized government oversight is seen as a sign of efficiency and independence, in practice companies perceive it as an excessive burden due to the dedicated administrative, human, and financial resources needed to handle requests and often respond with the same information to different, uncoordinated agencies instead of doing so only once. In addition, the companies perceive inspection as a rigid procedure aimed at finding formal noncomplying details rather than focusing on the substantive effects of nonconformities and looking to identify opportunities for improvement and adoption of good practices by the industry.

In addition, SENACE uses the Online Environmental Assessment System (SEAL) and the EVA software platform to evaluate its environmental impact assessment procedures and share information on the environmental certificates they grant. SENACE has developed an inter-institutional coordination strategy to improve its work with the agencies responsible for issuing technical opinions during the environmental impact assessment evaluation stage, such as ANA, SERNANP, SERFOR, the Ministry of Agriculture and Irrigation (MINAGRI), and MINCUL. To this respect, these institutions have jointly created a high-level team responsible for coordinating efforts to meet technical opinion deadlines and a technical task team (coordinators and specialists) that works together on prioritized activities to strengthen the environmental certification process. Despite the existence of these software platforms, however, working with the different authorities involved in environmental impact assessment has been difficult, since the language and content of the information entered into these platforms is not standardized.

## Room for Improvement in “Mining Sector Management Framework”

This assessment of the mining sector management framework has helped identify room for improvement in both the rules and their implementation.

### Sector Policy .....

- The implicit mining policy of attracting investment to drive exploration and mineral production is necessary but will not suffice in the face of the long-term challenges.
- There is a need for a better balance between citizens’ rights and the respect of social and environmental sustainability and mining rights. Both rights follow separate agendas, and this separation is aggravated by the management of mining issues by different promoters, regulators, and supervisors.
- Mining has still not unleashed its full potential for invigorating local, regional and national development.
- No policies exist for mining with regard to port and transportation infrastructure, renewable energy and decarbonization of the mining value chain, integrated management of water resources, effective use of the mining canon and royalties, human resource education and training, and science and technology. The mining industry has driven isolated territorial development efforts unconnected to national policies or regional plans.
- The government has not encouraged a mining-based productive diversification and applied innovation strategy for implementation especially in mining regions.
- The government has not implemented an effective territorial development mechanism for the mining regions and communities that makes good use of the funds generated by mining.

### Sector Dialogue .....

- Other than the EITI, the mining sector has no permanent spaces for multi-stakeholder dialogue.
- The government has still not institutionalized spaces, modalities, mechanisms and practices for ongoing relationship-building and dialogue between the different sectors and government levels.
- In contrast to the effective government-company relationship-building through the executive roundtable led by MEF, mining regions have no equivalent space for developing a territorial development and sustainability agenda.
- Despite positive experience with some development and dialogue round-tables, the practice continues of forming reactive roundtables between mining companies and communities, where the government acts only as “guarantor”.

- The level of environmental citizenship in the communities is extremely low and does not contribute to informed participation of the communities or better community relationships with the government and the companies.

### **Roles and Responsibilities .....**

- Government investment in the institutional modernization of MINEM’s mining management requires significant reinforcement to endow the institution with the resources it needs to build its competencies and capacities.
- MINEM does not exercise its governing and coordinating role in the mining sector and its mandate is conditioned to the mandates of other sectors involved in mining management, without an explicit policy favoring a shared mandate.
- Decentralization has weakened government effectiveness in terms of regulation, oversight, promotion and citizen participation, to the extent that MINEM is limited to its Lima office and has not developed its own decentralized structure.

### **Intra-governmental Coordination .....**

- The sustainability framework is debilitated by the intricate weave of responsible institutions without well-planned and well-articulated coordination of their operational and procedural management.
- The commendable efforts of the PCM and MEF have not been enough to lead intersectoral alignment and coordination.
- A vacuum exists with regard to a priority agenda for intersectoral coordination of plans, policies, programs and projects, translating into better coordination of government management.
- There are no operational protocols, interfaces between management support systems, or systematic sharing of information.

# V. Performance along the Extractive Industries Value Chain

This chapter takes a more detailed look at the performance of the mining sector at each stage of the value chain and lists potential areas where there is room for improvement.

## V.1 CONTRACTS, LICENSES AND EXPLORATION<sup>10</sup>

Regarding the first value chain stage, “Contracts, Licenses and Exploration”, all indicators were scored high or very high by the respondents. The de jure situation scored very high (3.95) while the de facto performance only scored high (3.23). Despite the high or very high scores of most of the indicators in the first value chain stage, some areas require more detailed examination, particularly collection of geological information and license allocation, which scored high but received important comments on their practical application.

Figure 10: Value Chain Stage 1--Indicators

<b>De Jure Performance (3.95)</b>	License Allocation Rules (3.90)
	License Management and Transfer Rules (4.00)
<b>De Facto Performance (3.23)</b>	Collection and Maintenance of Geological Information (3.24)
	Effective License Allocation (3.15)
	Effective License Management (3.29)

### Collection and Maintenance of Geological Information - De Facto (3.24)

The geological information provided by INGEMMET is of recognized quality and availability and is useful and acceptable for the scale at which it is provided, primarily to mining companies, except in certain areas. The companies acknowledge that INGEMMET has a good reference database, which is updated and available on the agency’s website (GEOCATMIN).

Geological mapping, consisting of 501 quadrangles at 1:100,000, was completed in 1999. Completion of geological mapping at 1:50,000 had been planned for 2021, in homage of the Bicentennial, but the work has been interrupted by the pandemic. The tools being used range from aerial photography and satellite imagery to geochemistry and geophysics, the latter available on the southern Peruvian coast and in the mountain range neighboring Bolivia. INGEMMET, by law, is not authorized to drill or make boreholes.

<sup>10</sup> The MSD methodology usually includes exploration in this stage of the value chain. In the case of Peru, since the license does not authorize exploration (which requires environmental certification and permits), exploration will be dealt with in the following stage, “Mining Operations.”

INGEMMET has no oversight over private exploration investment, which in practice hinders its effective capacity to use the geological information produced by the companies. Exploration companies publish the most essential information in their annual reports. They report annually to MINEM' DGM on their exploratory work, but the ministry does not pass this data on to INGEMMET. It is kept at MINEM as more of a physical, uncoded repository and is not available to the public so therefore cannot be used. The number of concessionaires that comply with this obligation is not precisely known. The information is often incomplete and does not always include drilling coordinates, for example. The sample cores are saved by the companies and INGEMMET has no digitalized database on them. Data concerning expired licenses or abandoned areas, depending on the type, is available in an information system layer and used to update the national geological map, the metallogenic map, and the mineral occurrences map.

With the results of more than two decades of intense exploratory activity, INGEMMET has a significant opportunity to capitalize on the data generated by mine license holders for galvanizing increased exploration. Supreme Decrees No. 010-2013-EM and No. 021-2015-EM mandated the collection and processing of already existing data that could enrich the national geological map, but the implementation of this requirement was not clearly defined. The agency is making slow progress on new mapping and its funds do not always stretch far enough for it to develop new products. Developing a geological map at 1:50,000 using only INGEMMET's own funds will take at least 20 years. Approximately 90% of its budget comes from payment of validity fees ("derechos de vigencia") and sanctions.

Peru lacks updated data from airborne geophysical surveys. At present, airborne geophysical survey data, obtained primarily in the 70s and 80s, covers only 649,667 km<sup>2</sup> of the national territory. To cover all territory, INGEMMET has a plan for working in three mountain areas - north, central, and south - but lacks the funding for this. Airborne magnetometer and gamma ray spectrometry surveys would not only help promote mining investment but also improve assessment of regional water resources, geothermal energy fields, and geological risks, marking the area of influence with seismic hazards caused by active faults.

For some years now, INGEMMET has been carrying out mineral prospecting studies and has made 26 claim areas available to the Agency for Promotion of Private Investment (ProInversion). Two areas were offered in an unsuccessful auction and ProInversion returned them to INGEMMET, which added cadaster information for a new auction. Public auctioning of the first area was successful (bringing in S/ 5 million). The second was freely awarded to Chinalco, as it was the only company participating in the auction. Management of the financial and technological resources invested by INGEMMET in geological mapping has room for improvement. Some respondents proposed turning INGEMMET into a purely national geological survey at the service of mining and other sectors, letting the cadaster system (formerly known as the National Institute of Mining Cadaster and Concessions, or INACC) recover its former independence.

Moreover, the INGEMMET information system should be linked to the other systems managed by MINEM, combining all mining-related information and integrating the results of company exploration investments. At present, all geological and mining rights information is digitalized and

updated in the INGEMMET information system. What needs to be integrated is historical data on mineral exploration and exploitation activities, which is in MINEM, to create a single record of each concession that also includes environmental information generated in other government agencies on the mining property. This would help solve the problems of sector management where information is segmented and the data being produced is neither integrated nor consolidated. INGEMMET cannot ask concessionaires for production information, because companies are only required to provide it to SUNAT or the DGM, but MINEM does not integrate it, either, into a system that can be accessed by INGEMMET.

### Rules for Allocating Mining Licenses - De Jure (3.90)

Mining licenses are awarded in the Lima administrative headquarters and, in a decentralized manner, in the DREMs (regional directorates for energy and mines). Depending on the rights being awarded, licenses are classified as follows: (i) mining (metallic and non-metallic, according to the substance type) for exploration and exploitation; (ii) beneficiation (processing); (iii) general works; and (iv) mineral transport. Mining licenses are awarded by the Institute of Geology, Mining and Metallurgy (INGEMMET) for large- and medium-scale mining, while the regional governments process and award mining licenses for artisanal and small-scale mining within their territorial boundaries. The other licenses (ii, iii, and iv) are awarded by the DGM under the MINEM.

The same mining license is valid for exploration and exploitation activities. Mining licenses are evaluated and awarded on a first-come, first-served basis, with provision for an auction if mining claims are submitted simultaneously. The terms and conditions, rights and obligations of mining licenses are not subject to negotiation of any kind. Except for Article 71 of the Constitution, which bans foreigners from acquiring or owning mines within 50 kilometers of the border, there is no discrimination against foreign companies wishing to acquire mining licenses in Peru.

The system for awarding mining licenses, based on a very simple claim application requiring no proven technical or financial capacity or prior fieldwork, has been maintained for more than 25 years. Large companies believe it gives Peru a competitive advantage over other countries with more complicated procedures, where more conditions of eligibility are required. Although very little criticism of this system has been collected over the years, some stakeholders argue that it provides little control over who gets the mining licenses and allows for the possibility of maintaining an unlimited number of “idle” mining concessions - that is, with no investment or production. This is a known recurring concern, however, even in jurisdictions where entry barriers are more demanding.

As a disincentive to speculation, penalties for failing to reach minimum production were introduced in 2008, with regulatory adjustments being made regularly (the last one happened in 2019). The annual payment amount for holding mining concessions has been increased significantly, becoming an economic disincentive to keeping a mining concession “idle”. This also ensures that only those with enough financial capacity to develop a mining project can keep their licenses current, although it also discourages small-scale mining, for which a minimum production - though smaller - must also be certified.

Another criticism made by responding companies regards the government's sketchy educational efforts to help the public understand that getting a mining license is not the same as undertaking mining activities, unless the respective authorizations and permits are later obtained - including those concerning land use, environmental protection and water use, permit to conduct exploration activities and, later, exploitation permits. Little is said, also, about the fact that mining activities do not involve the entire concession surface but are carried out, most often, in a very limited area. The awarding of a mining license on community land is a potential cause of conflict, since the community perceives that a license on their property implies their land will be directly affected. Added to this is the fact that the communities lack mechanisms, at least while the mining license is in the pipeline, for obtaining information on the claim holders. This is an example of the conflicts that can arise when communities receive information of a mining license granted in their area without their knowledge. A shortcoming of the procedure is the absence of local channels to inform that a concession award does not imply an immediate effect, since to engage in mining activities the concessionaire must obtain the authorizations and permits mentioned above.

In addition, for several years there has been a debate over whether the procedure for obtaining a mining license requires prior consultation in cases where the requested area belongs to indigenous or original peoples. Industry experts point out that a license award by itself does not impact the land or collective rights, since a series of permits and authorizations are later required. It would therefore not be reasonable to set up a prior consultation process, given that the mining license award does not authorize the startup of mining activities that could affect the collective rights of the Indigenous or original peoples. But it is reasonable that the community should have timely access to the information.

### **Rules for Allocating Mining Licenses - De Facto (3.15)**

In practice, the rules for allocating mining licenses are considered clear and transparent and carried out under a regime based on an administrative act, where the awarding of a mining right depends on strict compliance with the respective procedures established in the General Mining Law. For many years, and especially up to 2015, the procedures were considered up-to-date and efficient, leaving public officials little room for administrative discretion. Institutional responsibilities are well defined and administrative authorities such as the Mining Council exist for handling appeals for revision.

The regular license allocation procedure - managed by INGEMMET with the support of the Geological and Mining Cadaster Information System and the Mining Rights and Cadaster System - is noted for its simplicity, transparency, non-discretionary nature, and accessibility, as well as for the legal certainty it provides. This is recognized as one of the main foundations for investment growth and certainty in the Peruvian mining sector.

The national mining cadaster is a single, decentralized system accessible by the public completely free of charge. In a framework of deconcentration, not decentralization, INGEMMET has offices (reception desks) in the regions for consultations concerning claims. Some companies, however, complain that INGEMMET does not follow up on requests at other ministries, forcing them to do their own follow-up

with each separate agency. The decentralized system for allocating licenses for artisanal and small-scale mining, managed by the regional governments, is not always perceived as effective but rather as a potential risk to the system's efficiency.

Recent changes to the licensing procedures are cause for concern, however, due to the systematic delay in license allocation. This delay results from an accumulation of factors such as various ex-ante controls, the increased number of procedural steps, regional rules potentially restricting available areas, and rules regulating formalization processes that violate formal mining rights. INGEMMET observed that in several cases the opinions of some of the consulted agencies are ambiguous and evasive.

INGEMMET is able to process some 5,000 files in a year, of which approximately 2,000 are new license allocations and 3,000 are extinguished concessions. According to INGEMMET data, in 2010 the granting of a mining license took an average of four months, while at present it takes an average of twelve months. The Forest Service Law of 2011 ("SERFOR"), and its 2015 regulations, created a backlog of applications since it requires a prior opinion to determine the existence of forest and wildlife resources and a favorable opinion verifying that there is no overlap with a forest concession. Since SERFOR lacks a cadaster of forest concessions like the one INGEMMET has for mining, it can take six to twelve months to issue its opinion, depending on the region, since each region has its own procedures and way of managing information. This has led to a backlog of some 2,000 claims in process. Particularly problematic are the claims for non-metallic substances, which require the opinion of the regional agricultural authority on rural areas for agricultural use (the definition of which no longer exists in current legislation). Here, similarly, the 25 regional agricultural authorities may respond differently. According to INGEMMET, this has led to a backlog of another 2,000 pending claims.

Overall, Peru has a robust system of licensing and cadaster, backed by a computerized data management systems in INGEMMET. These systems, considered effective and secure, have served as the cornerstone of protection and legal certainty for investors, along with public access to concession information. The legislation provides for a system of quadrangles and procedures that eliminate overlap and conflict among license holders.

Although it incentivizes mining investment and improves the country's competitiveness, the ease or absence of restrictions or obstacles for granting mining licenses - exemplified by the lack of verification of the applicant's technical and financial capacity - could be one of the reasons many concessions are inactive (even in times of high prices) and open to speculation. Recent increase of mining license validity fees and penalties, however, is forcing companies to look more quickly and closely into their mining assets in order to avoid paying heavy penalties for keeping their properties inactive for prolonged periods of time (provided the delays are not the result of force majeure). According to INGEMMET, only 1.3% of the allocated subsoil area in the national territory is currently under exploration (0.3%) or exploitation (1%). Mining rights that have expired for nonpayment of the validity fee are shown in Figure 11.

Figure 11: Expired Mining Rights Due to Nonpayment of Validity Fe



Source: INGEMMET

### License Management and Transfer Rules (4.00)

Another basic feature of the Peruvian mining regulation that has remained essentially the same for more than 25 years without the need for change or even updating is the system for allowing mining concessions to stay in validity by fulfilling easily verifiable, objective obligations. This system reduces the need for and cost of overseeing compliance with those obligations, since there is no field inspection of actual production or mining investment; the DGM simply checks the mining company's consolidated annual declarations. Although there is a risk that companies could produce or extract materials or amounts other than as declared, companies are not raising criticism or complaints - at least with regards to formal mining.

### Effective License Management (3.29)

Another characteristic that has remained in effect without many problems or criticism concerns mining contracts. Just as a mining license can be obtained by any individual or legal entity, it can also be freely transferred to anyone. Although rules exist to regulate mining contracts, the premise is that the government does not interfere in these documents, since mining licenses are transferred, mortgaged or assigned as real estate, with certain specificities.

Without discarding the possibility of other types of agreements, the following are the most common mining contracts regulated by the Ordered Unique Text (TUO) of the General Mining Law: (i) transfer contract; (ii) mining option contract; (iii) mining assignment contract; and (iv) mining mortgage agreement. The TUO provides that for concession contracts to be contested before the government and third parties, they must be registered in public registries. If a license is not registered in a public registry, contracts concerning the license will be valid between the parties but cannot be contested before the government or third parties.

This system undoubtedly has an advantage for investors in that they can carry out their activities as they see fit with greater flexibility. However, it can also be considered a disadvantage for the government by being subject to whatever investors decide to do for a relatively long period of up to 30 years.

Nevertheless, this is offset by the supposedly high cost of keeping the concessions in effect.

### Room for Improvement in “Contracts, Licenses and Exploration”

- INGEMMET lacks geophysical data, acquired with modern technology, that covers the areas of most mining interest (the entire north to south high Andean strip). It lacks an ambitious national geological plan with realistic funding to generate and interpret new geophysical data.
- The DGM does not systematically share companies’ exploration information with INGEMMET for treatment and integration in the national geological databases.
- The MINEM information systems are not integrated with INGEMMET’s information in a multi-purpose information system that has integrated coverage of the results of companies’ exploration investments.
- Mining license allocation delays are systematic and can last for more than a year, and the allocation period is becoming unpredictable due to delays in obtaining the opinion needed from SERFOR.
- License management is not integrated into a single procedure and companies have to follow up separately with each agency involved.

## V.2 MINING OPERATIONS

For the purpose of this report, the “Mining Operations” component of the extractive industries value chain includes a look at such aspects as the processes for obtaining mining operation, environmental and sectoral permits; the effectiveness of social impact regulations; resettlement; artisanal and small-scale mining; mining product transport; health and safety; and mine closure.

The de jure rules and regulations scored fairly high (3.36), with scores generally high or very high except for “Access to Land, Compensation and Resettlement,” which scored low (2.00). De facto performance in practice and institutional capacity received an overall high score (2.83), where “Mining Legislation and Processes” scored low (2.50). Even though it has insufficient rules and regulations, in practice “Access

to Land, Compensation and Resettlement” scored the highest (3.67) because of the way agreements are reached and mining projects are generally made viable (see Figure 12).

Figure 12: Value Chain Stage 2 - Indicators

<b>De Jure Performance (3.25)</b>	Mining Legislation and Processes (3.58)
	Land, Compensation and Resettlement Rules (2.00)
	Environmental and Social Impact Management (3.49)
	Transportation of Minerals (3.20)
	Artisanal and Small-Scale Mining (3.00)
	Occupational Health and Safety (4.00)
	Mine Closure and Financial Sureties for Decommissioning (3.47)
<b>De Facto Performance (2.62)</b>	Mining Legislation and Processes (2.50)
	Land, Compensation and Resettlement-Practice (2.33)
	Environmental Impact (2.93)
	Social Impact (2.29)
	Transportation of Minerals (2.46)
	Support for Artisanal and Small-Scale Mining (2.38)
	Occupational Health and Safety (3.24)
	Mine Closure and Financial Sureties for Decommissioning (2.81)

### Mining Legislation and Processes - De Jure (3.58)

Mining legislation and regulation is assessed very high. However, mining regulations have been frequently changed in the history of the current mining regime, especially the mining procedures and obligations in conjunction with environmental legislation.

At the onset of the 1990s, with the Environment and Natural Resources Code, and later with the first mining environmental regulation of 1993, the environmental impact assessment, mining plan, and beneficiation concession became the main requirements for undertaking mining exploitation and processing activities, since mineral exploration did not at first require environmental approval. This was also a scenario where access to the surface was very simple for mining license holders. Not only did they have a right of free use of abandoned surface land, but they could also impose an easement or mining right of use on third-party land.

Later, in 1995 with the Land Law (Law No. 26505), free right of use of the surface for mining was eliminated and imposition of an easement became almost impossible. It was also made very clear that expropriation for mining purposes was impossible. Where government land is involved, however, the requirement for obtaining a right was only recently introduced as a formal requirement in 2011-12. Previously, it was enough to prove that abandoned government land was involved.

In 1998, the first environmental regulation for mineral exploration was published. A simplified environmental instrument called a sworn statement (“Declaración Jurada“, later replaced by an environmental impact statement) or an environmental assessment, depending on the intensity of the project, were made a requirement for mineral exploration. Whether for exploration or exploitation and beneficiation, the environmental instrument became the primary and most complex requirement for authorization, in contrast to the ease of obtaining a mining license.

This system was maintained until 2012, when for the first time specific authorizations were needed to start both exploration and exploitation activities. Additionally, beginning that same year, the requirement to prove a surface right was more clearly regulated and, where projects overlapped native or indigenous community lands, prior consultation was made a requirement for starting exploration, exploitation, or beneficiation activities.

This system of pre-activity authorizations remains in effect today with certain aspects that have changed over the years, such as approvals for heightening of tailings impoundments by stages, the relatively recent elimination of authorization for preparation and development activities, among others. The formal requirement introduced in 2012 to establish surface rights, especially where government land is concerned, led to the issuing in the following year of rules for obtaining what would later be called investment easements. With these, the government grants a right to use government land for investment purposes (mining, for example) in exchange for a compensation that is set using commercial criteria.

For its mining regulation to be competitive, a country needs to do more than just ensure reasonable permit processing times. It also has to make sure the processing is transparent, predictable, and non-discretionary. Just as important as competitiveness, however, is sustainability, which requires mining permits to be processed with the necessary rigor to ensure proper management of social and environmental impacts as well as safeguarding of the rights of communities and peoples in the mining activity environment.

The exact number and scope of exploration permits would depend on each project’s specific characteristics, development stage, and potential impacts. Because of its importance for the development of Peruvian mining, this report mentions the most significant permits for mineral exploration:

**Water Usage Rights:** According to the Water Resources Law (Law No. 29338), except for primary use, the use of water for other purposes (population and production) requires authorization by the National Water Authority (ANA). Mineral exploration activities require an authorization to use water, while exploration and beneficiation require a water usage permit. Water usage also generates an annual payment obligation to ANA. Failure to pay for two consecutive years leads to cancellation of the respective water usage right.

<p><b>Wastewater Discharge and Reuse:</b> The holder of the water usage right can reuse the wastewater produced by its activities if the wastewater is first treated to meet the applicable quality standards. The wastewater may be reused without the need for prior authorization if the reuse is for the originally authorized use. Wastewater discharge to a water source, on the other hand, necessarily requires ANA authorization. Water may only be discharged if effluents are first treated to meet the applicable quality standards.</p>
<p><b>Cultural Heritage:</b> Before undertaking any mining activity, the concessionaire must have a Certificate of Non-existence of Archaeological Remains (CIRA) issued by MINCUL for the area of the activity. The CIRA is valid for an unlimited period of time, but it will be voided if artifacts or archaeological sites are discovered during construction or operations. In addition, the concessionaire must obtain approval of an archaeological monitoring plan containing the actions to be taken to prevent, avoid, control, reduce and mitigate potential negative impacts on the nation's cultural heritage.</p>
<p><b>Use of Explosives:</b> The purchase, use, transportation, storage, and handling of explosives for civil use is highly regulated in Peru. Specific authorization must be obtained from the National Superintendence for Control of Security Services, Weapons, Munitions, and Explosives for Civil Use (SUCAMEC).</p>
<p><b>Chemical Inputs and Assets subject to Inspection:</b> Marketing, transport, and use of chemical inputs and assets which use is subject to government inspection is restricted due to their potential use, directly or indirectly, in illegal drug production or illegal mining activities. Mining license holders who need to use these inputs must be entered in the Registry for the Control of Inspected Assets managed by SUNAT.</p>
<p><b>Fuel Storage:</b> Anyone who purchases fuel for their own use or who has facilities for receiving and storing fuel with a minimum capacity of one cubic meter must first obtain a permit from OSINERGMIN to build and operate those facilities and enroll in the Registry of Direct Fuel Consumers.</p>
<p><b>Authorization to Start Mining Activities:</b> The start and restart of mining exploration or exploitation activities is subject to a specific DGM authorization. Authorization to start exploration activities is automatically approved once compliance with the necessary prior permits is verified, except when prior consultation is required. A DGM evaluation is needed before authorization to start exploitation activities can be approved.</p>

The proliferation of administrative procedures has driven up regulatory costs significantly for exploration and mining project implementation. According to some companies, government approval for exploration work (diamond drilling) can take from one and a half to two years. The causes are various: inadequate institutional arrangements, lack of institutional capacity, pre-control procedures instead of ex-post control, unreasonable application of administrative liabilities, and lack of integrated procedures.

With respect to environmental and mining procedures, the report by the Committee for Sustainable Mining Development (CDSM) gives several recommendations for ensuring proper assessment of regulatory quality and identification of procedures that could be approved through affirmative administrative silence to facilitate and speed up approvals. The recently approved Regulation of Mining Procedures addresses these recommendations and introduces affirmative administrative silence for 19 of the 34 mining procedures. The CDSM also proposes a new regulatory model to promote exploration by including participatory monitoring mechanisms based on monitoring of environmental and social instruments.

Overall, it is worth noting the increasing number of involved regulators and permits and authorizations required to conduct mining activities. The authorities tasked with inspecting and overseeing mining projects include the DGM, which receives reports of activities, and SUNAFIL and OSINERGMIN, which supervise Occupational Health and Safety Mining Regulations, while OEFA supervises compliance with environmental rules and regulations.

### **Mining Legislation and Processes - De Facto (2.50)**

Mining investment has been falling behind for several years now, and exploration projects are taking various years to start, due to delays in authorizations and permits. However, environmental, social, and safety concerns have also increased, leading to more requirements and controls. Though these are often justified, in the end they make for slower and more costly mining activities.

Peru's geological potential is too important to be ignored by explorers. But over and above changes in the global economy, mining exploration investment in Peru is suffering from a situation where drilling permits are taking much longer to be approved than in Canada, Australia, the United States, and Mexico, and only slightly faster than in Chile. It should be noted however, that exploration investment has been declining significantly in Peru since 2014, but the trend is global, not just in Peru. With the notable exception of Australia, exploration spending was down in 2019 in the six countries mentioned.

In 2018, Peru ranked fifth in exploration investment destinations after the first four abovementioned countries. With investment at US \$580 million, it accounted for 6.3% of all global investment in exploration of non-ferrous metals. This total was allocated as follows: US \$190 million for grassroots exploration; US \$150 million for exploration in the final feasibility study phase; and US \$240 million for exploration during the exploitation phase.

At the start of 2020, there were an estimated 64 exploration projects in the pipeline for a total investment of US \$498.6 million. According to MINEM, exploration investment fell from US \$413 million in 2018 to US \$356 million in 2019, a drop of 13.5%. SNMPE was predicting mineral exploration investment to fall to US \$250 million in 2020, largely (but not solely) due to COVID-19.

There also seems to be a certain amount of discretionality on the part of other agencies with regard to required information and evaluation times for mining sector authorizations and permits. This is reinforced by complex and highly sensitive political and social environments, a lack of common criteria among the agencies involved, and a high turnover of public officials (in some cases because of limited capacities and resources). This is obviously linked to the absence of a consolidated public or civil service system and competitive salaries compared to the private sector. As a result, there has been steady public to private sector migration, weakening sector management.

The industry feels that the proliferation of administrative bodies involved in the approval process is slowing down exploration activities. In fact, some studies report the intervention by 19 different institutions in the approval of mining projects, with little inter-agency coordination. The water and forest authorities, regional cultural offices, the Ministry of Culture, and others can delay the start of operations almost indefinitely, making Peru one of the most highly regulated jurisdictions for mineral exploration. Well established timeframes exist for the steps a mining project must take to materialize, but in practice these deadlines are not met.

As for supervision by environment, health and safety agencies, the checked parties complain that inspections by SUNAFIL, OSINERGMIN, OEFA and regional governments (for artisanal and small-scale mining) are inefficient and there is no clear delineation of each agency's competence. Environmental and sectoral inspections are carried out separately, with limited coordinated planning among the inspectors. Each agency inspects its own segment and there is no systematic sharing of information on the operations, so the benefits that would be obtained from inspections that integrate environment and occupational health and safety are lost.

With regard to mining activity information, license holders must submit to the DGM a consolidated annual statement (DAC) consisting of a descriptive report of the year's activities and production, with confidential data on geological resources, investment, human resources, etc. This is an excellent foundational tool for oversight, control, and capture of mining statistics. However, the DGM has no formal mechanism for checking and auditing the authenticity of the information presented by companies every year in their consolidated annual statements.

### Land Compensation and Resettlement Rules - De Jure (2.00)

As we saw in the preceding section, and as has been the case for many years, the government has abandoned the legal tools used in the past to impose mining activities on privately owned land. Even empty government land must be negotiated by mining concessionaires essentially as an agreement between private parties, using market values as a reference. Although a forced easement procedure exists where the mining use of land is imposed against compensation by the mining concessionaire for impairment and loss of income, fewer than ten mining easements have been forced in the last 20 years.

Moreover, quorums and more than a two-thirds vote are required for rural communities living in the Andes or in the tropical forest to agree to an act of disposition of their lands.<sup>11</sup> No land compensation rules exist, however, except those provided for mining easements - which, as noticed, are not applied. As a result, for some years now community lands can wind up costing the same as a residential zone.

Some analysts argue that the Peruvian system, where the government owns the natural resources, is a source of social conflict.<sup>12</sup> They suggest that one solution would be to grant ownership of any natural resources found on their land to the surface owners, at least in the case of communities. This is an unprecedented idea in Peruvian legislation and goes against the constitutional principle that subsoil resources are the property of all Peruvian citizens. A review of the social conflict map prepared by the Ombudsman's Office shows no correlation between disagreements over community lands and most cases of social conflict, which often arise from unfulfilled promises by the government or companies, but especially from fears of potential environmental damage. For several civil society respondents, the lack of credibility of the government's environmental certification is the main cause of social conflict in mining.<sup>13</sup>

11 The two-thirds provision does not consider the migration of many community members who may no longer live in the area of influence, which could affect the legitimacy and representativeness of the communities.

12 Draft Law No. 5750/2020-OR

13 However, the influence of political activists who make anti-mining a platform for boosting and growing their own political platform cannot be overlooked.

Resettlement, for its part, is regulated under the environmental certification and by individual company practices, either self-imposed or mandated by their providers of funds to comply with international standards. The fact is that most mining projects have been developed in areas where there is no population that needs to be resettled. Very few projects have required it or will require it in the future.

The report of the Committee for Sustainable Mining Development highlights the absence of explicit territorial resettlement policies, resulting in a lack of adequate social conditions and consensus-building. No regulatory framework is in place, either, to regulate resettlement of populations in the mining sector. Clear and binding rules should therefore be put in place to ensure the wellbeing and respect for the rights of the displaced population. The government should also consider adapting international standards, such as those of the World Bank, to the Peruvian context. Finally, and for these purposes, the government should consider the need to complete the titling of community lands, which it has been putting off in recent years. This report confirms that the lack of regulations for involuntary resettlement is a major shortfall of Peruvian mining regulation.

### Land Compensation and Resettlement Rules - De Facto (2.33)

In the view of the respondents from industry, the mechanism for purchasing land by means of a transaction between private parties - which is theoretically safer for gaining access to surface land - has led to much higher asking prices than the land's market value.

In practice, they emphasized the viability to date of ongoing projects but warned of the high risk for various new projects, several of which might not be able to cover the demands of landowners without putting the financial feasibility of the investment at risk. This could arrest mining development, especially of projects with low profit margins and/or medium-scale and ASM projects. The risk is especially high for new projects, which might not be able to meet the sale price expectations of surface landowners.

In the case of community resettlement to make way for a mining project, the resettlement plan should be included in the community relations plan of the respective EIA. There are cases of good resettlement plans in Peru, such as that of La Granja,<sup>14</sup> as well as apparently unsuccessful resettlement ones, such as, for example, Yanacancha<sup>15</sup>, with the Antamina mining project, and Morococha<sup>16</sup>, with the Toromocho project.

The issue of community resettlement leads to serious social conflict if it is not handled properly and could potentially render a project unfeasible. Civil society respondents feel that fulfillment of the compensation promises made by mining companies in their resettlement plans is not adequately supervised.

14 [https://www.commddev.org/pdf/publications/P\\_Land\\_Access\\_and\\_Resettlement\\_Planning\\_at\\_la\\_Granja\\_ESP.pdf](https://www.commddev.org/pdf/publications/P_Land_Access_and_Resettlement_Planning_at_la_Granja_ESP.pdf)

15 <https://www.mundoagrario.unlp.edu.ar/article/view/MAe123/11726>

16 <http://repositorio.uncp.edu.pe/bitstream/handle/UNCP/5525/TESIS%20CONFLICTO%20SOCIAL%20POR%20EL%20REASENTAMIENTO%20POBLACIONAL%20DE%20MOROCOCHA%20DEL%20PROYECTO%20MINERO%20TOROMOC.pdf?sequence=1&isAllowed=y>

Moreover, community relations and potential resettlements need to be specified, planned and carried out as soon as possible, before starting project construction, giving communities a better understanding of the mining projects and smoothing the path to more sustainable agreements, especially where there is resettlement and compensation. This is also very important for making any adjustments needed to the design of the mining project.

With regard to land access, compensation, and resettlement, a strong point made by interview respondents was that government monitoring of these processes was, by design, notably missing, and that the government only acts when the situation turns into a social conflict. This poses a major challenge for the MINEM's OGS.

### **Environmental and Social Impact Management - De Jure (3.49)**

Environmental regulations (Annex IV) ensure that projects will not be carried out without first having done the respective environmental assessment. As already mentioned, environment and mining procedures are the areas where Peruvian mining regulations have experienced more changes. The standards are increasingly demanding and the regulations are ever more complex, but they cause investment delays despite certain specific efforts to speed up and make procedures more efficient. One noteworthy effort is the SENACE global environmental authorization, which makes it possible to obtain, in addition to the environmental approval, other permits as well. In addition, another aspect that will be looked at here is the competence of regional governments for supervising the environmental impact of mining formalization activities.

In 2008 when the Ministry of the Environment was created, the environmental impact inspection role was transferred to OEFA. SENACE was created in 2012 as environmental certifier and after a long preparatory process took on the task of environmentally certifying mineral exploitation and beneficiation projects for medium- and large-scale mining.

Although rules exist for identifying and assigning responsibilities for eventual mining environmental liabilities, the task of identifying them is still ongoing and MINEM continues to identify new liabilities. This legacy of unremediated environmental liabilities undoubtedly affects the image of the modern mining industry, which is blamed for past errors when there was not much in the way of environmental requirements. In most cases, too, those responsible for the liabilities no longer exist.

The report of the Committee for Sustainable Mining Development suggests early and collaborative intervention as well as design of a new environmental assessment approach. It also highlights distrust in the government's role with regard to environmental legislation.

The mandate of environmental institutions continues to evolve, as the goal announced by authorities is to have all reviews and approvals of environmental management instruments, except those for ASM, transferred to SENACE.

In general, the rules and regulations for social impact assessment, monitoring, and resolution of conflicts, if any, are dispersed. A variety of public agencies intervene or should intervene in social impact

monitoring, conflict prevention, and conflict resolution, and there is no protocol to clearly define when the different agencies should intervene.

With regard to the environmental component of water, the interviewed companies stressed the need to inform the public that mining is not the country's biggest consumer of water. According to them, of all water consumed in the country, 1.5% is used in mining, 86% in agriculture, 7% by the population, and 6% by industry.<sup>17</sup> A negative perception exists, however, regarding the use of water in mining. This is sometimes well founded, since according to the Public Ombudsman's Office 25% of the conflicts linked to mining concern access to and pollution of water sources. The different mining segments - large-scale, medium-scale, small-scale and artisanal mining - should set a zero water pollution target, but this is impossible without a strong government presence supported by solid rules and regulations, training, and local oversight.

### **Environmental Impact Management - De Facto (2.93)**

The environmental management system is undergoing a transition through which the environmental authority has been taking on the responsibilities of the environmental offices of sectoral departments. While this transition continues and there is no single institution assessing and environmentally approving investments through the entire cycle of mining projects - exploration, exploitation, closure and post-closure - there may be different coexisting environmental assessment criteria due to a lack of understanding of the full development cycle of mining undertakings. It was obvious from the interviews that there is no coordination or adequate interaction among the specialized services and MINAM's departments dealing with mining (SENACE-OEFA or OEFA-OSINERGMIN, for example), although efforts are being made to improve coordination.

Although the law and regulations specify processing times for environmental impact assessments, in reality these are not met and the processing takes much longer than allowed. The respondents from industry generally perceived the time for obtaining environmental certification as being excessive and uncertain.<sup>18</sup> When companies submit environmental management instruments to SEIA, they have no idea, not even approximately, of how long the processing time will be. This causes uncertainty and a lack of predictability in business planning. This point was brought up time after time by the respondents.

The regulations of the Law of the National Environmental Impact Assessment System (SEIA) establish that the environmental authority can ask companies for at least one executive summary, written in the prevailing language of the project implementation area, but it cannot ask for all the project information. In general, the company and government representatives leading the citizen participation processes with the communities in the project's area of influence do not speak the prevailing language of the original peoples in the sector. This poses a barrier to adequate participation of the communities in the information-sharing and consultation processes and to their ability to issue a reasoned opinion on the project. If translation resources are not made available to ensure full community participation, the participation and consultation processes will not be as robust as they should be for large-scale mining investments.

<sup>17</sup> <https://gestion.pe/economia/sector-minero-peru-1-5-agua-disponible-ana-143962-noticia/>

<sup>18</sup> This is also addressed in "Propuesta para facilitar el desarrollo de la industria minera" by Apoyo Consultoría (August 2018).

There may be many reasons for the processing delay: short-staffing of the respective review agency; undertrained evaluators; insufficient information or misinformation provided by the company; delayed responses from the departments of other agencies consulted by the environmental evaluator, etc. From the standpoint of mining promotion and sector recovery in the midst of a pandemic, this is something that needs urgent resolution since it is key to galvanizing mining and other industries that need SEIA certification.

Although some environmental rules have been laid down for mining processes, the environmental authority does not necessarily have all the necessary competencies for conducting and legally and technically evaluating environmental assessments of mining investments. The reason lies in the large number of issues it has to analyze of different industries, not just the mining sector, which keeps it from developing the experience required for mining.

The respondents from national government and industry also noted the lack of capacity of the regional directorates (which depend on the regional governments) for supervision and evaluation of mining projects. In the process of decentralization, regional governments have been given supervisory responsibilities but not enough human and economic resources to carry them out.

Transparency is key to the understanding of mining projects by communities and citizenry. Relevant project information thus needs to be made available for the interested and/or affected population for them to reach a reasoned opinion and effectively take part in the participatory or consultation process established by SEIA. However, neither the key information turned in by companies for their environmental certification, nor the comments made by the environmental authority, nor the company responses are published in the National Environmental Information System (SINIA).

With regard to access to water resources, respondents from industry noted the excessive processing time needed to obtain water concessions. To be awarded a water concession, they must first show water resource availability, after which they must obtain an environmental permit and a construction permit. The procedure may take several months to a year, according to the legislation. Some of the government respondents noted that ANA is understaffed for complying with the review of applications and approval, monitoring and inspecting of water concessions deadlines. There is a perception of mining - sometimes substantiated by its history - as using large quantities of water and polluting rivers and groundwaters. Major social conflicts exist and have existed over the use of water in mining (see box below):

## Conflicts around the use of water

**Tía María Project:** This mining project is located in the Cocachacra district of the Islay province in the Arequipa region. It has an estimated investment of some US \$1.4 billion and consists generally of the removal of minerals from two open pit mines, La Tapada and Tía María, for recovery of the copper through lixiviation. The project initially contemplated the extraction of water from wells located in the Tambo River Valley basin, which was rejected by farmers. From the start, local farmers strongly opposed the project, arguing that it would seriously affect water availability for agriculture, although water is not the only issue causing conflict in this project. The project sponsor changed the proposed water supply to desalinated sea water but the conflict has not been solved. In fact, construction has not yet been started, allegedly because of a lack of acceptance by the population, even though the project has an exploitation permit issued by MINEM.

**Quellaveco Project:** This project, whose estimated investment is US \$5.5 billion, is located in the Moquegua region in the Asana riverbed. Water for this project is part of the social conflict generated several years ago. According to its EIA, the project considered pumping underground water from the Chilota River basin (a tributary of the Tambo river basin) to supply water for the operation. Negotiations with the communities led to changing the water supply source to surface waters of the Titire and Vizcachas rivers, which are not suitable for human or agricultural use. Opponents of the project felt that the use of water for mining would exacerbate the water shortage in the Tambo and Locumba basins. In practice, this project will improve the availability of water received in the Tambo valley, since water not suitable for human consumption or agriculture will be replaced by stored natural rainwater from the Viscaya reservoir, with a delivery capacity of 28 million cubic meters per year. During its operation, Quellaveco will use approximately 22 million cubic meters per year, of which 80% will be taken from the Titire River and 20% from the Viscaya reservoir. The result is that the region will have approximately four million additional cubic meters of good quality water per year for the Moquegua valley. At present the project is in the construction stage.

Water is an extremely important component for the development of any mining project. Enough water must be assured for project use, without affecting the water balance of the basin from which it is drawn, and then a water usage permit needs to be obtained. The project must also demonstrate in the assessment and throughout the course of operation that it uses the water rationally and does not pollute it. All of this must be done with very early and intense community participation. For the entire process to succeed, as in most complex procedures, the country needs strong, credible, and sufficiently staffed evaluating and supervisory agencies.

With regard to mining environmental liabilities, some interviewed companies are interested in using the Works for Taxes (OxI) mechanism for their remediation.

### **Social Impact Management - De Facto (2.29)**

We mentioned earlier two examples of water and mining conflicts for the purpose of describing the controversial issues that surrounds the use of water resources, even when companies have their environmental and technical permits in order. What is obvious is that mining companies need not only to have their environmental and sectoral permits in order, but also cultivate community acceptance of their projects. Several social conflicts involving public goods in mining, such as Quellaveco, Tía María, and Las Bambas, to name but a few, demonstrate that the social management instruments available to SEIA have not sufficed to prevent, detect, and manage social conflicts institutionally. Some civil society respondents perceive that the assessments made in the SEIA put too much emphasis on the technical aspects to the detriment of citizen participation and community relations to obtain a social impact assessment that inspires confidence. Public distrust of the government's actions in these processes only compounds the issue.

Not all companies or government regulators establish seamless relationships with mining regions and communities early in a project's cycle. Beyond informing on the project's benefits, though, such early relationships can collect citizen concerns and comments that can be incorporated into the project design, thereby avoiding having to change the design at a later stage as a result of social conflict. The government lacks a systematic mechanism to ensure its presence in the mining areas from the start of the projects. In several interviews mention was made of the central government's sporadic participation in the projects' early-stage processes. It mostly shows up when a conflict is already underway or when it becomes manifest.

In the view of the respondents from CSO and government as well, the citizen participation process should be revised since it clearly does not prevent conflicts or ensure the incorporation of citizens' opinions in the participation and consultation processes. The opinion of several interviewed stakeholders is that emphasis is placed on informing the population of the project's benefits rather than on creating a dialogue on the project based on the communities' concerns, thus nurturing truly informed participation that can make for a more socially accepted project, which will strengthen its medium- and long-term feasibility.

The respondents from CSO pointed out that the database of Indigenous or original peoples used for identifying the peoples and carrying out prior consultation in compliance with ILO Convention 169 is not fully reliable. There is no certainty that all the Indigenous or original peoples whose rights might be affected by a mining project are included in the database, so a formal consultation must be made to the Office of the Deputy Minister for Intercultural Affairs. Formal identification of existing Indigenous communities in a project's area of influence is considered by the respondent companies as being unnecessarily time-consuming, mainly because the official database is out of date and the Office of the Deputy Minister for Intercultural Affairs usually takes too long to respond. In practice, MINEM carries out its own field investigation and can determine the need for prior consultation in communities that are not on the MINCUL list. This issue requires better inter-ministerial coordination.

The SEIA requires companies applying for approval of the environmental instrument for their mining exploration and exploitation project, as appropriate, to submit a citizen participation plan (PPC), which must contain the citizen participation (PC) instruments to be implemented during the processing of the environmental instrument, project construction, project operation, and project closure. The citizen participation plan is prepared and carried out by the company.

Once a mining company has its environmental certificate, it must apply to the DGM for a permit to explore or exploit. If the DGM's authorization for a project to explore or exploit a mine could directly or indirectly affect the collective rights of Indigenous or original peoples, pursuant to Law 29785 on the right to prior consultation of Indigenous or original peoples as recognized in Convention 169 of the International Labor Organization, the DGM must convoke the identified Indigenous or original peoples to a prior consultation.

Both mechanisms, citizen participation and prior consultation, are key instruments for community relationship-building and respect for the rights of affected Indigenous peoples. When applicable, they are carried out at different times in the processing of permits. Citizen participation mechanisms are implemented first, before the EIA, and while the EIA is being prepared and approved, so that later, if necessary, the prior consultation mechanism can be implemented. To harmonize these citizen participation mechanisms, an alternative that permits projects to conduct prior consultation for exploitation while the EIA is being processed, together with implementation of the PPC, could be considered. In addition to reducing time, incorporating all the socioenvironmental variables and populations involved into the processing of the environmental instrument would bring in the respective government agencies as key stakeholders directing the prior consultation and supporting citizen participation.

### **Mineral Transport - De Jure (3.20)**

In general, minerals are transported by means of trucks, trains, or slurry pipelines. Minerals being transported can include the mineral per se, concentrates, or cathodes. According to environmental law, all instances of mineral transportation need to be defined in the respective EIA with its social and environmental impacts and their mitigation and/or offset. The biggest challenge for the issue of mineral transport is defining how far the project's area of influence extends when the mineral's destination is several hundreds of kilometers from the mine, and how inclusive the citizen consultations should be with all the populations involved. This is not clearly defined in the environmental rules.

Some industry respondents noted that the road infrastructure for trucks is deficient. The technical agency responsible for roads is the Ministry of Transport and Communications (MTC). Something similar to the issue of land access happens in the case of a slurry pipeline. Authorization by the owner or purchase of the land over which the pipeline needs to pass is a transaction between private parties, lacking any regulation to limit or define what could potentially become an extremely burdensome transaction with no objective relationship to market prices and the capital costs of the project.

## Mineral Transport - De Facto (2.46)

The general shortage of infrastructure, especially roads and railroads, is unquestionably holding back the development of the country as well as the mining sector.<sup>19</sup> The main highway connecting the coast with the Peruvian central mountain range and reaching the so-called “forest ridge” (high forest region) is in urgent need of expansion. The country lacks sufficient connecting roads and the steady flow of truck traffic required by large projects leads to social conflicts. The development of some new large-scale projects (iron projects in the mountains, for example) is hindered by the lack of infrastructure, while projects in production such as Las Bambas require safe and efficient means of transportation of low environmental and social impact to ensure their continuity.

Slurry transport has been and continues to be a source of social conflict, as in the case of the Las Bambas project of the Chinese mining company MMG Ltda. The EIA of this project, submitted in 2011 by the previous project owner, included the transport of molybdenum and copper slurry by a slurry pipeline from Las Bambas, Apurímac, to Tintaya, Cusco, where it would be treated in a molybdenum separation plant and a filter plant owned by the previous project sponsor. After acquiring the project, MMG Ltda. submitted several changes to the EIA. The environmental authorization of these changes has been heavily questioned by the public, bringing social conflicts in its wake since 2016 with serious disruptions. Since then, the route has often been blockaded and trucks have been burned, keeping the operation vulnerable to protestors along the entire route.

In the country’s southern zone, trucks transport mine products from the Cusco Constancia and Antapaccay and Apurímac Las Bambas mines along a route of approximately 500 km., the so-called “southern road corridor”. Due to social unrest in the corridor’s area of influence, which has led to prolonged road blockades, the government has appointed a high commission - with the participation of all involved populations and companies - to find a definitive solution for safe transport of mine products. The government is evaluating road improvements to the current route and potential railroad and/or slurry pipeline alternatives.

## Artisanal and Small-Scale Mining (ASM) - De Jure (3.00)

The principle stated in the introductory title of the General Mining Law is that “the government protects and promotes artisanal and small-scale mining, as well as medium-scale mining, and promotes large-scale mining.” This shows that the government considers artisanal and small-scale mining of equal importance to other sectors of the mining industry, at least in its declaration. The importance of including ASM at the same level as other sectors in the General Mining Law is that mining laws and regulations must be aimed not only at promoting large-scale mining undertakings but also at recognizing the benefits of ASM for the country. On the whole, the rules and regulations for ASM scored very high, even though this activity has created a myriad of conflicts. Although the Peruvian legislation has provided ASM with less costly obligations and some simplified permits, the rest of its obligations are basically the same as for medium- and large-scale mining. Attractive small-scale projects have thus ended up in the hands of larger companies or been turned into informal projects when small-scale miners could not meet the required standards.

<sup>19</sup> Mining Competitiveness Indicator, IMP, 2019

The Law for Formalization and Promotion of Artisanal and Small-scale Mining, enacted in 2002, provided for simpler environmental permits and the possibility of signing an exploitation contract with a mining concessionaire on an area smaller than its concession. However, the exploitation contract created (and continues to create in the most recent rules) joint and several liability of the mine concessionaire and the miner in the process of formalization. Moreover, the exploitation contract did not have to be adapted to the quadrangle system prevailing in Peru's licensing system.

Various legislative measures were adopted after 2006 to encourage formalization of small-scale and artisanal mining. Several years later, Legislative Decree No. 1293 created the Comprehensive Mining Formalization Registry (REINFO) under MINEM's General Directorate of Mining Formalization. However, the formalization process has faced numerous setbacks, in part because of the lack of a more effective strategy to combat illegal mining. Even before 2006, the handling of ASM was already the responsibility of regional authorities. But the transfer of responsibility has not been accompanied by the required budgets, resulting in inadequate planning by the regional governments and DREMs for addressing the technical, logistic and budgetary shortages (Torres Cuzcano, 2015).

Furthermore, due to increased ASM activity and its ties to violence, organized crime and environmental degradation, in 2010 MINAM issued Emergency Decree No. 012-2010-DM, which declared mining regulation in the Madre de Dios department to be of national interest, suspended new mine claims, established new mining exclusion zones, and banned river dredging.

In 2012, the government decided to reinforce the formalization process and has ever since attempted to tackle the problem through different initiatives such as legislative decrees, interdiction of operations, and strengthening of the formalization process. Legislative Decree No. 1102 (2012) classified illegal mining as a criminal offence punishable by prison. At the same time, small-scale miners were given two years (to April 19, 2014) to register in a several-step formalization process that required the approval of various government institutions. The regularization deadline was extended to 2016, during which time informal miners could continue their activities. In addition, at expiry of the first formalization stage, however, only five cases had been approved. Given this reality, the government was forced to extend the deadline again (Faulkner 2019).

At the end of October 2016, Legislative Decree No. 1293 was enacted to create a speedier process of comprehensive mining formalization. At the end of 2019, the process was restructured by Law No. 31007, which provided for the continuation of the formalization process and the progressive compliance with environmental regulations until December 2021. MINEM has been working since 2019 with the congressional energy and mines committee on a new framework law for small-scale mining that seeks to comprehensively address the sector's problems and move away from the idea of a formalization deadline. The current regulation faces hurdles, however, such as in the definition of maximum production volumes. To compound the limitations of the formalization policy, informal mining has amassed strong territorial power and political importance.

In short, over the last decade the deadline which exceptionally permitted informal miners to start the formalization process and then regularize their situation has been repeatedly extended. In practice, any interested party can simply register in a concession area and continue its activity without much of any

obligation, with the expectation that deadlines will continue to be extended. According to the 2030 Mining Vision Group's proposal, mining formalization and elimination of illegal mining are included as goals for the preparation of a comprehensive plan. Along this same line, the sustainable mining development committee suggests measures such as improving available data on artisanal and small-scale miners, drafting a national multisectoral policy, revising the rules to set up reasonable incremental requirements, and verifying concession rules to prevent speculation through the accumulation of concessions.

### Artisanal and Small-Scale Mining (ASM) - De Facto (2.38)

Illegal small-scale miners extract minerals in areas where mining is prohibited. Informal miners, on the other hand, extract minerals without licenses in areas where mining is permitted and are eligible for formalization. In the Madre de Dios region, mining is permitted by Legislative Decree No. 1100 only in the so-called "mining corridor", which occupies about 5% of the region's territory. Some 64% of the mining activity, however, occurs outside the corridor.<sup>20</sup> Most other artisanal and small-scale miners are working on third-party concessions without contracts.

In Peru, an estimated 20% of gold production is concentrated in ASM, primarily in the Amazon region of Madre de Dios - where it is associated with deforestation and mercury pollution, as well as crime and violence - and in the mountain range and Peruvian southwest, such as in the Andean mining city of La Rinconada (Cardozo). On a smaller scale, there is also artisanal copper and coal mining production. Data on the exact number of persons involved is highly imprecise, but in 2014 ASM was estimated as providing direct employment for some 100,000 individuals (of which 15,000 were women) and indirect employment for some 500,000. Informality is estimated at around 80% in small-scale mining (Faulkner 2019). In practice, MINEM has focused its efforts on formalization and transferred its formalization mandate to the regional governments. As of May 2020, MINEM's General Directorate of Mining Formalization had encouraged the formalization by regional governments of slightly more than 8,000 miners out of a total of some 60,000 (counting individuals regrouped in mining cooperatives) in a process that should conclude by December 2021.<sup>21</sup>

Most large-scale companies feel the constant extension of the formalization process is creating an incentive for miners to invade more concessions, since in practice informal miners occupy new areas and request their formalization, thus pressuring the government to postpone the final deadline indefinitely. On the other hand, the fight against illegal mining is now led by the Ministry of the Interior with the support of different entities, including MINEM, but the leading role is shared with the PCM and MINAM, with SUNAT participation. Despite efforts at interinstitutional coordination, the main approach is still reactive: interdiction. A gaping hole exists in data production and integration and no clear traceability policy exists.

Some regional government officers see access to the mining concession contract as the main bottleneck for ASM formalization. By not requiring obligations for obtaining concessions, the Mining Law makes it easier for speculators to lodge claims in areas of informal vein exploitation by artisanal and small-scale

<sup>20</sup> Madre de Dios already has 120 formalized miners and a total of 5,343 miners in the formalization pipeline. See MINEM: "No 'pateamos' la formalización minera para el siguiente Gobierno," interview with Lenin Valencia, SPDS Actualidad Ambiental / Monday, November 11, 2019, <https://www.actualidadambiental.pe/minem-no-pateamos-la-formalizacion-minera-para-el-siguiente-gobierno/>

<sup>21</sup> Comprehensive Mining Formalization Registry, MINEM.

miners who are not able to meet formalization costs. In possession of a legal license, the concessionaires can impose the rules of the game on informal miners. Consequently, most conflicts are not with large-scale mining but rather with small-scale mining concessionaires. The responsibility for granting beneficiation permits falls on the regional governments, which do not always report the results of the activity to MINEM. Consequently, no national registry exists of beneficiation plant owners and only recently is a centralized marketing registry being prepared.

Several respondents also mentioned that the DREMs' inadequate oversight of occupational health and safety in ASM is the result of the shortage of human and material resources available to the regional governments for exercising this competency.

### **Occupational Health and Safety - De Jure (4.00)**

Respondents have not identified any serious challenges with regard to the rules. The main piece of legislation is the Occupational Health and Safety Regulation, and the agencies charged with its oversight are OSINERGMIN and SUNAFIL for medium- and large-scale mining and the regional governments for ASM.

Provisions were included in the TUO of the General Mining Law to regulate health and safety in mining operations, including obligations to provide housing, health, and even educational facilities for the families of mine workers. The law's core goal has always been to prevent accidents and reduce their frequency and severity. The rules have also changed over time, becoming more and more demanding. The first occupational health and safety regulation was approved by Supreme Decree No. 023-92-EM of 1996. Later, in 2001, a new regulation was approved by Supreme Decree No. 046-2001-EM. This was followed by Supreme Decree No. 055-2010-EM, and, finally, Supreme Decree No. 024-2016-EM, which is currently in effect.

From the start, safety rules have included extensively detailed technical and practical measures and obligations to ensure the health and safety of workers and contractors. However, the 2001 law provides a more strategic view of safety, placing greater emphasis on the obligation of companies to have a safety committee, program, and policy. By 2010, the law called to the incorporation of a culture of prevention in addition to specifying the obligations and responsibilities applicable to specific activities such as the storage of slurry, among other things. Finally, the current law is much more detailed and precise, with strong emphasis on prevention and training. Furthermore, it incorporates and concurs with general national occupational health and safety rules, including the role of SUNAFIL.

### **Occupational Health and Safety - De Facto (3.24)**

Statistics are very useful for defining and applying a national occupational health and safety policy. Taking fatal accidents from 2007 to 2019 as an indicator, the behavior of medium- and large-scale mining has improved, with fatal accidents falling from a 55 to 23.<sup>22</sup> There is no certainty, however, that accidents in ASM are included in the national statistics for the sector. Some respondents from the three groups of stakeholders mentioned that the mining statistics of regional governments are not sufficiently reliable.

<sup>22</sup> [www.osinergmin.gob.pe](http://www.osinergmin.gob.pe)

The respondents noted, nonetheless, that having two public agencies, OSINERGMIN and SUNAFIL, overseeing the same regulation leads to a potential lack of clarity as to the functions of each agency. Consequently, certain areas may not be supervised, and there might be overlaps in other areas. Uncertainty is also created for inspected companies in the sense that they are not sure which agency they should answer to in the event of a potential noncompliance. The supervising authorities are becoming aware of this, since according to their information SUNAFIL and OSINERGMIN have recently been working on an agreement concerning which regulations each agency should oversee to reduce gaps or duplication.

In the different stages of mining project approval for environmental and sectoral permits, neither agency reviews and assesses the projects ex ante from the safety standpoint; projects are only reviewed ex post to see if they comply with regulations. OSINERGMIN does not participate in evaluations, since its duties begin when projects start operations and the DGM is not responsible for making sure projects are built according to regulation. The DGM has not developed any mine safety guidelines, either, for companies tackling their project design.

### **Mine Closure and Financial Sureties for Decommissioning - De Jure (3.47)**

The 2003 Mine Closure Law and its 2005 regulation (amended in 2019) regulate the obligation to prepare and obtain approval for a mine closure plan and present sureties to insure it. This obligation is enforceable for all exploitation and beneficiation projects and licensees of more intensive exploration projects. Regulations include: “the detail regarding the sureties; the process for estimation of liability and its review; the closure plan and its periodic updating; expectations for concurrent rehabilitation and its treatment vis-à-vis the sureties; post-closure monitoring requirements including timelines and provision in the surety; it does not include cumulative impact assessment over the life of mine; and possibly even specific technical guidance on special topics (i.e. water management, mine tailings management, safety of pits, shafts, etc.)”. Mine concessionaires must also include conceptual or feasibility closure measures in their environmental management instruments.

The authority that evaluates and approves the feasibility of mine closure plans (MCP) is MINEM’s General Directorate of Mining Environmental Affairs. The MCP is understood as being complementary to the EIA, so if the EIA is changed, the MCP must also be changed. The Plan should contain the closure measures established by law for the operational, definitive closure, and post-closure stages. It must also contain the cost of closure and post-closure in order to establish the sureties and implementation plan. MCPs must be updated every five years.

The MCP must be submitted to the authority within one year from approval of the environmental impact assessment and/or environmental remediation and management program (PAMA). Plans must be published in the official journal and a daily newspaper of the regional capital where the mine project will be implemented. In addition, the mine operator must send a copy to the local authorities. Individuals may submit comments on closure plans to the authority, but there are fewer participation requirements for MCPs than for EIAs. Title II of the Regulation to the Mine Closure Law establishes special conditions for ASM, for which MCPs are required. Regional authorities assess, control, and define the surety modality for this mining segment.

The surety required of the mining project concessionaire is annual and calculated according to the total MCP cost, from which the amount of the plan's progressive closure is subtracted. The result is divided by the project's remaining number of years of useful life. The surety must be established within the first 20 business days from notification of the mining project concessionaire of the construction permit or authorization for start of activities. The progressive closure measures are not subject to sureties, unless it is verified that they are not being complied with as approved in the MCP (Article 48 of the mine closure regulation). Thus, if a mine is abandoned, the established surety would not cover the progressive closures.

The types of surety are as follows: bank letter of guarantee or other equivalent mechanism; insurance policy; trust (movable goods and real estate); and third-party solidarity deposit. In addition to these, MINEM may expand the established types of surety by means of ministerial resolution. Recently, however, certain cases have arisen that show that the surety system is insufficient. For example, there have been situations where mining operations were abandoned before the project's life cycle was concluded and others where the sureties have been insufficient to resolve the environmental problem. In fact, the report of the sustainable mining development committee recommends that the mine closure plan should also include a surety for progressive closure activities and that post-closure functions and surety determination and enforcement should be transferred to Activos Mineros.

In 2006, a regulation (Ministerial Resolution No. 515-2006.MEM-DM) was published to permit acceptance of a "forest investment" trust as surety for MCP compliance. The idea was to encourage investment in the forestry business, but so far this instrument has not been used very much. The benefit of using in another sector a surety intended for a mining project closure is not obvious, though it may be good for promoting sustainable development since closure costs may be higher at the time of closure when the government needs to execute the surety and it would not have enough funds for the closure in the event the concessionaire abandons the mine. Improper mine closures may have consequences that are quite significant environmentally as well as from the viewpoint of individual safety and industry reputation.

### **Mine Closure and Financial Sureties for Decommissioning - De Facto (2.81)**

Several respondents mostly from industry felt that there was a lack of clarity as to how specific the closure plan had to be. They questioned whether the current mine closure sureties required from the project concessionaire, established by law in favor of the government, provided sufficient funds for proper mine closure and post-closure, from the standpoint of physical and chemical stability. In fact, the law permits deducting of the progressive closure cost from the closure cost, so if a mining project concessionaire abandons the mine before carrying out a progressive closure the government will not have enough funds to carry out that closure.

It was noted that there is no regulation or detailed guide for calculating closure costs and determining the surety. Moreover, some civil society respondents emphasized that it is not clear how the authority reviews and verifies the accuracy, justification, or support documents (invoices, contracts, quotations, etc.) of the mine closure costs submitted by a company. The law states that real estate property can be

included as surety for the closure; in practice this might leave the government with real estate property that cannot be sold later or can only be sold at a lower price than established as surety, as in the case of the La Oroya complex, where the government has not been able to sell a plant put up as closure surety.<sup>23</sup>

In addition, large-scale mining projects generally have a long lifespan of 20 or 25 or more years. Dividing the cost of the MCP by the remaining lifespan (years) of a mining project and establishing the annual surety on this basis could thus lead to a situation where the mining project concessionaire abandons the mine long before the end of the project's lifespan. The project might have been operating at full capacity, however. The result would be that the closure cost of the facilities (plants, workshops, warehouses, power lines, etc.) at the time of the abandonment might be the same as the cost at the end of their lifespan and very close to the cost of closing the mine at the end of the project, so the surety provided up to the time of abandonment would not be enough for proper mine closure.

The respondents from industry also noted a lack of coordination between the environmental authority and the sectoral authority for reviewing, evaluating and approving mine closure plans. When a mining project concessionaire submits its MCP within the EIA, the environmental authority does not necessarily consult the DGAAM or DGM, although the DGAAM must later analyze and evaluate the MCP in detail. There may therefore be inconsistencies in the closure plans submitted to the environmental and mining authorities.

The information on the approved closure plan surety amounts is not public. This does not help build public trust as to whether the sureties currently provided by the companies are sufficient for covering closure costs if a company abandons a project before its estimated closure date.

### Room for Improvement in "Mining Operations"

- Transparency and accountability, access to information, and quality improvement of citizen participation processes and systems are still insufficient.
- The government agencies involved in mining policy implementation, certifications, permits, and oversight of mining activities lack sufficient credibility and public confidence. This means the environmental assessments of the projects and their decisions lack public and community backing and respect. The public perception of the regulators' independence from project concessionaires has not been sufficiently nurtured, and this is not the way to build public confidence. This is especially important in the case of MINEM and of the DGM as the state agency specializing in promoting and monitoring mining activities.
- There is a worrisome systematic delay in the environmental certification of mining exploration and exploitation projects by the environmental certification system and the authorities responsible for exploration, exploitation and beneficiation permits. An in-depth solution has not been found for the economic harm posed to the Peruvian economy by the delay in mining investment.
- Environmental assessment for mining environmental certification of semi-detailed EIAs has not been fully transferred from DGAAM to SENACE so that it can fully assume environmental competency for them.

<sup>23</sup> Mining Press 08/21/2020, "Chappuis: MEN y las garantías para el cierre de minas."

- Most of the agencies responsible for environmental certifications and permits have not reinforced their specialization and human resources needed for efficient environmental evaluation of highly complex mining projects.
- SENACE does not include the technical opinions of specialized agencies such as the DGM, OSINERGMIN, and DGAAM in its evaluation.
- The mechanisms that contribute to ensuring the rights of communities affected by mining projects, such as citizen participation and prior consultation, often emphasize procedural aspects more than substantive citizen participation in the environmental processing of the projects.
- There is no systematic evaluation by the government of how prior consultations, citizen participation, and the legally mandated dissemination are carried out or of the satisfaction or inclusion produced by them.
- In many cases, communities only get executive summaries and presentations of benefits and are not given the entire background of the projects. Public agencies should be the source of better information for the public.
- When citizen participation activities are conducted in areas inhabited by indigenous people, there is not always an assurance of translation into the community language so that all area of influence inhabitants have information for forming an opinion on the project.
- The public EIA processing services do not actively participate in explaining the potential benefits, weaknesses, and risks of projects. They do not disclose all the information the public needs or include their comments or agreements in the public information.
- Although there are already detailed guidelines and regulations for mine closure, there is a gap related to covering and assuring closure that must be conducted during the operations. In addition, cumulative impact assessment over the life of mine and provision in the surety for post-closing need to be included in the regulations.
- MINEM lacks certainty that the sureties to cover mine closure and post-closure costs, which are extremely high in medium- and large-scale mining, are enough for proper closure without having to dig into public funds.
- Not all accepted surety modalities are easily executed instruments that will cover the insured amount.
- The DGM lacks its own cost estimation methodology based on real industry costs so that it can check and verify the closure costs submitted by companies.
- The ASM formalization mechanism suffers from a serious shortcoming with regard to access to mining licenses or lease possibilities so that these miners can seek formalization, thus keeping them continuously informal or in process of formalization.

- With respect to mining safety and occupational health, the existence of two public agencies charged with overseeing mining safety regulations could lead to duplication of efforts and confusion on the part of companies regarding their respective mandates.
- Insufficient mining environmental and health and safety oversight by the supervisory agencies has been evident in ASM and the necessary mining information is lacking in this segment for consolidating it with the rest of the sector mining information.
- The methodology for compiling accident statistics does not ensure trustworthy and reliable data for designing and implementing continuous occupational health and safety improvements in mining. The government should be collecting the total recordable injury frequency rate (TRIFR); this measures the rate of lost time injuries, which is normally a leading indicator for fatalities.

## V.3 TAXATION

The performance of the third extractive industries value chain component, “Taxation”, shows that all indicators scored high, while “Mining Tax Administration Rules” scored very high (3.44) and rules as a whole scored higher (3.26) than their implementation in practice (2.73).

Figure 13: Value Chain Stage 3 - Indicators

<b>De Jure Performance (3.24)</b>	Tax Policy and Instruments (3.04)
	Mining Tax Administration Rules (3.44)
<b>De Facto Performance (2.71)</b>	Mining Tax Administration (2.50)
	Mining Tax Auditing (2.92)

### Tax Policy and Instruments - De Jure (3.04)<sup>24</sup>

The Peruvian legal framework clearly defines the tax regime applicable to the mining sector and establishes the necessary stability rules to prevent changes in the legal terms and conditions of investors during a project’s life cycle. According to the Peruvian constitution, taxes can only be created, changed, or revoked by laws passed by Congress or by legislative decree (in a delegation of powers to the executive branch), with the exception of customs duties and certain public fees governed by supreme decree. Regional and local authorities can create, change and revoke public fees within their own respective jurisdictions, keeping in mind their legally established limits of power.

The law ensures legal stability of income tax regulations and dividend distribution to investors willing to invest at least US \$10 million in mining in a two-year period. The benefits of stability agreements are limited to the investment specified in the feasibility study used as a basis for signing the stability agreement. In addition, mining concessionaires may enter into investment promotion contracts

<sup>24</sup> State companies do not participate in the mining sector, so the questions concerning this matter were excluded in the review.

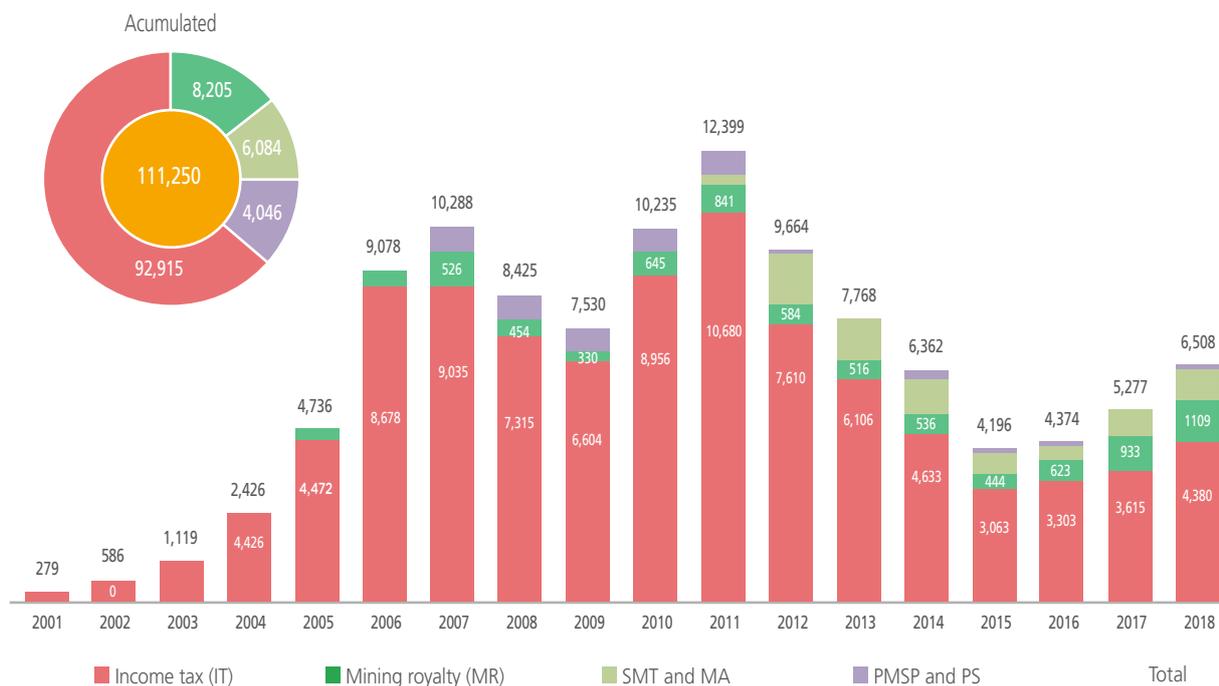
with MINEM to stabilize administrative, tax and exchange regimes in effect at the time of signing. Companies that sign 15-year stability agreements can include later investments of at least US \$25 million, provided such investments are preapproved by MINEM (EY 2019). During President Alan García's administration, in December 2006, a five-year voluntary contribution agreement called the "Mining Program in Solidarity with the People" was established in exchange for government refraining to introduce a planned tax on excess profits. This contribution would serve to finance social investment projects in the companies' areas of influence by private trusts controlled by them, in exchange for exemption from paying royalties and taxes on windfall profits.

During President Ollanta Humala's term, new negotiations with the mining industry resulted in the approval in September 2011 of three new laws amending the sector's tax regime: (i) the amended mining royalties law ("New Mining Royalties"); (ii) the special mining tax; and (iii) the special mining levy. These laws define a tax burden for the mining sector that tends to be more progressive than the old regime, since the government's share is greater, in percentage terms, in large, profitable mines than in small, marginal deposits. In general, the coverage of tax stability agreements has been respected.

MEF is responsible for tax policy and SUNAT is consulted when tax rules and policies are introduced. The following are the main taxes (not exclusively related to mining) established by Peruvian law: (i) income tax; (ii) dividend tax; (iii) modified mining royalties; (iv) special mining tax; (v) special mining levy; (vi) temporary net asset tax (ITAN); (vii) value-added tax; (viii) complementary mining pension fund; (ix) municipal taxes; and (x) other obligations.

The mining sector's tax revenue as a share of the GDP is greater than that of other sectors, reaching on average 8.3% of all tax revenue collected by the government. Income tax still accounts for most mining tax revenue generated in Peru. In 2018, 86.7% of all the sector revenues came from business income tax revenue (Figure 14). Mining's share of the income tax collected in the country was at 11.4% in 2017 (it had peaked in 2007 at 50.9%).

Figure 14: Revenue by Type of Payment (Millions of New Soles)



Source: MEF, SUNAT, Companies / GEM: Special Mining Levy

An additional issue that has sparked attention in recent years is the evolution of the country’s tax returns. At the end of 2018, the mining sector’s tax contribution plus royalties had risen to S/ 11,170 million, while returns were at S/ 3,770 million.

In Peru, most returns (almost 60%) are reimbursement for the IGV on purchases paid for by exporters of goods and services. This measure applies to all economic sectors, not just mining in particular. Returns have been rising in recent years and the mining sector is the main beneficiary with 30% of the total. This reflects the impact of mining megaprojects such as Las Bambas and the Cerro Verde expansion, which have generated significant tax credits in proportion to the scale of their investment.

**Infrastructure Investment.** The tax system includes provisions for granting income tax credits so that companies can recover their spending on public use infrastructure such as ports, airports, power plants, schools, hospitals, roads, or recreational facilities. Costs can be charged as they are incurred, provided they are approved by the competent sector authority (the Ministry of Transport and Communications) after meeting specific requirements.

**Corporate Social Responsibility (CSR) Expenses.** When CSR spending is on public infrastructure (such as schools, roads, or hospitals), the mining law grants a deduction subject to compliance with specific requirements and government approval. No specific provisions exist in Peru’s tax system granting deductions for other CSR expenses. The tax authorities generally treat CSR expenses as non-deductible donations or charitable contributions. In order to be deductible, CSR expenses should derive from a contractual or legal obligation, such as compliance with obligations under the legally required environmental impact assessment (EY 2019).

**Import Duties.** Mining companies are not exempt from import duties but may benefit from temporary import privileges that are subject to different duties. In addition, customs law permits temporary importation for 18 months of certain capital goods (such as machinery and equipment, for example) without payment of customs duties and import tax.

**Works for Taxes.** A mechanism has been created called Works for Taxes (“Obras por Impuestos”, or OXI), whereby private companies may execute public works and offset the costs against future tax payments under rules and conditions approved by government. This mechanism is now becoming another important tool for companies’ relationship-building with local communities, districts, and regions within the framework of their corporate social responsibility activities.

According to ProInversión, in 2017 OXI investment commitments had reached 899 million new soles, falling in 2018 to 482 million. OXI investment commitment distribution by sector in 2018 was as follows: Transportation - 43%; Sanitation - 24%; Education / Health - 36%; Commerce / Recreation - 4%; Safety - 7%; and Telecom / Culture / Irrigation / Other - 9%. The top 20 companies with the most investment through the Works for Taxes mechanism include ten mining companies with a total investment of US \$2,139 million over the last decade.

### Mining Tax Administration - De Jure (3.44)

One of the mining sector’s biggest contribution to the budget is the mining companies’ tax obligations. The government, for its part, must ensure that the competent agencies have sufficient administrative and auditing capacity, respecting accounting practices and accountability as well as internationally accepted transparency practices. SUNAT is the only specialized agency authorized to collect taxes. SUNAT was one of the first agencies to be reformed during the 90s for the purpose of collecting the necessary capital for public spending, for which it was provided the necessary resources and systems.

No special conditions or incentives of any kind are negotiated with companies in Peru. The main mining tax administration rules are mentioned below:

**Ring Fencing.** For income tax purposes, the accounts of different mining projects owned by the same company can be consolidated. One project or concession’s losses may be offset by the profits of another project or concession. There is therefore no ring fencing among projects or concessions, only between companies, even when the companies belong to the same group. Stability agreements are drawn up project by project, so different projects within the same company may be subject to different tax regimes (EY 2019).

**Loss Carryover.** For tax purposes, taxpayers can choose between one of two systems: (i) carry forward losses incurred in a year and offset them with profits earned over the next four years; or (ii) carry forward losses indefinitely but only to offset 50% of the net income obtained during each fiscal year. If the taxpayer does not choose a particular system, the Tax Administration applies automatically the first system.

**Transfer Pricing.** Peru has adopted transfer pricing rules based largely on OECD guidelines.

Undercapitalization. The amount of interest paid to related or unrelated parties in excess of a coefficient (capital debt index) equivalent to three times the company's net capital (3:1) at the end of the previous year is not deductible. On January 1, 2021, however, a new set of thin capitalization rules will take effect. Under these rules, interest in excess of 30% of the previous year's EBITDA will not be deductible. Undeducted interest may be transferred for up to four years but will always be subject to the 30% EBITDA limit (EY 2019).

**Fair Market Value Rule.** Despite what has been agreed between parties, sales and other transfers of property, as well as services rendered, will always be deemed made at their corresponding fair market value. For transactions between related parties and residents of tax havens, the respective fair market value will be deemed equal to the price that would have been agreed between independent parties in comparable transactions under identical or similar conditions. The sales agreement terms for metal in concentrate permits a price adjustment based on the end results of the contained metal assay by the customer to determine the final content. These are known as provisional price arrangements (advance agreements).

**The consolidated annual statement** (DAC) is treated as a sworn declaration and the data it contains must be truthful and reflect reality, with the concessionaire taking full responsibility for the truthfulness and accuracy of the declared information.

Mining companies must implement an anti-money laundering and counter-terrorism financing system, which entails, among other requirements, appointing a compliance officer, establishing a record of operations, and obligatory notifying of the Financial Intelligence Unit in accordance with Law 27693 and Supreme Decree No. 018-2006-JUS, revoked by Supreme Decree No. 020-2017, as periodically amended. To this respect, the Financial Intelligence Unit, an agency of the Superintendence of Banking, Insurance, and Pension Funds, is the designated authority for supervising and enforcing these rules.

### **Mining Tax Administration - De Facto (2.50)**

In practice, mining taxation is administered by the provisions of the general tax code and the mining law. However, SUNAT considers the definitions of the General Mining Law to be extremely general and out of sync with the sector's reality, leading to many demands for consultation due to outdated concepts. One example is the expense deduction of mining royalties, a difficult concept to interpret.

Based on an international comparison of the mining tax burden, the industry feels the country is below the regional average (42-52% of operating profit). The tax regime is initially regressive (minimum royalty of 1% of sales), but starting at 30% profitability it becomes slightly progressive. This is attractive for the companies. According to the industry, the tax burden is not a disincentive; the problem is the frequent changes in the regime made without consultation. No rules or guidelines exist for the mining sector except consultations made by the companies for specific measures.

The progress made on transparent collection and payment of taxes and royalties, as well as publication and accessibility of stability and investment agreements, constitutes a significant achievement for the mining sector. SUNAT has the necessary resources for carrying out its work and has acquired more experience in recent years. Although it does not have a specialized extractive industries department, it does have one for large taxpayers, which include mining companies. In addition, SUNAT has a team dedicated to transfer pricing and has doubled the number of auditors in this area. The provisions apply to the price-setting rules for regular transactions between domestic and international related parties based on sworn declarations.

The industry feels that the Works for Taxes (OxI) instrument is positive, though it is not as effective as it could be. Some companies see continued uncertainty in the project pre-prioritization process, the bidding and subsequent awarding of projects. An investment project databank exists in the MEF's *Invierte Perú* (former National Public Investment System, or SNIP) with data sheets and investment needs. The data sheets do not always have the necessary quality, however, and it is difficult to add new projects to the database. The industry feels that the approval process is very slow and may take up to two years. Certification of completed works is complicated, and maintenance of the works is also challenging. This complicates project sustainability, so a secondary market has developed for resale of titles of certification.

Coordination of priorities between the companies and the regions is all but smooth. There are no agreed long-term territorial development plans that transcend the different government authorities and facilitate the entry of new projects. Some mayors are also pressing for a direct contribution to public works rather than a contribution in exchange for future tax payments. The mechanism needs a simplified process to facilitate the relaunching of the post-pandemic economy.

Moreover, taxable income deductions for public infrastructure investments are not seen by the industry as being applicable to the current reality, because many agencies lack the administrative procedures for making sure the investments are reviewed and approved as established by Article 72 (d) and (e) of Supreme Decree No. 014-92-EM.

Actions taken to counter illegal mining made it possible for SUNAT to intervene in June 2013, when it began registering companies working with chemical inputs in order to detect the informal companies that are supplying illegal miners and drug dealers. Beginning in March 2014, single registration of mercury and cyanide users began and oversight of fuel and chemical input commercialization was intensified. In addition, the government announced new customs requirements and pre-accreditation for gold exports (Torres Cuzcano 2015). SUNAT manages the unified taxpayer registry (RUC) but views data interoperability as being somewhat incipient. For example, SUNAT lacks formal relations with customs and a smooth data exchange. A laboratory exists to analyze the quality of mineral concentrate exports, but it does not coordinate its tasks with the DGM.

## Mining Tax Auditing - De Facto (2.92)

There is frequent auditing of large mining companies. Companies are selected for auditing on the basis of risk, share of the economy, and other criteria (reserved). Inspection programs are a major part of the audits. SUNAT has a specialized team, but its staff is limited.

The scope of protection granted by stability agreements and other incentives is currently under debate. For instance, SUNAT has interpreted tax stability agreements as exclusively covering activities related to investments that were submitted and approved through the feasibility study but not any future extensions that are made. Although there are just few stabilization agreements currently in place, given these circumstances, some companies have taken their cases to the courts.

In addition, some industry representatives believe that the 2014 tax reform has led to much confusion and uncertainty as well as frequent litigation between SUNAT and mining companies. Disagreements between taxpayers and the tax authority are first resolved through administrative procedures (complaints) within the tax authority itself. The administrative resolution may be challenged. Companies have reported losing 80% of the cases but they can challenge the procedure in tax court (controlled by the MEF, which is not sufficiently independent since many of the officials come from SUNAT). If the decision is negative, the company must pay the debt before going on to the second stage, the judicial remedy. Some 25% go on to ordinary courts and the process may take years. The fines are fairly steep and lead to many contentious-administrative proceedings.

## Room for Improvement in "Taxation"

- SUNAT's tax administration system needs improvement, particularly with regard to the review of value chains for sales tax returns.
- There are differences of interpretation due to the lack of clarity of some tax provisions of the General Mining Law and these ambiguities that can lead to disputes between SUNAT and the companies.
- Anti-circumvention measures and review systems for preventing potential undervaluation practices in the shipping of mineral concentrates could be reinforced.
- According to the industry, the tax burden is not a disincentive; the problem is frequent changes without dialogue with the private sector.
- No tax or non-tax guidelines exist for the mining sector except institutional consultations made by the companies for specific transactions.
- Data interoperability between the different agencies involved in the combat of illegal mining, including MINEM, PCM, MINAM, the Ministry of the Interior, and regional governments, could be improved.
- There are information gaps in the combat against illegal mining and there is no clear traceability policy.

- The rules and procedures for certification of investments in the Works for Taxes mechanism are imprecise and do not help speed up approval times, reduce conflicts, or improve decision-making transparency.
- The management cost of Works for Taxes is high and company expenses for implementing projects are not recognized.

## V.4 REVENUE DISTRIBUTION AND MANAGEMENT

The performance is very uneven in this stage of the value chain (“Revenue Distribution and Management”) with one exceptional score for “Legislation, Policy and Regulation” (4.00) and a low score for “Institutional Capacity and Effectiveness” in the practical implementation of the rules (2.40). With regard to de jure performance the score is very high for revenue-sharing arrangements (4.00) and tax stabilization rules (4.00), while for de facto performance tax stabilization (2.13) and especially sectoral revenue distribution (2.06) have room for improvement. In the aggregate table, the implementation gap between rules and practice in mining revenue distribution and management is quite wide.

Figure 15: Value Chain Stage 4 - Indicators

<b>De Jure Performance (4.00)</b>	Revenue Sharing Rules (4.00)
	Fiscal Stabilization Rules (4.00)
<b>De Facto Performance (2.40)</b>	Revenue Sharing Arrangements (2.06)
	Fiscal Stabilization (2.13)
	Resource Revenue Transparency (3.00)

### Revenue Sharing Rules - De Jure (4.00)

Mining revenue sharing in Peru is the result of a combination of three policies: a mining sector policy that prioritizes investment attraction, a macroeconomic policy that has been highly successful in controlling public finance management, and a decentralization policy whose agenda is still not finished. This is one of the issues most commonly criticized by interview respondents, since large amounts of funds are transferred to local governments but there is no evidence the funds are being used adequately. In fact, a major part of those funds is not executed in the corresponding budget cycle.

The central government imposed strong fiduciary requirements for spending and strict administrative controls through the SNIP (now Invierte Peru). Central government approval is required for regional expenses above a low threshold. A participatory budget law has also been approved for the districts that requires local authorities, elected every four years, to consult every year with their constituents and civil society on budget planning. These constraints have improved fiscal responsibility and helped reduce corruption, but many municipal governments have often been unable to spend their allocated

budget. To this respect, the Committee for Sustainable Mining Development recognizes that current government revenue distribution and use is weak and that the benefit-sharing system is considered unfair by communities, leading to gaps between those who receive transfers and those who do not.

Starting in 2004, the law has concentrated transfers even more in the local jurisdictions where natural resources were extracted. The central government is now estimated to transfer some 60% of mining revenue through three instruments: (i) the mining canon - 50% of the income tax is shared by this means with the regional and local governments of the territories where these resources are extracted, according to the percentages and rules set by law; (ii) 100% royalties; and (iii) 100% validity fees. Some 95% of mining canon revenue and royalties is transferred to the local governments in the producing regions according to their production levels. The remaining 5% is allocated to public universities within the producing regions. The allocation system creates enormous differences in mining revenue transfers to regional and local governments of producing versus non-producing regions. Although huge amounts of revenue have been transferred, the inequalities caused by increased revenue during the mining boom compounded the number of conflicts in the regions that receive large transfers (NRGI, 2020a).

In 2019, transfers through the three instruments totaled 4,644 million soles (95% of the total transferred in 2018). These were distributed as follows: (i) mining canon: 2,898 million soles; (ii) mining royalties: 1,516 million soles; and (iii) annual validity fees and penalties: 230 million soles.

The evolution of the legislation has focused primarily on establishing controls for the use of resources rather than on redefining their beneficiaries. Direct benefits have been proposed for several years for the communities in the mining project areas, including not only the mineral extraction area but also the zones where infrastructure may be needed for both the project and transportation of its mineral production.

The report of the Committee for Sustainable Mining Development proposes working progressively towards a scheme for reducing the amount of income tax that returns to the producing region. Where spending is concerned, it concedes that revenue transfers for the effective reduction of social gaps in the areas of influence of future mining projects may be relevant, provided this criteria for resource allocation is prioritized over the proximity to the mining project.

It also proposes that the three government levels should assume responsibility for preparing development plans in the areas of influence of mining projects, while the central government should carry out a diagnostic of social inequalities in these areas and prepare an integrated territorial development plan with the participation of the subnational governments. Finally, it proposes that the sharing of mining revenues with universities should be replaced with a competitive fund managed by CONCYTEC.

### **Revenue Sharing Rules - De Facto (2.06)**

Execution of the revenue transferred to the regions is an extremely weak link in Peru's mining value chain. There are no public evaluations of the effectiveness of said sharing mechanisms although it is obvious that starting in 2004 the strong impact of these funds during the metal price boom has revitalized regional and municipal public spending. It has also led to vulnerability, though, in the producing regions that lack mitigating mechanisms to cope with eventual price drops (such as stabilization or savings funds).

The legislation does not provide any mechanism for saving regional and municipal surpluses during high commodity price years. However, the MEF has been advancing mining canon funds to the regional and local governments, although several cases of corruption, mismanagement, and unplanned spending have been reported (Cooper 2019). The communities, municipalities, provinces, and departments also need greater certainty and transparency regarding tax and royalty revenue and disbursement, as well as better strategic planning and coordination among the different government levels.

The industry is greatly concerned by the way mining canon funds are managed and views the oversight capacity of the government (comptroller's office and public prosecutor's office) as having been inadequate. Nevertheless, not all the mining canon has been wasted. The debate over mining canon-sharing reforms is therefore on the public agenda. Government and industry agree that changing the rules for sharing mining revenues is a political exercise that will require time. However, any reform must necessarily be accompanied by capacity building of regional and local governments for identifying good investments and managing and implementing public works.

In response to the pandemic, in June 2020 the congressional economic committee approved extraordinary temporary powers for regional governments to use up to 15% of their mining canon revenue for regional health plans to address and contain the COVID-19 virus. In addition, they may use up to 10% of mining tax revenue to finance and reinforce agricultural and educational plans. To take effect, the decision must still be debated in the congressional plenary session, which will decide whether or not to approve it.

### **Fiscal Stabilization Rules - De Jure (4.00)**

The Fiscal Stabilization Fund (FEF) was created in 1999 by the Fiscal Prudence and Transparency Law in the context of Peru's first macro-fiscal framework. The goal of the FEF is to accumulate funds during economic booms that can be used in periods of recession or emergency (such as natural disasters). The idea is to provide fiscal accounts with a reserve cushion for adverse economic cycles.

The FEF comes under the MEF and is administered by a directorate composed of three members: the minister of economy and finance, the president of the Central Reserve Bank of Peru, and a representative appointed by the Presidency of the Council of Ministers. Surpluses from the general budget fund the FEF, and revenues from the extractive industries have contributed significantly to budgetary surpluses in the last two decades.

FEF inflows, specified in Article 12 of Law No. 30099, come from the following four sources: (i) the available budgetary balance in the public treasury at the end of each fiscal year obtained as income from ordinary resources, if positive, provided the savings of the stabilization fund do not exceed 4% of the GDP; (ii) 10% of net income from each sale of assets for privatization; (iii) 10% of down payments on state concessions; and (iv) other resources expressly authorized by law.<sup>25</sup>

<sup>25</sup> During 2015, US \$3.15 million were transferred from concessions (Machu Picchu Hotel, Toromocho mining project, Chincas special project, Las Bambas mining project, Michiquillay mining project, La Granja mining project, and Salmueras mining project).

The FEF may only be used according to the following criteria: (i) when the exception clauses of the macro-fiscal rules are activated, which occurs in cases of disasters or significant external shocks affecting tax revenue, or when the economy needs boosting due to a decline in economic activity due to exogenous factors; (ii) all FEF resources from new privatizations and concessions must be allocated to the Public Services and Public Infrastructure Fund, provided accumulated FEF savings are greater than 4% of the GDP; (iii) accumulated FEF savings exceeding 4% of the GDP may be used to reduce gross public debt, if this debt temporarily exceeds 30% of the GDP; and (iv) interest income may be freely used by the public treasury.

### **Fiscal Stabilization Rules - De Facto (2.13)**

The Peruvian tax system depends on few taxes and the tax burden is generally low (14-16%) compared to other countries in the region and especially to OECD countries. In recent years, the greatest amount of tax revenues was generated by general sales tax (IGV) and business income tax. Public revenue is also very sensitive to the business cycle of metals. Revenue correlates highly with the terms of trade, showing the importance of the mining sector in tax income (Cooper 2019).

From its creation in 1999 until 2014, the FEF grew steadily in terms of both balance and percentage of GDP, increasing from US \$100 million (0.2% of the GDP) to US \$9,159 million (4.5% of the GDP). First in 2015 and again in 2017, the government used transfers from the FEF when tax revenue declined and natural disasters occurred. At the same time, the deteriorating economy after 2014 has kept the fund from continuing to grow. At the end of 2019, the fund's balance was US \$5.4 billion.

Despite the FEF's strong reserves, savings made during the price boom appear insufficient for responding to the coronavirus crisis. In May 2020, the MEF affirmed the government's estimated need of US\$16 billion to combat the economic impact of COVID-19, so the fund's US\$5.1 billion will not be enough.

### **Resource Revenue Transparency (3.00)**

Dissemination of information on mining projects is essential for preventing their potential impact on social conflicts. It is important for the government to ensure transparent management and sharing of revenue from the extractive sector. Otherwise, the corruption and economic inequalities seen in some regions could be aggravated.

Access to information in Peru is guaranteed by the Law on Transparency and Access to Public Information. In addition, Peru is an active member of the Extractive Industries Transparency Initiative (EITI), the global standard for good governance of oil, gas, and minerals. Due to the pandemic, EITI has again extended the deadline for Peru to submit its seventh report to the end of December 2020 (the last report was submitted in February 2018). The country plans to submit a conventional EITI report, but in 2021 it could shift to shorter, more flexible reports using new tools (automatic platforms, DATAMART, "Peru País Minero", and the Mapa de Inversiones, which has some capacity for tracking mining canon spending). In recent months, the government has confirmed its commitment to the EITI. This has been reflected in better coordination by the OGGS.

Within the framework of innovation and strengthening of the EITI process, Peru is currently developing a subnational program in five priority regions to improve transparent management of the resources allocated to the regional and local governments. Already, four reports have been published in Apurímac, two in Arequipa, one in Loreto, four in Moquegua, and four in Piura. The reports contain abundant data on mining canon transfers and regional sharing (districts, municipalities, and universities) and added categories on how the funds are spent. In general, the reports are dense and not very reader-friendly for the layman, especially for the regional and local public interested in information closer to their area. There is room for working with the regions to make these reports easier to use and better geared to monitoring and accountability.

Peru has also made an effort to develop a national integrated environmental information system and has carried out major initiatives to build environmental citizenship and participation. Its legislation mandates prior consultation of Indigenous communities on activities in their territories. This being said, the transparency of the processes and results of public participation could still be improved, especially in the environmental impact assessment process.

### **Room for Improvement in “Revenue Distribution and Management”**

- Income tax revenue returning to the producing regions and districts is highly concentrated.
- No interregional equity mechanism is in place for the mining industry to help fight poverty in Peru’s poorest regions, ensuring transfers of funds to regions that fall within the lowest average income quintile and receive no oil or mineral taxes.
- Mining tax revenue is dispersed among thousands of small-scale projects and does not help implement multi-year inter-municipal plans with larger-scale investment projects having a broader impact.
- No headway has been made on operational integration of the three government levels to design integrated land-use plans in mining areas or co-funding projects of regional or interregional interest.
- No effective management instruments have been defined for managing revenue through stabilization or savings funds.
- There has been insufficient encouragement of outsourcing and evaluation of institutional alternatives such as, for instance, specialized agencies for public spending projects.
- There has been no traceability of mining’s contribution to communities and the use of funds.

## V.5 LOCAL IMPACT

This section looks at the rules and policies and their enforcement with regard to the local impact of mining in Peru, from the viewpoint of how the government formulates policies and regulates mining projects to make sure they generate benefits for the community. It also takes a look at how the companies relate to their social environment. The overall score in this “Local Impact” stage is high on the aggregate de jure situation (3.01) but the de facto performance (2.50) falls at the high end of the low range. As for de jure performance, “Employment Policies” scored the maximum (4.00), and in de facto performance the lowest score was for community engagement (2.20).

Figure 16: Value Chain Stage 5 - Indicators

<b>De Jure Performance (3.01)</b>	Local Content Rules (2.50)
	Employment Policies (4.00)
	Rules on Community Engagement (3.04)
	CSR and Social Issues – Rules (2.50)
<b>De Facto Performance (2.50)</b>	Local Supplier Development (2.66)
	Employment (2.74)
	Community Engagement (2.20)
	CSR and Social Issues (2.39)

### Local Content Rules- De Jure (2.50)

Overall, the mining industry has collaborated more closely with governments to help create direct and indirect jobs for its operations, sourcing goods and services locally, creating business opportunities for local companies, and, wherever possible, increasing local mineral processing (beneficiation, smelting, and refining) as well as planning and implementing spending on shared mining infrastructure.

Having mining operations in remote areas gives companies an opportunity to support local or regional economic development activities and help build job skills in their area of influence. Growing automation in the mining industry will gradually reduce job opportunities for unskilled or semiskilled laborers. However, the new technologies offer the industry an opportunity to become a hub for spreading technology, innovation and knowledge. Local content policies work better when they are flexible, without undermining investment and international trade agreements, and are implemented through promotion and incentives via policies, programs, and projects, rather than through requirements. Peru lacks policies, programs, and projects as part of a national mining strategy contributing to employability, industrial capacity, regional infrastructure, and technological innovation.

Although not a specific local content regulation, in 2003 Supreme Decree No. 042-2003-EM - later expanded and specified by Supreme Decree No. 052-2010-EM - included a sworn declaration of prior commitments to sustainable development activities as a requirement for filing a mining concession claim. These commitments include contributing to the population's sustainable development, encouraging local hiring, and contributing to local and/or regional economic development by purchasing local goods and services. The promised activities are included in the consolidated annual statement (DAC) as reportable activities subject to follow-up by MINEM. In addition, the local and social impact of mining projects is the subject of environmental management instruments.

### Local Content Rules- De Facto (2.66)

The sworn declarations submitted prior to obtaining a mining concession - where the concessionaire commits to different actions to benefit and support local economic activity, including local supplier development - is voluntary, making it a weak requirement compared to what the authority could demand.

Having said this, local suppliers currently mostly just supply mining projects with basic inputs and services such as food, reagents, fuels, and cleaning, to mention a few. Based on the interviews, in practice there is no policy for inducing mining companies to contribute to local social and economic development. What exists are individual voluntary undertakings by some mining companies, generally large-scale ones, that have their own policies and standards for supporting local community development, including support for local supplier development.

There are several initiatives for contributing to local development, but they are not national programs as part of a medium- or long-term national government strategy or policy. One private initiative in particular is aimed at, among other things, facilitating linkages between Peruvian suppliers and mining companies: the Southern Peru Mining Cluster, driven by the Development Bank of Latin America (CAF) and Arequipa's chamber of commerce and industry. Clusters are an excellent mechanism for turning local suppliers into a mining supply industry capable of competing with companies from other parts of the country or even the world. Another private initiative that is building bridges between mining companies and suppliers is the Peruvian Mining Innovation Hub<sup>26</sup> formed by mining companies and associations for the purpose of finding solutions for innovation and collaboration in the mining sector.<sup>27</sup>

Still another example is the Antamina "Suppliers of Excellence" program, whose goal is to help develop local suppliers with better technological capacities through collaborative work to identify and overcome challenges to provide value for mining operations. Another interesting case is that of Yanacocha, identified as the first mining company in Peru to develop an explicit local purchase policy from the start of its operations.

The contribution of mining projects to local social and economic development is poorly coordinated and weakly promoted. This means that even if contributions are sizeable, their effectiveness is limited, especially if they are the result of pressure from local governments or a few community leaders.

<sup>26</sup> Hub: space where companies and entrepreneurs work together and interact as a community.

<sup>27</sup> <https://hubinnovacionminera.pe>

With its mining potential, Peru would benefit much more if it develops and implements a long-term policy that provides incentives, guidelines, and directives on how mining should contribute to local social and economic development and defines the best mechanisms for deciding where the public and private funds mobilized around that long-term policy should be spent.

### **Employment Policies - De Jure (4.00)**

The country's employment policy is reflected in a variety of laws and regulations. The main one is the General Labor Law, which regulates the employment relationship between employers and employees in Peru. This law limits the hiring of foreign nationals to a maximum of 20% and total payroll payments to foreign employees to a maximum of 30% to safeguard jobs for Peruvians.

Peruvian labor law establishes employee profit-sharing differentiated by activity, which in the case of mining is 8% (in medium- and large-scale mining the resulting amount is equal to several monthly wages). A cap of 18 monthly wages is set on benefits received by workers. If the total amount of the profit share is greater than the distributed amount, the surplus goes into education funds. In addition, before mining concessions are granted applicants must promise in their sworn declarations to give preference to local hiring.

### **Employment Policies - De Facto (2.74)**

The agency charged with enforcing labor law is SUNAFIL, which also oversees occupational health and safety in conjunction with OSINERGMIN.

According to MINEM, an average of 209,449 workers were directly employed in mining in 2018. Of these, 43.4% were workers hired directly by mining companies and 56.6% were workers of contracted companies, according to MINEM's 2019 mining employment report. The report declares that 6.25 additional jobs are created in other branches of the economy for each job generated by mining - which measures the multiplier effect of the creation of mining jobs.

In addition, the report states that 52.2% of mining employees come from the same region as the mining operation and 47.8% are from other regions. In general, local hires are for jobs that require no special skills or training. Another interesting statistic is that mining operations registered under the general regime account for 91.6% of the jobs, which are well paid, while small-scale mining accounts for 8.3% and artisanal mining for 0.1%.

These statistics reflect a significant challenge for the government and the mining sector in general, including mining companies and suppliers, namely training local workers in mining operations, which demand increasingly highly skilled personnel. Rules requiring mining companies to give preference to local hiring are not enough; the local area must also have sufficiently skilled, competent workers for performing the tasks inherent to the mining industry.

As for the participation of women in mining, in 2018 women accounted for 6.9% of all mine workers. Regarding the wage gap, the average annual wage from 2009 to 2018 was S/ 42,999 for men and S/

39,205 for women. The wage gap was 26.3% for managers, 10.5% for administrative staff, 10.6% for plant staff, and 47.5% for general operations personnel.

Much still needs to be done in terms of gender, and to this end MINEM has developed the following initiatives: a gender equality committee, whose mission is to implement the national gender equality policy; a program for emerging women leaders in the Peruvian mining and energy sector, which is part of an agreement with the Inter-American Development Bank and the National Society of Mining, Petroleum and Energy to achieve a high percentage of women in top mining positions; and the pilot project “Magic Women”, an initiative for empowering women in locales within the area of influence of mining projects.

### Rules on Community Engagement - De Jure (3.04)

Several legal and regulatory instruments regulate citizen participation in the mining sector, including the Regulation of Mining Procedures - which does so indirectly by requiring a commitment in a mining concession applicant’s sworn declaration to interact responsibly and maintain ongoing dialogue with the community - and rules and regulations applicable to the environmental impact assessment process. The interview respondents emphasized that the comments and/or objections to projects arising from citizen participation activities conducted by companies in the environmental assessment process are not binding. However, the resulting commitments that are set out in the environmental certificate are auditable and enforceable by the oversight body.

A rule related to community engagement is the Prior Consultation (PC) Law No. 29785 of 2011 and its regulation, concerning compliance with ILO Convention 169. The PC establishes the responsibility of the state - in this case MINEM - to consult with any original Indigenous communities whose collective rights could be affected by an administrative government act, specifically exploration and exploitation permits and beneficiation concessions. Civil society is interested in analyzing whether prior consultation would be necessary for the granting of mining concessions. A mining concession does not grant the right to carry out mining activities, exploration, or exploitation, however, so it does not entail direct intervention in the concession area implying a direct impact on the rights of Indigenous peoples.

In regulatory terms, prior consultation is conducted after the environmental assessment is concluded and the environmental certificate has been granted. Conflicting opinions exist among the respondents on when the prior consultation should apply - before, during, or after the environmental assessment. In any case, even though the results of the prior consultation are non-binding, what is set forth in the EIA is indeed binding.

The opinion of some industry respondents was that prior consultation should not apply for exploration, since this is more of a short-term, temporary exploratory activity rather than a mining project development involving construction, operation, and closure. They felt that exploration is essentially a speedy activity and prior consultation adds too much time to the granting of a permit. In general, respondents agreed on pointing out that, in practice, there are no problems with the substantive process of prior consultation and its results, but that there are serious setbacks in the management of consultations for mining projects.

## Rules on Community Engagement - De Facto (2.20)

With regard to citizen participation, the biggest shortcoming mentioned in the course of the interviews was the lack of public access to all the information delivered by mining companies to the SEIA for evaluation or requests for additional information made to SENACE.

In addition, having the information is not enough for the general public. The information must be understandable, so it is important for a public official of a credible institution (not just the company) to explain a project from the viewpoint of the government's interest in its benefits and shortcomings for the community. Those who present and explain projects to the communities are generally company representatives. In some cases, these are technicians with no training in community relations who highlight only the benefits of the project - which logically arouses suspicions. Another stakeholder group in community engagement consists of NGOs, which are sometimes not local and whose interests are not necessarily the same as those of the community. Between the two are the communities or their representatives, without proper technical support from the government for a knowledge and understanding of the legal frameworks that establish their rights as citizens with regard to large-scale mining investment projects. This leaves a vacuum that is frequently filled by groups with particular agendas that often do not reflect the long-term interests of the communities.

When the EIA of a mining project whose area of influence includes communities where most inhabitants speak a native language, the law permits SENACE to ask for an executive summary written in that language. An executive summary alone is clearly not enough for forming a well-founded opinion on a project since executive summaries focus on presenting the results of an evaluation rather than the technical support for those results. This does not mean, however, that each and every document contained in the environmental instrument needs to be translated.

A key issue with regard to prior consultation of original or Indigenous peoples is the identification of said peoples within a mining project's area of influence. This needs to be searched in the official database, where there are currently 55 Indigenous or original peoples. The respondents from all the stakeholders mentioned that this database is not up to date and serves only as a reference, so a query must be submitted to the Office of the Deputy Minister for Intercultural Affairs, which takes months to answer. It is impossible to start a prior consultation without this data, without knowing who to convene or if those who were convened are the ones who should be participating. An effective, efficient system would require only a simple request to the deputy minister's office for automatic verification and certification of the presence or absence of Indigenous peoples within the concession area based on its information system.

According to MINEM's website, to date there have been 15 prior consultations in the mining sector, all for exploration, which is not a great number considering that the law dates back to 2011. The prior consultation process should take a maximum of 120 days, but it averages 150-200 days, according to the respondents from CSO and industry. The main delay is in the identification of the Indigenous peoples to be consulted.

Noting that Peru has been a pioneer in Latin America in establishing a regulatory framework for prior consultation, in 2016 the World Bank issued a report entitled “Prior Consultation in Peru: Lessons and Challenges” where it looked at the prior consultation process in Peru at that time and mentioned several recommendations that are still relevant today. Among these are the following: i) more consistent institutional responsibilities should be established for prior consultation; ii) prior consultation should be coordinated with other community engagement and inclusion mechanisms for their mutual reinforcement; iii) the role of the Office of the Deputy Minister for Intercultural Affairs should be reinforced and its actions should be made more efficient; iv) Indigenous organizations should be strengthened through training on the rules of the game of the mining industry and their rights; v) oversight and monitoring of compliance with the agreements resulting from the prior consultation should be encouraged; and vi) flexible, case-by-case criteria should be used in implementing prior consultations.

The private sector views the government as being a source of support in the management of relations with their communities of influence, especially in conflicts. In recent years, however, the government has lost credibility with investors and civil society as a standard-setting, regulatory, and managing agency as the result of several social conflicts. The lack of a structure giving it a deconcentrated presence for early intervention in mining regions has limited its ability to effectively handle social conflicts. This has contributed to the lack of social acceptance of several technically and financially feasible mining projects.

Good international practices emphasize early and sustained cooperation between the central government, companies, regional governments, and communities. This should happen from the very first stages (exploration and pre-feasibility studies) to foster environmental citizenship and inform and prepare the community for understanding and proposing measures for managing the socio-environmental risks and socioeconomic benefits of large-scale mining in the region.

### **CSR and Social Aspects - De Jure (2.50)**

No specific policy exists for CSR. CSR initiatives are therefore carried out privately and individually by companies or groups of associated companies. The most specific regulation of CSR is the Regulation of Mining Procedures, DS No. 020-2020-EM, as well as its earlier versions, in which mining concession applicants are asked to include within the concession requirements a sworn declaration containing several commitments to the communities in their area of influence. The commitments are later inspected by OEFA and must be included in a consolidated annual statement by the concessionaire.

Environmental regulations also establish that companies must implement an environmental management and social responsibility policy (General Environmental Law, Article 11, section 1) which, in line with the preceding paragraph, is overseen by OEFA. Other instruments, such as the Works for Taxes program, also incentivize companies to invest in works to benefit the community.

The commitments assumed in the sworn declaration submitted by the concessionaire when applying for a mining concession should be reflected in the environmental management instrument submitted for obtaining the respective certificate. In addition, the mining project license holder must report

on its social responsibility activities in the consolidated annual statement and include a list of activities planned for the following year so that the DGM can **verify compliance with these social commitments**.

### CSR and Social Aspects - De Facto (2.39)

Large-scale mining companies generally establish their CSR policy according to their vision of relationship-building with the community from the standpoint of their project. In itself, this is not objectionable. But it is a problem in an area where there are several mining projects underway. It would be much more efficient if government and company relationships with the community were planned in an integrated manner, though their implementation could be separate.

Today, mining projects should not be conceived without establishing, early on during project design, their plan for contributing to the territorial development of the region and communities inhabiting their area of influence and agreeing with the communities throughout the prior consultation or citizen participation process (as applicable) on how the projects would benefit them. One mechanism for establishing social commitments to the community for the project as a whole is a dialogue round-table, but this is not enough. A plan to support regional territorial development based on the capacities and resources of the different populations and geographical areas would complement the cluster mechanism and help generate investment, development, and prosperity in a more extensive and better integrated process, always respecting, of course, central government competencies and authorities.

The Quellaveco project established in 2011 a dialogue round-table between the company, Anglo American, and national, regional, and local authorities and communities. In this dialogue, 26 agreements were reached on water, environment, and social responsibility. The round-table also gave rise to a committee for monitoring, follow-up, and verification of the agreements, tasked with making sure they were fulfilled. Moreover, a Moquegua development fund was created to manage the money for the projects arising from the agreements. One of the agreements is construction by the company of a 2.5 million cubic meter dam for the community to offset the water to be used by the project. This dialogue round-table made the project viable and is the foundation for its social license to operate in Moquegua.

### Areas of Improvement in “Local Impact”

The public, and especially the communities in the mining project area, do not perceive the environmental and sectoral authorities as accessible guarantors of the interests and rights of citizens. In general, they distrust the authorities’ decisions and have no faith in the potential benefits mining would bring to the area and region where the projects are developed.

No guidance or guidelines are in place for an integrated, systematic government relationship with communities throughout the life cycle of mining projects in which areas with several mining projects are viewed as regional or local socioeconomic development units.

No regulated mechanisms, supported by both government and companies, have been defined to expand the range of influence of the benefits generated by mining for mining regions or areas, such as, for example, infrastructure that benefits a group of areas of influence or technical schools that provide technicians and professionals for the entire mining industry operating in that area, boosting the training of skilled local labor and higher-value-added local suppliers.

Guidelines and incentives designed by MINEM are needed for motivating various mining projects to share mining infrastructure such as tailings deposits, dumps, beneficiation plants, water infrastructure, access or mineral transport roads, and power generation and transmission, etc.

Information submitted by mining projects to obtain approval of their environmental management instruments - EIS (environmental impact statement), EIA-sd, and EIA-d - is not easily accessed and does not include the respective authorities' technical consultations and company responses or citizen participation results and agreements. This partial access to information does not make it easy for the public to have the information needed for a reasoned opinion, thus improving the quality of the citizen participation process. It does not help build public confidence in the results of the environmental certification, either.

MINEM lacks an ambitious agenda for the training of Peru's human resources, projecting and following the mining industry's future job demand, to obtain greater benefits for the country from mining. There is no detailed national analysis of the future mining labor force demand; nor are future gaps projected.

The companies make an effort to hire local labor, but the statistics on the type of work for which locals are hired show that most are unskilled jobs.

Regulations are not enough for getting mining companies to agree to hire local workers. It is also necessary to encourage the training of workers in mining areas in the competencies needed for the technical tasks required by mining as well as other economic sectors.

The government does not actively encourage collaboration among research and training centers or link current and future industry demands with academia and specialized training centers for cross-cutting competencies.

There is a need for greater MINEM and MIC's involvement in the development of the Arequipa mining cluster.

MINEM's ineffective planning of prior consultation leads to holdups in its implementation and causes serious delays in exploration and construction timelines.

Lack of a universally accepted database that unequivocally and transparently identifies the presence or absence of Indigenous or original peoples in a mining project's exploration or exploitation area works against the purpose of the prior consultation mechanism and causes unnecessary delays in its implementation.

The determination in the EIA of the area of influence of a mining project addresses socio-environmental risks but places constraints on the socioeconomic benefits (compliance - beyond compliance), which have a regional dimension that goes beyond the directly or indirectly impacted communities.

MINEM and SENACE do not require companies to identify in their environmental impact assessment other projects adjacent to or near their area of influence in the same zone, identifying potential synergies that would reduce the potential cumulative environmental impact on the zone.

There is no public CSR policy defining the guidelines and terms for companies' community relationship initiatives, setting minimum standards, for example, for monitoring and ex-post evaluation of commitments or agreements.

## VI. Stakeholder Priorities

This section presents an organized summary of the mining sector management priorities expressed by respondents. The priorities include issues concerning public mining management as well as some that are not directly related to mining. This is a result of the increasingly greater importance of sustainability in mining operations and the changes in the sectoral governance configuration, which has gone from the bilateral relationship that was traditionally limited to mining companies and the government's sectoral agency (MINEM) to a more complex configuration where local communities, civil society, local and regional governments, and other cross-cutting government agencies (such as MINAM, SENACE, OEFA, and MINCUL) have achieved greater prominence.

The analysis in Sections IV and V has treated every topic and each indicator equally. In giving a flat listing of shortcomings, the analysis overlooks an important aspect: some problems are more important than others. They either have a larger impact (positive or negative) on the functioning of the mining sector or they are perceived as indispensable areas that require reforms. The analysis of stakeholder priorities in this section is a first step towards identifying the topics that should be considered priorities, as seen through the eyes of the three main stakeholder groups in the mining sector: government, industry, and civil society.

During the interview phase of the MSD, all respondents were asked to identify their top priorities for the sector. Specifically, they received the voting template reproduced in Annex V, and each respondent picked the topics evaluated in the MSD that they considered most important. For each topic, the respondents assigned a total of 100 votes distributed among the indicators that in their view were priorities and required special attention. Priority areas were defined as areas where reforms would be most likely to significantly improve the management of the sector with the aim of increasing its contribution to overall sustainable development. It should be taken into account that by definition each priority area is an indicator in the MSD framework.

The stakeholders' votes were standardized to 100 per respondent, giving equal weight to each respondent. The responses were then aggregated for each stakeholder group. The following table shows the top ten priorities for each sector (Figure 17). The table also gives the score for each priority topic. Some of the priorities picked by the three stakeholder groups scored low on the MSD analysis, coinciding as areas for policy interventions. There are many optimal- and high-scoring topics among the top priorities, however, confirming the importance of these areas in mining management.

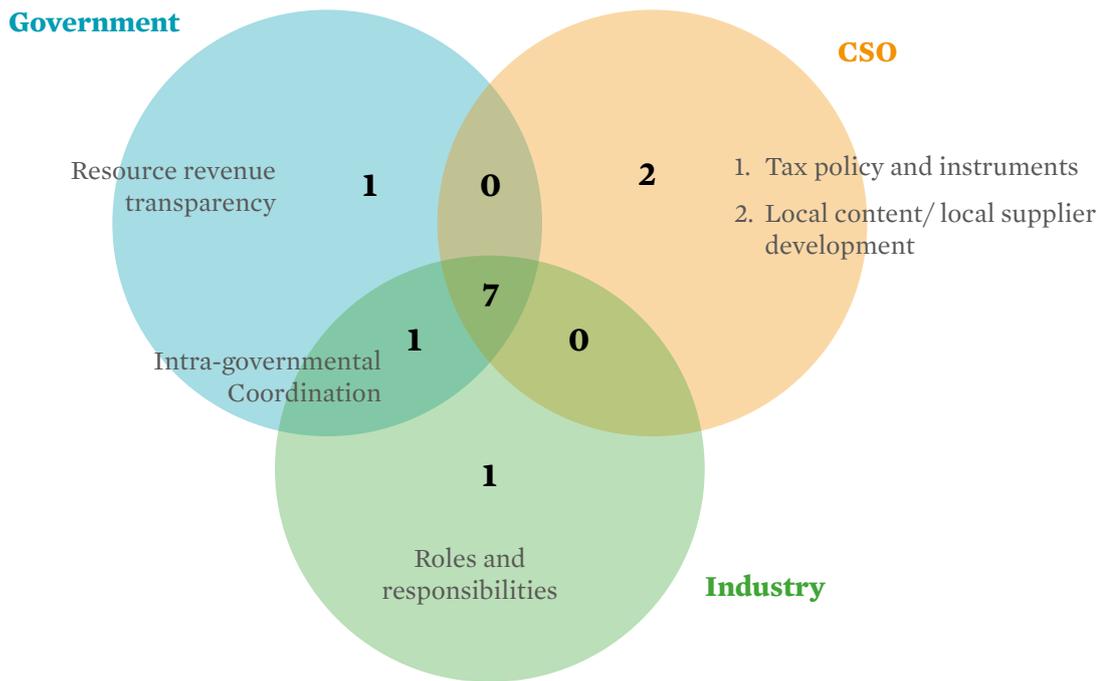
Figure 17: Top Ten Stakeholder Priorities

Topic	Votes (%)	Votes (% Cumulative)	Scores	
			De Jure	De Facto
<b>Government</b>				
Intra-Governmental Coordination	13.0%	13%	2.20	
Community Engagement	9.9%	23%	3.04	2.20
Social Impact Management	7.8%	31%		2.29
Sector Policy	7.5%	38%	2.73	
Environmental Impact Management	7.0%	45%	3.46	2.93
Sector Dialogue	6.8%	52%	2.27	
Artisanal and Small-Scale Mining	5.0%	57%	3.00	2.38
Resource Revenue Transparency	4.9%	63%		3.00
CRS and Social Issues	4.9%	67%	2.50	2.39
Tax Administration	3.9%	71%	3.44	2.54
<b>Industry</b>				
Sector Policy	11.4%	11%	2.73	
Environmental Impact Management	9.5%	21%	3.46	2.93
Intra-Governmental Coordination	9.1%	30%	2.20	
Social Impact Management	7.3%	37%		2.29
Community Engagement	7.3%	45%	3.04	2.20
Artisanal and Small-Scale Mining	6.8%	51%	3.00	2.38
Sector Dialogue	6.4%	58%	2.27	
Roles and Responsibilities	5.9%	64%	3.88	
CRS and Social Issues	5.9%	70%	2.50	2.39
Mining Legislation and Processes	5.5%	75%	3.58	2.50
<b>Civil Society</b>				
Environmental Impact Management	11.8%	12%	3.46	2.93
Social Impact Management	10.5%	22%		2.29
Artisanal and Small-Scale Mining	9.2%	32%	3.00	2.39
Sector Dialogue	8.0%	40%	2.27	
Sector Policy	7.7%	47%	2.73	
Community Engagement	6.8%	54%	3.04	2.20
CRS and Social Issues	6.0%	60%	2.50	2.39
Tax Policy and Instruments	5.2%	65%	3.07	
Local Content/Local Supplier Development	5.2%	70%	2.50	2.66
License Allocation	4.2%	75%	3.90	3.15

Three elements of the Sector Management Framework (Sector Policy, Intra-governmental Coordination, and Sector Dialogue) were listed by at least two interviewed stakeholder groups as a top priority. Priority areas are also unequally distributed along the EI value chain; they are mostly concentrated in stage II (“Mining Operations”) and stage V (“Local Impact”).

The Venn diagram (Figure 18) provides information on shared priorities by illustrating where the top priorities overlap among stakeholder groups. Seven topics are listed by the three stakeholder groups as top priorities: “Sector Policy”, “Sector Dialogue”, “Environmental Impact Management”, “Social Impact Management”, “ASM”, “Community Engagement”, and “CSR and Social Issues”. Addressing the room for improvement in “Intra-governmental Coordination” is a concern shared by government’s and industry.

Figure 18: Shared Stakeholder Priorities



Looking at the respondents’ answers, there is a notable convergence of priority themes and areas with room for improvement. That is to say, in the dashboard with the scores obtained on each of the topics in this evaluation, we can see that both “Social Impact Management” and “Community Engagement” were perceived as being areas with room for improvement with regard to implementation of the rules.

Interestingly, these same areas were also confirmed as being priorities for the government as well as for industry and civil society. This convergence could be very positive when the time comes to propose an agenda for improvement, since if there is consensus on the fundamental importance of the social acceptance of projects, it would seem right to concentrate efforts on optimizing the mining management institutions with emphasis on social and environmental impact and community engagement. A reform agenda would entail a consolidation of efforts and initiatives for explicit public policy improvements that could lead to concrete short-, medium- and long-term changes.

# VII. STRENGTHS, CHALLENGES, AND REFORM AGENDA

This section concludes the report by noting the current strengths - where the rules are in line with good international practice and where there are competent and capable institutions. It then outlines the main medium- and long-term challenges and concludes by proposing a set of necessary improvements that could go onto a mining sector reform agenda that includes, firstly, policy improvements, and secondly, reinforcement of institutional performance and management.

## VII.1 STRENGTHS

Some indisputable events have shaped the strength of the Peruvian mining industry. Among these are the steadily high level of investment in both exploration and exploitation; increased volumes of polymetallic production led by copper, present in most Peruvian regions; a significant number of large-scale projects and large national and international companies, with a high number of ICMM members; and high export volumes and their contribution to tax revenues and public spending in mining districts via the mining canon, significantly boosting formal private economic activity in remote rural areas where there is often a high incidence of poverty. These features make Peruvian mining a global competitive player and position Peru as a country expected to continue attracting investments capable of ensuring a mineral output that can meet the strong global demand for strategic minerals in the next two to three decades.

On the basis of its enormous geological potential, Peru has constantly attracted mining investment for exploration and project development since it reformed its mining code in the 1990s. Private mining investment has flowed in during the last decade, making Peru the second most popular destination (after Chile) for mining investment in Latin America. Investments received a strong boost of US \$21 billion in the first half of the last decade, rallying once again from 2017 to date with US \$8.3 billion for copper projects. In the last two decades, Peru has increased its copper production five times from approximately half a million to two and a half million metric tons of fine copper per year, being only a major producer of gold to becoming also the second largest producer of copper in the world.

Between 2009 and 2018, mining production generated about 20% of total tax revenues and financed some US \$12 billion in transfers to regional and municipal governments. Large-scale mining and the consequent transfers to local governments involved a significant number of regions in Peru, the most important ones being Ancash, Arequipa, Cajamarca, Apurímac, Moquegua, Piura, Junín, Cusco, Puno, Ica, Lambayeque, Huancavelica, Pasco, Huánuco, Amazonas and La Libertad. Mining decentralizes economic activity and market opportunities towards the regions in the rural and urban areas of influence.

Being the main generator of foreign exchange through exports and capital inflows through foreign direct investment (FDI) and the main generator of tax revenue for transfers to the regions, mining

has been a cornerstone of Peru's extraordinary macroeconomic performance in the last two decades. However, Peru's excessive dependence on its minerals and metals makes its economy vulnerable to global price volatility; hence the challenge of greater economic diversification.

The mining industry's strengths would not be possible if they were based solely on its enormous geological potential. Along with its geology, Peru has armed itself with a legal framework, policies, and promotion and regulatory agencies that have helped bring in investments, develop projects, and expand production. None of this would have been possible if the country had not had, at the onset of the 1990s, a well-defined, stable, and consistent mining policy aimed at attracting investment in the mining sector. This policy, which is based on the Mining Law of 1992, has clearly been successful in achieving its main goal: to expand modern mining activity and make it one of the country's most important sources of economic growth. Peru's mining sector policy has endured by inertia in the last two decades, with several key developments in environmental management, taxation, and protection of the rights of Indigenous peoples. It has maintained its essence, however, that of ensuring the legal certainty of investors and providing a favorable regulatory framework for attracting mining investment.

The mining licensing system has successfully evolved for more than 25 years, giving Peru an advantage over other jurisdictions with more complex procedures and receiving very little criticism over the years from large investors. The cadaster system is highly dynamic, with a continuous turnover of companies due to expired licenses, because to discourage speculation it imposes penalties for failing to achieve minimum production. In practice, the rules for allocating mining licenses are considered clear and transparent and are carried out under an administrative act-based regime where the awarding of a mining right depends on strict compliance with the procedure established in the General Mining Law. The procedure is considered up-to-date and efficient, leaving public officials little room for administrative discretion.

Peru has a robust cadaster and concessions system, backed by computerized data management systems. These systems are considered effective and secure and have provided protection and legal certainty for investors, as well as public access to concession information. The laws have designed a system of quadrangles and procedures that eliminate overlap and conflict among license holders. Management of the regular exploitation procedures by INGEMMET with the support of the Geological and Mining Cadaster Information System (GEOCATMIN) and the Mining Rights and Cadaster System (SIDEMCAT) is noted for its simplicity, transparency, non-discretionality, and accessibility, as well as for the legal certainty it provides. This is recognized as one of the main foundations for investment growth and certainty in the Peruvian mining sector.

The Peruvian legal framework clearly defines the tax regime applicable to the mining sector and establishes the necessary stability rules to prevent changes in the legal terms and conditions of investors. According to the Peruvian constitution, taxes can only be created, changed, or revoked by laws passed by Congress or by legislative decree (in a delegation of powers to the executive branch), with the exception of customs duties and certain public fees governed by supreme decree. The law ensures the legal stability of income tax regulations and dividend distribution to investors willing to invest at least US \$10 million in mining in a two-year period. Stability agreement benefits are limited to the investment

specified in the feasibility study used as the basis for the signing of the agreement. Companies that sign 15-year stability agreements can include later investments of at least US \$25 million, provided such investments are preapproved by MINEM.

The progress made on transparent collection and payment of taxes and royalties, as well as publication and accessibility of stability and investment agreements, constitutes a significant achievement for the mining sector. SUNAT has the necessary resources for carrying out its work and has acquired more experience in recent years. Although it does not have a specialized extractive industries department, it does have one for large taxpayers, which include mining companies. In addition, SUNAT has a team dedicated to transfer pricing and has doubled the number of auditors in this area. Transfer pricing provisions apply to the price-setting rules for regular transactions between domestic and international related parties based on a sworn declaration.

The sector has a key mechanism for channeling benefits to the communities or regions where it operates through public works that can be implemented through the Works for Taxes program (OxI). An investment project databank exists in the MEF's *Invierte Perú* (formerly the National Public Investment System, or SNIP) with data sheets and investment needs from which companies can choose the works they wish to implement. This mechanism has been in effect for almost a decade and still has aspects that could be improved, but though it is available to all sectors it has mostly been used by mining.

The Fiscal Stabilization Fund (FEF) has been funded with revenue contributed by mining to budget surpluses in the last two decades. From its creation in 1999 until 2014, the FEF grew steadily in terms of both balance and percentage of GDP, increasing from US \$100 million (0.2% of the GDP) to US \$9,159 million (4.5% of the GDP). First in 2015 and again in 2017, the government resorted to FEF deposits when tax revenue declined and natural disasters occurred. At the same time, the deteriorating economy after 2014 has kept the fund from continuing to grow. At the end of 2019, the fund's balance was US \$5.4 billion. Despite the FEF's strong reserves, however, savings accumulated during the metals' price boom appear insufficient for responding to the coronavirus crisis. In May 2020, the MEF affirmed the government's estimated need of S/ 60 billion to combat the economic impact of COVID-19, so the fund's S/ 19 billion will not be enough.

Access to information in Peru is guaranteed by the Law on Transparency and Access to Public Information. In addition, Peru is an active member of the Extractive Industries Transparency Initiative (EITI), the global standard for good governance of oil, gas, and minerals. Due to the pandemic, EITI has again extended the deadline for Peru to submit its seventh report to the end of December 2020 (the last report was submitted in February 2018). The country plans to submit a conventional EITI report, but in 2021 it could shift to shorter, more flexible reports using new tools (automatic platforms, DATAMART, "Peru País Minero", and the Mapa de Inversiones, which has some capacity for tracking mining canon spending). In recent months, the government has confirmed its commitment to the EITI. This has been reflected in better coordination by the OGGS.

Likewise, the Peruvian mining labor force created 250,000 direct jobs in different positions, not only in unskilled activities, and it is estimated that there are at least six other indirect jobs for every direct

job. There is a broad range and critical mass of Peruvian professionals who have been trained over the last 20 years and moved up into positions of responsibility, some with international experience due to mobility within their own companies. Many of these now have senior management positions. Likewise, there are major domestic mining companies that have developed complex projects by themselves or in partnership with global mining corporations. The stock market has a significant number of mining companies that have gone public and raised funding in Peru.

## VII.2 CHALLENGES

The strength of the Peruvian mining industry is also reflected in its excellent future prospects for expanded mining activity, with a consequent effect on myriad economic variables. Just as Peru has increased its copper production by two million tons in the last two decades, it has the potential to do so again and raise production by a similar volume by 2040, considering the growing global demand. Of the 48 new projects for an estimated investment of US \$57 billion in the coming decade, 25 are for copper, with an estimated additional production of two million metric tons. Half of the upcoming new projects are in the pre-feasibility stage and 30% are in the feasibility stage, meaning that 80% of the new projects will take at least seven years to enter production.<sup>28</sup> The delays in meeting project deadlines have been intensely discussed, analyzed, and put on the agenda by industry and the government, and this report corroborates the different causes of these costly setbacks. Stability and legal security are essential to ensure the country continues to be attractive for mining investors, as are the need to improve environmental control and citizen participation. The challenge of institutional inefficiency is enormous, but it is neither the only nor the most difficult one to overcome. The biggest challenge consists of creating the necessary conditions for social acceptance (sustainability and social inclusion) of mining investments and operations in the regions, generating an environment of social legitimacy and forging stronger mining industry links with the regional and national economy.

Added to the challenge of maintaining an appropriate timeline for project development, then, is the challenge of sustainability. Of the 48 new investments in the pipeline, at least 39 are greenfield and at least 28 would be open pit. Environmental certification, citizen participation, prior consultation, and granting of mining permits will thus be highly complex for these projects. The steady decline in exploration investment from its peak of US \$900 million in 2012 to US \$350 million in 2019 warns of the sustainability challenges of mining investments. Extracted resources are not being replaced and more exploration is needed to reverse the lack of new significant discoveries in recent times. The private sector views the government as being a source of support in the management of community relations, especially where there are conflicts. However, in recent years the government has lost credibility with civil society as a standard-setting, regulatory, and managing agency. In the eyes of civil society, the weak presence of MINEM and the regulators in the main mining regions and their lack of early intervention have constrained their ability to effectively manage the processes that guarantee the rights of the communities. This has contributed to a lack of social acceptance of several technically and financially feasible mining projects. Several mining projects, totaling an investment of US \$12 billion, or 6% of the GDP, have been put off in recent years as a result of these social conflicts.

<sup>28</sup> This considers, in theory, seamless progress on authorizations and permits and compliance with the legally established deadlines for completing mining procedures.

The third major challenge for Peruvian mining goes beyond its expansion as an industry and consists of creating opportunities for local, regional, and national economic development. This challenge's distinctive feature is that it must be addressed as a shared government, mining company, and civil society responsibility. The mining industry can create far-reaching opportunities based on changing technologies, innovation, improved productivity, the impacts of automation, the challenges of future human resources, cultivation of talents needed for the long term, and the challenges of climate change, clean energy or the circular economy. To do so, it will have to adopt stricter sustainability standards across all stages of the value chain, such as reduction of carbon emissions and water use and reduction/recycling of industrial waste. Significant opportunities also exist in the development of suppliers, infrastructure for the mining regions' economic corridors, and the economic potential of other sectors in the mining regions. A key pending issue for social inclusion is more effective use of the mining canon and royalty transfers to the regions. Poor or inadequate investment of these funds for more than a decade has adversely affected the perception of the mining sector's contribution to regional development. This compromises the fundamental premise that mining development can lead to regional development that goes beyond economic growth. For the industry to have a future, its operations must contribute to regional and national economic development. In short, Peru has attractive initiatives, mostly private, but the challenge lies in strengthening social inclusion mechanisms by creating economic opportunities through government policies that prioritize and allocate public resources for leveraging the expansion of the mining sector to the benefit of the country's economic development and diversification.

Finally, the government faces the key challenges of formalizing ASM, to ensure its development under acceptable social and environmental conditions, and of halting illegal gold mining, which has destroyed 53,000 hectares of Amazon jungle with the use of machinery in riverbeds, especially in the Madre de Dios region of the Amazon. ASM has up to now been given low priority and the policy for this sector has been inconsistent over time. In the current context of global economic crisis, then, the lessons of the last two decades must be kept in mind and reviewed from the holistic point of view of the ASM value chain and its traceability.

## VII. 3 REFORM AGENDA

This Mining Sector Diagnostic has identified areas with room for improvement, whether in the rules or in their implementation. Summarized below are our main recommendations for improvement arising from this report. Mining sector growth in the last twenty years in Peru raises the need for the Peruvian government to strengthen its mining policies so that, building on the current policy for attracting investment to drive exploration and mineral production (**more mining**), it reinforces the sector agenda for **better mining** in terms of sustainability and mining for **more development**, especially territorial development.

These last two premises, aimed at addressing the biggest challenges facing the growth of mining in Peru, would seek to: i) enhance and achieve the conditions for environmental and social sustainability, with a proper balance of mining rights and citizen rights, leading to improved credibility and legitimacy of the mining promotion agencies, regulators, and auditors (**better**

**mining**); and ii) complement mining growth policies with proactive, sustained public policies that channel mining growth into more local, regional, and national development (**more development**), identifying and taking advantage of its potential for generating socioeconomic benefits for the population, especially in mining areas.

#### **A. Improve Institutional Credibility for Sustainable Mining Activity**

- Government agencies involved in the certifications, permits, and oversight of mining activities (MINEM, MINAM, ANA, SENACE, OSINERGMIN, OEFA, and the regional governments) need to take all necessary measures to legitimize themselves and earn public credibility. In EIA procedures, the authorities should take an active part in explaining the potential benefits, weaknesses, and risks of the projects. One way to build public confidence in the regulatory agencies is to nurture the public perception that the regulators are fully independent of mining project concessionaires. This is especially critical in the case of MINEM.
- The sector needs to make headway on institutionalizing the spaces, modalities, mechanisms, and practices for ongoing relations and dialogue among the different sectoral agencies, communities, and regions, where information on mining plans and projects can be shared and analyzed. Mining dialogue, documentation, and information centers could be set up, with members from all the sectoral entities and regional governments, where the general public could request information from the government and companies and where the mining integration program could operate on a larger scale and in a decentralized manner. This would be a significant step towards building environmental citizenship and achieving better prepared and informed citizen participation. MINEM's OGGs could consider setting up deconcentrated offices or formal hubs in some regions and revitalizing its support for citizen participation and prior consultation.
- A strategic move would be to set up an executive roundtable to enrich policy dialogue with representatives from the regional governments of the main mining regions, following MEF's example of setting up an executive roundtable that has enriched policy dialogue with the business sector (represented by SNMPE). This type of "territorial roundtable" would help with the rank-ordering of an institutional reform agenda to enhance sustainability in mining regions and the impact of mining on territorial development.
- A comprehensive policy needs to be formulated to systematize government relations with communities from the early stages and throughout the life cycle of mining projects. The policy should visualize mining zones as local or regional socioeconomic development units, depending on the size of the area of influence of the group of mining projects in the zone, leaving companies to focus on project-to-project areas of influence. Regulated mechanisms, supported by both government and companies, could then be created to expand the range of influence of the benefits generated by mining for the community, such as, for example, infrastructure that benefits a group of areas of influence or technical schools that can provide technicians and professionals to the entire mining industry operating in that area, driving the formation of skilled local labor and higher-value-added local suppliers.

- The government could consider completing the transfer of mining environmental assessment competencies from DGAAM to SENACE, or at least reach a definitive decision to this regard, so that the environmental management system can take full charge of this sector. In addition to complying with the principle of full separation of mining promotion (MINEM) and environmental certification (MINAM), this measure would be a step in the direction of improving the credibility and legitimacy of the government's environmental certification for the mining sector. To do this, SENACE would have to determine if it needs to reinforce its specialization and staffing to handle environmental assessment of exploration projects as well. In any case, to improve the quality of the assessment, it would necessarily have to ask for the technical opinion of MINEM's specialized agencies such as DGM and DGAAM, among others.
- The government would progressively have to take responsibility for generating and compiling baseline data and for developing a single, publicly accessible database for a variety of uses. Having this done by the mining companies represents a wasted opportunity for the government to progressively build its knowledge of the territories, existing natural resources, and the status of those resources.
- The government should ensure that translation into the language of the communities is available for citizen participation or prior consultation in areas inhabited by original peoples, so that all inhabitants in the area of influence have information for forming an opinion on the project.
- For prior consultation of Indigenous or original peoples, the government should update and complete the Indigenous or original peoples database and tailor it by consensus into an instrument acceptable to all stakeholders to facilitate the prior consultation process rather than hinder it.
- Government should consider the development of a comprehensive set of mine closure regulations, reviewing its legal framework and upgrading the existing guidelines to prepare for eventual mine closure.
- Closure and post-closure costs are enormous in medium- and large-scale mining, so if there are any doubts or indications that the sureties obtained by the government will not suffice for proper closure without having to draw from public funds, those costs should be reviewed. Overall, the cost calculation method should be reviewed. The types of sureties accepted should also be reviewed to make sure the instruments are easily executed for the guaranteed amount. The DGM should have its own cost estimation method based on real industry costs so that closure costs submitted by companies can be checked and verified. Closure sureties should consist only of easily liquidated financial instruments rather than mobile goods or real estate for which there is no certainty of recovering the guaranteed amount when executed.
- Mechanisms, incentives, and guidelines designed by MINEM need to be put into place for sharing mining infrastructure such as tailings deposits, dumps, beneficiation plants, water infrastructure, mineral transport or access roads, and power generation and transmission, etc., among various mining projects. MINEM and SENACE could ask companies to identify in their environmental impact assessment other projects that are adjacent to or near their area of influence in the same zone, noting potential synergies that could reduce the potential cumulative environmental impact in

that zone. Based on this preliminary analysis, MINEM could implement a mechanism and incentives for companies to negotiate joint use of the identified facilities, such as, for example, buffer zones. This would reduce investment and operating costs and provide an environmental benefit in the area by reducing the footprint of the mining infrastructure that would later have to be closed, remediated, and restored.

- There should be a systematic assessment or “operational audit” of the results and the way prior consultation, citizen participation, and the legally mandated dissemination are carried out. Taking into account the social conflicts that have arisen over several mining projects and the respondents’ comments, the mechanisms for ensuring the rights of communities in mining areas have not been achieving the goal of substantive citizen participation in the projects’ environmental certification. All forms of citizen participation should have mechanisms for citizens to learn project backgrounds, not just executive summaries and presentations of benefits. Public agencies should be the source of more credible information for the public so that the information is not distorted or manipulated by third parties for other purposes. MINEM should explore the feasibility of setting up a mining scorecard focused on environmental and social sustainability and its perception at the mining district level.
- As a way of building public confidence in the environmental certification of mining projects, all information submitted by mining projects for approval of their environmental management instruments (EIS, EIA-sd, and EIA-d) should be easily accessible to the public, with delivery of the necessary technical information in an easy format so that participants have the information they need to reach an opinion. This information should include technical consultations by the respective authorities and company responses as well as the results and eventual agreements or commitments of the citizen participation. Increased transparency in the environmental certification process would help make sure the public has all the information it needs to reach a reasoned opinion, thereby improving the quality of citizen participation. The public would perceive that the authorities are genuinely caring for the public interest in this process.

## **B. Public Policies to Generate More Economic Development from Mining**

- Crucial to the issue of development is a shared vision - with the contribution and support of the different stakeholders - of the role the sector will be playing in the country’s (and especially the regions’) development and of the way the government, industry, civil society, and academia will be interrelating and collaborating. This could serve as the foundation for agreeing on an explicit medium- and long-term mining policy as an instrument for generating agreements among stakeholders and proposing development programs, plans, and strategies, while at the same time aiming at steady and gradual improvement of the sector’s governance.
- SUNAT’s tax system operability needs improvement, particularly with regard to the review of value chains for sales tax return. Anti-circumvention measures and review systems for preventing potential undervaluation practices in the shipping of mineral concentrates need reinforcement.

- Rules and procedures for certification of investments under the Works for Taxes program need to be specified to reduce approval times and conflicts and improve decision-making transparency. Given the high cost of management, a fixed compensation cost could be considered for the company (fixed percentage of the total project).
- Government should fill the void regarding the necessary public policies for driving a mining-based economic development agenda in areas such as port and transportation infrastructure, renewable energy and decarbonization of the mining value chain, integrated water resource management, effective use of the mining canon and royalties, human resource education and training, and science and technology.
- The amount of income tax that goes back into the producing region should be progressively reduced and a mechanism should be created to ensure the transfer of funds to regions that receive neither mining nor oil tax and are in the lowest average income quintile of Peruvian regions. This would introduce a criterion of interregional equality through a mechanism that would permit the mining industry to help fight poverty in Peru's poorest regions, including poor regions without mining investment.
- The government needs to avoid fragmentation of the use of the mining canon and move towards multi-year and inter-municipal planning. The MEF could explore the viability of new implementation mechanisms or institutions for the implementation of public investment projects to incentivize investment of the canon and royalties in larger-scale ventures that address structural infrastructure shortcomings in areas comprising several or more districts in a region. This would enhance the local impact of the canon and royalty spending. The three government levels should be involved in the design of integrated territorial development plans in mining areas. This would allow for identification and formulation of larger-scale regional or inter-district projects for co-funding.
- Effective management instruments should be designed to manage revenue, such as, for example, budgeting expenditures for longer than one year; creating stabilization or savings funds by district or region in individual accounts managed by the BCRP to stabilize cash flow and eliminate pressures for quick but ineffective use of the entire amount in the year in which the transfer is received; authorizing the hiring of expert fund managers to be paid with canon funds up to a percent ceiling; and facilitating public-private coordination in the management of implementing agencies or special regional public investment vehicles. Outsourcing of project formulation, structuring, and implementation should be permitted to build enough capacities for proper implementation of public works. Alternatives such as social funds or investment funds, for example, should be considered.
- The MEF's transfer devices should be strengthened, improving the budget execution accountability of regional and district governments and universities that receive canon transfers, thus complementing the recent Mapa Peru Pais Minero initiative.
- The government should promote a strategy of mining-based productive diversification and applied technological innovation. This implies going from a sectoral to an intersectoral approach and basing policies and management at the territorial level on synergies and coexistence with other economic activities such as agriculture, industry, and tourism, to permit better use and coordination of resources with national, regional, and municipal development programs in mining areas.

- Measures to support territorial development should go beyond linkages within the mining value chain and include horizontal and spatial links. Mining companies should learn to engage with mining regions on shared infrastructure and efforts to upgrade and diversify the local productive value chain.
- Headway needs to be made on a detailed national analysis of the future mining labor force demand and projection of future gaps. The mining labor force is becoming more and more complex in an industry that increasingly requires staff highly skilled in the use of technology as it increasingly applies digitalization, automation, and artificial intelligence. The government needs to facilitate collaboration between research and education centers, connecting current and future industry demands with academia and specialized training centers for cross-cutting competencies. Given the presence of global corporations, the scale and number of ongoing projects, the investment pipeline, and the job and professional experience of the Peruvian labor force, MINEM should enforce a more ambitious national human resource training agenda to obtain more benefits for the country.
- The regulatory and operational framework for execution of the canon to universities - mostly unused today - needs to be reformulated to promote regional research and innovation in partnership with national and international universities and to promote more involvement of local universities in mining development and improvement in their respective regions.
- The statistics on the type of work for which locals are hired reflect the use of unskilled workers. Absorbing local technical or semi-skilled workers is a key challenge for both the government and the mining sector in general. The government, mining companies, and suppliers are in a position to make greater efforts to train local workers in the techniques and competencies that are used in mining but are also transferable to other sectors of the economy. Regulations are not enough for getting mining companies to agree to hire local workers. It is also necessary to train workers in the mining areas in the competencies needed for the technical tasks that apply not only to the mining industry but to other sectors of the economy as well. Some companies have already been doing this, but the effort should be generalized and guided by a clear policy.
- Government should consider setting up a marketplace for local content, nationally and in specific mining districts, fostering specific partnerships between mining companies and SMEs/SMIs.

### **C. Improve Institutional Efficiency to Revitalize Mining Investment**

- To consolidate the strong efforts made by PCM and MEF to facilitate intersectoral coordination of mining management, MINEM's technical and managerial capacity as the sector's core governance entity needs to be built for better management and coordination with other public agencies, and it needs to be modernized. MINEM needs to reinforce its governing role in the sector and its intersectoral coordination of policies and interventions, including alignment of policies with regional authorities.
- MINEM's activity should be supported by management platforms and systems, which would enable it to systematize the tasks of each operational unit and directorate at the central office with the specifics of all the authorized mining units, areas of social discontent, socioenvironmental conflicts, and other indicators needed to create a unified "smart, flexible management center" for mining

projects and investments. This would allow to add, plan, and create sector management programs and mitigate sectoral problems by license, project, company, industry segment, district, region, or promotion agency or regulator, etc. This effort could be reflected in a mining permitting dashboard and a matrix for accountability and monitoring of sector performance (mining accountability scorecard) and, in the medium term, of intersectoral performance.

- The foregoing would entail digitalizing management processes and the supporting documents with a platform that can record the mining projects' evaluations and technical and administrative decisions and the procedures in the sequence of actions. This would in the end make it possible to put into practice a more efficient service for processing sectoral permits and authorizations using a tool where companies can remit information all at once to a single agency to meet all permit requirements. This would only be possible through rationalization, standardization, and automation of management processes.
- Management and information systems should be integrated and strengthened to improve MINEM's management effectiveness, establishing formal mechanisms for sharing information among MINEM senior management and the different general directorates and between MINEM and other land use and land access, environmental, social protection, risk mitigation, and national and regional government authorities. Just as GEOCATMIN or SIDEMCAT are integrating their management systems in INGEMMET, MINEM needs a central data storage system and mining database to facilitate the processing and analysis of sectoral data (SEAL, ESTAMIN, and DAC).
- These improvements could be set out in a plan for mining modernization and integrated management with the first step being digitalization of mining procedures within the Office of the Deputy Minister of Mines in the MINEM, followed by integration of this with all the other agencies involved in mining procedures.
- The sector needs to create significant multisectoral dialogue spaces to enhance the effectiveness of government regulation, oversight, promotion, and citizen participation. MINEM could form a multisectoral task force for monitoring and improving regulatory performance and quality in mining, which would evaluate multisectoral mining management bimonthly or quarterly and establish a process of continuous improvement of mining management. With regard to environmental management, this multisectoral task force would be supported by the work being done by the High-Level Team (responsible for coordinating efforts to meet technical opinion deadlines) and the Technical Task Team (coordinators and specialists who work together on developing prioritized activities for strengthening the environmental certification process).
- INGEMMET needs a realistic and adequately funded "Geological Knowledge National Strategy" which would define the key areas, scope and priorities for acquisition, interpretation, digitalization, and dissemination of geological data , prioritizing the generation and interpretation of new geophysical data (pre-competitive geology). Key attention would be dedicated to the broader use of geological data for being use on priority non-mining sectors such as environment, land use planning, hydrological resources and underground water, natural disaster prevention and risk management, etc.

- The DGM needs to share company exploration data with INGEMMET so that INGEMMET can put it to use by completing its treatment and integrating it into the national geological database.
- With the help of the executive mining board, INGEMMET should prepare an operational proposal to ensure that the other services involved in mine licensing, such as SERFOR, have enough financial and technical resources to issue their opinions with technical competency and within reasonable time periods.
- MINEM should ensure the technical and operational resources needed to improve its effectiveness in planning and implementing prior consultations, to improve the predictability of estimated times for prior consultations for both exploration and exploitation. Since SENACE and OEFA are the environmental authorities, their participation in the prior consultations is crucial.
- In view of the disturbing and systematic delay in environmental certification of exploration and mineral exploitation projects, the environmental management system could form (or eventually reinforce) an institutionalized task team led by SENACE with the participation of MINEM (or vice versa) and all the agencies involved in the mining environmental procedures. The task would be to identify in detail the bottlenecks causing excessive processing time for EIA and exploration permits and propose proportionate rationalization of mine concessionaires' obligations according to expected impacts and risks. Another task would consist in scheduling the necessary changes to the mine closure plan so that, maintaining the necessary and proportionate rigor of the environmental certification, an in-depth solution can be found to the enormous economic damage to the Peruvian economy being caused by the delay in mining investments. To this respect, a 2018 proposal sponsored by SNMPE offers a good starting point for regulatory quality assessment that includes the main mining environmental procedures.

#### **D. Development of ASM and a Halting to Illegal Mining**

- There is a need to strengthen data integration and interoperability among the different agencies involved in the combat of illegal mining, including MINEM, PCM, MINAM, SUNAT, the Ministry of the Interior, and regional governments. Gaps exist in data production and no clear traceability policy exists.
- Incentives could be improved for the holders of mining concessions with informal miners on their properties to reach formal development agreements that enable ASM miners to formalize their status. For example, validity fee payment and penalties for not reaching minimum production could be reduced more (both time-wise and amount-wise), and tax benefits could even be offered. Additionally, the government could consider reducing the payment for use of its abandoned land, which is currently granted at market prices.
- A special, comprehensive, and more appropriate permit scheme is needed for ASM and miners in the process of formalization. Although a special permit system does exist, it offers only a limited number of authorizations that fail to address an operational reality that differs greatly from medium- and large-scale mining. A special labor and tax regime, as in other economic sectors, could also be considered.

- A revision should be made of the rules for exploitation contracts to make them a mechanism that truly facilitates and incentivizes mining formalization and ASM in general (not only for REINFO-registered miners but also for artisanal and small-scale miners in general).
- The regions should be equipped with staff and materials so that they can provide adequate technical support and security to ASM and carry out their formalization and oversight duties. With regard to this issue, mechanisms should exist for coordinating with the Ministry of the Interior on cases where national police intervention is required.
- The support provided by the Mining Formalization Directorate should be improved so that it (or the General Directorate of Mining) can be empowered to channel and eventually resolve the difficulties of ASM in general in obtaining the different permits, especially non-mining ones, needed for viable and sustainable small-scale mining operations. It could even become a one-stop shop for ASM.

# Glossary

Area of Direct Influence - **AID**

National Water Authority - **ANA**

World Bank - **WB**

Local Coordination Council - **CCL**

Regional Coordination Council - **CCR**

International Financial Corporation - **IFC**

Consolidated Annual Statement - **DAC**

Environmental Impact Assessment - **EIA**

Prior Consultation Law - **LCP**

Mining Program in Solidarity with the People - **PMSP**

International Financial Institutions - **IFIs**

Institute of Geology, Mining and Metallurgy - **INGEMMET**

Mining Social Investment - **MSI**

Ministry of Agriculture and Irrigation - **MINAGRI**

Ministry of Economy and Finance - **MEF**

Ministry of Energy and Mines - **MINEM**

Works for Taxes - **OxI**

Territorial Planning - **TP**

Agency for Environmental Assessment and Enforcement - **OEFA**

Non-governmental Organizations for Development - **NGOs**

Presidency of the Council of Ministers - **PCM**

Gross Domestic Product - **GDP**

Mining Program in Solidarity with the People - **PMSP**

Corporate Social Responsibility - **CSR**

Programmatic Knowledge Services - **PKS**

National Society of Mining, Petroleum and Energy - **SNMPE**

# References

- Arellano-Yanguas, Javier (2011). ¿Minería sin fronteras? Conflicto y desarrollo en regiones mineras del Perú, Instituto de Estudios Peruanos, Serie: Minería y Sociedad, 7, [www.iep.org.pe](http://www.iep.org.pe), Lima.
- Ballón, Eduardo; Molina, Raúl; Viale Claudia; and Monge Carlos (2017), Minería y marcos institucionales en la Región Andina. GIZ and NRGI, Bogotá, <https://resourcegovernance.org/analysis-tools/publications/mineria-y-marcos-institucionales-en-la-region-andina>
- World Bank / Oxfam International (2015), Construyendo desde el conflicto: Lecciones aprendidas de las mesas de diálogo en Tintaya y Moquegua (Perú), Social Development Unit, Social, Urban, Rural and Resilience Global Practice, Lima, World Bank; Oxfam International.
- Centro para la Competitividad y el Desarrollo (CCD) (2019), Actualización del “Estudio: Beneficios de la minería en el Perú” - Beneficios macro y microeconómicos, Lima, 2019.
- Economic Commission for Latin America and the Caribbean (ECLAC) / Organisation for Economic Co-operation and Development (OECD) (2017), Evaluaciones del desempeño ambiental: Perú, Santiago.
- Cooper Fort, Claudia (2019), La Minería y su Importancia en la Economía Peruana, September 2019, Bolsa de Valores de Lima.
- De Echave, José (2020), Carrera hacia el fondo, in Dammert Bello, Juan Luis and Javier Arellano Yanguas (eds.). Gobernanza de las Industrias Extractivas en América Latina. Introductory training material, NRGI, Lima, <https://resourcegovernance.org/analysistools/publications/gobernanza-industrias-extractivas-america-latina-capacitacion>
- De Sa, Paulo (2018), Buenas prácticas en la gestión de recursos minerales, Paulo de Sa and Ramon Espinasa, IDB Technical Note, 1602.
- EY (2019), Peru’s Mining & Metals Investment Guide 2020-2021, prepared January 2020 by ProInversión, the Ministry of Foreign Relations, and EY; authors: Marcial Garcia and Paulo Pantigoso, EY, Lima.
- Faulkner, S. (2019), DELVE 2019 Country Profile: Peru, DELVE, World Bank, 2019, [https://delvedatabase.org/uploads/resources/2019-Country-Profile-Peru\\_Final.pdf](https://delvedatabase.org/uploads/resources/2019-Country-Profile-Peru_Final.pdf)
- Instituto de Ingenieros de Minas del Perú (IIMP) and Centro para la Competitividad y el Desarrollo (CCD) (2019), Beneficios Actuales y Potenciales de la Minería en el Perú, Resumen Ejecutivo, July 2019.

Natural Resource Governance Institute (NRGI) (2020a), ¿Una nueva carrera hacia el fondo? Desafíos de gobernanza para el sector minero en América Latina en tiempos de COVID-19, working document, June 11, 2020.

Natural Resource Governance Institute (NRGI) (2020b), Peru: Initial Assessment of Impact of the Coronavirus Pandemic on the Extractive Sector and Resource Governance, June 9, 2020.

Torres Cuzcano, Víctor (2015), Minería Ilegal e Informal en el Perú: Impacto Socioeconómico, Cuadernos de CooperAcción #2, CooperAcción – Acción Solidaria para el Desarrollo, Lima, Peru, [www.cooperaccion.org.pe](http://www.cooperaccion.org.pe)

World Bank Group (2015), Desafíos y oportunidades para la Inversión Social Minera en el Perú, Energy and Extractives Global Practice (GEEDR), Lima, World Bank Group.

World Bank Group (2014), Gobernanza de la Tierra y Minería: Diagnóstico situacional Apurímac, Perú. Social, Urban, Rural and Resilience Global Practice, Lima, World Bank.

# Reference Annex

- Ministry of Energy and Mines (MINEM): Governing body for the energy and mining sector. Its purpose is to formulate and evaluate national policy on mining activities. [www.minem.gob.pe](http://www.minem.gob.pe)
- Institute of Geology, Mining and Metallurgy (INGEMMET): Public agency responsible for granting mining concessions, administering the national mining registry, and processing, managing, and disseminating geoscientific data for promoting investment in Peru. [www.ingemmet.gob.pe](http://www.ingemmet.gob.pe).
- General Directorate of Mining (DGM): MINEM agency responsible for supervising and promoting activities for ensuring the effective use of mining resources in harmony with the environment and for granting certain concessions and authorizations for starting exploration, exploitation, and beneficiation activities. [www.minem.gob.pe](http://www.minem.gob.pe).
- General Directorate for Mining Environmental Matters (DGAAM): Technical body and regulator responsible for promoting policies to ensure sustainable development of the mining sector. This is a MINEM agency that focuses on promoting environmental protection through standards and regulations on mining activities, responsible for granting environmental instruments for exploration and mine closure.
- Supervisory Body for Investment in Energy and Mines (OSINERGMIN): Public agency of the Presidency of the Council of Ministers (PCM) responsible for regulating and supervising infrastructure safety in the electricity, hydrocarbon, and mining subsectors and mining operations of the medium- and large-scale mining stratum, specializing in engineering aspects. [www.osinergmin.gob.pe](http://www.osinergmin.gob.pe).
- Ministry of the Environment (MINAM): Governing body for the environment in Peru, with authority for designing, establishing, implementing, and supervising government policy on the environment, directing the Environmental Impact Assessment System (SEIA) and the National Environmental Information System (SINIA), and establishing the criteria and procedures for formulating, coordinating, and implementing plans for decontamination and recovery of degraded environments. [www.minam.gob.pe](http://www.minam.gob.pe)
- National Environmental Certification Service for Sustainable Investments (SENACE): Regulatory agency created in December 2012 under MINAM. It formally began operating on December 28, 2015 and is responsible for approving detailed environmental impact assessments (EIA-d) for public or private investment projects that might cause a significant negative environmental impact.
- Environmental Control and Assessment Agency (OEFA): This is the authority responsible for regulating, supervising, and sanctioning environmental matters related to activities carried out by entities in the electricity, hydrocarbons, and mining subsectors, among other economic sectors. It is a MINAM support agency. [www.oefa.gob.pe](http://www.oefa.gob.pe).
- National Service for Natural Protected Areas (SERNANP): MINAM agency with authority to direct the

management, operation, control, and supervision of the National System of Natural Protected Areas (SINANPE). The Service also addresses key threats to the integrity of the protected areas, including illegal mining. [www.sernanp.gob.pe](http://www.sernanp.gob.pe).

- National Water Authority (ANA): Maximum technical and regulatory authority responsible for promoting, supervising, and controlling the use of water resources throughout the country. Responsible for granting different rights concerning the use of water in the mining industry, it is a specialized agency under the Ministry of Agriculture. [www.ana.gob.pe](http://www.ana.gob.pe).
- General Directorate for Environmental Health (DIGESA): Technical and regulatory agency for matters concerning basic sanitation, occupational health, food hygiene, zoonosis, and environmental protection. It issues regulations and evaluates environmental health processes in the sector. It is an agency under the Ministry of Health. [www.digesa.sld.pe](http://www.digesa.sld.pe).
- National Labor Inspection Superintendence (SUNAFIL): Oversight agency under the Ministry of Labor and Employment Promotion responsible for overseeing compliance with the law on health and safety management in all mining strata (large-, medium-, and small-scale and artisanal mining). <https://www.sunafil.gob.pe/portal/>.
- Office of the Deputy Minister for Intercultural Affairs under the Ministry of Culture (MINCUL): It issues binding technical opinions on the environmental impact assessment (EIA) when an investment project is carried out in territorial reserves created for the protection of Indigenous peoples, among others. <https://www.cultura.gob.pe>. It is responsible for registering and identifying Indigenous and native communities.
- PROINVERSIÓN: Since the 1990s, through its predecessor, the Commission for the Promotion of Private Investment (COPRI), this agency has been contributing to the mining sector through the awarding of projects that have marked milestones in the industry's evolution. Since 1991, forty contracts have been awarded for a total transfer price of US \$1,767 million, not including the companies' investment commitments. <https://www.proinversion.gob.pe>.

# Annex I: MSD Methodology - Brief Description

MSD is a data-driven diagnostic of the mining sector. Data is compiled using a questionnaire containing 373 questions. The questions draw on two different data sources, specifically:

- Primary data on the country’s laws, regulations, and procedures; these questions are related to de jure “rules.” This data is generated through a desk review of relevant documents; and
- Interview data from in-country interviews of representatives from government, civil society, and industry. These questions refer to de facto performance.

The response to each question is scored on a scale of 1 (lowest) to 4 (highest). Specifically:

- Primary data questions typically deal with the existence of legally binding requirements. In some cases, primary questions are simple Yes/No questions that are scored as 4 or 1, depending on the response. In many other cases, primary questions explore whether the legally binding requirement is consistent with good practice. This is done through a series of sub-questions. The overall score then averages the sub-question scores.
- The interview questions have specific response options. Four, three or two options are given. An example of four options is “very satisfied / satisfied / unsatisfied / very unsatisfied” with the respective scoring of 1 to 4. An example of three options would be “fully / partially / not at all” with scores of 4 / 2.5 / 1. An example of two response options would be “Yes / No” with a score of 4 or 1. Interview questions may contain 2 or more sub-questions, in which case the overall score would be an average of the sub-question scores.

Interview responses from civil society and industry are averaged into one response for civil society and one for industry, respectively. Respondents also have an opportunity to provide comments to support or clarify their views. Questions are grouped into indicators and indicators are grouped into “topics” that represent the cells of the dashboard (indicators are shown in several Figures in the report and are clearly identified in the headings in Annex II). Aggregation of each step involves simple averaging. The resulting scores are divided into four groups:

- “Very Low” (scores of 1 - 1.75);
- “Low” (scores >1.75 to 2.5);
- “High (scores >2.5 - 3.25); and
- “Very High” (scores of >3.25 - 4).

The figures in the report translate these scores into color coding as follows:

<b>Scoring Key:</b>	<b>Very low</b> (1.00-1.75)	<b>Low</b> (>1.75-2.50)	<b>High</b> (>2.50-3.25)	<b>Very High</b> (>3.25-4.00)
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# Annex II: Question Scores

Number	Question	Data Source	Score
<b>A</b>	<b>Mining Sector Management</b>		
<b>A1</b>	<b>Sector Policy</b>		
1	Is there an approved mining sector strategy that is publicly available?	Primary	4.00
2	Is there a current multi-year national development plan that has a section on the mining sector and that is publicly available?	Primary	4.00
3	How satisfied is government with the mining sector development taking place in this country?	Interview Government	2.62
4	How satisfied is the mining industry with the mining sector development taking place in this country?	Interview Industry	2.42
5	How satisfied is civil society with the mining sector development taking place in this country?	Interview Civil Society	2.00
6	Is mining sector legislation in accordance with the mining sector strategy?	Interview Government	2.50
7	Is mining sector legislation (including policies and regulations) consistent with other relevant legislation (including policies and regulations)?	Interview Government	2.57
8	How satisfied is the mining industry with the country's mining legislation (e.g., is it reasonably up-to-date and addresses all relevant issues)?	Interview Industry	2.42
9	How satisfied is the government with the country's mining legislation (e.g., is it reasonably up-to-date and addresses all relevant issues)?	Interview Government	2.36
10	How satisfied is civil society with the country's mining legislation (e.g., is it reasonably up-to-date and addresses all relevant issues)?	Interview Civil Society	2.29
11	Is there an investment promotion strategy that adequately covers the mining sector?	Interview Government	2.82
<b>A2</b>	<b>Sector Dialogue</b>		
12	Is there a Chamber of Mines (or similar organization) that represents the mining industry?	Primary	4.00
13	How satisfied is the mining industry with the way the Chamber of Mines (or similar organization) represents the views of the mining industry?	Interview Industry	2.73
14	Are there civil society organizations that represent the views of civil society on a wide range of mining sector issues?	Primary	4.00
15	How satisfied is civil society with the way existing civil society organizations represent the views of civil society on mining sector issues?	Interview Civil Society	2.00
16	How satisfied is the government with the dialogue between the government and the mining industry on mining sector issues?	Interview Government	2.67
17	How satisfied is the government with the dialogue between the government and civil society on mining sector issues?	Interview Government	2.31
18	How satisfied is the mining industry with the dialogue between the government and the mining industry on mining sector issues?	Interview Industry	2.50
19	How satisfied is the mining industry with the dialogue between civil society and the mining industry on mining sector issues?	Interview Industry	2.40
20	How satisfied is civil society with the dialogue between the government and civil society on mining sector issues?	Interview Civil Society	1.67
21	How satisfied is civil society with the dialogue between the mining industry and civil society on mining sector issues?	Interview Civil Society	1.83
22	Did an informed and meaningful national consultation take place during the preparation of the mining sector strategy?	Interview Government	1.50
23	Did an informed and meaningful national consultation take place during the preparation of the mining sector strategy?	Interview Industry	1.92
24	Did an informed and meaningful national consultation take place during the preparation of the mining sector strategy?	Interview Civil Society	1.00

25	Did an informed and meaningful national consultation take place during the preparation of the national development plan?	Interview Government	2.20
26	Did an informed and meaningful national consultation take place during the preparation of the national development plan?	Interview Industry	1.08
27	Did an informed and meaningful national consultation take place during the preparation of the national development plan?	Interview Civil Society	2.50
<b>A3</b>	<b>Roles and Responsibilities</b>		
28	Is there a stand-alone Ministry of Mines with clearly defined responsibilities for the mining sector? If not, and mining sector issues are covered by a unit/section in a different Ministry, is this unit/section sufficiently empowered to deal with mining sector issues?	Interview Government	4.00
29	Does mining or other legislation assign clear authorities and non-overlapping responsibilities between government ministries/agencies in the mining sector?	Interview Government	3.25
30	Is there a clear understanding and acceptance of the various roles and responsibilities amongst the agencies involved in the management of the mining sector?	Interview Government	3.25
31	Is there a dedicated unit within the mining authority dealing with artisanal and small-scale mining (ASM)?	Primary	4.00
32	Is there a legally binding provision for the establishment and operation of a mining cadastre that specifies its authority and responsibilities?	Primary	4.00
33	Is there a legally binding provision that identifies the authority that issues exploration and mining licenses and is this authority separate from the mining ministry?	Primary	4.00
34	If there a legally binding provision that provides for the use of mining-related standard contracts and/or development agreements, does the law define the signatory and is the signatory the same as the license issuer?	Primary	...
35	Are there legally binding provisions that identify which institution or institutions are responsible for approving EIAs and EMMPs as well as monitoring and enforcing compliance with legal requirements related to managing environmental impact?	Primary	4.00
36	Are there legally binding provisions that identify which institution or institutions are responsible for approving SIAs and SMMPs as well as monitoring and enforcing compliance with legal requirements related to managing social impact?	Primary	4.00
37	Are there legally binding provisions which identify the authority or authorities which grant permits related to the transportation of minerals and is this authority separate from the Ministry of Energy and Mines?	Primary	4.00
38	Is there a legally binding provision which establishes who is the authority in charge or supervising and controlling mining infrastructure and if yes, is this authority separate from the authority in charge of monitoring environmental impact and are the two authorities clearly delineated?	Primary	4.00
39	Is there a legally binding provision which establishes who is the authority in charge or supervising and controlling mining occupational health and if yes, is this authority separate from the authority in charge of monitoring environmental impact and are the two authorities clearly delineated?	Primary	4.00
40	Is there a legally binding provision which establishes who is the authority in charge or supervising and controlling mining obligations such as validity fees, investment and production and if yes, is this authority separate from the authority in charge of monitoring environmental impact and are the two authorities clearly delineated?	Primary	4.00
<b>A4</b>	<b>Intra-Governmental Coordination</b>		
41	In practice, are there disagreements between government ministries/agencies over the roles and responsibilities regarding the mining sector?	Interview Government	2.72
42	In practice, are you aware of disagreements between government ministries/agencies over the roles and responsibilities regarding the mining sector?	Interview Industry	1.80
43	In practice, are you aware of disagreements between government ministries/agencies over the roles and responsibilities regarding the mining sector?	Interview Civil Society	2.00

44	Has the government set up formal mechanisms to share resources and information between institutions in the form of committees, task forces or working groups that bring together "mining sector practitioners"?	Interview Government	2.11
45	Are you aware that the government has set up formal mechanisms to share resources and information between institutions in the form of committees, task forces or working groups that bring together "mining sector practitioners"?	Interview Industry	1.96
46	Has the government set up formal mechanisms to share resources and information between institutions in the form of committees, task forces or working groups that bring together "mining sector practitioners"?	Interview Civil Society	1.64
47	Are there formal mechanisms for sharing information between government ministries/agencies working on the mining sector?	Interview Government	3.23
48	How satisfied are you with the effectiveness of the formal mechanisms for sharing resources and information?	Interview Government	2.20
49	How satisfied are you with the effectiveness of the formal mechanisms for sharing resources and information that the government has set up?	Interview Industry	2.38
50	How satisfied are you with the effectiveness of the formal mechanisms for sharing resources and information that the government has set up?	Interview Civil Society	2.00
51	Has a central information storage system and database been set up that effectively supports the maintenance, verification, and sharing of data for the mining sector?	Interview Government	2.16
52	How satisfied are you with the central information storage system and database?	Interview Government	2.20
53	If it does exist, how satisfied is industry with the central information storage system and database for the mining sector that the government has set up?	Interview Industry	2.60
54	How satisfied are you with the central information storage system and database for the mining sector that the government has set up?	Interview Civil Society	1.80
1	<b>Contracts, Licenses and Exploration</b>		
B1	<b>Rules for License Allocation, Oversight, and Transfer</b>		
B1.1	<b>License Allocation Rules</b>		
55	Are there legally binding procedures for granting exploration and mining licenses that are consistent with good practice and compatible with other relevant legislation?	Primary	4.00
56	Do the procedures used in granting exploration and mining licenses ensure that licenses are only issued to qualified applicants and do rely on either "First Come, First Served procedures" or "Competitive Bidding"?	Primary	4.00
57	If competitive bidding is used for granting exploration licenses, are standardized bidding documents and contracts used and, if so, do the evaluation criteria emphasize work commitments?	Primary	...
58	If competitive bidding is used for granting mining licenses, are standardized bidding documents used and, if so, do the evaluation criteria emphasize investment commitment and premium payments?	Primary	...
59	Are there legally binding procedures for registering or granting licenses to artisanal and small-scale mining operators and, if so, can the registration/license be obtained from field offices, not just the mining authority head office?	Primary	4.00
60	Are there legally binding provisions regarding the timeframes for the issuance of exploration and mining licenses and the approval of exploration work programs?	Primary	4.00
61	Is there a legally binding requirement or guideline that requires that a map component be used to record license boundaries in the cadastre?	Primary	...
62	Are there legally binding provisions that an applicant be informed if a license application is denied or a license is cancelled and, if so, are they consistent with good practice?	Primary	4.00
63	Are there legally binding provisions that require exploration license holders to report exploration activities and results to the Geological Survey Department or the mining authority and, if so, are they consistent with good practice?	Primary	3.40

64	Are there legally binding procedures for granting licenses to mineral traders and are they required for trading minerals, gemstones, etc. produced by mining license holders as well as artisanal and small-scale mining operators?	Primary	...
<b>B1.2 License Management and Transfer Rules</b>			
65	Are there legally binding provisions for penalties and sanctions for non-compliance with exploration and mining license conditions?	Primary	4.00
66	Are there legally binding requirements that exploration and mining licenses, contracts and agreements be made publicly available?	Primary	4.00
67	Are there legally binding provisions, such as state secrecy laws, that contain barriers to the disclosure of mining sector information?	Primary	4.00
68	Are there legally binding provisions that require license holders to provide the government with details of the beneficial ownership of the license and is this information made publicly available?	Primary	4.00
69	Does a company that holds an exploration license and is in compliance with exploration license conditions have a legally binding automatic priority right to apply for a mining license in that area—provided it does also meet the conditions and has provided all necessary information required for a mining license?	Primary	...
70	Are there legally binding provisions that permit exploration and mining license holders to transfer their licenses to an eligible party that meets the license provisions?	Primary	4.00
<b>C1.1 Collection and Maintenance of Geological Information</b>			
<b>C1.1 Collection and Maintenance of Geological Information</b>			
71	In practice, are exploration license holders delivering the required operational information to the Geological Survey Department (GSD) or mining authority on a regular basis?	Interview Government	3.38
72	In practice, does the GSD or similar organization maintain geological information from companies in a confidential manner until such time as it can be made publicly available?	Interview Government	2.50
73	In practice, does the GSD or similar organization collect geological information in a publicly accessible library?	Interview Government	3.00
74	Is there a government website that presents what national geological information is available or, if not at the national, at the sub-national level?	Primary	4.00
75	Is there a library with current national or sub-national geological information maintained by the Geological Survey Department (GSD) or a similar organization?	Primary	4.00
76	In practice, does the GSD or similar organization make use of the geological data collected from companies to improve government and public awareness/understanding of geological prospectivity?	Interview Government	4.00
77	In practice, does the GSD or similar organization make use of the geological data collected from companies to monitor compliance with license conditions?	Interview Government	2.50
78	In practice, does the GSD or similar organization have the capacity to fulfill its mandate in a satisfactory manner?	Interview Government	3.07
79	How satisfied is the mining industry with the way in which the Geological Survey Department (GSD) or similar organization is fulfilling its mandate?	Interview Industry	3.08
80	What percentage of the licensed ground is being serviced by active exploration?	Interview Government	1.00
81	How satisfied is the mining industry with the availability of geological maps for the most prospective areas?	Interview Industry	3.00
82	In practice, does the Mining Cadastre have the capacity to fulfill its mandate in a satisfactory manner?	Interview Government	3.25
83	How satisfied is the mining industry with the way in which the Mining Cadastre is fulfilling its mandate?	Interview Industry	3.10
84	In practice, is the topographic map for the cadastre compatible with GPS systems?	Interview Government	4.00
85	What percentage of the mining cadastre is up-to-date?	Interview Government	4.00

86	In practice, if there is a decentralized cadastre system in place, is the central office able to obtain updated information on a timely basis?	Interview Government	4.00
<b>C1.2 Effective License Allocation</b>			
87	In practice, is the information required for license applications publicly available?	Interview Industry	4.00
88	Are the procedures in the legal framework for the award of exploration and mining licenses followed in practice?	Interview Industry	3.80
89	Are the limits to discretionary power in the award of exploration and mining licenses followed in practice?	Interview Industry	3.50
90	In practice, is there a preference for local companies or producers in the award process of exploration and mining licenses?	Interview Industry	4.00
91	In practice, are the legislated timeframes for mining concessions awards followed?	Interview Industry	2.80
92	Are the timeframes for the approval of exploration work programs followed in practice?	Interview Industry	1.58
93	Are the timelines for deciding on exploration and/or mining license applications compatible with the timelines of other required permits?	Interview Industry	1.86
94	In practice, when licenses are denied or cancelled, are the procedures followed?	Interview Government	4.00
95	In practice, does the unit issuing exploration and mining licenses have the capacity to fulfill its mandate in a satisfactory manner?	Interview Government	2.39
96	How satisfied is the mining industry with the way in which the unit issuing exploration and mining licenses is fulfilling its mandate?	Interview Industry	2.91
97	What percentage of licenses are subject to boundary disputes between license holders due to the ambiguity of boundaries?	Interview Government	4.00
98	In practice, how often do license cancellations or denials result in appeals?	Interview Government	3.00
<b>C1.3 Effective License Management</b>			
99	In practice, does the unit managing the monitoring of licenses have the capacity to fulfill its mandate in a satisfactory manner?	Interview Government	2.21
100	How satisfied is the mining industry with the way in which the unit managing the monitoring of licenses is fulfilling its mandate?	Interview Industry	3.09
101	In practice, are license holders able to transfer their licenses to companies which meet the qualification criteria?	Interview Government	4.00
102	In practice, are exploration and mining licenses, contracts and agreements made publicly available?	Interview Government	4.00
103	If the answer to the preceding question is "No", are key details of exploration and mining licenses readily accessible?	Interview Government	...
104	In practice, does the agency or ministry responsible for awarding licenses for exploration and mining operate independently from the mining ministry, and without undue influence from the mining ministry?	Interview Industry	3.73
105	Do you perceive corruption as having a negative impact on mining-sector activities- in particular the licensing process?	Interview Industry	3.00
106	Is your company aware of the payment of bribes in the mining sector?	Interview Industry	3.00
<b>2 Mining Operations</b>			
<b>B2 Mining Legislation/Processes, Land/Compensation/Resettlement, Environmental and</b>			
<b>B2.1 Mining Legislation and Processes</b>			
107	Are there legally binding regulations which cover exploration and mining activities?	Primary	4.00
108	Are the laws and regulations governing exploration and mining operations readily available from a dedicated government source?	Primary	3.25
109	Is there a legally binding process to appeal decisions by mining authorities and, if so, is the authority that receives the appeal independent of the mining authorities?	Primary	4.00

110	If it exists, does the legally binding process to appeal decisions by mining authorities have the legal standing to overturn these decisions?	Interview Government	3.00
111	Are citizen participation methods established for legal dispositions in mining issues adequate, are they an effective tool for transmitting the questions and needs of citizens, and can the legal process delay the granting of a mining permit?	Interview Government	3.25
112	Are timeframes for the approval of mine development plans and the approval of extensions of mining operations set out in the regulations?	Primary	4.00
<b>B2.2 Land, Compensation and Resettlement Rules</b>			
113	Does the holder of a mineral right have legally guaranteed access rights to surface land?	Primary	1.00
114	Is there a legally binding established procedure for the resettlement of communities displaced by mining activities and, if so, does it follow internationally accepted principles such as the Equator Principles or the IFC Performance Standards?	Primary	4.00
115	Is there a legally binding procedure for the payment of compensation when exploration and/or mining activities interfere with land ownership or land use?	Primary	1.00
116	If mining is taking place in areas where armed conflict is taking place, are there legally binding requirements for a diagnostic review for appropriate actions regarding existing mineral rights in such areas?	Primary	...
<b>B2.3 Environmental and Social Impact Management</b>			
117	Is there a legally binding requirement that the clearance of the agency or ministry responsible for environmental protection be obtained before exploration or mining activities can commence and is the agency or ministry separate from the mining authorities or in a separate line of authority from the mining licensing agency?	Primary	4.00
118	Is there a legally binding requirement for companies to prepare and submit EIAs, EMMPs (or combined ESIAAs and ESMMPs) and related reports including implementation and monitoring reports for review and approval by the concerned government agencies?	Primary	4.00
119	Is there a legally binding requirement for EIAs and EMMPs (or combined ESIAAs and ESMPS) and related implementation and monitoring reports to address mining's environmental impacts on women separately from the impacts on men?	Primary	1.00
120	Is there a legally binding requirement for E(S)IAs and E(S)MMPs (or other key environmental impact related documents such as monitoring reports) to be made public and is the requirement consistent with good practice?	Primary	4.00
121	Are there legally binding requirements for pollution prevention and management of air pollution, hazardous and non-hazardous wastes, chemicals and hazardous materials and pesticides?	Primary	4.00
122	Are there legally binding requirements for the protection of surface and ground water quality and the review and balancing of water allocations and are they consistent with good practice?	Primary	4.00
123	Is there a legally binding requirement for structures such as tailings dams and impoundments that hold mine wastes to be designed, operated and maintained according to internationally recognized standards that is consistent with good practice?	Primary	1.00
124	Is there a legally binding requirement for mining operations to identify, manage and protect biodiversity that is consistent with good practice?	Primary	4.00
125	Is there a legally binding requirement for mining operations to identify, manage and protect natural habitat that is consistent with good practice?	Primary	4.00
126	Is there a legally binding requirement that mine design and operations reflect anticipated trends in weather event severity and frequency related to climate change that is consistent with good practice?	Primary	3.40
127	Is there a legally binding requirement for mining operations to have an Emergency Preparedness and Response Program (EPRP) prior to commencement of mining operations that is consistent with good practice?	Primary	4.00
128	Is there a legally binding requirement for Emergency Preparedness Plans to be made public and is the requirement consistent with good practice?	Primary	2.50

129	Is there a legal provision for a simplified Environmental Permit for artisanal and small-scale mining (ASM)?	Primary	4.00
130	Is there a legally binding requirement for companies to prepare and submit SIAs and SMMPs (and related reports including Implementation and Monitoring reports) for review and approval by the concerned government agencies and is the requirement consistent with good practice?	Primary	4.00
131	Is there a legally binding requirement for SIAs and SMMPs (or other key social impact related documents such as monitoring reports) to be made public and is the requirement consistent with good practice?	Primary	4.00
132	Is there a legally binding provision establishing a grievance and complaints mechanism for environmental and social mitigation issues and is the complaints mechanism consistent with good practice?	Primary	3.50
133	Is there an authority with whom a grievance or complaint can be filed and has the authority put in place procedures for hearing as well as corrective procedures?	Primary	4.00
<b>B2.4</b>	<b>Transportation of Minerals</b>		
134	Are there legally binding provisions that establish the procedures for the granting of permits related to the transportation of minerals?	Primary	4.00
135	Is there a legally binding requirement that the clearance of the agency or ministry responsible for environmental assessment be obtained before mining transportation permits are issued and do changes in an existing project require clearance as well?	Primary	2.80
136	Is there a legally binding requirement that mining transportation permits are subject to stakeholder consultation and/or public participation?	Primary	2.80
<b>B2.5</b>	<b>Artisanal and Small-Scale Mining</b>		
137	Is there an association that represents artisanal and small-scale miners?	Primary	4.00
138	Is there a government-run program that ASM workers and their families can access to get basic health and education services in the area where they work?	Primary	1.00
139	Are there legally binding provisions that provide for the legal operations of artisanal and small-scale mining (ASM) activities?	Primary	4.00
140	Are there legally binding provisions that permit ASM activities to take place, with the consent of the (non-ASM) license holder, on land for which an exploration or mining license has been issued?	Primary	4.00
141	Are there legally binding provisions that provide for the settlement of disputes between ASM and exploration and mining license holders?	Primary	1.00
142	Are there legally binding provisions for ASM that safeguard from potential environmental and other harm?	Primary	4.00
<b>B2.6</b>	<b>Occupational Health and Safety</b>		
143	Are there legally binding Occupational Health and Safety (OHS) standards and procedures, and, if so, do they include related education and training requirements and are they in line with internationally used standards?	Primary	4.00
144	Is there a grievance mechanism for workers for non-compliance with Occupational Health and Safety (OHS) standards and procedures, and, if so, does it include penalties in case of non-compliance?	Primary	4.00
<b>B2.7</b>	<b>Mine Closure and Financial Sureties for Decommissioning</b>		
145	Are there legally binding regulations which cover mine closure and reclamation activities?	Primary	4.00
146	Is there a legally binding requirement for a Mine Closure and Reclamation Plan (MCRP) to be prepared and is it consistent with good practice?	Primary	2.80
147	Are there legally binding provisions that outline what the MCRP must cover regarding environmental protection, remediation and reclamation as well as managing and mitigating potentially harmful social impacts?	Primary	2.50
148	Is there a legally binding requirement for the MCRP to be prepared in consultation with the affected communities and local government and is it consistent with good practice?	Primary	4.00

149	Is there a legally binding requirement for Mine Closure and Remediation Plans to be made public and is the requirement consistent with good practice?	Primary	3.00
150	Is there a legally binding requirement for mining companies to include progressive rehabilitation in the mining plan?	Primary	4.00
151	Are there legally binding provisions regarding a financial assurance mechanism related to mine closure that are consistent with good practice?	Primary	4.00
<b>C2.1</b>	<b>Mining Legislation and Processes</b>		
<b>C2.1</b>	<b>Mining Legislation and Processes</b>		
152	Are citizen participation methods established for legal dispositions in mining issues adequate, are they an effective tool for transmitting the questions and needs of citizens, and can the legal process deal the granting of a mining permit?	Interview Industry	3.00
153	Are citizen participation methods established for legal dispositions in mining issues adequate, are they an effective tool for transmitting the questions and needs of citizens, and can the legal process deal the granting of a mining permit?	Interview Civil Society	2.00
<b>C2.2</b>	<b>Land, Compensation and Resettlement--Practice</b>		
154	In practice, does the government enforce the legal requirements to resettle communities affected by mining activities?	Interview Civil Society	3.00
155	In practice, does the government enforce the legally binding payments of compensation when exploration and/or mining activities interfere with land ownership or land use?	Interview Civil Society	2.00
156	How satisfied is industry with the existing resettlement and compensation rules and their implementation?	Interview Industry	2.00
157	If mining is taking place in areas where armed conflict is taking place, does the government take appropriate actions in practice regarding existing mineral rights in such areas?	Interview Government	...
<b>C2.3</b>	<b>Environmental Impact</b>		
158	In practice, do exploration or mining activities commence without obtaining a permit from the agency or ministry responsible for environmental protection?	Interview Government	3.00
159	Is the institution tasked with monitoring and enforcing environmental laws and regulations carrying out its task in a satisfactory manner regarding the mining sector from exploration to post-mine closure?	Interview Government	3.33
160	How satisfied is civil society with the way the institution tasked with monitoring and enforcing environmental law is carrying out its task?	Interview Civil Society	2.14
161	How satisfied is the mining industry with the way the institution tasked with monitoring and enforcing environmental law and regulations is carrying out its task?	Interview Industry	2.33
162	In practice are EIAs and EMMPs (or other key environmental impact related documents) approved by the mining authority before a mining right is granted and are the documents updated and approved on a regular basis with specified timeframes?	Interview Government	3.57
163	In practice is the implementation of EMMPs and other environmental impact management and mitigation requirements monitored and enforced systematically?	Interview Government	2.86
164	In practice in case of breaches of environmental obligations does the OEFA impose economic sanctions and/or require other measures aimed at mitigating negative environmental impacts?	Interview Government	2.96
165	Are Environmental Impact Assessments (EIAs) and Environmental Management and Mitigation Plans (EMMPs) (or other key environmental impact related documents such as monitoring reports) made public in practice and are they widely available?	Interview Government	3.02
166	How satisfied is civil society with the public availability and accessibility of EIAs and EMMPs?	Interview Civil Society	2.43
167	In practice is surface and ground water quality being protected and water allocations reviewed and balanced?	Interview Government	3.50
168	In practice are structures such as tailings dams and impoundments that hold mine wastes designed, operated and maintained according to internationally recognized standards?	Interview Industry	3.59

169	In practice in case of breaches of environmental obligations does the OEFA impose economic sanctions and/or require other measures aimed at mitigating negative environmental impacts?	Interview Industry	3.05
170	In practice in case of breaches of environmental obligations does the OEFA impose economic sanctions and/or require other measures aimed at mitigating negative environmental impacts?	Interview Civil Society	2.58
171	In practice is biodiversity being identified, managed and protected?	Interview Industry	3.28
172	How satisfied is the government with the mining companies' design, operation and maintenance of structure such as tailings dams and impoundments that hold mine wastes?	Interview Government	2.75
173	In practice is natural habitat being identified, managed and protected?	Interview Industry	3.27
174	In practice do mine design and operations reflect anticipated trends in weather event severity and frequency related to climate change?	Interview Industry	3.66
175	In practice do mining companies have an Emergency Preparedness and Response Plan (EPRP) that is approved by Government, is reviewed, tested, and updated on a regular basis with reporting to the Government and is prepared and updated in close collaboration with the local community?	Interview Industry	3.10
176	Are Emergency Preparedness Plans made public in practice and are they widely available?	Interview Government	2.91
177	How satisfied is civil society with the public availability and accessibility of Emergency Preparedness Plans?	Interview Civil Society	1.75
178	In practice is the government monitoring and enforcing compliance with environmental requirements for artisanal and small-scale miners?	Interview Government	2.50
<b>C2.4</b>	<b>Social Impact</b>		
179	Are the institutions tasked with monitoring and enforcing social mitigation measures and requirements carrying out their tasks in a satisfactory manner?	Interview Government	2.74
180	How satisfied is civil society with the way the institutions tasked with monitoring and enforcing social mitigation measures and requirements are carrying out their tasks?	Interview Civil Society	1.86
181	How satisfied is the mining industry with the way the institutions tasked with monitoring and enforcing social mitigation measures and requirements are carrying out their tasks?	Interview Industry	2.08
182	How satisfied is civil society with the public availability and accessibility of SIAs and SMMPs?	Interview Civil Society	2.50
183	Is the grievance and complaints mechanism for environmental and social mitigation issues working well in practice?	Interview Civil Society	2.25
<b>C2.5</b>	<b>Transportation of Minerals</b>		
184	Regarding mineral transportation needs, is the already existing infrastructure adequate for the needs of the mining sector?	Interview Government	1.60
185	Regarding mineral transportation needs, is the already existing infrastructure adequate for the needs of the mining sector?	Interview Industry	1.75
186	In practice, is the clearance of the agency or ministry responsible for environmental assessment obtained before mining transportation permits are issued and do changes in the way minerals are transported require clearance as well?	Interview Government	3.25
187	In practice, is the clearance of the agency or ministry responsible for environmental assessment obtained before mining transportation permits are issued and do changes in the way minerals are transported require clearance as well?	Interview Industry	3.83
188	Are mining transportation permits subject to stakeholder consultation and/or public participation?	Interview Government	3.67
189	Are mining transportation permits subject to stakeholder consultation and/or public participation?	Interview Industry	3.58

190	Are mining transportation permits subject to stakeholder consultation and/or public participation?	Interview Civil Society	1.00
191	Are there mechanisms in place which guarantee adequate communication between the population affected by the transportation of minerals and mining titleholders and/or have there been recent claims from affected communities regarding the need for adequate communication?	Interview Government	2.20
192	Are there mechanisms in place which guarantee adequate communication between the populations affected by the transportation of minerals and mining titleholders?	Interview Industry	2.23
193	Are there mechanisms in place which guarantee adequate communication between the populations affected by the transportation of minerals and mining titleholders?	Interview Civil Society	1.50
<b>C2.6</b>	<b>Support for Artisanal and Small-Scale Mining</b>		
194	If there is a unit in the mining authority dealing with artisanal and small-scale mining, does it have the capacity to fulfill its mandate in a satisfactory manner?	Interview Government	2.31
195	How satisfied is civil society with the way the unit dealing with artisanal and small-scale mining in the Mining Ministry or in Regional Government is fulfilling its mandate?	Interview Civil Society	1.50
196	In practice, does the government provide technical training to ASM miners to help improve their mining activities and, if so, is the training effective and inclusive?	Interview Civil Society	1.00
197	In practice, are small scale miners able to coexist with other mining activities?	Interview Civil Society	2.75
198	In practice, are large-scale mining operations able to coexist with ASM activities?	Interview Industry	2.80
199	In practice, are artisanal and small-scale miners operating in the formal market?	Interview Government	2.00
200	Has the government implemented policies aimed at the reduction of illegal mining in Peru and, if yes, how satisfied are you with the results of these policies?	Interview Government	2.25
201	Has the government implemented policies aimed at the reduction of illegal mining in Peru, and, if yes, how satisfied are you with the results of these policies?	Interview Industry	2.92
202	Has the government implemented policies aimed at the reduction of illegal mining in Peru, and, if yes, how satisfied are you with the results of these policies?	Interview Civil Society	2.79
203	Have there been recent social conflicts generated by illegal mining?	Interview Government	1.25
204	Have there been recent social conflicts generated by illegal mining?	Interview Industry	1.63
205	Have there been recent social conflicts generated by illegal mining?	Interview Civil Society	1.64
206	Are the existing regulations related to mining formalization adequate and do they take account of environmental impact?	Interview Government	3.00
207	Are the existing regulations related to mining formalization adequate and do they take account of environmental impact?	Interview Industry	2.64
208	Are the existing regulations related to mining formalization adequate and do they take account of environmental impact?	Interview Civil Society	2.67
209	Is the deadline for the process of formalization adequate and is it extended when needed?	Interview Government	2.50
210	Is the deadline for the process of formalization adequate and is it extended when needed?	Interview Civil Society	2.50
211	Are there benefits associated with being a small-scale or artisanal miner?	Interview Government	4.00
212	Are there benefits associated with being a small-scale or artisanal miner?	Interview Civil Society	4.00
213	Is it common for mining titleholders who do not qualify as small-scale or artisanal miners to claim that they indeed are small-scale or artisanal miners?	Interview Government	1.60
214	Is it common for mining titleholders who do not qualify as small-scale or artisanal miners to claim that they indeed are small-scale or artisanal miners?	Interview Civil Society	1.00

215	In practice, are the mechanisms for the settlement of disputes between ASM and other mining operations being used?	Interview Civil Society	1.60
216	In practice, do artisanal and small-scale miner associations participate in the monitoring, advocacy and protection of ASM mining and property rights?	Interview Civil Society	4.00
217	In practice, are ASM workers and their families able to access basic health and education services in the area where they work?	Interview Civil Society	2.80
<b>C2.7</b>	<b>Occupational Health and Safety</b>		
218	In practice, is the implementation of Occupational Health and Safety (OHS) standards and procedures including any related education and training requirements enforced?	Interview Industry	3.15
219	Is the grievance and complaints mechanism for operational health and safety working well in practice?	Interview Government	3.30
220	Is the grievance and complaints mechanism for operational health and safety working well in practice?	Interview Civil Society	2.50
221	In practice, does the government track the number of injuries and fatalities related to mining activities?	Interview Government	4.00
<b>C2.8</b>	<b>Mine Closure and Financial Sureties for Decommissioning</b>		
222	In practice is an initial Mine Closure and Reclamation Plan (MCRP) prepared and approved prior to the commencement of production?	Interview Government	3.50
223	In practice is a final MCRP prepared and approved prior to the commencement of mine closure activities and is it audited by independent experts?	Interview Government	2.93
224	In practice do mining companies consult communities and local government when developing and updating the Mine Closure and Reclamation Plan (MCRP)?	Interview Industry	3.23
225	How satisfied is civil society with the way mining companies consult with communities when developing and updating the Mine Closure and Reclamation Plan (MCRP)?	Interview Civil Society	1.80
226	How satisfied is local government with the way mining companies consult with communities when developing and updating the MCRP?	Interview Government	2.00
227	Are Mine Closure and Remediation Plans made public in practice and are they widely available?	Interview Government	2.66
228	How satisfied is civil society with the public availability and accessibility of MCRPs?	Interview Civil Society	1.33
229	How satisfied is the mining industry with the way the institutions tasked with monitoring and enforcing the environmental and social obligations associated with mine closure are carrying out their tasks?	Interview Industry	2.25
230	How satisfied is civil society with the way the institutions tasked with monitoring and enforcing the environmental and social obligations associated with mine closure are carrying out their tasks?	Interview Civil Society	2.00
231	In practice does progressive rehabilitation take place to reduce the scope and cost of work needed for mine closure and reclamation once production ceases?	Interview Industry	4.00
232	In practice are mining companies setting aside funds for mine closure consistent with the estimates in the MCRP and are the funds sufficient to cover the costs of premature closure as well as the cost of closure by third party contractors in the event this becomes necessary?	Interview Industry	3.64
233	In practice, are adequate procedures being followed regarding the funds being set aside for mine closure?	Interview Government	3.55
234	How satisfied are mining companies with the procedures in place regarding the funds being set aside for mine closure?	Interview Industry	2.29
235	In practice is government working to inventory abandoned mine sites, and determine the most effective way forward?	Interview Government	3.00
236	In practice, is the approved plan for moving forward with abandoned mine sites being implemented?	Interview Government	4.00

3	<b>Mining Taxation</b>		
B3	<b>Tax Policy and Tax Administration Rules</b>		
B3.1	<b>Tax Policy and Instruments</b>		
237	Are there legally binding provisions that prescribe which government agencies have the authority to collect taxes, royalties, and other payments (if applicable) from mining companies?	Primary	4.00
238	Are income and withholding tax payments and royalties from mining companies to government required by law to be placed in the national treasury or other designated accounts?	Primary	4.00
239	Are the rates, formulae and bases for the main fiscal instruments (such as income taxes, withholding taxes, indirect taxes and royalties) that apply to mining prescribed by law?	Primary	4.00
240	Are there legally binding provisions for the granting of tax incentives to mining companies and, if so, do they require that a cost-benefit analysis be conducted before granting the tax incentives?	Primary	4.00
241	Can the government negotiate fiscal provisions with mining companies that differ from those provided in the law and, if so, are these fiscal provisions being made public?	Primary	4.00
242	Are there legally binding provisions that ensure that the government has an adequate minimum revenue stream (relative to sales revenue) in all production periods?	Primary	1.00
243	Does the country employ an adequate mix of progressive and regressive fiscal instruments with respect to revenues from mining?	Primary	1.75
244	Are there legally binding provisions that require an annual disclosure of related party transactions?	Primary	4.00
245	Are there legally binding provisions regarding transfer pricing and, if so, are they consistent with good practice?	Primary	4.00
246	Are there legally binding provisions that limit the risk from thin capitalization and, if so, do they include interest rate caps and debt to equity caps?	Primary	3.00
247	Are there legally binding provisions that identify profits from the indirect or offshore transfer of exploration and mining assets/rights so that they are taxable in the host country?	Primary	1.00
248	In cases where the government holds equity shares in resource companies, are the actual benefits from equity holding greater than the costs for acquiring equity?	Interview Government	...
249	How satisfied is the mining industry with the stability over time of the fiscal terms for mining?	Interview Industry	2.36
250	Are there no or low tariffs on imports of capital equipment?	Primary	4.00
251	Do companies have to pay VAT or sales tax on imports of capital equipment?	Primary	1.00
252	Are there no or low tariffs (or non-tariff barriers) on raw material exports?	Primary	4.00
253	How satisfied is civil society with the current mining tax regime?	Interview Civil Society	2.50
B3.2	<b>Mining Tax Administration Rules</b>		
254	Are there legally binding provisions that specify which agencies collect mining sector payments and is the number of agencies involved relatively small?	Primary	4.00
255	Are there legally binding provisions for mining sector tax payment processes and, if so, do they cover detailed arrangements?	Primary	4.00
256	Are there legally binding provisions for mining sector royalty payment processes and, if so, do they cover detailed arrangements?	Primary	4.00
257	Does the government have a simplified tax collection system for ASM?	Primary	1.00
258	Are there legally binding provisions that require regular tax, cost and physical audits to be conducted of mining operations and, if so, do the provisions apply to all mining taxpayers (excluding ASM) and are the audits risk-based?	Primary	4.00
259	Are there legally binding provisions for penalties and sanctions for companies for non-compliance with tax legislation?	Primary	2.00
260	Are there legal provisions for independent agencies to exercise oversight of the administration of the fiscal regime?	Primary	4.00

261	Are there legally binding provisions that require government officials with a role in the oversight of the mining sector to disclose information about their financial interests in any extractive activity or project (NB: These could be general, e.g. not mining-specific provisions)?	Primary	4.00
262	If they exist, are national mining companies limited to a commercial role and subject to fiscal regulation in the same way as other commercial companies?	Primary	4.00
<b>C3</b>	<b>Mining Tax Administration and Auditing</b>		
<b>C3.1</b>	<b>Mining Tax Administration</b>		
263	In practice, are policies and procedures related to mining taxation publicly available, easily accessed, and understandable by the taxpayer?	Interview Industry	3.00
264	In practice, are changes to mining tax legislation undertaken through a consultative process and, if so, how satisfied is the mining industry with the process?	Interview Industry	1.58
265	In practice, does the taxation authority issue guidance notes for mining sector taxpayers and, if so, how satisfied is the mining industry with these guidance notes?	Interview Industry	2.00
266	In practice, are the bases on which taxes are levied subject to disputes between taxpayers and the tax authorities and if there are such disputes are they resolved through active tax tribunals?	Interview Government	3.50
267	Does the tax administration have a large taxpayer unit/office or one specialized in natural resources/mining?	Primary	4.00
268	In practice, does the large taxpayer unit/office or the one specialized in natural resources/mining have the capacity to fulfill its mandate in a satisfactory manner?	Interview Government	1.83
269	In practice, how satisfied is the mining industry with the way in which the large taxpayer unit/office or the one specialized in natural resources/mining is fulfilling its mandate?	Interview Industry	2.27
270	In practice, are taxes and payments by mining sector tax payers only collected by the mandated agencies?	Interview Government	4.00
271	How satisfied are you with the implementation of the "Works for Taxes" ("Obras por Impuestos") mechanism?	Interview Government	2.80
272	In practice, how well does the "Works for Taxes" ("Obras por impuestos") mechanism work?	Interview Industry	3.01
273	Are there any impediments that negatively impact the use of the "Works for Taxes" mechanism (e.g., high administrative costs, long waiting periods for approval, restricted definitions of potential beneficiaries, difficult access to the competent government agencies, or others)?	Interview Government	1.50
274	In practice, are the fiscal terms, including provisions for tax incentives in the law followed?	Interview Government	4.00
275	In practice, does the government negotiate fiscal terms and fiscal incentives with mining companies that differ from those in the mining and fiscal laws and regulations and, if so, does the government have well experienced and qualified representative to negotiate fiscal terms and fiscal incentives with mining companies and are the negotiated terms publicly available?	Interview Government	1.00
276	In practice, do government officials with a role in the oversight of the mining sector disclose information about their financial interest in any extractive activity or project?	Interview Government	1.00
277	How satisfied is the government with the implementation of the provisions in stabilization contracts?	Interview Government	2.50
278	How satisfied is civil society with the implementation of the provisions in stabilization contracts?	Interview Civil Society	2.00
<b>C3.2</b>	<b>Mining Tax Auditing</b>		
279	In practice, are tax, cost and physical audits of mining companies conducted systematically?	Interview Government	2.00
280	In practice, are the legally binding provisions regarding transfer pricing being implemented?	Interview Government	2.50

281	In practice, are there regular audits for domestic and international related party transfer pricing transactions?	Interview Government	4.00
282	In practice, are advanced pricing rules used for regularly occurring domestic and international related party transactions?	Interview Government	4.00
283	In practice, are there regular audits of mining companies for compliance with thin capitalization rules?	Interview Government	2.50
284	In practice, are the legally binding provisions on penalties and sanctions for non-compliance with tax legislation being implemented?	Interview Government	2.50
4	<b>Revenue Management and Distribution</b>		
B4	<b>Revenue Sharing and Fiscal Stabilization-- Rules</b>		
B4.1	<b>Revenue Sharing Rules</b>		
285	Are there legally binding provisions regarding arrangements for resource revenue sharing between central and sub-national governments that clearly articulate the objectives of resource revenue sharing and do they specify how much should be transferred to sub-national governments?	Primary	4.00
286	Does the Ministry of Finance have written guidelines regarding when and how yearly budget allocations to sub-national governments should be disbursed?	Primary	4.00
B4.2	<b>Fiscal Stabilization Rules</b>		
287	Are there legally binding provisions that require a medium-term fiscal framework?	Primary	4.00
288	Are there legally binding provisions for a mechanism to protect budget expenditures from revenue volatility?	Primary	4.00
C4	<b>Revenue Sharing, Fiscal Stabilization and Resource Revenue Transparency--Practice</b>		
C4.1	<b>Revenue Sharing Arrangements</b>		
289	In practice, are the arrangements for resource revenue sharing between central and sub-national governments being followed?	Interview Government	3.33
290	In practice, does the Ministry of Finance follow its guidelines regarding when and how it disburses budget allocations to sub-national governments and do sub-national governments receive their entire yearly budget allocations?	Interview Government	3.00
291	In practice, do the mechanisms for mining royalty and "canon" transfers work?	Interview Government	3.40
292	In practice, do the mechanisms for mining royalty and "canon" transfers work?	Interview Industry	2.75
293	In practice, do the mechanisms for mining royalty and "canon" transfers work?	Interview Civil Society	3.00
294	Do regional and municipal governments have the capacity to manage the funds transferred?	Interview Government	2.50
295	Do regional and municipal governments have the capacity to manage the funds transferred?	Interview Industry	1.75
296	Do regional and municipal governments have the capacity to manage the funds transferred?	Interview Civil Society	1.29
297	Is the amount spent by regional and municipal governments (the disbursement rate) adequate in relation to the amounts transferred by the central government?	Interview Government	2.50
298	Is the amount spent by regional and municipal governments (the disbursement rate) adequate in relation to the amounts transferred by the central government?	Interview Industry	1.68
299	Is the amount spent by regional and municipal governments (the disbursement rate) adequate in relation to the amounts transferred by the central government?	Interview Civil Society	1.50
300	Are expenditures and the impacts of funded projects adequately monitored and evaluated (through audits or other mechanisms)?	Interview Government	2.33
301	Are the expenditures and the impacts of funded projects adequately monitored and evaluated (through audits and other mechanisms)?	Interview Industry	2.13
302	Are the expenditures and the impacts of funded projects adequately monitored and evaluated (through audits and other mechanisms)?	Interview Civil Society	1.71
303	How satisfied are you with the way the mechanism is contributing to its stated purpose?	Interview Government	2.00

304	How satisfied is the mining industry with the way the mechanism is contributing to its stated purpose?	Interview Industry	1.73
305	How satisfied is civil society with the way the mechanism is contributing to its stated purpose?	Interview Civil Society	1.57
306	In your opinion, is there a need to reform the legislative framework in order to improve the efficiency of the transfer system?	Interview Government	1.00
307	In your opinion, is there a need to reform the legislative framework in order to improve the efficiency of the transfer system?	Interview Industry	2.36
308	In your opinion, is there a need to reform the legislative framework in order to improve the efficiency of the transfer system?	Interview Civil Society	1.00
309	How satisfied is the mining industry (your company) with the way in which regional and municipal governments use the mining royalty and "canon" funds transferred from central government for the benefit of the communities that are impacted by your project?	Interview Industry	1.75
310	How satisfied is civil society with the way in which regional and municipal governments consult with communities about the way they use the mining royalty and "canon" funds?	Interview Civil Society	1.57
311	How satisfied is the mining industry (Your company) with the way in which the institutions in charge of supervising and enforcing the rules for the use of funds transferred under the mining royalty and "canon" system are carrying out their responsibilities?	Interview Industry	1.78
312	How satisfied is civil society with the way in which the institutions in charge of supervising and enforcing the rules for the use of funds transferred under the mining royalty and "canon" system are carrying out their responsibilities?	Interview Civil Society	1.57
313	How satisfied is civil society with the public availability and accessibility of information on income and payments related to the transfer of mining royalty and "canon" funds?	Interview Civil Society	2.43
314	Do transfers from the mining royalty and "canon" funds make a contribution to decreasing intra-regional and inter-regional inequalities?	Interview Civil Society	2.00
<b>C4.2</b>	<b>Fiscal Stabilization</b>		
315	In practice, is the mechanism to protect budget expenditures from revenue volatility being applied?	Interview Government	2.50
316	In practice, have changes in commodity prices had a negative impact on budget performance?	Interview Government	1.75
<b>C4.3</b>	<b>Resource Revenue Transparency</b>		
317	Is all government spending from resource revenues appropriated through the national budget and, if not, are off-budget funds that manage resource revenues audited and subject to external oversight?	Primary	4.00
318	In practice, are the assets and liabilities of mining sector SOEs included in the public sector accounts as reported by the Ministry of Finance?	Interview Government	1.00
319	In practice, does the country disclose details relevant to mining sector revenues, such as data on production, sales, reported profits and payments by fiscal instruments, through EITI or another disclosure process?	Interview Government	4.00
<b>5</b>	<b>Local Impact</b>		
<b>B5</b>	<b>Local Content, Employment, Community Engagement, CSR and Social Issues</b>		
<b>B5.1</b>	<b>Local Content Rules</b>		
320	Is there a policy for the promotion of opportunities for local, regional and national supply of goods and services to the mining industry that is consistent with good practice?	Primary	4.00
321	Are there site-specific agreements with mining companies that promote opportunities for local, regional and national supply of goods and services to the mining industry?	Primary	...
322	Is there an agency in the government whose mandate includes tracking demand and supply of goods and services needed by the mining sector and does this agency periodically conduct this assessment?	Primary	1.00

323	Does the legally binding requirement to prepare and submit SIAs and SMMPs support local and national employment, supply of goods and services, and business development?	Primary	...
<b>B5.2 Employment Policies</b>			
324	Is there a legally binding provision for mining companies to give equal employment opportunities to women from local communities?	Primary	4.00
325	Is there a legally binding provision for mining companies to provide on-the-job training?	Primary	4.00
326	Are there legally binding provisions that prohibit child labor including ASM child labor?	Primary	4.00
327	Are there government commitments to provide women with equal employment opportunities and conditions?	Primary	4.00
328	Are there legally binding rules that require employment equity, has an agency been designated to enforce the rules and has the agency put in place monitoring procedures and enforcement mechanisms?	Primary	4.00
<b>B5.3 Rules on Community Engagement</b>			
329	Is there a legally binding requirement for community stakeholder consultation throughout the mine life with affected communities and, if so, is it consistent with good practice?	Primary	3.14
330	Does this legally binding requirement for community stakeholder consultation conform with good practice in terms of record keeping, access, and use of information?	Primary	4.00
331	Is there a legally binding requirement that the results of community stakeholder consultations be used in preparing and updating EIAs, EMMPs, SIAs and SMMPs?	Primary	4.00
332	Is there a legally binding requirement for Community Development Agreements between mining companies, government and affected communities and, if so, is it consistent with good practice?	Primary	1.00
<b>B5.4 CSR and Social Issues--Rules</b>			
333	Is there a national policy on Corporate Social Responsibility (CSR) that applies to mining and is publicly available and is there an agency that is responsible for oversight of the policy and its application in different sectors including mining?	Primary	1.00
334	Is there a legally binding requirement for free, prior and informed consent, has an agency been designated to enforce the requirement and has the agency put in place monitoring procedures and enforcement mechanisms?	Primary	4.00
335	Are there legally binding requirements for local governments and companies to work together to manage the effects of the potentially rapid and disruptive in-migration around mining operations?	Primary	4.00
336	Is there a legally binding requirement for companies to collect data on, report on, and address the impacts of mining on women separately from the impacts on men?	Primary	1.00
<b>C5 Local Supplier Development, Employment, Community Engagement, CSR and Social</b>			
<b>C5.1 Local Supplier Development</b>			
337	Has the government sought the views of a wide range of stakeholders in preparing the local content policy for goods and services within the mining value chain?	Interview Government	2.75
338	What percentage of goods and services is your company sourcing from local suppliers?	Interview Industry	3.33
339	How satisfied is the mining industry with the support provided for domestic suppliers in attaining local content goals?	Interview Industry	3.33
340	In practice, is there an agency in the government that is tracking demand and supply of goods and services needed by the mining sector and does this agency periodically track demand and supply?	Interview Government	1.38
341	In practice, does the Investment Promotion Agency (IPA) or similar organization have the capacity to fulfill its mandate in a satisfactory manner?	Interview Government	2.50
<b>C5.2 Employment</b>			
342	In practice, is your company providing on-the-job training for your employees?	Interview Industry	4.00
343	Are the laws prohibiting child labor, including ASM child labor, enforced?	Interview Civil Society	1.00

344	Is significant progress being made in implementing employment equity?	Interview Government	3.25
345	How satisfied is civil society with the government's actions to provide women with equal employment opportunities and conditions?	Interview Civil Society	1.71
346	How satisfied is civil society with industry's actions to provide women with equal employment opportunities and conditions?	Interview Civil Society	1.71
347	In practice are mining companies providing equal employment opportunities and conditions for women?	Interview Industry	3.50
348	In practice do mining companies value and respect their female employees?	Interview Industry	4.00
<b>C5.3</b>	<b>Community Engagement</b>		
349	In practice, are the consultations that take place between mining companies and affected communities meaningful?	Interview Civil Society	2.20
350	In practice are the consultations that take place between mining companies and affected communities comprehensive?	Interview Civil Society	2.45
351	Are the results of the mining company-community stakeholder consultations used in the preparation of relevant documents?	Interview Government	4.00
352	Is there social consensus regarding which administrative measures in the mining sector should be subject to prior consultation with affected communities?	Interview Government	1.50
353	Is there social consensus regarding which administrative measures in the mining sector should be subject to prior consultation with affected communities?	Interview Industry	1.50
354	Is there social consensus regarding which administrative measures in the mining sector should be subject to prior consultation with affected communities?	Interview Civil Society	1.00
355	Have there been recent examples where mining titles have been declared invalid for not following required prior consultation requirements?	Interview Government	1.00
356	Have there been recent examples where mining titles have been declared invalid for not following required prior consultation requirements?	Interview Industry	2.00
357	Have there been recent examples where mining titles have been declared invalid for not following required prior consultation requirements?	Interview Civil Society	1.25
358	Are you aware of an applicable legal timetable for prior consultation procedures and is this timetable usually followed in practice?	Interview Government	2.29
359	Are you aware of an applicable legal timetable for prior consultation procedures and is this timetable usually followed in practice?	Interview Industry	2.38
360	Are you aware of an applicable legal timetable for prior consultation procedures and is this timetable usually followed in practice?	Interview Civil Society	3.25
361	In practice are community development agreements negotiated between mining companies and affected communities and local governments?	Interview Civil Society	3.82
362	In practice do women consider that mining companies and government are doing a satisfactory job addressing women's concerns and issues?	Interview Civil Society	2.18
<b>C5.4</b>	<b>CSR and Social Issues</b>		
363	In practice, how satisfied are mining community representatives with how industry, government and civil society collaborate in the planning and implementation of Community Social Responsibility (CSR) activities and with the participation of women in these activities?	Interview Civil Society	1.75
364	In practice, how satisfied is the mining industry with the planning and implementation of CSR activities?	Interview Industry	2.67
365	In practice are the health services in mining communities similar to or better than nearby non-mining communities?	Interview Civil Society	3.14
366	In practice are the education services in mining communities similar to or better than in nearby non-mining communities?	Interview Civil Society	3.14
367	In practice, do mining communities depend on regular support from mining companies for the provision of basic services?	Interview Civil Society	2.07

368	In practice are the effects of the potentially rapid and disruptive in-migration around mining operations adequately managed?	Interview Civil Society	1.36
369	Does the government recognize indigenous people on its territory and, if so, does it safeguard their rights in relation to mining?	Interview Civil Society	3.29
370	In practice do indigenous groups consider that mining companies and government are doing a satisfactory job addressing their concerns and issues of indigenous groups?	Interview Civil Society	2.05
371	If the Government has a policy of free, prior and informed consent, is it implemented in practice?	Interview Government	2.83
372	In practice do women who are land users but not land owners receive adequate compensation for loss of land taken for mining?	Interview Civil Society	2.00
373	In practice does the government provide support to improve the productivity and incomes of female subsistence farmers who have had to relocate their agricultural activities due to mining development taking place?	Interview Government	2.00

## Annex III: Role of MINEM

MINEM's main responsibility today is to promote investment through the monitoring of a pipeline of projects, the development of which it does not control. The goal is to increase the number of projects and amount of investment and, consequently, the volume of mineral production. MINEM's other responsibilities are limited to sector regulations, administrative procedures, and mining formalization and information, as follows:

- **General Directorate of Mining (DGM):** This agency proposes policies and technical and legal rules for the sector, awards beneficiation, general labor, and mineral transport concessions; grants operating authorizations; approves investment programs and feasibility studies for the surety agreements and investment promotion measures; coordinates with regional governments for ASM; takes the inventory of mining environmental liabilities; compiles mining statistics by consolidating figures submitted by the companies in their annual reports; and manages the mining information system.
- **General Directorate of Mining Environmental Affairs (DGAAM):** This technical agency proposes environmental regulations, guides, and guidelines for the sector (based on general guidelines and a review by MINAM); evaluates draft laws on environmental standards; evaluates and approves or disapproves environmental instruments presented to MINEM for exploration (EIS-FTA) and limited-environmental-impact exploitation activities (EIA-sd); and evaluates mine closure plans (the DGM evaluates the closure budget and issues an opinion on the surety).
- **Mining Formalization Directorate:** This agency is responsible for the formalization of artisanal and small-scale mining (ASM).
- **General Social Management Office:** This office is charged with leading the prior consultations for energy, hydrocarbon, and mining projects, in coordination with the competent agencies, and with following up on and monitoring the social commitments assumed by the mine licensees in their social responsibility plans.
- **General Directorate of Mining Promotion and Sustainability (DGPSM):** Recently created, this agency carries out coordination, articulation, and promotional activities to encourage sustainable mining.

# Annex IV: Key Environmental Rules and Regulations for the Mining Sector

- Law 28611: General Environment Act (2005), which established environmental guidelines applicable to all kinds of mining.
- Law 26821: Organic Law for the Sustainable Use of Natural Resources.
- Law 27446: Law for the National System of Environmental Impact Assessment, and its regulation (Supreme Decree No. 019-2009-MINAM), intended to achieve effective identification, prevention, supervision, control, and early correction of negative environmental impacts deriving from human actions expressed through investment projects, as well as public programs, plans, and policies, through the establishment of the National Environmental Impact Assessment System (SEIA). As the governing body of the SEIA, MINAM is responsible for ensuring mechanisms for cross-sector coordination and integration, across the different government tiers, of environmental management of investment project impacts.
- Environmental Regulations for Mineral Exploration Activities (Supreme Decree No. 020-2008-EM).
- Mine Closure Regulation Act (Law 28090) and its regulation (Supreme Decree No. 033-2005-EM).
- Environmental Management and Protection Regulation for Exploitation, Beneficiation, General Labor, Transportation, and Mineral Storage (Supreme Decree No. 040-2014-EM), which, after almost 21 years, revoked the first sector regulation in this matter.
- Environmental Protection Regulation for Mineral Exploration Activities (Supreme Decree No. 042-2017-EM), which revoked Supreme Decree No. 020-2008-EM.
- Supreme Decree amending the Environmental Protection Regulation for Mineral Exploration Activities (No. 019-2020-EM).
- Environmental Quality Standards for Water (Supreme Decree No. 004-2017-MINAM).
- Environmental Quality Standards for Air (Supreme Decree No. 003-2017-MINAM).
- Environmental Quality Standards for Soil (Supreme Decree No. 011-2017-MINAM).
- Environmental Quality Standards for Noise (Supreme Decree No. 085-2003-PCM).
- Comprehensive Solid Waste Management Act (Legislative Decree No. 1278) and its regulation (Supreme Decree No. 014-2017-MINAM).

Except for exploration and prospecting (when drilling is not involved), mining activities in Peru first require an “environmental certificate”, which is issued with the approval of the respective environmental management instrument.

# Annex V: Voting Template

Instructions: Below you will find a list of 25 topics that are relevant for the functioning of a country's mining sector. These are organized into six broad areas – mining sector management plus the five stages of the El value chain. Now think about topics where changes/improvements are the most needed in your country's mining sector. You have 100 votes – please allocate these votes across the 25 topics in such a way that the number of votes indicate how important you consider a topic to be. You can split your votes across as many or as few topics as you like. Specifically, if you think there is only one important topic, put your 100 votes there. On the other hand, if you think four topics are equally important, then give 25 votes to each of these four. Or, if you think one topic is very important, but two others are still relatively important, you might want to split your votes 60-20-20.

	Indicators	Votes
<b>Mining Sector Management</b>	Intra-Governmental Coordination	
	Collection and Maintenance of Geological Information	
	License Allocation	
	License Management and Transfer	
<b>Contracts, Licenses and Exploration</b>	Mining Legislation and Processes	
	Land, Compensation and Resettlement	
	Environmental Impact Management	
<b>Mining Operations</b>	Social Impact Management	
	Transportation of Minerals	
	Artisanal and Small-Scale Mining	
	Occupational Health and Safety	
	Mine Closure and Financial Sureties for Decommissioning	
	Tax Policy and Instruments	
	Tax Administration	
	Tax Auditing	
<b>Tax Policy and Administration</b>	Revenue Sharing	
	Fiscal Stabilization	
	Resource Revenue Transparency	
<b>Revenue Management &amp; Distribution</b>	Local Content/Local Supplier Development	
	Employment	
	Community Engagement	
<b>Local Impact</b>	CSR and Social Issues	
	Employment	
	Community Engagement	
	CSR and Social Issues	





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