

"You must change the mindset so that you are within the community and that everyone is a partner."
- IFC 2017 Sustainability Exchange, Cartagena



Columbia University, Peru 2018 Capstone

COMMUNITY PARTNERSHIP AGREEMENT

**Securing community consent in
mining areas in Peru**



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Dedication

This Columbia Capstone Report and the supporting research are dedicated first and foremost to the communities across Peru who play host to the hopes, possibilities, excitement, and challenges that mining has brought to the country. The opportunities resulting from the mining sector require careful consideration, fairness, equity, responsibility and open mindedness to be optimized effectively and successfully.

The women and men of San Marcos and Espinar who welcomed us into their homes, offices, and communal spaces and shared their insights, fears and aspirations with us display a wealth of these characteristics. They inspired the Columbia Capstone team with their acceptance of the responsibilities that geography and timing have given them and with their honest and nuanced illustration of the challenges to overcome in the extractive sector.

We thank them for their time, effort, openness, hospitality, and kindness. We hope to encourage and support those working to lift up their communities and preserve their livelihood and environment for future generations in Peru.

We would also like to thank the government officials, NGOs, and mining companies' representatives who met with us and inspired us with their ambition and enthusiasm to develop pathways to mitigate social conflict, protect the environment, and ultimately secure real and fair sustainable development in Peru. We hope that our research, fieldwork, and final report prove useful for the government officials, community leaders, and mining company executives working resolutely towards these goals.



Francisco Merma Saico stands outside his home in the Espinar region of Peru, with the site of the Tintaya mine behind him in the distance. Francisco and others in the Espinar region feel that the mining activities have harmed, rather than helped, their lives. When asked what he considered the worst and most important impact of the mining on his family, he replied that it was the negative health impacts of the mine.

Photo by Mia Brill



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Previous Capstone Workshops and Research

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Other publications include:

- Oil: Uganda's Opportunity for Prosperity (2012)
- Politics and Economics of Rare Earths (2012)
- China, Natural Resources and the World: What Needs to be Disclosed (2013)
- Mozambique: Mobilizing Extractive Resources for Development (2013)
- Colombia: Extractives for Prosperity (2014)
- Tanzania: Harnessing Resource Wealth for Sustainable Development (2014)
- Mining in Peru (2015)
- The Peruvian Mining Sector: Exploring Issues Related to Social License, Corruption, and the Trans-Pacific Partnership Treaty (2016)
<https://www.slideshare.net/AffanJaved2/capstone-report-2016-final>
- Mining, Social License and Conflict Prevention (2017)
<https://sipa.columbia.edu/file/5287/download?token=stt81lYB>

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EXECUTIVE SUMMARY

Columbia University's School of International and Public Affairs and Law School share the same position as the current President of Peru, Martin Vizcarra, who wants mining in Peru to be responsible both in respect of the environment and society. The Head of State has declared himself recently to be in favor of the development of extractive projects and particularly when they improve the quality of life of the community near to mining operations and when they look after the environment.¹

As a continuation of the 2017 Government of Peru Capstone Workshop, Columbia University's School of International and Public Affairs and Law School 2018 Capstone Workshop set out with the objective to further develop mechanisms to enable a more formalized relationship between the mining industry and the communities it impacts while looking to enable oversight by the Government of Peru. This project focused on four parts: (1) building tangible recommendations for the Vice Ministry of Territorial Governance, (2) developing and delivering a more comprehensive, inclusive, and ever-evolving community partnership agreement, (3) producing a guide for the government as to how to further develop the agreement and (4) creating an implementation guide for communities impacted by mining activities to understand, provide feedback, and begin to use the community partnership agreement so that they are placed in the best position possible to interact with mining companies operating in their area.

This was Columbia University's second year working with the Vice Ministry of Territorial Governance, an agency charged with creating a governance strategy that achieves lasting economic, social, and cultural benefits by creating a healthy balance between the State, the private sector, and civil society. Mining is of the utmost importance for Peru – comprising 60 percent of total exports in 2017 – and solving the issues surrounding the industry is crucial for Peru's development. The 11-person team was split into three to maximize stakeholder engagement. One team remained in Lima to interact with various government ministries, government agencies, mining company headquarters, law offices, and non-governmental organizations. The other two teams traveled to areas heavily impacted by mining: The San Marcos District (in the Ancash region) and Espinar (in the Cusco Province). Through interviews and roundtables, all teams collected information enabling the Capstone Workshop team to build the four documents contained in this report. The information collected, along with extensive deskside research, equipped the team with the necessary tools to: (1) draw inferences and linkages between state deficiencies and systemic issues, (2) identify that the asymmetric relationship of power and knowledge between the mining sector and communities is a principal contributor to social unrest, distrust, and conflict, and (3) create a template agreement for a social license to operate, to be

¹ Gestión. (2018, April 27). Martín Vizcarra: "Yo quiero una minería responsable con el medio ambiente y con la sociedad". Retrieved from Gestión: <https://gestion.pe/economia/empresas/martin-vizcarra-quiero-mineria-responsable-medio-ambiente-sociedad-232538>



entered into by communities and mining companies across Peru, with supervision and regulation by the State.

In 2017, the International Finance Corporation held the IFC Sustainability Exchange in Cartagena, Colombia. A theme developed at the conference, the importance of working together with communities in partnership and introducing a community partnership agreement which would require mining companies to keep their promises to the communities whose lives they impact and to be held accountable if they break those promises. The agreements should be legally binding and if the mining companies commit a serious breach of those agreements they should lose their government-issued license to mine. In other words, “to make a contract [between natural resource extractive industries and communities] livable as well as a project successful is community acceptance in the real force, to give them [communities] empowerment to do what they do and so that promises are kept. That it is what is necessary.” The link to the 2017 IFC video detailing this need for community partnership agreements is as follows:

<https://www.youtube.com/watch?v=DSUm5srA9KA>

Last year’s 2017 Capstone Workshop obtained the strong endorsement of the Vice Ministry of Territorial Governance of the need for community partnership agreements to stem the social conflict engulfing the extractive industry and disrupting its operations in Peru. The link to the video detailing the Vice Ministry of Territorial Governance’s endorsement is as follows:
<https://www.youtube.com/watch?v=eSOgoKSPgMI>

Our intent is for this project to continue to develop the relationships established with the Government of Peru, the mining companies, and the communities to further encourage and advance this valuable tool of a community partnership agreement which is intended to support every community impacted by mining in Peru. Ultimately, our ambition is not to push a certain agenda but instead to create a tool that can only be sharpened and honed by the involvement of all stakeholders connected with mining. Therein lies our ideal objective: to enable effective communication that transcends inherent power asymmetries and creates lasting and positive partnerships.



Natural Resources: An Elusive Yet Viable Road to Prosperity

Peru – as well as other countries of Latin America – has for centuries sought to break an age-old conundrum: ensure their natural resource endowments produce wealth for their nation and people. Natural resources, as long as they are on the ground and not extracted, constitute an unproductive asset. However, with sustainable management of natural resources and a community sharing policy, Peru can make its resource richness be the foundation for a vibrant and diversified economy.

The Vice Ministry of Territorial Governance has been charged with overcoming the historic resource curse, namely community conflict, and environmental damage, within its borders. Peru has not yet transformed its rich endowment into a stable source for economic development. The creation of the Vice Ministry in February 2017, however, is historic and can lessen – if not prevent – the continued tensions and conflicts with communities in mining areas, which has economic, social and environmental costs. This office is now the prospective mainstay and hope for building a prosperous future for Peru, one free of social conflict.

With its significant mineral wealth, Peru stands at the Latin American epicenter of this 21st century rush to mineral riches. With its copper, gold, iron ore, lead, and zinc, as well as a host of such lesser-known ores as bismuth and rhenium, Peru is now home to mining companies that hail from around the globe: Brazil, Canada, China, UK, and the US. Mining companies have invested countless billions of dollars, which has permitted Peru to boom, although many people, especially those impacted by natural resource development are still being left behind, or worse, even being harmed by such development.

The investment rush has now slowed, although it has not stopped, due to market conditions and due to lack of an effective social license – community acceptance – of mining projects, which much too often have polluted rivers and ground waters. While such phenomenal investments have bettered the lives of many ordinary Peruvians, mining investments have created an Achilles Heel for themselves and Peru by fueling discontent and outright conflict. Past Peruvian headlines tell the story of social crisis and conflict: “World Heritage Site ripped up by [mining] quarry”; “The Devastating Costs of the Amazon Gold Rush”; “Peru’s Tia Maria Mining Conflict: Another Mega Imposition”; and “Peru’s Conga Mine Conflict: Cajamarca Won’t Capitulate.”

To cite one specific example: Newmont – a U.S. based company – has been granted the not unusual right to use local lake water for its operations. The consequence is a protracted water war with local farmers, which has already yielded civilian deaths. Newmont and other companies have the legal (regulatory) license to operate, but they often forget they are operating amongst communities, not in isolation. Because a mine will operate for 40 or more years, the companies’

actions today will be remembered for generations to come. Mining companies need the acceptance and support of their neighbors – the communities in which they operate – and effectively live as “corporate citizens.”

Such decades-long investments in mining require a social license, an acceptance by the community in which such investments are made if such investments are to be sustainable over decades. Otherwise, social protests inevitably become a regular occurrence, an unfortunately accepted form of negotiation, as has repeatedly happened in many of the mining areas of Peru. The consequence is that investors scale back their operations, export revenues decrease and local employment drops and the state loses the revenues needed to finance development.



On the way from Huaraz, a regional capital to San Marcos, the community closes to the Antamina mine. Picturesque snow peaked mountains, rushing rivers, and grassy plains are juxtaposed with large mining dumps like the one pictured here. Waste dumps like these have been left by mining projects that are now closed, and are continuing to pollute water sources such as the river located just behind this one.

Photo by Mrig Mehra.

environmental and health laws, based on continuously upgraded international best practices. Laws, which are vague, meaningless and riddled with legal loopholes, are subject to endless interpretation by creative lawyers. A rule of law system is especially necessary for respect of environment and health, the impacts of which are felt immediately and directly by people of the local communities. Enforceable means that licenses to operate may well have to be canceled, even permanently, if environmental violations occur or if the Community Partnership and Consent Agreement we propose in this report is breached.

As the Columbia Capstone Report recommends, social licenses need to be documented and enshrined in written agreements. In essence, these are informed prior consent agreements, with clear conditions, clear requirements and clear enforcement mechanisms, between communities

A social license requires honesty, transparency, and socially responsible operations. Common wisdom states that a local community must benefit from natural resource investments through jobs and not suffer from water contamination and air pollution; the benefits must outweigh the costs. This must apply not just nationally but locally, in the mining companies' area of influence.

A social license assumes, in fact, takes for granted, that there is a robust legal system in place with enforceable mining,



and companies. These agreements need to be supervised by the government. And, most important, social license agreements cannot be created or function in isolation. Such agreements need to constitute an integrated part of the legal license to operate, which is issued by the State. If there is a serious violation by a company in keeping its promises as set forth in the social license agreement, that default will necessarily have to have consequences. The only real or effective result is what is legally termed as a cross-default. A default in the social license agreement needs to constitute a default in the operating license with the further consequence that a company's right to operate will be suspended and, if necessary, canceled.

Companies, specifically their management, must be incentivized to always keep their word, their promises. Ernst and Young's report on the global mining industry ironically called it a major risk for mining companies that communities are now expecting the mining industry to keep its word. Moreover, if communities come to realize they have a contractual and legal mechanism for enforcing their rights and do not need to take to the streets, to protest, this will be social and psychological empowerment. Communities must feel and be partners not just in name, but also by contract. A partner by definition has rights and is treated with respect. The Vice Ministry of Territorial Governance has the challenge and the opportunity to make this a reality.

By companies treating communities as contractual partners, Peru can usher in a great big beautiful tomorrow – yes optimism and idealism drive me. With less conflict, mining operations will be more efficient and more profitable. Peru will earn more revenues to be dedicated to schools, infrastructure, satisfying the UN Sustainable Development Goals (the SDGs). Using an over-used or hackneyed expression: it will be a win-win situation for all. This Columbia Capstone Report is dedicated to achieving that mission, a win-win for Peru, the communities and the companies.

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II. GOVERNMENT

Recommendations to the Vice Ministry of Territorial Governance

I. Introduction

For the last 25 years, the mining industry has been a boon to the Peruvian economy. However, mining activity, it must be recognized, at times comes at an environmental and human cost, as well as economic cost. The impact of mining projects has unfortunately given rise to social conflicts, especially when: (1) people feel excluded from project planning and benefits, and (2) when the environment suffers. In such cases, communities feel that they have no control, no influence, and therefore that they have no recourse to protect their interests and may opt to clash with the State or the mining companies, resulting in stoppages and violence, and, of course, economic loss for all concerned. Moreover, the trust that is lost among all the stakeholders is hard to rebuild, especially in the short term.

The recommendations presented here provide the President of the Council of Ministers Office (*Presidencia del Consejo de Ministros del Perú*, or *PCM*), and the Vice Ministry of Territorial Governance (*Viceministerio de Gobernanza Territorial*) with **food for thought, or ideas, on how to mitigate social conflict and achieve an ameliorated level of development**. Based on our in-country fieldwork, we have identified the absence of the State in rural Peru (deteriorating both State legitimacy and the rule of law), and the lack of governance capacities at both the national and local level as key challenges to address in order to prevent, or at least mitigate, future social conflict. Any other initiatives will see their efficacy curtailed if root issues are not tackled first: a dysfunctional State precludes the validity of public policy.

Economic growth stemming from mining has not alleviated systemic rural poverty --- in fact often the opposite, leading communities to distrust the State. Developing State presence in rural areas affected by mining activities is critical to repairing, and building, the State's relationship with these communities and preventing future social conflicts. Decentralization efforts have tried to develop State presence, but because these have not been tied to developing governance capacities at the subnational level, there is mismanagement and further ill will is created among the populace; and corruption (or misconstrued incompetence) amongst government officials also presents a significant stumbling block.

Mining royalties (“regalía minera”), the canon tax (“Canon minero”), the tax on dividends, the special mining tax (SMT), the special mining burden (SMB), and the “derecho de vigencia” fee (paying for land use) are all part of the complex Peruvian fiscal regime applicable to mining. This



revenue is not always shared with regional and local governments; when it is, it is not necessarily used effectively. Stabilization agreements such as the “Convenio de Estabilidad Jurídica” (Legal Stability Agreement) and the “Contrato de Estabilidad Minera” (Mining Stability Contract) guarantee the non-changeability of these tax regimes for foreign investors, too often without limitation on term of such stabilization agreements, and create an obstacle for the Peruvian government to enact legislation that would prevent social conflict. None of these efforts by the Peruvian government address any of the root causes of social conflict surrounding mining (e.g. marginalization, disenfranchisement, and information asymmetry), and our recommendations look to address these issues specifically because we believe doing so will help to substantially ameliorate the conditions that perpetuate social conflict and adversely impact mining development, and, in turn Peruvian economic performance and outlook.

Another important issue to consider: in Peru, international human rights treaties are recognized as having constitutional status and, accordingly, take precedence over domestic legislation. Consequently, any commitments made at the international level need to be duly incorporated into the domestic legal framework. The central government must, therefore, analyze the following instruments of international law and ensure compliance therewith:

1. The International Covenant on Civil and Political Rights (ICCPR).
2. The International Covenant on Economic, Social and Cultural Rights (ICESCR).
3. International Labour Organization’s Convention 169.
 - a. The “Consulta Previa” law, which requires that indigenous populations be consulted before taking legislative or administrative action, can be modified to better meet the goal of achieving a social license and preventing conflict. Some of the shortcomings of the law are the lack of legal enforcement, the difficulty of determining which communities the law applies to, the overlapping of administrative responsibility during application of the law, and the ambiguity surrounding the timing and continuation of the consultation process.
4. The UN Declaration on the Rights of Indigenous People (UNDRIP).
5. The Extractive Industry Transparency Initiative (EITI).
6. International investment agreements must also be analyzed before legal or policy action is taken, given their potential to impact foreign investment in the Peruvian mining sector.
 - a. Bilateral Investment Treaties (BITs).
 - b. Free Trade Agreements (FTAs).

Keeping all this in mind, we respectfully make our recommendations.

Signed,

Columbia University Government of Peru Capstone Team 2018

II. Executive Summary of Recommendations

1. Improve coordination among and across government agencies, both at the national and local levels; generate strategic plans for development and their s implementation.

Implementation Recommendations

- a. Empower the Vice Ministry of Territorial Governance and the National Strategic Planning Center (CEPLAN in Spanish) in creating national and regional strategic plans for development; Defensoría del Pueblo can and should provide support.
- b. Restructure the delimitation of the Peruvian territory as it is currently understood by the Peruvian State.
- c. Provide coordination and technical help to Regional Governments to foster the creation of Plans of Territorial Ordering contemplated in the “Ley Orgánica de Gobiernos Regionales” in its article 53.

2. Develop capacities and training of public servants in order to prepare them for the challenges of working with rural communities to obtain the social license, especially in respect of regional and local governments.

Implementation Recommendations

- a. Empower SERVIR to meet mandate.
- b. Extend SERVIR’s mandate to include mandatory initial and refresher training for public officials.
- c. Give the PCM and its entities the power to compel other government bodies to support and comply with PCM initiatives, strategies, and plans.

3. Develop a national agenda for key professions to require one year of service in rural areas as a prerequisite for graduation from universities.

Implementation Recommendations

- a. Leverage in-country academics and academia to fill current capacity gaps in regional and local governments and within communities.
- b. Replicate the “Servicio Rural y Urbano Marginal de Salud” program for professional candidates desiring to enter public service.

4. Empower the “Contraloría General de Republica”, or consider the creation of an accountability and anti-corruption office that can track the implementation of the strategic development plans mentioned in



recommendations 1-3; also empower civil society to help State organs be more effective in their comptroller role.

Implementation Recommendations

- a. Extend the mandate of the Contraloría General de la República.
- b. Enable the Working Team (between Vice Ministry of Territorial Governance and CEPLAN) to (1) collaborate with Defensoría del Pueblo and (2) extend Defensoría del Pueblo's mandate to include the authority to supervise and execute corrective actions surrounding social conflict.

5. Strengthen the judicial system.

Implementation Recommendations

- a. Administer and widely publish a public message from both the highest levels of the administration and offices of justice addressing (1) the need for the establishment of the rule of law, (2) the supporting of the respect of the courts and their decisions, and (3) the provision of support to the judges who have to make decisions on sensitive cases that consider the relationship between mining companies, communities, and the State.
- b. Promote dialogue round tables that engage the Ministry of Justice, the Ministry of the Interior, the police force, the judicial branch, the National Association of Lawyers, and civil society.
- c. Hold capacity building workshops and sensitivity training for judges and public defenders.
- d. Create an independent committee supervising the behavior of judges.

6. General implementation recommendations to achieve social license and build social cohesion between communities and mining companies:

- a. Create a National Registry of Agreements (Registro Nacional de Acuerdos or RNA in Spanish).
- b. Determine whether or not the Peruvian government needs or wants to retain “first contact” and expand purview of the Consulta Previa past campesino and indigenous denominations.
- c. Utilize innovative technologies to initiate multi-stakeholder dialogues connecting hard to reach, or isolated, communities with centralized public and private sector agencies that provide support.

III. Recommendations in support of strategic development plans and the social license agreement

The following recommendations are meant to inform the Vice Ministry of Territorial Governance and its colleagues in other ministries about the structural reforms we believe are needed in order for the Peruvian public sector to work more effectively to bring stability and predictability to the current investment environment that lies at the mercy of social conflict. While communities and mining companies are the main actors involved in social license negotiations and agreement development, the State's supervisory and regulatory role is key to normalizing and stabilizing the relationship between private actors. If the State is clear about what it needs and wants from both its citizens and from private investors, this ex-ante laying out of the rules of the game coupled with strong institutions should lead to the better governance Peru needs to generate inclusive and sustainable growth for all.

1. Improve coordination among and across government agencies, both at the national and local levels; generate strategic plans for development and their implementation.

Issue description:

- A. Lack of intra-governmental coordination has impeded information sharing, resulting in unclear or overlapping, if not conflicting, responsibilities, and has hampered the development of a national strategy for the prevention of social conflict.

This is evidenced by two separate and independent studies conducted by Dr. Javier Arellano Yanguas² and the OECD.

- a. From “Local politics, conflict, and development in Peruvian mining regions” by Javier Arellano Yanguas: “The failure to clearly distribute functions and expenditure responsibilities between the three levels of government is a major issue. The Framework Decentralisation Law of 2002 (Law N° 27,783) defines three types of function: (1) exclusive to each level; (2) shared between levels; and (3) those delegated from one level to another through explicit agreement. Shared functions, such as the management of public services, were made problematic due to a lack of coordination.”³
- b. “The result is a patchwork of juxtaposed strategies that lack any effective synergy. To make matters worse, the national ministries implement projects at sub-national level using different criteria and without any coordination with the sub-national

² Dr. Javier Arellano Yanguas has done extensive research the interaction of local governments, mining companies and social movements at the local level in the Peruvian context.

³ University of Sussex. “Local politics, conflict and development in Peruvian mining regions, by Javier Arellano Yanguas.” October 2010.

governments. For example, at the national level, there are four agencies responsible for (i) investment in rural electrification, (ii) rural roads, (iii) telecommunications, and (iv) water and sanitation. Each has its own planning mechanisms, criteria for the distribution of funds among territories, and even its own definition of what constitutes a rural area.”⁴

- c. From the OECD Public Governance Reform Recommendations for Peru: “Persistent institutional silos and coordination challenges limit the State’s capacity to pursue its strategic objectives effectively, achieve results for people, and enhance its transparency and accountability; this undermines citizens’ trust in government.”⁵
- B. No coordination between Ministries leads to disjointed plans and conflicting agendas.
 - a. From Peru’s Universal Periodic Review by the Human Rights Council, comment made by the Portuguese appointee to the Committee: “Consider the establishment or the strengthening of the existing national mechanism for coordination, implementation, reporting and follow-up, in line with elements arising from good practices identified in the 2016 OHCHR guide on national mechanisms for reporting and follow-up.”⁶
 - b. From Peru’s 2014 CEDAW Report: “the Committee is concerned at the extremely low budget allocated to the Ministry of Women and Vulnerable Groups to promote gender equality... and to collaborate effectively across all branches and levels of government. The Committee is particularly concerned at the lack of coordination between the Ministry of Finance and other line ministries for the implementation of an effective gender budgeting model.”⁷

Implementation:

A. **Empower the Vice Ministry of Territorial Governance and the National Strategic Planning Center (CEPLAN in Spanish) in creating national and regional strategic plans for development; Defensoría del Pueblo should provide support.** This triumvirate will be referred to as “the Working Team”.

- a. **First key consideration:** change the language of Law Number 29158 (Articles 17, 18 and 18): “Ley Orgánica del Poder Ejecutivo”.⁸
 - i. The language used to describe the PCM’s functions is too vague, and makes it difficult for the PCM to coordinate between the different agencies of the executive branch.

⁴ Ibid.

⁵ Public Governance Reform Peru 2016. <http://www.oecd.org/gov/public-governance-review-peru-highlights-en.pdf>

⁶ Human Rights Council, Universal Periodic Review. Report of the Working Group on the Universal Periodic Review. 23 March 2018.

⁷ Committee on the Elimination of Discrimination against Women. "Concluding observations on the combined seventh and eighth periodic reports of Peru." 24 July 2014.

⁸ El Peruano. “LEY N° 29158”. Jueves 20 de Diciembre de 2007.

- ii. The law should give the Working Team the authority to require ministries, regional, and local governments to implement the initiatives that result from the process of coordination. If no party has the authority to compel implementation, coordination is irrelevant. Coordination requires the authority to require implementation at some point in the process cycle.
 - iii. From the OECD report: “With at least twelve additional units whose mandates are unrelated to leading the coordination of whole-of-government strategy-setting and implementation, the PCM is thus unwieldy, with too many different mandates under its responsibility. In practice, it faces difficulties in exercising its strategic coordination role effectively, both horizontally across the central government and vertically with subnational governments.”⁹
- b. **Second key consideration:** The Law Number 27867 (Article 9): “Ley Orgánica de Gobiernos Regionales” was approved in 2002 as a part of the efforts to decentralize the administration of Peru. The law specifies that the formulation and approval of the “Planes de Desarrollo Regional” (Regional Development Plans) are a constitutional faculty of the Regional Governments. Therefore, the Working Team could only provide suggestions and work together with Regional Governments, but it cannot replace them in the creation of the plan.
- c. The Working Team should give direction to ministries, regional, and local governments, and actionable plans should emerge from this collaboration.
- i. A decision-maker from the Ministry of Economics and Finance (MEF) should be present at every step of this planning process to approve the budget as soon as possible, preventing unnecessary delays and removing bureaucratic roadblocks.
 - 1. As the OECD Report on Public Governance Reform notes: “coordination between PCM and MEF – and with the lower levels of government - needs to be reinforced to give full effect to these efforts so that spending performance can be used to assess whether national and regional strategic planning objectives and results are in fact being achieved... strategic and operational goals could be better linked to spending decisions for a better understanding of the cost-effectiveness of public spending and of whether spending decisions are improving policy outcomes.”¹⁰

⁹ Public Governance Reform Peru 2016. <http://www.oecd.org/gov/public-governance-review-peru-highlights-en.pdf>

¹⁰ Public Governance Reform Peru 2016. <http://www.oecd.org/gov/public-governance-review-peru-highlights-en.pdf>

- d. Specific to extractives, the Working Team should preside over all dialogue tables between the Ministry of Energy of Mines, the communities, regional, and local governments.
 - i. It is key that these dialogue tables, aside from serving as the setting to achieve consent, set the stage for the development plans for the region and the communities within the jurisdiction in which the mining project is being developed.
 - ii. It should be clear to all parties what the strategic plan for development is; initiatives have to work in unison and build on each other.
- B. Restructure the delimitation of the Peruvian territory as it is currently understood by the Peruvian State.** By redrafting territorial delimitations, the regional and local governments can reorganize in ways that make more sense based on economic activity, societal arrangements, and cultural values. The “Ley de la Mancomunidad Municipal”, issued in May 2007, has made progress in considering this issue. The law allows municipalities to form alliances with each other when seeking to engage in (1) promotion and execution of investment projects that may supersede each individual municipal jurisdiction, (2) collaborate with other municipalities to ensure infrastructure projects (i.e. roads) are collectively logical and purpose driven, and (3) form unified fronts to present initiatives to international organizations in order to receive funding for development projects.
- a. The “Ley de la Mancomunidad Municipal” is a manifestation of the understanding that boundaries and jurisdictions need to be consistently redefined in order for them to make sense in a development framework. This applies especially to extractives. When a mining company seeks to work in rural Peru, it will be able to deal with Mancomunidades (or variations thereof) that have strategic development plans that private investment can fit into seamlessly. In this case, the localities inform the national tiers of government, as mayors and regional governors are better equipped to know what alliances make more sense to their constituencies, yielding better synergies amongst government agencies. A more unified front between civil servants and their constituents can more effectively define and articulate their needs when dealing with the private sector.
 - b. From the OECD: “Insufficient coordination across levels of government in territorial development policy poses challenges to a balanced and equitable development across Peru’s diverse regions and local municipalities and hampers the effectiveness of the decentralization process launched in 2002.”¹¹ Empowering the Mancomunidades is thus a way to tackle this insufficiency in coordination among regional and local levels of government.

¹¹ Public Governance Reform Peru 2016. <http://www.oecd.org/gov/public-governance-review-peru-highlights-en.pdf>

C. Provide coordination and technical help to Regional Governments to foster the creation of the Plans of Territorial Ordering contemplated in the “Ley Orgánica de Gobiernos Regionales” in its article 53. This has the objective of preventing the indiscriminate grant of mining concessions in land that has other economic and potential social potential (e.g. agriculture).

2. Develop capacities and training of public servants in order to prepare them for the challenges of working with rural communities to obtain the social license, especially in respect of regional and local governments.

Issue description:

- A. One of the main issues we have identified is not the lack of resources at the local level, but a lack of governance capacities that lead to conflict due to the perception of incompetence, corruption, and mismanagement. Funds transferred to regional and local governments (from mining royalties, canon minero, and “derecho de vigencia”) are misused. This needs to be fixed by training public officials and public servants and have them become capable to deal with increased budgets coming from mining activities within their jurisdiction.
- B. Unless this occurs, an increase in potential mining investment is directly tied to an increase in the potential for social conflict, as noted by a UNDP report that says: “The validity and legitimacy of a social contract may be gauged by the extent to which it creates and maintains an equilibrium between society’s expectations and obligations and those of State authorities and institutions, all amidst a context of constant flux.”¹² When the Peruvian government at the national and subnational level receives increased revenues from mining, people’s expectations about the government’s capacity to influence their lives positively grows; when this does not materialize, the social contract weakens and conflict become a possibility.
- C. Taken from Natural Resource Governance Institute’s “Revenue Sharing Case Study: Mineral Revenue Sharing in Peru” report: “The following signs of the local resource curse are evident in subnational governments receiving excessive revenue transfers from central governments: increase in corruption of public works; increase in the political dispute between rival groups; higher levels of patronage; deterioration of governance; and excessive public spending that distorts salaries and affects agriculture... the Canon system tends to create perverse incentives that discourage open and democratic government... in the absence of a robust civil society, excessive funding tends to encourage clientelism and corruption rather than accountable and transparent administration at the local level.”¹³
- D. From the OECD Governance Reform recommendations for Peru: “Despite important progress, a complex multitude of employment regulations, atomised human resources

¹² United Nations Development Programme and the Norwegian Peacebuilding Resource Center. “Engaged Societies, Responsive States: The Social Contract in Situations of Conflict and Fragility”. April 2016. Date accessed: June 5, 2018. <https://bit.ly/2Jkp9B5>

¹³ Maria Lasa Aresti. “Mineral Revenue Sharing in Peru”. Natural Resource Governance Institute. April 2016.



management, limited use of accurate data and significant churn in key managerial civil-service positions constrain the government's ability to implement successful public-sector modernization that improves results for society through better service-delivery to citizens and businesses.”¹⁴

Implementation:

- A. **Empower SERVIR to meet mandate,** another entity under the purview of the PCM. As the human resources arm of the Peruvian State, SERVIR’s mandate under the Law of Civil Service created by the Peruvian Congress¹⁵ (“Ley del Servicio Civil”) is to formulate national level policy regarding civil servants: what is required from civil servants (e.g. educational qualifications), and evaluating them in order ensure there is proper human capital development within the Peruvian public sector. This latter issue is the biggest aspect of SERVIR’s functions: to map out training programs for civil servants, ensure these are complied with, evaluate participants, and ensure Peru’s civil servants are adequately trained.
- B. **Extend SERVIR’s mandate to include mandatory initial and refresher training for public officials.** Training should be a required career milestone prior to advancement and should consist of raising awareness of all officials about the need for long-term strategic planning initiatives. There should be an additional focus on developing an understanding of how critical it is to obtain the social license via the achievement of sustainable development in areas where the absence of State has been an endemic problem. This initiative could also help bring together national, regional, and local officials, setting the stage for more collaborative efforts across all levels of government.
- C. **Give the PCM and its entities the power to compel other government bodies.** SERVIR’s current competencies under the Law of Civil Service already include some of the above recommendations, and yet their real implementation is still pending changing the provisions of the “Ley Orgánica del Poder Ejecutivo”. By providing the PCM and its entities with the authority and mandate to enable and hold accountable other government bodies, more substantive progress can be made in this area.

3. Develop a national agenda for key professions to require one year of service in rural areas as a prerequisite for graduation from universities.

Issue description:

- A. Professional degree programs in Public Administration and related fields in Peru do not currently offer or require any fieldwork or work experience outside of Lima. Therefore, young professionals graduating from top academic institutions enter the public service with

¹⁴ Public Governance Reform Peru 2016. <http://www.oecd.org/gov/public-governance-review-peru-highlights-en.pdf>

¹⁵ Congreso de la República. “Ley del Servicio Civil”. July 4, 2013.



little to no understanding of the communities they serve. Further, it is common knowledge that there is a considerable “lack of desire” on the part of both students and professionals to venture outside of the capital, namely into rural areas.

- B. Due to a lack of hands-on experience in communities outside of Lima, national, regional, and even local government officials do not possess the necessary knowledge and understanding of the root causes of mining-related social conflict. Without this understanding, officials cannot begin to properly address or prevent incidents - let alone develop the appropriate policies to support both public and private needs.

Implementation:

- A. **Leverage in-country academics and academia to fill current capacity gaps in regional and local governments and within communities.** There are professional degree programs at various Peruvian universities that offer courses in Public Administration or in related fields. Some focus specifically on the politics of extractive industries, as it is such a key issue in Peru. By leveraging academia to fill the current capacity gaps that exist in the regional/local governments and within communities, the Vice Ministry is afforded a timely and actionable solution to the problem of asymmetric relationships between mining companies, the public sector, and those community members within the area of influence of a mining project.¹⁶
- B. **Replicate the “Servicio Rural y Urbano Marginal de Salud” program for professional candidates desiring to enter public service.**
- Medical students are required to do Rural and Urban Marginal Service (SERUMS in Spanish)¹⁷. Established by the Marginal Health Service for Urban and Rural Areas Law (“Ley del Servicio Rural y Urbano Marginal de Salud” in Spanish)¹⁸, this program consists of working in marginalized areas of Peru for a year.
 - This is a requirement for medical professionals to work for the public sector, to seek a specialization degree within Peru, or to be able to access scholarships to seek specialization both in Peru or abroad. SERUMS enables the medical system to fill the skills gaps in rural Peru and develops more well-rounded, knowledgeable medical professionals. This is both an effective use of human resources and a way to enhance the sense of civic duty among the populace.
 - The SERUMS system can be replicated for other key public administration professions (such as Law or Economics). A SERUMS-esque public administration

¹⁶ Foreign universities like Columbia University can provide support and a global research base that complements local university competencies. Strategic alliances will help implementation go smoothly, and will mean solutions can be attained more quickly.

¹⁷ Ministry of Health. “¿Qué es el Servicio Rural y Urbano Marginal de Salud – SERUMS ?”. Date accessed: April 9, 2018. <http://www.minsa.gob.pe/servicios/serums/2010/default.asp>

¹⁸ Ministry of Health. “Ley del Servicio Rural y Urbano Marginal de Salud”. https://www.minsa.gob.pe/dggdrh/comunicate/paso1/ley_serums.pdf



system could have students in their senior year of education go to rural, under-resourced areas and work with communities, local and regional governments.

- d. The benefits of such a program would have cumulative effects. Soon-to-be graduated students have the ability to fill technical capacity gaps in the short term, while also providing the government with a previously untapped stream of human capital over the long-term. Prior to formally entering the public sector, students will be exposed to and engage with communities they potentially would never encounter. Any length of time spent with rural communities on the ground, listening to their concerns, addressing their needs, and developing the necessary skill of navigating the tightrope walk between the needs of the public and the demands and desires of the private sector is a necessary experience for any public official. The presence of future public officials interacting and meaningfully engaging with rural communities would enable the personal growth of students and solidify Peru's social fabric.

4. Empower the “Contraloría General de Republica”, or consider the creation of an accountability and anti-corruption office that can track the implementation of the strategic development plans mentioned in recommendations 1-3; also empower civil society to help State organs be more effective in their comptroller role.

Issue description:

- A. It is necessary to underscore the following: in Peru, there is a need for follow-through. The legal framework is often well crafted, what is missing is proper implementation, or even just implementation. The appropriate levels of oversight are absent from planned development and this hinders national, regional, and local strategic and operational objectives.
- B. From the OECD: “The Government has articulated several national strategic plans/agendas for the development of Peru, the most relevant of which is the Plan Bicentenario: El Perú hacia el 2021... yet these plans are neither linked together, nor are they integrated with budgetary instruments. And while these plans aim to tackle key challenges in Peru, they are not binding, and the strategic objectives in these plans are neither prioritised nor coordinated in a coherent fashion.”¹⁹

Implementation:

- A. **Extend the mandate of the Contraloría General de la República.** Due to the severe lack of follow-through, this report recommends extending the mandate of the Contraloría General de la República. By doing so, the Contraloría will have oversight of the implementation processes regarding the strategic development plans at the national,

¹⁹ Public Governance Reform Peru 2016. <http://www.oecd.org/gov/public-governance-review-peru-highlights-en.pdf>

regional, and local levels. If, for example, a dialogue table between government officials, mining company representatives, and the community yields a plan for development that includes infrastructure projects, it will be the role of the Contraloría to ensure (1) the plans are implemented, (2) cost overruns are kept within reason or industry standards, and (3) if objectives are not met, that those responsible for the shortcomings are held accountable for explaining both the cause of such shortcomings and the proposed remedy to correct them. Increasing the Contraloría's budget and staff will send a demand signal from the administration indicating its seriousness towards responsibility and plan completion.

B. Enable the Working Team (between Vice Ministry of Territorial Governance and CEPLAN) to (1) collaborate with Defensoría del Pueblo and (2) extend Defensoría del Pueblo's mandate to include the authority to supervise and execute corrective actions surrounding social conflict.

- a. The Contraloría created a system under a resolution issued in 2013: "Registro de Información y Participación Ciudadana en el Control de Obras Públicas - INFObras". INFObras's role is to create a registry of all infrastructure projects undertaken by public sector entities in Peru, and through this method increase control and transparency in government spending. INFObras helps the Contraloría track and monitor these projects while opening up the information to the general public, increasing citizen participation. A civil society organization that has taken advantage of the information provided by INFObras: Proética, the Peruvian arm of Transparency International. Proética is collaborating with the Contraloría to put together initiatives such as workshops that educate the populace on how to exercise watchdog capabilities, and hold officials accountable for expenditures.²⁰
- a. This same system could apply to how the Peruvian government begins to address social conflict. The Defensoría del Pueblo provides extensive open source mapping of current social conflicts in Peru in their monthly reports. However, Defensoría del Pueblo needs to be empowered by an extended mandate and perhaps collaboration with the Contraloría and civil society.²¹
- b. The Working Team – which includes the Defensoría del Pueblo in a supporting role – should work closely with the Contraloria so that they share experiences and best practices, making the establishment of a system of monitoring and tackling social conflict much more seamless. The Contraloria need to not join the Torking Team directly, but it is a strategic ally because of its experience with INFObras, and the success the initiative has experienced to date.

²⁰ La Contraloría de la República. "Contraloría y Proética realizan en Iquitos taller gratuito sobre control social de obras públicas". February 3, 2015. <https://bit.ly/2IEU0Y5>

²¹ Defensoría del Pueblo. "Reporte de Conflictos Sociales Número 168".



- c. Furthermore, civil society can help keep public sector institutions honest and engaged by bringing forth further cases of social conflict that are not being dealt with effectively or efficiently.

5. Strengthen the judicial system.

Issue description:

- A. One of the main issues that has been identified in rural areas of Peru is the lack of rule of law, which is closely related to the historical absence of the State. As a result, there is an unpredictable business environment. The current agreements that are drafted between mining companies and communities are not fulfilled or kept since there are no repercussions to renegeing on legal obligations. For example, a community blocking a road out of discontent with a mining project is breaking the law. However, as it stands, there are no consequences for belligerent community members just as much as there are no consequences for a mining company violating environmental regulations. If this situation does not change, and due process continues to be outweighed by the need for so-called (private) swift justice, then the consequence will inevitably be a cyclically volatile environment. This may well cause Peru to descend further into a place where disputes between private parties immediately escalate to violence, conflict, and economic disruption vice following a civil, formal process grounded and supported in the rule of law.

Implementation:

- A. **Administer and widely publish a message from both the highest levels of the administration and offices of justice addressing (1) the need for the establishment of the rule of law, (2) the respect of the courts and their decisions, (3) the provision of support to the judges, who receive personal backlash for their court decisions, ensuring their continued political impartiality.** Political will is needed to change the mindset of the courts and the population. Special attention needs to be given to judges working in rural jurisdictions, as they can be further isolated from institutions and will be more susceptible to the political and personal pressures.
- B. **Promote dialogue tables that engage the Ministry of Justice, the Ministry of the Interior, the police force, the judicial branch, the National Association of Lawyers, and civil society.** The dialogue tables should be supported by an appropriate legal framework and sufficient budget to support legitimacy and ensure continuity. A key to successful dialogue tables will be to develop procedures of conduct that prevent organizational deterioration with changes of leadership. Ultimately, the purpose of these tables is to create a process that is comprehensive, participatory, and inclusive and withstands changes of leadership and political agendas driven by special interests.
- C. **Hold capacity building workshops and sensitivity training for judges and public defenders.**

D. Create an independent committee supervising the behavior of judges.

An independent committee could be modeled after the International Commission against Impunity in Guatemala²²; the United Nations is collaborating with the Guatemalan authorities to support the Public Prosecutor's Office and other State institutions in the investigation of sensitive cases. The ultimate goal of the Commission is to strengthen judicial institutions, allowing them to confront illegal groups and organized crime in the future. This same methodology could be applied in Peru when it comes to cases that arise from social conflict, another sensitive situation. If a multilateral commission could support Peruvian judges at the local level, it will grant security, predictability, and consistency to proceedings and rulings.

IV. Further recommendations:

A. Create a National Registry of Agreements (Registro Nacional de Acuerdos or RNA in Spanish) similar to INFObras; this registry would be managed by the aforementioned Working Team.

- a. Copies of all documents associated with a project (“Actas de mesas de trabajo”, for example) should and would be uploaded to this digital registry.
- b. Every submitted document should include the name of all the parties involved, the name of the representatives, their contact information, and the dates when the agreement was signed and/or ratified. There should be information about the status of the agreement, updated and uploaded consistently to the RNA.
- c. This transparent information flow would help to create bottom-up accountability for agreements, and would provide the public with ready access to all the information they need to empower them as watchdogs of and for public officials.

B. Determine if the Peruvian government wants to retain “first contact” and expand purview of the Consulta Previa past campesino and indigenous denominations.

- a. At the moment there are discrepancies between what the law dictates and the situation on the ground. According to the Ministry of Energy and Mines, the Consulta Previa Law guides their actions and is also enforced; however, the research conducted by the Peruvian Capstone team indicates there are small and medium-sized mining companies that report that this law does not affect their relations with their partner communities until after the exploration phase, which is too late. Therefore, it currently cannot serve as the benchmark for interactions between the State and/or private parties.
- b. It is necessary for the Peruvian government to review their current practices and determine whether the government needs to or wishes to retain “first contact” or whether it is adequate for mining companies to establish contact first with potential communities.

²² Comisión Internacional contra la Impunidad en Guatemala. <http://www.cicig.org/>



- c. The government of Peru must expand the purview of the Consulta Previa to those who are not campesino or indigenous by denomination, ensuring all communities affected or impacted by mining are afforded the opportunity to learn about the full impact the extractive project will have on its area of influence.
- C. Utilize innovative technologies to initiate multi-stakeholder dialogues connecting hard to reach communities with centralized public and private sector agencies that provide support.** Stakeholder dialogues do not always have to physically gather people around a table, and technology can help make hard-to-reach areas much more accessible for the State apparatus.
- a. **Online collaborative platforms:** computer software that enables interaction between an organization and its target audience through a website or virtual space. Collaborative platforms allow stakeholders to suggest, vote for, rank, or comment on ideas about a particular topic; they allow for frequent feedback by a forum facilitator and a feedback loop to keep stakeholders aware of how their input is being used.
 - b. **Product development challenges:** contests in which an organization challenges its target audience to submit ideas for or to create products. Participants compete for a chance to win prizes from the host organization while providing input on topics of interest and generating creative ideas for dissemination and implementation.

V. CONCLUSION

The goal of these recommendations has been to illustrate the Peruvian State's challenges and shortcomings, specifically referring to the lack of strategic planning, coordination, and implementation, all combined with State absence in rural areas and also to give a way forward. The national government has been “standoffish”, to use Dan Slater and Diana Kim’s terminology; the central bodies have inclinations to avoid administering their populations and territories in the hope of preventing political complications.²³ Subnational levels characterized by institutional incapacities and/or corruption create an environment where the private sector and communities interact without State legitimacy or rule of law. This non-structured or informal interaction harms the communities themselves as well as Peru. Mining companies and communities invariably engage in asymmetrical relationships that result in conflict. Communities expect and ask the private sector to fill the gap left by the State for the simple reason there is no other recourse. When the company obliges, conflict may be kept at a minimum; if the company refuses to acquiesce, conflict ensues. But in either case, governance and planning remains absent.

²³ Dan Slater and Diana Kim (2015). Standoffish States: Nonliterate Leviathans in Southeast Asia. TRaNS: Trans -Regional and -National Studies of Southeast Asia, 3, pp 25-44 doi:10.1017/trn.2014.14



This unsustainable and unstable environment discourages investment and hurts Peru. Given Peru's heavy reliance on the mining sector, it is crucial that the State (1) enforce the rule of law and (2) ensures the equitable distribution of public goods that better the living conditions of communities that have been historically neglected. It is in this spirit of idealism and optimism that we wish to close our study. We hope the recommendations aforementioned will be a step in the right direction for the Peruvian government so that Peru and its citizens can prosper. Yes - we believe that there is a win-win for all. And in that vein, we believe that it is time for effective implementation of laws and sustainable plans.



III. COMMUNITY

Government Guide to the Community Partnership Agreement

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Guiding questions for the Vice Ministry of Territorial Governance to consider and take into account regarding the implementation of the Community Partnership Agreement among government, mining companies and communities

The aim of the Community Partnership Agreement (for the purposes of this Guide, the **Agreement**) is to ensure that a mining company is required to obtain the free, prior, informed consent of a community affected and impacted by prospective mining activities for all stages (to include exploration) of a mine's life cycle. The mission of the Agreement is to ensure that communities and the mining company openly engage with each other, decrease, if not eliminate, the risk of conflict, and hopefully provide a benefit for the community, the mining company and Peru. Accordingly, the Agreement seeks to make sure that:

- (a) **there is effective and regular dialogue between all stakeholders** involved in a mining project so that impacted communities develop an understanding of the impact of the mining company on its members and environment, to manage expectations of all parties, and prevent the outbreak of social conflict as the mining project unfolds and thereby ensure benefits for all stakeholders from the mining project; and
- (b) **the community is empowered to negotiate and exercise its rights**, as neighbors to and partners in the proposed mining project, when negotiating with a mining company to ensure equitable benefits and treatment for all impacted by the mining company and the sustainable development and survival of the community; and
- (c) **the government is enabled to establish a formalized agreement process to benefit private-sector relations** where currently agreements between communities and mining companies are ad hoc and unsupervised by any regulatory body.

The Vice Ministry of Territorial Governance has a linchpin role in observing, supervising, and approving the process of negotiation and execution of the Agreement. It is vital that the mining company is accountable for the promises it makes to each community impacted by the mining company's activities. 2018 Columbia University Peru Capstone Workshop Team's (the **Team**) recommendation is that if a mining company commits a material breach of the Agreement the Government of Peru will automatically revoke its license to mine, which would incentivize a party,



here the mining company, to take its commitments seriously and to keep its word, its promises. The Government of Peru should also make granting of the license to mine conditional on a mining company entering into the Agreement.

This Guide gathers together all of the thoughts and questions that the Team has generated throughout the course of developing the content of the Agreement and its implementation to assist the Government of Peru and future Columbia University Capstone Workshop Teams to develop the Agreement. Many questions remain to be answered. However, this Guide should explain to the Vice Ministry of Territorial Governance the rationale, purpose and intention of the Agreement while also highlighting areas in need of further research and refinement.

The Guide addresses the tripartite relationship between community, government and mining company from different perspectives because a mining company works and functions within a community, so much so that it is effectively part of the community and its everyday life, and both parties need the input of government to interact effectively. The mining company needs to engage with the community and to view the community as its partners. It is in the Government of Peru's interest to ensure a sustainable working relationship between mining companies and communities to prevent social unrest and mining operation disruption which inevitably and negatively affects the entirety of Peru in both the short and long term with the goal of providing and ensuring benefits for all.

The questions in this Guide have underpinned the Team's drafting of the Agreement. They are questions which should be borne in mind at all times and should, in and of themselves, provide guidance. We hope that they are helpful to the Vice Ministry of Territorial Governance in the development of their future strategy in this area. This document is a dynamic document which will be further developed by subsequent Columbia University Capstone Workshop Teams.

1. The Parties to the Agreement

The mining company, its parent company, the community, local government and central government should all be a party to the Agreement. Under the Agreement, the mining company will have obligations to the community in respect of its conduct of its mining activities. The mining company's parent company, which is the ultimate corporate beneficiary of the mining operations, will guarantee its obligations under the Agreement. The community will have the right to sue the mining company and to hold it accountable for its activities if it breaks its promises to the community - keeping promises is the cornerstone of good relations. Local government and central government will be supervising and approving the contents of the Agreement and holding the mining company accountable through its role as a state observer.

A) How will a community organize itself?

There are various options as to how a community could organize itself for the purposes of negotiating with the mining company throughout the life of the mining project but also for the purposes of managing its finances, decision-making and property ownership on an ongoing basis more effectively:

- The community could rely on any pre-existing organizational structures.
- The community could organize itself as a closely held corporation led by a board of directors of community members.
 - The challenge of this option is that there will be Peruvian corporate law implications including how the corporation is set up, how it should be governed, who owns the corporation and what the duties of the directors of the corporation are to the corporation and its owners. The community will need to be advised of the corporate law implications before undertaking the project.
 - The advantage of this structure is that if, for example, each member of the community becomes an owner of the corporation then each member of the community has a vested interest in the economic success of the corporation (the community). It also enables the community to hire out people and services, to make a profit (which will be accounted for applying corporate law accountancy rules) and to hold property. The directors of the corporation would be appointed on a rolling basis for fixed terms in accordance with pre-agreed rules set out in the corporation's constitutional documents.
- The Team's preferred option is that the community organize itself by establishing a trust with members of the community acting on a board of trustees who will have fiduciary duties e.g. a duty of care to the trust the board manages. The trustees will be held to a higher standard by law than any of the above organizational structures. It also has the potential to reduce corruption because the role of a trustee is self-selecting, its more demanding ethical obligations and standards of conduct require more from an individual than ascending to power through popular vote to a position of president or elected executive committee member and then serving personal interests only.
- **Change in Law Recommendation:** The Government of Peru could amend the laws of Peru to establish special legal personality for communities so that they have the recognized capacity to enter into agreements and the standing to sue in courts.

B) Who from the community will represent the community in negotiating the Agreement?

There are various options as to how a community might represent itself when negotiating with a mining company. It is important that the community is not represented by one person only (such as a president) who could filter the information that is given to the community or be susceptible to serving his or her own interests.

- Any pre-existing leadership structure could be used to negotiate with the mine such as presidents, executive committees (junta directiva) and the Frente de Defensa.

- A committee of elders and other representatives could be set up for the sole purpose of negotiating with the mining company.
- The directors or trustees of the corporation or trust could represent the corporation.
- If the Peruvian Government established a special legal status for the community, the representatives would be whoever is entitled to do so by law.
- Whatever the representative group option chosen, women should be members of that representative group. Those women who are willing should be given the opportunity to lead in negotiating with the mining company.
- A recent example from other states, for example, Canada is a model that the Peruvian Government might contemplate. The Canadian Minister of Indigenous and Northern Affairs recently announced multi-year funding agreements to support co-management boards and committees, established under the Inuvialui, Gwich'in, Sahtu and Tlicho treaties, to carry out their roles in stewarding natural resources in the Northwest Territories of Canada. The funding aims to stabilize operations of the 33 boards and committees. Whilst these funding arrangements are to support co-management treaty rights that derive from modern Indigenous treaties in Canada, **our approach is that all communities impacted by mining in Peru**, and not just those labelled indigenous in accordance with international law definitions, should be considered and protected by government and mining companies during the development of a project. However, the idea of communities playing an active role in land use, environmental assessment and resource regulation is one that we think should be adopted. Central government might contemplate a scheme of initiating a co-management board/committee with representatives of local government and the community all making decisions together as to how the land in their region is mined²⁴.

C) Who should be represented in the community?

There naturally are different, if not competing, interests within a community that all need to be heard and therefore represented. For example, those members of a community who are going to be displaced by a mining company need specific representation as their interests differ significantly to those of the rest of the community who will be remaining on their land.

- All of the demographics of the community need to be represented: men, women, the elderly, the disabled, children.
- Women play such a significant role within the community that their attendance at meetings and votes of the community should be mandatory. Women should have the right to have their voice heard and be given a platform to speak out and make decisions openly (not just behind the scenes) and with the full support of the rest of the community.
- The Agreement anticipates that adults will represent the interests of their children in the negotiation of the Agreement.

²⁴ https://www.canada.ca/en/indigenous-northern-affairs/news/2017/08/government_of_canadarenewspartnershipwith33treaty-basedco-manage.html

D) How do you manage conflicting interests within the community?

Different members of the community may want different things from the arrival of the mining company: fundamentals such as a permanent clean water supply, sanitation, jobs, education, health, improved infrastructure, improved housing, internet and technological training and equipment, all should be able to unify behind a plan for a sustainable future for the community. Communities may have historical structures such as powerful or influential families or individuals whose interests have traditionally prevailed over the interests of the rest of the community or whose interests risk winning out once the mining company arrives. All parts of a community need to have a voice.

- Each interest group should have its own leadership who can represent that interest group in meetings and votes.
- Where an issue specifically affects one interest group such as a group that is going to be relocated or displaced, then that community should have the right to vote on that specific issue. The Agreement could contain a displacement regime on which the displaced community has the right to vote.

E) How do you make sure that everyone in the community knows what is in the Agreement and what the mining company is promising them?

In order for a community to fully understand what a mining project will mean for their community, what the mining company is promising them and what their rights are if the mining company breaks those promises, everyone in the community needs to understand the Agreement and how it protects them.

- The mining company should be providing funds to the community so that the community can be on an equal playing field with the mining company. The community can use the funds to instruct lawyers chosen by the community to draft the Agreement on behalf of the community and with the best interests of the community in mind and to advise the community as to the terms of the Agreement. The community's lawyers should defend and strengthen the community's negotiating position versus the mining company.
- Full transparency is key in this regard as among other things it develops trust. The Agreement needs to be widely publicized. We require a hard copy to be made available under the Agreement at the (i) church, (ii) in the town hall/office of local government, (iii) at the mining company's office and (iv) at meeting place of the community's leadership committee.
- New technology, which makes information sharing so much easier, could be harnessed such as publishing the agreement on a website or maximizing the use of smart phones so that there is better communication between the mining company and the community.
- An electronic screen could be put up in the Plaza de Armas of each community where each Agreement is publicized and the Agreement could be stored in a database run by the municipality. There must be public access to the Agreements in the database at all times.

- The principle of equality should govern – if the mining company and its workers have access to the Agreement, so should the community.
- Local and central government should verify that the community accurately knows in detail what is in the Agreement and what the mining company is promising the community.

F) What voting mechanism should be put in place to ensure that each member of the community has a voice?

Any decisions taken in respect of the mining project should be taken on the basis of a democratic vote by ideally every member of the community but we have set out a minimum below in the event that is not achievable.

- A super majority of the community (e.g. a minimum of 75%) should vote to approve the terms of the Agreement for the simple reason that the terms thereof affect everyone in the community.
- A minimum of 2 members of the community should execute the final version of the Agreement so that there is no danger that one person signs the Agreement without the knowledge or consent of the remainder of the community.
- Women, who are normally a majority of any community, should represent 50% of the vote to approve the Agreement to ensure women have a voice as set out above.
- The vote should be anonymous to avoid coercion or intimidation of any members of the community by other members of the community or the mining company or any other third party.

G) Who should sign the Agreement on behalf of the Government of Peru?

Representatives of local government should be present on the ground with the community to monitor the whole process of the negotiation and signing of the Agreement as an observer.

- Both local government and central government should be signing in the capacity of supervisor and approver of the whole dialogue process between the community and the mining company.
- The Agreement should be sent to central government for its review and signature by the lawyers of the community.
- The Vice Ministry of Territorial Governance should sign on behalf of central government and should be responsible and accountable for ensuring the mining company treats the community fairly and without discrimination at all times, particularly between communities.
- Both local government and central government should keep a complete copy of the Agreement.
- Local government and central government should play a proactive role in managing the needs, priorities and expectations of the community.

2. Enforcement



H) How do you make the Agreement binding on the mining company and enforce its obligations?

The Agreement needs to have teeth, the mining company needs to understand that there are very real consequences if it breaks its promises to the community.

(i) Cross-default provision

The Agreement will contain a cross-default mechanism meaning that central government, once notified, shall automatically revoke the mining company's mining license if it commits certain material breaches and does not remedy those breaches within a fixed period of time under the Agreement.

- **Change in Law Recommendations:** Peruvian law will need to be changed to link a material breach by the mining company under the Agreement to the revocation of its mining license granted by the Government of Peru. The mining license will need to specify that a breach of the Agreement constitutes a breach of the mining license.
- Many mining companies are owned by publicly listed parent companies who are required to notify their shareholders if there is a material breach under any of their subsidiaries' project agreements. This would mean external pressure on the mining company to comply with the Agreement. A project agreement will definitely include the mining license and should also include the Agreement. Shareholder pressure should encourage compliance by the mining companies. Ideally, the mining company would also be required under the Agreement to register the Agreement with the stock exchange on which its parent company is listed.
- Most mining companies will have events of default in their loan agreements with the banks funding their projects so that any breach of a project agreement gives the bank the right to accelerate the loan and call for its repayment. This type of financial pressure on the mining companies will be an extra way to ensure compliance with the Agreement.

(ii) An effective complaints mechanism

The community should have an easy and effective process by which to complain to the mining company, local and central government. The community should be able to complain at any time and should be able to take the mining company to court at any time.

- The community should be able to complain in a central space (e.g. on a bulletin board, on a website, on a hotline) whenever the mining company breaches its obligations.
- All members of the community should be made aware of the possibility of complaining to Defensoría del Pueblo in the event that a social conflict is breaking out. The community is also entitled to complain to local government and central government if any social unrest unfolds.



- If there is a breach, there should be no statute of limitations on any breach which harms the environment, water, animals, health or sacred places pertaining to the community or otherwise creates long term problems, the effects of which cannot necessarily be discovered or discerned earlier. All other breaches should be governed by the existing statute of limitations regime under Peruvian law.
- Minor complaints should easily be managed by a mining company but those that are material breaches will need to be dealt with effectively.
- Breaches should be notified by the community both to local government and central government, they should be recorded and publicly available at all times.
- Local government and central government should have an effective response system when there is a breach of the Agreement by the mining company so that it exerts pressure on the mining company to comply with its obligations.
- There needs to be a clear process for what happens in the event of a breach so that all the relevant players are aware that something has gone wrong immediately and can determine how best to fix it.
- The community has the right to seek out the government/its entities to complain of non-compliance with the terms of the Agreement by the mining company. There are a multitude of current complaints databases but the Defensoría del Pueblo operates and maintains an extensive database and there is a link to it in the “how-to” guide for the community.
- **Peru Capstone 2019:** Further research could be done by the 2019 Columbia University Capstone Workshop Team about the detailed practices that mining companies have put in place in Peru in terms of appointing a community liaison person to whom complaints can be communicated. Most mining companies have a community liaison team to communicate with communities. The difficulty is that the team’s personnel might change over the life of the project and so maintaining consistency of relations between the mining company and the community is challenging.

I) **What kind of remedy periods should be given to the mining company before it is considered to be in breach?**

Different types of breach require different remedy periods by the mining company according to the impact on the community.

- Under the Agreement, environmental, water, animal, or sacred place-related breaches should be fixed immediately, for all other breaches the mining company has 30 days to fix the breach with the exception of other breaches which have a materially adverse impact on the community for which it shall have 10 days to remedy the breach before it becomes a material breach triggering automatic revocation of the mining license.
- The burden of proof should be on the mining company to prove that it did not commit a breach of the Agreement and more generally, that it is in compliance with the Agreement.

- For material breaches, the mining company should be required to stop operations while it fixes those breaches and for all breaches, remedying of breaches and suspensions of operations, to continue to pay staff (including community members it employs).
- A mining company should in general police itself but the community needs to be empowered to verify the information that is being given to the community by the mining company so that it can hold the mining company accountable.

J) How should the mining company be required to fix any breaches of the Agreement that it commits?

- Under the Agreement, the mining company has to establish and maintain a fully funded emergency fund which is held in trust for the benefit of the community (and so is not accessible to the mining company's creditors, as per the abandonment fund) which should be used by the mining company to fix the impacts of any breach it commits, accidents during operations or natural disasters such as earthquakes i.e. cleaning up environmental waste, protecting the health, safety and water supply for the community.
- The fund should be fully funded every five years after independent inspection.
- **Peru Capstone 2019:** Further research could be done by the 2019 Columbia University Peru Capstone Workshop Team as to how much should be maintained in the emergency fund. The scale of fixing an emergency will obviously differ from project to project. The 2019 Columbia University Peru Capstone Workshop Team could also determine the exact mechanics of independent inspection, funding of and drawdown from the funds maintained by the mining company.

K) How can you require the mining companies' parent companies to be accountable for the mining companies' actions?

- The Agreement contains a parent company guarantee. The parent company is responsible for the prompt performance of all obligations and payment of all liabilities of the mining company under the Agreement.
- **Peru Capstone 2019:** Further research could be done by the 2019 Columbia University Peru Capstone Workshop Team as to whether a community typically sues an international parent company in Peruvian court or in another jurisdiction or the Peruvian mining company subsidiary of the international parent company.

L) What happens if a mining company is succeeded by another mining company?

If a mining company is succeeded by another mining company, the exiting mining company must ensure that the community knows who the relevant community liaison personnel is in the new mining company and must ensure a smooth transition. The community must be able to sue both the exiting and incoming mining company, there can be no gaps in responsibility.

- Both the exiting and incoming companies should be liable for the existing liabilities at the time of transfer from the exiting to incoming company. The exiting company should be a guarantor of liability for the incoming company.
- The incoming company needs to have at least the same financials and technical qualifications as the exiting company.
- It is important that both companies remain liable for any environmental damages whatsoever arising out of or in connection with the project.
- Whichever mining company is operating the project at the closure of the mine should be responsible for any damage of which it has actual knowledge and any damage that cannot be seen at the time of closure of the mine but which later reveals itself and is there as a result of the mining activity, in which case the mining company should have uncapped liability in that regard.

M) How do you ensure that the Agreement is amended according to an effective, pre-agreed process and is not susceptible to manipulation by any party?

- All community members must be aware of any amendment to the Agreement. All members of the community must vote on any amendment to the Agreement in accordance with the voting process (in terms of percentage of vote, presence of women etc.) established for the obtaining of consent from the community by the mining company.
- There should be no room for bilateral amendments between the mining company and one community leader or executive leadership committee of which the community is not aware and which amendments the community members would not accept if they were aware of them.

N) How do you hold the mining companies accountable within the various ministries of central government?

- All ministries need to be proactive in monitoring the performance of mining companies operating in Peru.
- The Vice Ministry of Territorial Governance, the ministry best placed to implement the Agreement across Peru in light of its established mission to address social conflict in Peru which perfectly matches the objective of the Agreement, needs to ensure that other ministries are aware of (a) the template Agreement and (b) that an Agreement is being entered into by each Peruvian community impacted by a mining company's activity and that mining company.

3. Changes in the Law

O) What changes in Peruvian law are recommended to accommodate the Agreement?

- The granting of a mining license to a mining company in Peru should be made conditional on the signing of an Agreement with the relevant impacted community.
- If a mining company commits a material breach of the Agreement and does not rectify that breach within a certain period of time, the law will need to be changed so that central

government automatically revokes the mining company's mining license, without discretion, this can be done by (a) introducing a regulation to that effect, (b) changing the law to specify that this is the case and/or (c) writing into the mining license that a breach of the Agreement is a violation of the mining license. The mining license should also contain a provision which requires the mining company to comply with the law.

- Communities should no longer be divided up into zones of direct and indirect influence. This causes direct conflict between different communities who see those in the zone of direct influence as receiving better treatment than those in the zone of indirect influence and beyond. This leads to social conflict that could be avoided by changing the law so that a mining company has to consider all members of a community **impacted**, which is the key concept, by its activities.
- Central government could change the law to set up a registry where every signed Agreement in respect of any project in Peru will be posted and publicly available (this could be both at a central government and local government level, the more points of access to the information the better). This is important not only to hold a mining company accountable but also to ensure equal treatment by mining companies of communities across Peru.

P) How effectively is the Consulta Previa process actually working in practice?

- The central government should review the effectiveness of the consulta previa process in terms of how well it is working in practice and whether it is being effectively enforced. Central government may decide it would be a good idea to launch a PR campaign to educate the public as to how the consulta previa process works.

4. Free Prior Informed Consent

The intent of the Agreement is that the mining company should obtain the free, prior, informed consent of the community before it starts exploring to decide whether it wants to continue with the project, at each major stage of operations and upon any material development during the life of the project. There should be a dialogue roundtable set up from the outset which every stakeholder in the project must attend to enable the project to be fully explained to the community and to agree collectively on a sustainable development plan for the community. According to the World Bank, governments, mining companies, and local communities should undertake trilateral negotiations right from the start of mining projects²⁵.

Q) How do you ensure that any consent given by the community is given openly and transparently?

- There should be a meeting of the community each time a decision is required to be made in respect of, and throughout the life of a mining project.

²⁵ World Bank and International Finance Corporation, *Large Mines and Local Communities: Forging Partnerships, Building Sustainability*, International Finance Corporation (2002).

- When a representative of a community signs the Agreement it must do so with the express authorization of a vote of the community as set out above.
- Any Agreement signed by the community could be registered with the official registry(ies) set out above.
- Others will know that the Agreements have been signed because they have been registered with the official registry(ies) and there should be complete access by the public to the Agreements. Members of the public should be able to download copies of the entirety of Agreements for their review.
- Central government could launch an education campaign for communities across Peru so that members of communities know what their rights are and what they can ask for from a mining company.

R) How do you prevent intimidation/manipulation/corruption/coercion of any member of the community by the mining company, any other community member or any third party?

- Measures should be considered to avoid a mining company or government talking to only one individual within a community regarding issues that concern the community as a whole because there is the risk that the one individual chosen has too narrow of an approach, and even worse, is corruptible, or represents only his interests or the interests of those close to him or is perceived by the rest of the community as no longer belonging to that community and being considered “one-of-them”, losing the trust of the community the individual claims to represent.
- As above, communities should be encouraged to have a committee who represents them in their negotiations so that one individual cannot be influenced or corrupted or obtain so much power that the individual can intimidate or manipulate other members of the community.

S) What should be a major stage of a project for the purposes of obtaining consent from a community?

- As a minimum this should cover exploration (physical, aerial and subsuelo), the start of operations, the processing of extracted soil with minerals and metals (if applicable), the transport of minerals and metals and the disposal of waste, any change in equipment, technology or labor, any material development that might impact the community, any change in scope of the operations and abandonment of operations.
- If the mining company considers a stage to be non-minor and not requiring the consent of the community then the burden of proof is on the mining company to show that the change is minor. The mining company has to decide what is material but that should be an objective fact. For example, a mining company might change its materials during operations and consider it not to be a major change requiring the consent of the community but it causes sickness amongst members of the community. The mining company should be responsible for that sickness.

- A mining company should be responsible for setting out all of the risks to the community in clear, specific, tangible and easy to understand concepts and terminology.
- The mining company should be providing to the community all plans as to the building of any structure to support any part of the mining activity and the transporting of tools, resources and people in respect of the project.
- The mining company should be obtaining consent at all times from the community in respect of anything that might impact water including the use of water, any change in access to water and if there is anything which might contaminate the water or reduce or eliminate the supply of water to the community or might impact any lake or river which is considered sacred to the community.
- The mining company should obtain the consent of the community for any change of condition, scope or impact that has or might have a significant impact on the community. A minimum standard such as this for when consent needs to be obtained would be advisable.

T) How often should the mining company be required to reengage with the community about the mining project or to change or refine the scope of the Agreement as required?

- As a minimum under the Agreement, the mining company is required to meet with the community regularly, e.g. every two months, but it can of course meet more frequently as required particularly if a mining company is changing its operations.
- The mining company should be required to provide all material information to the community concerning any issues that might impact the community as often as it gives such information to management.

U) How is it ensured that the community has the capacity, or is given the capacity to make informed decisions?

- A mining company should be opening a conversation and continuing dialogue with the community in understandable language and concepts at all times.
- NGOs and universities might be employed or engaged by central government to run education campaigns to ensure the community is fully informed about what a mining project is and what its impacts might be for the community and its surrounding environment.
- The how-to-guide is designed to prepare communities for what to expect when a mining company arrives in its area.

V) What happens if a community does not want to give its consent to a project once a mining company has given the community all relevant information?

- It is likely in this scenario that the community and the mining company will continue to negotiate until the community is happy with the project and what it means for its members' future.

- However, the community should be free and have the right to veto or object to a particular project without any repercussions. If a community refuses consent, the project should not go ahead. An unwanted project will doubtless lead to social unrest. It must be remembered, a mining project functions, and operates, within a community so the consent of the affected and impacted is necessary.
- The community's ability to hold a vote (with a super majority required to approve the project as above) must be meaningful in this respect.
- This means it is fundamental that a community's consent is obtained before any firm arrangement is achieved between the mining company and central government. It cannot be a "done deal" when the project is presented to the community.

W) What kinds of information should be provided to the community by the mining company?

- The potential or actual effect or impact on the water and environment in clear and simple language.
- A detailed description of the mining project proposal including whether there is going to be the use of any explosives and what will be built on the land acquired or to be used by the mining company.
- All anticipated eco-systemic, socio-economic impacts. The mining company will need to do a health, social and environmental impact assessment and provide that information to the community in a form that is straightforward for the community to digest and understand.
- All anticipated impacts on the environment of the project which should include all risks to the environment and what will be done by the mining company to eliminate or minimize those risks. The Agreement requires the mining company to use the best and most advanced technology, processes and standards and a requirement to clean up immediately.
- The mining company's proposal on how to monitor, avoid and mitigate the adverse impacts of the mine and how community members will be included in monitoring the impacts of the mine.
- Community members should be encouraged to monitor the impact of the mine on their land and community. An independent third-party company might be engaged to do this monitoring on behalf of the community at the mining company's expense.
- The mining company's proposal on optimizing and sharing benefits and profits with communities affected by the mining project. This might best be served by way of a royalty system whereby the mining company pays a regular royalty to a trust fund which will fund the community's sustainable development plan (see more below on this). As an aside, the mining company should not pay any profits directly to the community either lawfully or illegally as this has the potential to breed corruption and the desire for community members to ascend to power to serve their own personal interests.
- The mining company's proposal on creating employment for community members either at the mining company or in the surrounding area.
- The mining company's proposal on how and when to fulfil the conditions of the consent.

- All reports and studies done by the mining company in relation to the project in a form that the community understands.
- In summary, the information that a community requires to make a fully informed decision should cover the environment, health, jobs, education and any inconvenience or damage the community is going to suffer.

X) How do you empower the community to review the mining company's proposals and decide whether they are adequate for them?

- The community needs to have access to independent lawyers and other professional advisors of comparable qualifications and experience as the advisors to the mining company.
- Under the Agreement, the mining company is required to provide a fund to the community for the community to use to compensate its advisors.
- If the Agreements are published on a central website, then communities will know what other communities have asked for and what they have been granted by the relevant mining company.
- A copy of the Agreement should be hosted by the mining company, the local government and the Vice Ministry of Territorial Governance.
- It is very important there be a physical paper and digital trail of everything agreed to by the mining company, the community, local government and central government. It should be kept in mind that a digital trail is a permanent trail as it cannot be fully deleted or destroyed.

Y) How should the mining company give notice to the community of any change of information requiring a change of consent?

- This should be published in local newspapers, on the company's website, in the local government building and sent to all members of the community by mail.
- This is vital to make sure the community remains fully informed of any developments in the project that might impact the community and consents to those changes, otherwise social unrest may break out.

Z) How do you make sure the mining company has communicated all relevant information about the project to the community?

- The mining company has the burden of proof, as it has the knowledge of the facts, in terms of proving it has provided all relevant information to the community. If the mining company has omitted to provide information to the community that has turned out to be important, it will be responsible for compensating for any damage caused to the community as a result.
- The directors of the mining company should confirm that they have provided all relevant information to the community.
- The Agreement is going to be signed by the mining company's parent company too, as it is the ultimate decision maker and gains from the commercial success of the mining company, which will be aware of what information has been provided to the community and will be guaranteeing the mining company's obligation to provide all relevant information to the community.

AA) How do you provide ready and easy access for the community to the information in a form that is understandable and accessible?

- The company should provide the information in Spanish and the local language(s) spoken in the community. It should provide summaries, repeat explanations, translators.
- The mining company should provide the information orally, in hard copy and using new technologies.

BB) How will a community communicate to the Government of Peru that it has given its consent to a particular stage of the mining project and that the consent is still in action or has not been withdrawn?

- The proposed public registry where the Agreements are registered could have a section where a community can notify the Government of Peru that it has given consent or that the consent has been withdrawn.
- **Peru Capstone 2019:** Further research could be done by the 2019 Columbia University Peru Capstone Workshop Team as to how this consent notification process would work in practice.

CC) How do you ensure that there is a minimum level of information that the mining company should provide as to the scope of the project?

- The Agreement contains schedules which sets out the information that the mining company should provide about the scope of the project. It should as a minimum match the scope of the project agreed under the mining license. It should include real detail.
- The Agreement should include a map of the area and who has to be moved if there is any relocation required.
- The mining company needs to show what the major and minor impacts are going to be geographically and how far the impact spreads beyond the community.
- The information should include the mining company's plan and what the mining company will be employing in terms of equipment and methods when doing the work at the mining site.
- It should include information about the environmental, health and employment impacts of the mine and how the mining company intends to protect the culture of the communities.

DD) How do you ensure the procedure for obtaining consent from the community is as effective as possible?

- The mining company is required under the Agreement to give the community sufficient time to analyze, study and understand the information it gives to the community.
- At the dialogue roundtable set up at the start of the process, representatives from (a) the community, (b) local government, (d) the mining company, (e) regional government, (f) central government and (g) any advisor or NGO organizations should be present.
- The community should be given at least three months to digest all the information that is given to the community by the mining company. The process of obtaining consent should be given

at least 6 months by the community, government and mining company i.e. the mining company will not be able to proceed with any activity during that 6-month period.

- Any process should include publication, meetings, consultation and fair and open discussion.
- NGOs might be able to provide expert assistance to communities to help lubricate the process.

EE) How do you ensure the community is adequately represented by advisors and professionals?

- As above, under the Agreement the mining company shall fund the appointment by the community of a variety of legal, accountant, environmental and other professional advisors to assist it with the drafting, negotiation and execution of the Agreement, any advice required during the life of the project including amendments to the Agreement and to assist in resolving any disputes arising out of or in connection with the Agreement including after the mine has closed.
- The mining company should not play any role in appointing those advisors but the amount of money it makes available should be sufficient so that the community can appoint advisors of comparable competence, experience and credibility to those engaged by the mining company. The mining company's funding of these advisors is to ensure the mining company and community are operating on the same level and in equal bargaining positions.
- The community should be able to build up a panel of trusted advisors it can refer to throughout the life of the project.
- The mining company should not interfere with or have access to the advice provided to the community which should be independent and given entirely with the best interests of the community in mind.
- The mining company should have the right to engage independent accountants to verify that the community has spent the allocated funds on its advisors. The mining company can refuse to fund advisors for the community if it discovers that there has been corruption, nepotism or fraud in the process of using its allocated funds in the appointment and retention of advisors.
- The mining company should only have the right to scrutinize what the community is paying to its lawyers, above, if the mining company is fully transparent as to what it pays its lawyers.
- Central government might initiate a scheme whereby newly qualified lawyers who have just finished law school in Peru are required to spend a year providing legal advice to community members in rural Peru.
- Central government should provide advice to communities as to which law firms might be able to best act in their interests.

5. Corruption

FF) How do you find out if there has been corruption in the conduct of the mining activities? Who should monitor that there should be no corruption?

- Peru has a series of entities (and most prominently the Fiscalías Especializadas en Delitos de Corrupción de Funcionarios) in place to prosecute corruption.



- **Peru Capstone 2019:** Further research could be done by the 2019 Columbia University Peru Capstone Workshop Team as to how to corruption-proof the Agreement and reduce corruption within communities and local government in general and more specifically with regards to eliminating corruption in how the *canon minero* is invested for the development of communities.

GG) How do you make the process of obtaining consent from the community corruption/bribery proof as possible?

- As many parties need to be involved in the process as possible to increase transparency.
- The mining company is obliged to comply with anti-bribery regulations in Peru, internationally and in its own country.
- The mining company should lose its license to mine if it commits any corrupt action, which should be the incentive to act properly and not commit a corrupt act.
- The mining company should lose all profits it earned from the date it committed the corrupt act, which again is an incentive to act properly and not commit a corrupt act.
- The penalty must be sufficiently high that the mining company is deterred from committing any corrupt acts and is incentivized to act properly.
- The parent company could be obliged to return any dividends paid out from the date of corruption onwards. The parent company is obliged to sign the Agreement and so is aware of the contractual requirement to protect the dialogue between the community and the mining company from corruption.
- There needs to be monitoring/policing of sub-contractors too. The mining company is fully responsible for its sub-contractors. Any corruption of any sub-contractor should be imputed to the mining company.

6. Conditions for Consent

HH) What conditions might the community put in place for its consent?

- The Agreement has a set of mandatory conditions that the mining company must comply with to maintain the consent of the community predominantly concerning the provision of necessities such as water to the community.
- The Agreement has a set of template conditions that the community can choose to apply to its consent.
- The community is also free to determine whether it wants to attach more conditions to its consent.

II) Environmental harm: what kind of avoidance and/or mitigation measures should a mining company take or be able to take to protect the environment from the adverse impacts from mining?

- The mining company is obliged under the Agreement to apply the best and most advanced technologies, standards and processes available anywhere in the world to its operations.

- The community should be able to withdraw consent for any environmental harm or damage arising from the mining project or any mining activity.
- A mining company is likely to want to know what the minimum threshold is for environmental harm and that should be anything not consented to in the mining proposals provided to and agreed to by the community.
- The mining company should be fully responsible for any spills of waste water for example and there should be zero tolerance.
- The mining company should be required to make sure there is a minimum level of water for the community to grow and to continue to function unaffected.
- Environmental NGOs could be employed to assist in this process including training the community to better understand environmental concepts, how their environment may be being impacted and how to monitor any contamination.
- The burden is on the mining company to prove that the environmental harm or damage could not have arisen and/or been caused as a result of the mining company's (or any predecessor mining company's) activity. There should be a heavy penalty on the mining company if the mining company has caused any damage.
- Mechanisms such as enabling (a) a mining company representative, (b) a community representative and (c) a neutral third-party representative to each take samples for the purposes of verifying whether there is contamination, for example, will hold the mining company accountable and educate the community as to how to measure contamination of the environment. Those representatives can cross-check their findings against each other.
- The government could also provide environmental advisors to the community to educate members as to how to monitor the impacts of the environment and to better understand the environmental information that is being provided to the community by the mining company.

JJ) Land purchase/use: how much compensation should be paid to each member of the community to buy his or her land?

- Often when a mining company negotiates with a member of a community to buy his or her land there is very unequal bargaining power between the community and the mining company.
- The mining company should be required to pay an amount for the highest and best use of the land, it should be a fair and not unreasonable price. There should also be compensation for the community to start a life that is equally as good as before if not better.
- The mining company should also be obliged to pay royalties, as above, to the community because without the community's land nothing could be mined and so the members of the community are major and valuable contributors to the mining project. The community members could be viewed by analogy as "equity" partners in mining venture²⁶.
- The mining company should not be depriving a community member of its capacity to earn income from the land.

²⁶ Radon, Jenik and Achuthan Mahima, Reframing Compensation for Extractive Development: Land Owners are Partners, Not Expenses, unpublished paper and article, p2.



- The mining company should pay relocation costs for any community member who is displaced from his or her land.
- If the mining company prevents the community from using the land as it did before then the community needs to be compensated. There should be clear delimitations of the land that the mining company is going to use for the project, the land it is going to need to access permanently and temporarily to construct and operate the project and the land that might be impacted environmentally as that is likely to cover more than the area impacted by the mining.
- As Professor Jenik Radon and colleague Mahima Achuthan explain, compensation for land acquisition and economic and physical displacement is currently poorly handled throughout the world, and, moreover, addressed in a very traditional narrow framework, which can be described as buy-sell. A new model of benefit sharing remedies should be implemented which more adequately compensates for the major losses individuals and communities might face as a result of a mining project, particularly when they are displaced. Displaced communities are currently viewed as externalities, onetime costs, that companies need to account for but instead they should be treated as partners, as integral parts of the mining venture, because without the collaboration of these displaced communities, the project could not go ahead²⁷.
- The guiding principle should be that at all times community members need to be placed in a position where they are better off as a result of the mining project.
- **Peru Capstone 2019:** Central government might investigate whether it could standardize how much mining companies should pay to communities as a minimum amount for the land it acquires and/or uses. Further research could be done by the 2019 Columbia University Capstone Workshop Team as to how much mining companies pay to communities for their land. The team could further research the standardized land agreement process already existing in Peru to see if it could be improved and to make sure it fully ties into the operation of the Agreement. A cross-default provision could be included in the land agreement that if the Agreement is breached the land agreement is too and vice versa.

KK) Relocation: How do you standardize the process when a mining company displaces a community so that each community is treated on an equal basis?

- The mining company should adequately explain to the community what displacement is going to mean for the community. The mining company has the burden of proving that it has adequately explained and provided for the communities being displaced.
- It may be advisable for independent evaluators or a dedicated NGO to monitor the displacement process to ensure that communities are being fairly treated and adequately protected in terms of preserving their means of earning a living, health, safety and education.
- A community that is being displaced to Lima, or a more urbanized area, when it has previously been located in a rural area needs to be given the resources both in terms of financing and education to develop a new life in that new area.

²⁷ Radon, Jenik and Achuthan Mahima, Reframing Compensation for Extractive Development: Land Owners are Partners, Not Expenses, unpublished paper and article, p2.

7. Sustainable Development Plan

The Agreement contemplates that the community, mining company and local government shall create a sustainable development plan and the mining company will pay royalties into a fund held in trust for the community to be spent only on the sustainable development plan (and not available to the mining company's creditors) called the sustainable development fund. An independent committee comprised of members of the community, mining company and local government could manage the allocation of the funds in the sustainable development fund.

LL) What should the mining company be responsible for building in the local community?

- The mining company can build anything that the community agrees should be built by the mining company in the sustainable development plan.
- Local government and central government both need to be aware of what the mining company is agreeing to do for the community.
- If the mining company builds infrastructure that would traditionally be built by local government or central government, the mining company should be awarded tax credits for such work because the mining company should not serve as a substitute for the state in this regard.
- The community should be made aware that a tax credit system is how the infrastructure is being funded because the arrangement should not establish a regime where communities expect mining companies to fund and maintain projects that government should be expected to provide. A risk of creating such an expectation is that it gives communities the power to protest to extort further economic provisions or concessions from mining companies.
- The focus is on long-term sustainable development for the community. The Prospectors and Developers Association of Canada cautions against short-term direct capital awards from mining companies to communities because it is “not necessarily what communities want or need to meet the objectives of long-term sustainability”²⁸.
- If mining companies do construct and maintain infrastructure and services during their operations of the mine, central government needs to establish and maintain a continuance plan for when the mining project closes so that the infrastructure and services continue to operate.
- **Change in Law Recommendation:** The Government of Peru might consider changing the law or regulating to provide for a minimum contribution by the mining company to the long-term sustainable development of each community in key areas: improving necessities like water and sanitation, improving education and healthcare and fostering youth empowerment.

MM) Who will maintain any projects once the mining company has left the mine?

²⁸ Prospectors & Developers Association of Canada (PDAC), Excellence in Social Responsibility e-toolkit (ERS) (2009) p. 94.

- There needs to be sustainability for a community for when the mining company has left so that a community does not experience wealth once the *canon minero* starts arriving and poverty once the mine has closed.
- The mining company should be responsible for ensuring that there is sufficient training for the community to survive, particularly in the fields of health, education and the environment once the mining company has departed.
- The mining company will be required to maintain an abandonment fund fully funded under the Agreement which means that a certain amount of money will be set aside in trust to serve the community should the mine be abandoned before the anticipated date of completion of the project. The mining company is responsible for maintaining the bank account throughout the life of the mine and afterwards. The monies in that bank account should not be available for the creditors of the mining company.
- Local government could oversee the Abandonment Fund and make sure that the mining company continues to fund the Abandonment Fund on a regular basis providing updates and information to the community about the Abandonment Fund.
- There should be an independent five yearly assessment of the Abandonment Fund to make sure that sufficient funds are kept in the Abandonment Fund to protect the community once the mining company has departed. The independent expert should determine how much should be put in the fund.
- If the mining company is not maintaining the Abandonment Fund, it should lose its license to mine.
- The Abandonment Fund should be relied upon when operations end prematurely before the completion date of the mine or upon the agreed completion date for the mine.
- **Peru Capstone 2019:** Further research could be done by 2019 Columbia University Peru Capstone Workshop Team to establish the exact mechanics of the Abandonment Fund. Further paperwork might be required such as a trust deed or an escrow arrangement setting out when and how the monies can physically be drawn down from the bank account.

NN) What kind of role should the mining company play in the following fields as part of the Sustainable Development Plan?

- **Employment:**
 - The guiding principle should be that there should be no discrimination between those who work for the mining company who come from outside the community and those who work for the mining company who are community members.
 - A mining company should provide employment opportunities for anyone from a community who volunteers for employment.
 - A mining company might have a team of skilled contractors that it habitually uses on a project, the mining company should be required to train members of the community so that they can either start work when operations begin and/or at later stages depending on the activity required.



- The ideal would be to avoid a situation where the majority of the workers at a mine are imported by the mining company from elsewhere. Training over time would mean fewer and fewer employees would be outsiders. Many miners are laborers so it should be relatively straightforward for a mining company to train and utilize the local labor force.
- The mining company is in the best position to know what it needs in terms of labor and when, the mining company should set an employment plan.
- It is cost effective for a mining company to use local labor so if a mining company is not using local labor then it should have the burden of proving why a local does not qualify for employment.
- The mining company should plan to use a certain number of local suppliers and using those local suppliers should mean that the suppliers are able to grow their businesses and provide further services.
- The mining company should make sure that all of its hired sub-contractors have the same obligations regarding employment as the mining company i.e. the obligation on the mining company to use the local suppliers and labor force should be passed on to all sub-contractors.
- **Peru Capstone 2019:** Further research needs to be done by the 2019 Columbia University Peru Capstone Workshop Team as to whether requiring a mining company favoring local suppliers over other suppliers expressly violates international agreements or treaties and if so, what appropriate measures can be adopted to ensure a mining company is in compliance with international law but engages local suppliers.

- **Infrastructure:**

- The mining company should not substitute the state for building, operating and maintaining infrastructure.
- If it does build such infrastructure then it should have access to tax credits for the process of building that infrastructure.
- The government would have to maintain that infrastructure once the mining company has departed upon closure of the mine.
- The mining company should as a minimum provide WIFI to the community to the same extent it provides WIFI to employees working for its company as well as publicly available computers and non-removable tablets so that the community can access the internet and copies of the Agreement.

- **Health:**

- If a mining company builds a hospital then it should also get a tax credit for building that infrastructure. The government would need to maintain that hospital once the mining company had departed.
- The mining company should provide the same health service to local employees as it provides for its imported employees including any expats. This would include the same level of health insurance, transporting local employees to specialist medical centers or

hospitals if they need it in the same way they would treat their executives. There should be no discrimination between employees.

- It would be excellent if mining companies could fund highly-skilled health professionals to come to the area impacted by the mining company and train up locals so that they are able to work as health professionals on an ongoing basis. Similarly, the central government could launch a scheme whereby young doctors are required to spend one to two years in the regions of Peru immediately after medical school.

▪ **Education:**

- If a mining company builds a school, it should receive the same tax credits as above.
- If the mining company does not build a school but there is sufficient *canon minero* resources to build a school, central government and local government should be monitoring the application of those funds to ensure a school is built within a reasonable walking distance of the community and that there are sufficient numbers of children within the community who could use the school.
- The mining company should provide the same level of education to children of the community as is provided to its employees including expat children. Any sign of inequality will cause friction, social conflict and protest.
- There should be a campaign to inspire the youth in the community to aspire to go to university.
- The local government should introduce initiatives to introduce partnerships between communities and the local universities to foster aspirations amongst the youth of the community so that they strive to be professionals rather than simply wanting to work in the mine which is not always sustainable in the long term once the mine has departed.
- **Peru Capstone 2019:** Further research might be done by the 2019 Columbia University Peru Capstone Workshop Team into the use of sustainable development plans and funds in other countries of the world and how those funds can be established and administered in a way that is not susceptible to corruption or mismanagement and in a way that delivers what the community really needs.

OO) How might a mining company share its profits with the community?

- This will depend to a certain extent on the financial model of the mining company.
- There are various options:
 - Keep just the *canon minero* but re-assess the way in which the *canon minero* is spent by local government including initiating a campaign, led by central government as to how to invest vast sums of money at a local level in health, education, infrastructure as above in an appropriate, sustainable and non-corrupt way.
 - The mining company could be required to pay a royalty (paid out from gross revenues from the project, pre-tax) which shall only be used for pre-agreed sustainable development



projects (otherwise there is a risk that paying large sums directly to the community might result in waste or bad investment or at worst, corruption as above).

Communities are not yet necessarily organized or equipped to handle the large sums of money that the mining company would be able to pay out once it has started operations.

- The mining company could be required to pay a form of dividend to the community as if it were a shareholder at the same time as a mining company pays dividends to its shareholders. This has the potential for accounting manipulation so that the mining company does not necessarily pay as much money to the community as it ought to do and so the Team favors royalties for this reason.
- **Peru Capstone 2019:** Further research should be done by the 2019 Columbia University Peru Capstone Workshop Team as to how royalty structures work in detail and what royalty payment mechanism might best be implemented for mining projects in Peru.

PP) How do you make sure a mining company protects cultural characteristics, traditions, practices, heritage, language and sacred sites of the communities in Peru?

- The rights of the indigenous are most fragile and need to be protected.
- A mining company should hire an anthropologist to advise it as to the local communities and their culture that are going to be impacted by its mining activity.
- The Ministry of Culture should be involved in this process.
- When the first stages of dialogue are opened between the mining company and the community, time should be specifically set aside for the community to explain its culture to the mining company and in particular if there are any specific sacred sites in the area that require extra protection and consideration by the community. There may also be specific cultural practices or festivals that require preservation by the mining company.
- The community should have the capacity to complain to the mining company if its cultural heritage is not being adequately protected and the mining company should respond appropriately and within an adequate timeframe.
- Respect and depth of understanding by the mining company of the community's particular cultural characteristics, traditions, practices, heritage, language and sacred sites will be another effective method of maintaining good relations between the mining company and the community and preventing social conflict.



Community Partnership Agreement



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TEMPLATE

COMMUNITY PARTNERSHIP AGREEMENT



[Note: The first draft of this Community Partnership Agreement should be prepared by lawyers acting for the Community who shall manage the negotiation of the Agreement with both the Mining Company and its legal representation until execution of the Agreement. The provisions in this Agreement are not exhaustive but serve as a framework for the relationship between the Mining Company and the Community. The lawyers acting for the Community may add to, amend or delete any provisions of this Agreement at their complete discretion when preparing the first draft of the Agreement with the exception of the following mandatory provisions which must never be deleted because the purpose and effectiveness of the Agreement will be undermined: Article 2 (regarding the obtaining of the free, prior, informed Consent of the Community) and particularly Article 2.9 (the cross-default provision which is the linchpin of this Agreement), Article 4.1 (mandatory conditions for Consent), Article 7 (breach and consequences of breach by the Mining Company) and Article 8 (parent company guarantee) and accompanying Schedule 6.]

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This **Agreement** is made on [insert date] among

- (I) [insert name of the community] of [insert location of the community] (the “Community”); and *[Note: We recommend that a community organize itself as a trust with a board of trustees made up of community members to manage that trust but other options include (a) the community organizing itself as a closely corporation or (b) the community could have a committee of elders and other representatives or (c) the Government of Peru could change the law to award the community a special legal status of its own.]*
- (II) [insert name of mining company] incorporated in Peru under company registration number [insert company registration number] (the “Mining Company”), and
- (III) the obligations of the Mining Company under this Agreement are to be guaranteed by [insert name of parent company] incorporated in [insert jurisdiction] under company registration number [insert company registration number] (the “Parent Company”) in accordance with Article 8 of this Agreement; and



- (IV) this Agreement has been supervised and approved by [insert name of local government entity and name of representative] (the “**Local Government**”) and the Government of Peru represented by [insert the Vice Ministry of Territorial Governance and name of the representative] (the “**Central Government**”).

(The Mining Company and the Community are referred to collectively as the “**Parties**” and individually as a “**Party**”).

Whereas:

The activities of mining and other extractive industries are distinct from other entrepreneurial industries’ activities, owing to the all-encompassing impact mining has on communities, including but not limited to an impact on the quality of life, lifestyle, environment, health, traditional occupations, transport, and educational and economic opportunities of the community. It is functionally imperative for there to be a partnership agreement with the community, and to have one that is cognizant of, and is able to mitigate, the broad range of foreseeable and unforeseeable impacts that accrue as result of the presence of mining or other extractive industries.

The Mining Company recognizes and acknowledges that obtaining the full, prior, informed consent of the Community impacted by the Project is a requirement under international standards to initiate, develop, operate and maintain the Project.

The Mining Company recognizes and acknowledges the critical importance of protecting, and not adversely affecting, the environment, the cultural distinctiveness and the social and economic well-being of the Community and of safeguarding the health of all of the individual members of the Community.

The Mining Company recognizes and acknowledges the rights, titles and interests of the Community on and to its territory.

The Mining Company recognizes and acknowledges that the Community surrenders certain rights over its territory by consenting and agreeing to the Project but only to the extent of the Project as disclosed in writing to the Community under this Agreement.

The Mining Company recognizes and acknowledges that it has to fully perform all of the obligations and fulfil all of the conditions set out in this Agreement to (i) obtain and maintain the consent of the Community and (ii) provide benefits from the Mining Company’s exploitation of natural resources to the Community as set out in this Agreement. The Parent Company acknowledges and agrees that it guarantees all of the obligations of the Mining Company for the benefit of the Community, Central Government and Local Government under this Agreement.



The Mining Company agrees that this Agreement is in full conformance, and is not in conflict, with any provision of any international treaty or agreement to which the state or the Government of Peru is a party.

The Parties agree that this Agreement is legally binding in accordance with its terms and judicially enforceable under the laws of Peru and applicable international treaties.

The Parties agree that this Agreement is fundamental to the grant and continuance of the Mining License and is an integral part of the Mining License. The Parties agree that a Material Breach of the Agreement, as set out in this Agreement, constitutes an immediate breach under the Mining License and shall result in a revocation of the Mining License by the Central Government.

Article 1 – Definitions and Interpretation

1.1 “Abandonment Fund” means the bank account that the Mining Company must establish and maintain fully funded at all times in accordance with Article 2.8.

1.2 “Advisor Fund” means a pre-agreed amount of money that the Mining Company must pay to the Community in accordance with Article 2.8.

1.3 “Community” includes all groups and adult individuals of voting age, across the gender spectrum, who reside in the [Environmental Impact Zone] of / [area impacted by] the Project, in whole or in part, including but not limited to the Displaced Community. ***[Note: This definition needs to be refined by Columbia University’s Peru Capstone 2019 team. Currently, an area impacted by mining is divided into the zone of direct and indirect influence. This Agreement needs to cover the entire area impacted by a Project without distinction. The Government of Peru should also ensure its regulation provides for an EIA to take into account the cumulative effects on environment, health and safety of the Project].***

1.4 “Consent” means the consent that the Mining Company is required to obtain from the Community under Article 4.

1.5 “Corruption” means the abuse of public office for private gain. Public office is abused for private gain when an official accepts, solicits, or extorts a bribe. It is also abused when private agents actively offer bribes to circumvent public policies and processes for competitive advantage and profit. Public office can also be abused for personal benefit even if no bribery occurs, through patronage and nepotism, the theft of state assets, or the diversion of state revenues. This definition will also include any broader definition under any international treaty or agreement to which Peru is a party or which is applicable to it.



- 1.6 “Displaced Community”** includes all those groups and individuals who have to change their place of residence and/or their mode of earning and/or customary occupational method and/or area and/or forgo having or storing or housing their property in a specific place as a result of the Project.
- 1.7 “Environmental Impact Zone”** means the [environmental area of impact of the Project] according to the Environmental Impact Assessment(s) prepared for the Project by the Mining Company.
- 1.8 “Major Stage of the Project”** means any of the stages as set out in Article 2.2.
- 1.9 “Material Breach”** means any breach of this Agreement by the Mining Company which has a more than a minor adverse effect on the Community, whether in whole or in part, and including any minor breach that is not cured within thirty days of the notification of the breach by the Community to the Mining Company.
- 1.10 “Mining License”** means the concession granted by the Government of Peru to explore and exploit any determined minerals and any and all licenses to be granted to the Mining Company or any of its subsidiaries or affiliates by the Central Government in respect of the Project in accordance with the General Mining Law of Peru or any other relevant/applicable law in effect at the time of granting the concession and during the life of the Project.
- 1.11 “Project”** means the proposed mining project to be carried out by the Mining Company in [insert location] as described in Schedule 1 and any and all activities to be carried out by the Mining Company in connection with the Project in accordance with the project as approved by Central Government under the General Mining Law of Peru.
- 1.12 “Sustainable Development Fund”** means the bank account that the Mining Company must establish and maintain in trust for the benefit of the Community which is fully funded at all times during the life of the Project in accordance with Article 2.8.
- 1.13 “Sustainable Development Plan”** means the long-term sustainable development plan devised by the Community in collaboration with the Mining Company and Local Government and approved by Central Government, with the assistance and advice of any non-governmental organizations (as applicable), and as set out in Schedule 3.
- 1.14** The terms and conditions of this Agreement are to be interpreted in the best interests of the Community at all times. The Mining Company agrees to apply the best and most advanced technology and resources available to fully perform its obligations and fulfil the conditions



under this Agreement such technology and resources to be constantly updated throughout the life of the Project.

Article 2 – Rights and Obligations of the Mining Company

2.1 - Obtaining Consent

The Mining Company acknowledges that it has the right to conduct the Project conditional on its obtaining the Consent of the Community in accordance with Article 2.2 below. The Mining Company agrees that it cannot operate or continue to operate without obtaining Consent from the Community in accordance with this Article 2.

2.2. - Free, Prior and Informed Consent

The Mining Company agrees that any Consent given under this Agreement by the Community to the Mining Company must be free, prior and informed as follows:

- (a) **Free:** The Consent must be given openly and transparently without coercion, intimidation, manipulation or corruption of any member of the Community or of its representatives by any other member of the Community or the Mining Company or any third party.

For the purposes of this para (a), for consent to have been given by the Community, a super majority vote (meaning at least 75% of the members of the Community) of all members of the Community must have been obtained at a documented meeting of the Community where all members are present and of those who vote, at least 50% must be women.

If the Mining Company only obtains consent to the Project from one member of the Community or from an executive committee representing the Community (such as a *Junta Directiva*) only, even if that member (such as the president of the Community) or executive committee purports to represent the entire community, it shall be invalid.

The Mining Company must notify the Community each time it requires a decision from the Community under this Agreement. The Community will then call a vote giving every member of the Community 5 days' notice of the vote.

All votes held by the Community under this Agreement must be on an anonymous basis. The Community's leadership must ensure that each Community member is able to write his or her decision on a piece of paper and to post it in a ballot box.

No vote of any member of the Community may be purchased or otherwise influenced by the offering of any personal benefit or gain to that Community member in order to achieve a particular decision by the Community.

- (b) **Prior:** The Mining Company must obtain consent from the Community before:
- (i) the Mining Company begins exploration for the Project;
 - (ii) the Mining Company starts every Major Stage of the Project;
 - (iii) every change in scope of each Major Stage of the Project; and
 - (iv) every material development which could impact the Community during the life of the Project until the mine closes.

For the purposes of this para (ii), a “Major Stage of the Project” shall include each stage of the Project, including without limitation: (a) Any initial activities on the territory of the Community; (b) Licensing; (c) Exploration; (d) Exploitation; and (e) Closure.

- (c) **Informed:** The Mining Company, Local Government and Central Government shall share with the Community all relevant information before any consultation process with the Community and before every request for Consent that the Mining Company makes to the Community in accordance with this Agreement, including, without limitation, any information relating to any potential or actual impacts of the Project (a) on any member of the Community; and (b) on the water and environment.

The Mining Company shall ensure that:

- (i) the Community has ready and easy access to all information in both digital and hard copy form that is understandable and in both Spanish and the Community’s local preferred languages; and
- (ii) the information is sufficient, accurate and complete; and
- (iii) the Community has the capacity, or is given the capacity, to make informed decisions in a reasonable time period so that the Community has time to digest and understand the information and ensure that all members of the Community have read all the relevant information provided to them and/or have been provided with an adequate explanation of all the relevant information by the Mining Company.
- (iv) that each transfer of information acknowledges the possibility of unforeseeable impact and takes responsibility for it.

Local Government agrees that it shall be present at each stage of negotiation of any change to the terms of the Consent given to the Mining Company under this Agreement.

2.3 - Consent limited to the Project only

Any Consent given by the Community to the Mining Company is only valid for the Project and any aspect of the Project in respect of which Consent has been obtained by the Mining Company. Consent does not extend to any other mining activities in any other area of Peru. Any deviation from the Parties’ agreement as to the Project constitutes a change that requires renewal of Consent, unless it is minor in nature in which case, the Mining Company has the burden of proving to the



Community, Local Government and Central Government that it is minor and does not require any further Consent.

2.4 - Mining Company to maintain Consent throughout life of the Project

The Mining Company shall fully perform its obligations and fulfill all the conditions under this Agreement in order to maintain the Consent of the Community throughout the life of the Project and the term of this Agreement.

2.5 - Notification of Consent to Local Government and Central Government

The Community shall notify Local Government in writing which shall notify Central Government each time Consent has been granted to the Mining Company. For the purposes of this Article, the representative for the Central Government shall be the Vice Ministry of Territorial Governance or any other agency that undertakes its responsibilities in the future. The notification must include the details of the Major Stage of the Project, the material development or change in scope, as applicable, to which the Community has consented.

[Note: Peru Capstone 2019 team and future capstone teams should work towards determining exactly who in the Local Government and Central Government shall be responsible for receiving such complaints and could also make suggestions to advise the Government of Peru about how this process can be expedited.]

2.6 - Full and accurate disclosure by the Mining Company

The Mining Company certifies that all information necessary for the Community to make a free, prior, and informed decision as to whether to give Consent to the Mining Company under this Agreement has been disclosed and that this information is sufficient, true, complete and accurate. The Mining Company undertakes that should it discover that any information that has been delivered to the Community is no longer sufficient, true, complete and accurate or that it has not communicated any material fact to the Community, it shall immediately inform the Community and provide it with the corrected or outstanding information in writing.

2.7 - Regular Dialogue between Mining Company and Community

The Mining Company shall meet with the Community at the start of exploration and thereafter, a minimum of every two months during each Major Stage of the Project until twenty-four months after closure of the Project to ensure open lines of communication with the Community and the prompt resolution of any issues that may have arisen under this Agreement including any breaches of this Agreement by the Mining Company.

2.8 - Funds for the Community

The Mining Company shall create, fund and maintain the following funds which shall be fully funded at all times with sufficient funds to carry out the purpose of each fund as set out below. The Mining Company shall ensure that each of the below Funds is fully funded if, after a mandatory inspection to be completed by independent third-party every five years, a shortfall in the amount



required to service the purpose of the Fund is reported by that independent third party to the Mining Company and the Community as joint beneficiaries of that report. The Mining Company shall establish each fund in such a way that all funds held within the bank account are held in trust for the benefit of the Community and not the Mining Company or any other third-party (other than in respect of the Advisor Fund).

- (a) **Abandonment Fund:** The Mining Company shall apply the funds in the Abandonment Fund only in restoring the Project site and any land of any Community member impacted by the mine that has been polluted or damaged to the original condition of the land, as best it can by applying the best and most advanced technologies, processes and standards, before the Mining Company began the Project on the site should the Mining Company be required to close the Project prematurely for any reason before completion of the Project in accordance with the Mining License. The Mining Company shall be responsible for any shortfall if the funds in the Abandonment Fund are insufficient to restore the Project site to its original condition.
- (b) **Sustainable Development Fund:** The Mining Company shall apply the funds only in carrying out the Sustainable Development Plan. Only the Mining Company shall have access to the funds in the Sustainable Development Fund solely for the purposes of carrying out the Sustainable Development Plan. The Mining Company shall maintain true, complete and accurate accounting as to how the Sustainable Development Fund is being applied in accordance with the Sustainable Development Plan. The Mining Company shall provide that accounting to the Community, Local Government and Central Government every quarter. Any of the Community, Local Government and Central Government shall have the right to audit and inspect the accounting and application of the Sustainable Development Fund at any time on reasonable notice to the Mining Company.
- (c) **Emergency Fund:** The Mining Company shall apply the funds contained within the Emergency Fund for the purpose of (a) remedying any (i) breach by the Mining Company of its obligations under the Agreement as shall be notified to the Mining Company by the Community in accordance with Article 7, (ii) accident during the course of its operations or (iii) the effects of any natural disaster including earthquakes and (b) ensuring that all members of the Community are safe, sheltered and have access to (i) uncontaminated food and water and (ii) medical services if required as a result of the Mining Company's breach, the accident during the course of its operations or the effects of any natural disaster including earthquakes. **[Note: Peru Capstone 2019 team to investigate further how to calculate how much should be maintained in the Emergency Fund e.g. the scale of fixing an emergency will obviously differ from project to project].**
- (d) **Advisor Fund**



- (i) The Mining Company shall provide the Community with an Advisor Fund. The Community shall hold the Advisor Fund in trust and shall only apply the Advisor Fund in the payment of legal, accounting, economics, statistics, environmental, social, technical and other professional advisors for the preparation, negotiation and execution of this Agreement, any amendment to this Agreement and for any advice the Community needs during the life of the Project and in respect of any disputes arising out of this Agreement after the mine has closed.
- (ii) The Mining Company shall pay an amount to the Advisor Fund, for the Community to spend in retaining advisors, at least equal to that paid to the advisors engaged by the Mining Company, it being acknowledged and agreed that the Community should have comparable capability to the Mining Company and be comparably represented. The Advisor Fund should place the Community in a financial position to be able to instruct such lawyers and professional advisors that are of the same skill, experience and qualification as those engaged by the Mining Company.
- (iii) The Community shall have complete freedom to choose its professional advisors and should be able to build up a bank of trusted professional advisors to provide it with independent advice, but the Mining Company shall have the right to veto any advisor appointed by the Community if the Mining Company reasonably determines there has been any corruption or nepotism or fraud in that advisor's appointment.
- (iv) The Mining Company shall be entitled to have independently audited the application of the Advisor Fund to ensure that the Advisor Fund has been applied only in obtaining advice and that there has been no corruption or nepotism or fraud in the appointment of advisors. The Mining Company shall not have the right to receive, review, comment on, or interfere with the receipt of, advice by the Community from its professional advisors. ***Note: Peru Capstone 2019 team to investigate how best to structure the detailed mechanics of funding and draw-down of each of these funds].***

2.9 - Cross-default between Agreements with the Community

- (i) This Agreement does not alter any other obligations of the Mining Company under the Mining License, any other agreements with the Community (including any land agreements the Mining Company has entered into with the Community (which agreements must also be obtained with the free, prior, informed consent of the Community)), any other agreements with governmental entities or other communities and any applicable Peruvian laws.
- (ii) The breach by the Mining Company of any obligations under the Mining License shall also constitute a breach of this Agreement and breach under this Agreement shall constitute a breach under the Mining Licenses and the laws of Peru.

2.10 - No Conflict

In the event of any conflict between the terms of the Mining License and any other agreements entered into by the Mining Company under which it has obligations to the Community and the terms of this Agreement, the terms of this Agreement shall prevail in all respects. **[Note: Peru Capstone 2019 team to thoroughly review standard land agreements and mining concession agreement to ensure all the agreements dovetail].**

Article 3 – Rights and Obligations of the Community

3.1 The Community gives Consent for the Project to be undertaken by the Mining Company as described in Schedule 1.

3.2 Any Consent given by the Community under this Agreement is subject to the full performance by the Mining Company of its obligations and the full compliance by the Mining Company of the conditions under this Agreement.

3.3 Any Consent given by the Community must be maintained subject to review in the presence of the Mining Company, the Community and a representative of Local Government [every six months or annually] during the lifetime of the Project, and a minimum of three months before the engineering schedule of the Project is launched as described in Schedule 4 .

3.4 The Community may withdraw its Consent and the Mining License shall be immediately deemed suspended if:

- (a) There is a Material Breach by the Mining Company of its obligations under this Agreement, its Schedules, and/or any complementary agreements with the same Community as democratically determined by the Community, and verified by an independent expert where relevant;
- (b) Any Consent given by the Community under this Agreement is shown not to have been free, prior, informed and/or timely renewed by the Mining Company;
- (c) Any statement or representation by the Mining Company proves to have been negligently and/or willfully incorrect, misleading, or incomplete;
- (d) Any statement or representation by the Mining Company proves not to have been updated upon the realization of new or additional information and/or any change in circumstances surrounding the said statement or representation;
- (e) Any allegation of environmental harm or damage arising from the Project proves to be true upon investigation, which shall be concluded within [sixty days], or if such an allegation of



environmental harm or damage goes uninvestigated and unremedied within the said time frame [sixty days]; and

- (f) Any act of [Corruption or bribery], any allegation of which has to be conclusively investigated by the [local fiscal unit responsible for corruption] within [45 days], has occurred in connection with the securing or maintaining of the Mining License, the Agreement or the Consent, or in the conduct of the Project.

3.5 If Consent is not renewed, as specified in [Schedule 5], within [ninety days], after it is revoked, the Mining License will be deemed null and void.

3.6 The Community has the right to notify Local Government and/or Central Government or any of its respective governmental representatives or entities of any complaints it has of non-compliance with any of the terms and conditions of this Agreement by the Mining Company in accordance with the following process:

- (a) [Any member of the Community is free to complain either to the leadership committee or directly to the Mining Company. No member of the Community shall inhibit any other member of the Community from complaining to the Mining Company]; and
- (b) **[Note: Peru Capstone 2019 team to insert detailed mechanics for the complaint mechanism with Local Government and Central Government].**

3.7 The Community is obliged to make representatives, chosen through consensus or democratic means, available at meetings organized for any periodic review and dispute resolution in respect of the Project.

3.8 This Agreement is without prejudice to any other rights and remedies available to the Community under applicable law. The Agreement does not restrict the ability of the Community to participate in any public forum, consultation process, or organization.

Article 4 – Conditions for Consent

4.1 In order to maintain the Consent of the Community, the Mining Company agrees to the following mandatory conditions which may not be altered at any time:

- (a) To ensure access to pollution free water and land at all times by the Community during the life of the Project.
- (b) To provide drinking water and clean running water, a sewerage system and electricity to all households of the Community twenty-four hours a day, seven days a week.



- (c) To ensure the Community has the same level of access to drinking water and clean running water throughout the life of the Project as the Community had before the Mining Company began its operation of the Project and where the Community had no access to drinking water or clean running water before the operation of the Project, to provide the Community with access to such water for the life of the Project.
- (d) To ensure the Community has access to sufficient clean running water to allow the Community to grow and develop throughout the life of the Project and beyond. To not drain or exhaust the water sources available to the Community during the life of the Project. In no circumstances shall the Community have access to less water during and after the Project has closed than it had before the Project was started by the Mining Company.

4.2 In order to maintain the Consent of the Community, the Mining Company agrees to the following further conditions:

[Note: The following list is exemplary and non-exhaustive for the conditions that are tied to Consent being given by the Community. It entails a variety of health, education, environmental, economic, monetary and other measures, one or more of which the Mining Company has to fulfill in order to obtain or maintain Consent. The conditions should be confirmed through dialogue and negotiations between the Mining Company and the Community. Proper assistance to the Community should be provided by professional advisors and the Government of Peru. Ideally, the Government of Peru should be responsible to manage the needs, priorities, and expectations of the Community. The Community should determine the long-term Sustainable Development Plan for its Community in collaboration with the Mining Company and Local Government and as approved by Central Government:]

- (a) To deliver the Sustainable Development Plan by deploying the Sustainable Development Funds in accordance with this Agreement.
- (b) To create and implement avoidance and/or mitigation measures to protect the environment from any adverse impacts that arise out of or in connection with the Project during the life of the Project including a twenty-four-month winding up process upon closure of the mine.
- (c) To fully and adequately compensate each member of the Community for the acquisition of property rights / rights to use the land in the form of a payment in the amount of [insert amount] [to buy the land] / [per [insert amount of time, i.e. days/month/year] to use the land during the life of the Project. **[Note: Peru Capstone 2019 team to develop**



royalty structure to be used to compensate Community members for the use of their land.]

- (d) To refrain from damaging, destroying, limiting access to or displacing any member of the Community from its territories (unless in respect of displacement as otherwise agreed with the Community in accordance with the terms of this Agreement).
- (e) To resettle any Displaced Community if its place and method of primary residence or earning is negatively impacted by the Project and to compensate that Displaced Community if its property is negatively impacted by the Project.
 - (i) In any event, all resettlement plans and timelines to be decided and finalized in formal consultation with the Community, through mechanisms decided at the time of this agreement and appended to Schedule [X].
 - (ii) All resettlement plans will ensure complete access to clean drinking water, sanitation and power; and, they will aim to maintain economic and infrastructural parity between the Displaced Community and the Project's own employee's standard of living.
 - (iii) All resettlement plans will respect, accommodate and replicate where desired, to the greatest degree possible, the traditional lifestyle of the Displaced Community, including the geographical and architectural spread of the Displaced Community itself.
 - (iv) All resettlement plans, particularly in cases where primary modes of earning have been disrupted by the Project, will envisage and include avenues of realistic earning and/or employment.
 - (v) Training for employment in the Project to be provided, if so desired by the Displaced Community, in time for Project activities to begin.
 - (vi) Any other provision mutually agreed.
- (f) To offer employment and training for adequate employment to willing Community members with the Mining Company at the local site of the Project or elsewhere in accordance with the Sustainable Development Plan. [The Community should determine what proportion of the Community wants to be employed by the Project. This could potentially be proportional to the employment lost or compromised due to displacement in respect of a Displaced Community.] The Mining Company must ensure that Community employees will receive equal labor protections and services (including but not limited to family healthcare plans and pension funds) to that of any other employee of the Mining Company.

[Note: Peru Capstone 209 team to examine the best standardized employment strategy to be adopted.]

(g) If employment by the Mining Company requires qualified training or education:

- (i) To provide necessary training to members of the Community for employment at Project sites and to provide, or provide any funding for, any training for such members of the Community to obtain any further qualifications they might need to operate on an equal basis alongside any personnel the Mining Company brings to the Project site.
 - (ii) To comply with the Sustainable Development Plan as to how to train and educate members of the Community willing to work on the Project sufficiently in advance of the commencement of operations of the Project so that such members are qualified and ready to be employed on the Project at the same time as any personnel the Mining Company brings to the Project site and a further plan as to how to train and educate members of the Community so that they will be qualified and ready to be employed during further stages of the Project.
- (h) To construct / renew / maintain access and roads on the Project site, in and around the Project and the Community (including any such infrastructure as is agreed in the Sustainable Development Plan).
- (i) To provide health care and insurance to members of the Community of the same standard as provided to the Mining Company's executive workers.
 - (j) To provide free WI-FI internet access at all times to the Community [and to provide [insert names of [at least five] representatives of the Community with fully functioning cellphones (to the extent they do not already possess them)] to facilitate communication between the Community and the Mining Company]. [To provide publicly available computers in the local town hall/municipal office and in the local office of the Mining Company and in the local school where members of the Community who do not have access to computers can access the internet (including a digital copy of this Agreement).] [To provide the Community, in the local town hall/municipal office and in the local office of the Mining Company non-removable tablet devices which contain a permanent copy of this Agreement on such device].
 - (k) [To pay to the Community a royalty rate of [insert %] of all gross income before tax generated by the Project to the Sustainable Development Fund. ***[Note: Peru Capstone 2019 team to develop the mechanics of the Sustainable Development Fund. This should be a regime that operates entirely separately to the canon minero]***



- (l) Other payments / compensation [insert].

4.2 The Mining Company shall bear the entire cost of performing its obligations and fulfilling the conditions under this Agreement [but shall be entitled to tax credits in respect of the infrastructure it provides under the Sustainable Development Plan as set out in Schedule 3.

Article 5 – General Obligations

5.1 The Mining Company shall preserve the environment, and cultural, and social ties of the Community as they existed before the Mining Company arrived. It shall not engage in any illegal, detrimental or corrupt business practices. The Mining Company shall not engage in any activity that gives rise to or can result in a non-minor negative effect and/or disturbance on the environment and the Community (or any member of the Community) and its territories, including but not limited to the social, economic and/or cultural conditions in which the Community operates.

5.2 The Mining Company shall respect and not interfere with any of the cultural characteristics, traditions, practices, customs, heritage and language(s) of the Community.

5.3 The Mining Company shall conduct all communication with the Community in the preferred local language(s) of the Community at all times. It is the Mining Company's responsibility to provide at its entire cost an interpreter of the preferred local language(s) for any and all communication with the Community and this includes translating any relevant information that is to be provided to the Community into the Community's preferred local language(s).

Article 6 – Procedure for Obtaining Consent

6.1 - Disclosure of Information

6.1.1 The Mining Company agrees to disclose to the Community all information relevant to the impact of the Project and shall give the Community sufficient time to analyze, study and understand such information. Such information shall include:

- (a) a detailed description of the Project;
- (b) all anticipated socio-economic and environmental impacts of the Project and follow-up reports of any impacts subsequently discovered;
- (c) a proposal from the Mining Company on how to monitor, avoid, and mitigate, to the maximum extent technologically and procedurally possible, any adverse impacts arising out of or in connection with the Project, applying the best and most advanced technologies,



procedures, and standards and on how the inclusion of Community members in the monitoring of impacts will be ensured;

- (d) a proposal from the Mining Company on how to optimize and share benefits, including royalty payments, with the Communities;
- (e) a proposal from the Mining Company on the creation of employment for Community members at the local mining site;
- (f) any report, study, or assessment related to the Project created by the Mining Company or any third party; and
- (g) any other information that is required for the Community to make a fully informed, free, decision and to create a concrete and effective Sustainable Development Plan.

6.1.2 No applicable information can in any way be omitted, concealed or misrepresented. The Mining Company must give notice to the Community of any change of information and the Consent must be renewed respectively.

6.2 - Procedure

Upon disclosure of the information according to provision 6.1, the Mining Company shall conduct the following to obtain Consent:

- (a) Notify the office of Defensoría del Pueblo that has jurisdiction over the territory of the Project for them to take the appropriate actions to ensure the respect of the Community's rights;
- (b) Ask permission from the Community to enter the territory and meet with local Community leaders;
- (c) Agree to meet on the date, times, location and conditions that the Community sets for the dialogue;
- (d) Communicate with the Community members and leaders at the location of the Community, on all issues set out in Article 6.1 or as otherwise provided in the Agreement. in the local or preferred language(s) of the Community;
- (e) Ensure the participation of women of the Community in all communication and negotiations with the Mining Company;



- (f) Negotiate and agree in good faith with the Community under the supervision of Local Government and approval of Central Government on the conditions that the Mining Company has to fulfill to obtain and maintain the Consent;
- (g) Translate each draft of the Agreement into the preferred local language of the Community and Spanish;
- (h) Sign the Agreement with Community leaders in the presence of [number to be inserted] male and female members of the Community at the location of the Community;
- (i) Review and agree with the Community members and leaders at the location of the Community, any subsequent changes needed to the Agreement after it has been executed under the supervision of Local Government and approval of Central Government as may be required during the life of the Project; and
- (j) Schedule regular meetings with the Community, ensuring that a representative is present from Local Government, for the purpose of reviewing compliance with the Agreement.

6.3 - Community right of assistance from third parties

The Mining Company shall not impair the right of the Community to seek assistance for this procedure from third parties, such as state officials, professional advisors including lawyers and non-governmental organizations.

Article 7 – Breaches of the Agreement

7.1 - Notification of Breach

7.1.1 The Community shall notify the Mining Company in writing promptly if the Mining Company has breached this Agreement. The Mining Company shall appoint a community liaison officer or representative who shall be the person to whom any complaints by the Community must be addressed and sent. The Mining Company must ensure that a community liaison officer or representative is engaged throughout the term of this Agreement. The Community may appoint its own representative(s) who will be responsible for notifying the Mining Company of any breach, however, any member of the Community shall be entitled at all times to complain directly to the Mining Company without reprisal or negative consequences attaching to that member of the Community as a result. *[Note: All members of the Community should have the right to complain to the Mining Company to avoid any potential filtering of information by the Community's leadership and to reduce the possibility of any intimidation/coercion/corruption. This Article also recognizes that it is possible that a Mining Company's community liaison team might change but what is important is that there is someone the Community can speak to at all times.]*



7.1.2 [Any member of the Community is entitled to lodge his or her complaint in a public, central location including without limitation on a physical or electronic bulletin board, website or by means of a hotline whenever the mining company breaches its obligations under this Agreement.] **[Note: Peru Capstone 2019 team to investigate and develop this provision further.]**

7.2 – Statute of Limitations

Any member of the Community can notify the Mining Company, Local Government and Central Government of any breach of this Agreement by the Mining Company at any time. The Parties agree that no statute of limitations shall apply to any claim of the Community in respect of any breach by the Mining Company which harms the environment, water, animals, health and any sacred place pertaining to the Community or otherwise creates long-term problems, the effects of which cannot necessarily be discovered or discerned earlier. The Parties agree that the existing statute of limitations regime under Peruvian law will apply to all other claims by the Community in respect of any other breach by the Mining Company.

7.3 - Burden of proof

7.3.1 The burden of proof in respect of compliance with the terms of this Agreement is on the Mining Company. Upon receipt of a notice from the Community that the Mining Company is in breach under Article 7.1 above, the Mining Company shall promptly provide evidence to the Community, Local Government and Central Government that it is not in breach of this Agreement. The Mining Company must provide its explanation and evidence as to why it is not in breach of this Agreement to the Community within 5 days if the breach is minor and within 2 days if it is a Material Breach.

7.3.2 For the purposes of this Agreement, the burden of proving compliance with the terms of this Agreement, including any future amended versions of this Agreement, by the Mining Company (in the event of notification of breach by the Community and otherwise at all times during the life of the Project and/or during the term of this Agreement) shall rest with the Mining Company at all times. The Mining Company also has the burden of proving non-compliance by the Community with any of its obligations under this Agreement. The Mining Company's burden of proof extends to all foreseeable and non-foreseeable impacts of the Project existing at the time of the Agreement or occurring in future.

7.4 - Liability

The Mining Company is strictly liable for any breach of the obligations of this Agreement. The Mining Company is strictly liable for any damage to the environment and specifically to the environment of the Community arising out of or in connection with the Project and at all times during the Project, whether or not arising out of an occurrence of force majeure, unless it can prove beyond a reasonable doubt that the damage did not arise from the Project and could not have been



caused by the Project or prevented by the Mining Company, such burden of proof shall extend to the activities which were undertaken by any predecessor mining company for which the Mining Company is also liable.

7.5 - Breach

The Mining Company is in breach of this Agreement if it:

- (a) damages the environment or water or harms any animals or harms any sacred place pertaining to the Community;
- (b) makes a false statement to the Community, or provides misleading, incomplete or inaccurate information about the Project to the Community;
- (c) commits a minor breach of this Agreement and fails to remedy that minor breach within the Remedy Period;
- (d) commits any act of Corruption; and
- (e) commits a Material Breach of this Agreement and fails to remedy it within the relevant Remedy Period.

7.6 - Remedy Periods

Upon receipt of notification from the Community under Article 7.1, the Mining Company shall remedy the following breaches within the following time periods:

- (a) damage to water and the environment or harm to any animals or harm to any sacred place pertaining to the Community: immediately;
- (b) for any other breach set out in Articles 7.5 (b) – (d): the Mining Company shall have a period of 30 days from the date of notification of the breach under Article 7.1 above to either prove that the Mining Company is not in breach of the Agreement or to cure the breach; and
- (c) for any Material Breach: the Mining Company shall have a period of 10 days from the date of notification of the breach under Article 7.1 above to either prove that the Mining Company is not in material breach of the Agreement or to cure the breach.

7.7 - Consequence of Breach

7.7.1 The Mining License shall be suspended for the duration of the breach by the Mining Company of the terms of this Agreement.



7.7.2 The Mining Company must do everything that is possible to remedy the breach as quickly as possible and in the case of a Material Breach where the Remedy Period has expired for that Material Breach, the Mining Company must stop operations immediately upon expiry of the Remedy Period.

7.7.3 The Mining Company must use the best and most advanced technical resources, processes and standards to remedy any breach, irrespective of the cost of those processes and standards, and shall give the highest priority to remedying any breach of this Agreement.

7.7.4 The Mining License shall be automatically revoked by the Central Government if the Mining Company commits a breach of this Agreement under Articles 7.5 d and e.

7.7.5 In the event of any act of Corruption by any personnel employed by the Mining Company, the Mining Company shall be required to refund all profits earned from the first date the Corruption occurred up to and including the date the Corruption was discovered and thereafter in accordance with the *Ley de Pérdida de Dominio* (Extinction of Domain Law).

7.7.6 The Mining Company shall continue to pay full salaries to its staff (including any members of the Community it employs) at all times including during any breach, remedying of any breach, any suspension of operations or any suspension of the Mining License. In the event of termination of operations and/or the Mining License, the Mining Company shall continue to pay full salaries to its staff for [X] years thereafter.

7.7.7 The Parent Company acknowledges that it is the ultimate beneficial owner of the Project and if it is not, the Parent Company and Mining Company agree that they shall provide the Community with the identity of the ultimate beneficial owner within 10 days of execution of this Agreement and promptly should the ultimate beneficial owner change at any time during the term of this Agreement. The Parent Company shall if it is the ultimate beneficial owner in respect of the Project and if it is not, the Mining Company and the Parent Company shall procure that the ultimate beneficial owner in respect of the Project shall recognize any Material Breach of this Agreement as a significant breach requiring disclosure to all stock exchanges on which the shares of the ultimate beneficial owner are listed. The Parent Company shall (if it is the ultimate beneficial owner) and if it is not, the Mining Company and the Parent Company shall procure that the ultimate beneficial owner makes such disclosure to the relevant stock exchange(s) as soon as the Remedy Period has expired (without the Material Breach having been remedied) regardless of whether such stock exchange requires disclosure and regardless of whether the Mining Company, Parent Company or ultimate beneficial owner consider the disclosure to be premature or not sufficiently material.

7.8 - Obligations during suspension or revocation of the Mining License



7.8.1 The suspension or revocation of the Mining License does not exempt the Mining Company from the obligation to remedy breaches of this Agreement.

7.8.2 The termination or suspension of the Project due to suspension or revocation of the Mining License does not exempt the Mining Company from fully performing its obligations or fulfilling the conditions of this Agreement.

7.9 - Damages

The Community, and each member thereof, shall be compensated for any injury or damage suffered from any breach by the Mining Company of any of its obligations under this Agreement. Such compensation shall at least restore the Community and any injured members of the Community to such position they would have been in had there been no breach and for all costs and expenses incurred by the Community. In addition, the Community and any injured members of the Community shall be compensated for any pain and suffering.

7.10 - Inspection

The Community shall have the right to inspect the local site of the Project at all times accompanied by third parties of its choosing including without limitation any representatives of Local Government or Central Government (e.g. non-governmental organizations, professional advisors including lawyers, government officials, members of other communities, and others).

7.11 - Security and freedoms of the Community

The Mining Company is prohibited from hiring state police forces, whether local or national, for security purposes at any time. The Mining Company shall respect the right of assembly and freedom of speech of the Community at all times.

7.12 – Social Conflict

The Community is entitled to notify any of Local Government or Central Government and shall notify its autonomous local Defensoría del Pueblo office, or any functionally equivalent office in future should the Defensoría del Pueblo cease to exist, in the event that there is any social unrest arising out of or in connection with the Project including any major disputes between members or groups within the Community as to the Project or between members or groups within the Community and the Mining Company as to the development of the Project.

Article 8 - Parent Company guarantee

8.1 The Parent Company shall provide the parent company guarantee set out in Schedule 6 for the benefit of the Community, Local Government and Central Government.

8.2 The Parent Company if it is the ultimate beneficial owner in respect of the Project, or if not the Parent Company agrees to procure that the ultimate beneficial owner in respect of the Project



shall register the fact of execution of this Agreement with every stock exchange where it is listed (if applicable) and a copy of this Agreement with each stock exchange if the stock exchange either requires it or has the capacity to record that Agreement.

Article 9 - Succession

9.1 The Mining Company is obliged to ensure that the Agreement continues in full force and effect and fully binding on the Mining Company, uninterrupted, if the Mining Company transfers its obligations to a legal successor (such as in the case where the Project is sold, in whole or in part, to another company or if there is a change of control of the Mining Company resulting in a new company assuming its obligations or if the Mining Company is restructured).

9.2 Any such transfer of rights and/or obligations must be in accordance with this Agreement, the Mining License, any land use agreements and other agreements that the Mining Company has entered into with any members of the Community.

9.3 The Mining Company as exiting company and the legal successor as incoming company shall both be liable to the Company for any existing liabilities at the time of transfer from the exiting company to the incoming company. The incoming company must have at least the same financial and technical qualifications and resources as the exiting company. Both exiting and incoming companies are liable at all times for any environmental damage arising out of or in connection with the Project.

Article 10 - Term of Agreement and Renewal

10.1 This Agreement takes effect on the date of signing of this Agreement and remains legal, valid, and binding for the term of the Mining License. Upon termination or expiry of the Mining License and this Agreement, the Mining Company, or any other successor company that is operating the Project on closure of the mine in accordance with Article 9, is responsible for: (i) any environmental damage of which it has actual knowledge as at the date of termination and (ii) any environmental damage that has arisen out of or in connection with the Project up to (and including) the date of termination and (iii) any environmental damage that does arise out of in connection with the Project, no matter when arising.

10.2 The Mining Company, or any successor company that is operating the Project on closure of the mine in accordance with Article 9, shall have uncapped liability in respect of any environmental damage arising out of or in connection with the Project.



Article 11 - Governing Law and Enforceability

11.1 This Agreement, including the validity and interpretation of this Agreement, and any non-contractual obligations arising out of or in connection with this Agreement shall be governed by the laws of Peru.

11.2 This Agreement is a legally binding contract. Any disputes arising out of or in connection with this Agreement shall be subject to the exclusive jurisdiction of the courts of Peru.

11.3 This Agreement is not in conflict with any international and bilateral treaty or any other international agreement or instrument entered into by the state of Peru.

Article 12 - Language

12.1 The Mining Company shall make the Agreement available, in Spanish and in the local preferred language(s) of the Community, to the Community and at the cost of the Mining Company.

Article 13 - Amendment

13.1 Any amendment this Agreement shall only be effective if such amendment is made in writing and duly signed by all five parties to this Agreement (and notarized as required by Peruvian law) and provided that any amendment must be supervised and approved by both Local Government and Central Government at all times.

13.2 All members of the Community must vote on any proposed amendment to this Agreement before it is executed, and the terms and implications of such amendment must be explained in full to all members of the Community by its legal advisors before it executes the amendment.

13.3 Any amendment entered into bilaterally between any member of the Community (including the any leader of the community) or any leadership committee of the Community and the Mining Company without the approval of the Community expressed by vote in accordance with Article 2.2(a) above shall be invalid.

Article 14 - Delegation

14.1 No right, privilege, or obligation under this Agreement may be assigned or transferred in whole or in part to a third party without the Consent of the Community, except

- (a) In the case of succession under Article 9 of this Agreement; and



- (b) In the case where one or more subcontractors are hired either to perform an obligation of the Mining Company with respect to the Project generally in accordance with the Mining License or to perform an obligation of the Mining Company generated by this Agreement; in which case such subcontractors are under the same obligations as the Mining Company towards the Community and the environment.

The Mining Company remains fully liable to the Community for its obligations under this Agreement in the event of any delegation to sub-contractors.

Article 15 - Publication of the Agreement

15.1 The Mining Company shall make arrangements for a copy of this Agreement to be published in the following locations:

- (a) in the Official Newspaper of Peru “*Diario Oficial El Peruano*” or any other newspaper that in the future becomes the official newspaper of Peru;
- (b) [in the database on agreements between communities and mining companies of the Vice Ministry of Territorial Governance];
- (c) in the principal church of the Community;
- (d) in the local town hall or office of the Local Government;
- (e) [in a database of local agreements maintained by the Local Government];
- (f) at the office of the Mining Company located within the geographical area of the Community;
- (g) at the meeting place of the Community’s leadership committee; and
- (h) [on an electronic notice board, if available, in the Plaza de Armas of the Community].

15.2 The Mining Company shall provide a hard copy of the Agreement to any member of the Community who requests a hard copy.

15.3 The Agreement shall be accessible by the public nationwide in the case of the Official Newspaper of Peru and the database on agreements between communities and mining companies of the Vice Ministry of Territorial Governance.



15.4 The Mining Company and Local Government shall ensure that any copy of the Agreement that is available to the public under Article 15.1 (c) – (h) shall be available at all times without disruption, in both Spanish and the local preferred language(s) of the Community and that any publicly available copy of the Agreement shall be complete without omission, redaction or alteration.

15.5 If any of the Parent Company, Mining Company or its workers have access to the Agreement, the Community should have equal access to the Agreement on exactly the same terms.

Article 16 - Documents that form part of the Agreement

16.1 Every Schedule to this Agreement forms part of this Agreement and is incorporated by reference into the terms of this Agreement and all the terms of the Schedules are binding on the Parties as operative terms.

EXECUTION PAGE

[Note: Two representatives from each organization must sign this Agreement].



FOR AND ON BEHALF OF THE COMMUNITY	FOR AND ON BEHALF OF THE COMMUNITY
FOR AND ON BEHALF OF THE PARENT COMPANY	FOR AND ON BEHALF OF THE PARENT COMPANY
FOR AND ON BEHALF OF THE MINING COMPANY	FOR AND ON BEHALF OF THE MINING COMPANY
APPROVED FOR AND ON BEHALF OF LOCAL GOVERNMENT AND AGREEING AND ACKNOWLEDGING THE TERMS OF THIS AGREEMENT APPLICABLE TO THE LOCAL GOVERNMENT	APPROVED FOR AND ON BEHALF OF LOCAL GOVERNMENT AND AGREEING AND ACKNOWLEDGING THE TERMS OF THIS AGREEMENT APPLICABLE TO THE LOCAL GOVERNMENT
APPROVED FOR AND ON BEHALF OF CENTRAL GOVERNMENT AND AGREEING AND ACKNOWLEDGING THE TERMS OF THIS AGREEMENT APPLICABLE TO THE CENTRAL GOVERNMENT	APPROVED FOR AND ON BEHALF OF CENTRAL GOVERNMENT AND AGREEING AND ACKNOWLEDGING THE TERMS OF THIS AGREEMENT APPLICABLE TO THE CENTRAL GOVERNMENT

SCHEDULE 1: PROJECT LOCATION AND GEOGRAPHICAL SCOPE



[Set out the location in detail, including a detailed map of the territory to be impacted by the Project]

SCHEDULE 2: PROJECT PROPOSAL AND SCOPE



[Project Proposal and Scope: The Mining Company shall set out in detail the project proposal, scope and impact in the preferred local language(s) of the Community in tangible, easy to understand concepts and terminology so as to be understood by the members of the community.]

[Note: The Schedules to this Agreement should contain all information relevant to the Project in accordance with the provisions of the Agreement.]



SCHEDULE 3: SUSTAINABLE DEVELOPMENT PLAN

[Note: The below is a suggested framework for the Sustainable Development Plan. Peru Capstone 2019 team to flesh out the detail of the below and the mechanics of how a tax credit system might fund some of the items below.]

The Mining Company shall provide the following to the Community:

FUNDAMENTALS

- (a) Clean drinking water 24 hours a day, 7 days a week.
- (b) Hot and cold water 24 hours a day, 7 days a week.
- (c) Fully functioning sewerage systems for the whole Community.
- (d) Electricity.
- (e) To the extent not already provided under *Servicio Rural y Urbano Marginal de Salud* (SERUMS) (Ley N° 23330).

ENVIRONMENT

- (a) Train Community members to understand EIAs, monitor compliance with EIAs, take samples, monitor contamination and liaise with representatives of the Mining Company, Local Government and any non-governmental organizations as to contamination and how to remedy the contamination.
- (b) Train Community members to be able to train other members of the Community about their own sustainable living i.e. recycling / non-polluting etc. **[Note: Please refer to the environment section of the how-to-guide for the community for more guidance and thoughts in this area.]**

HEALTH

- (a) A hospital near to the centre of the Community for members of the Community and workers at the Project site (tax credit project).
- (b) Doctors and nurses to staff the hospital.
- (c) Training for doctors and nurses in accordance with *Servicio Rural y Urbano Marginal de Salud* (SERUMS) (Ley N° 23330).
- (d) Local Government to continue operation of the hospital after the Mining Company has completed the Project.
- (e) Specific reproductive health services for women (maternal/reproductive health) and children (malnutrition).
- (f) Young medical professionals to be provided by Central Government or provided by a non-governmental organization with Mining Company assistance and/or funding.
- (g) Medical campaigns on a regular basis to reduce and prevent malnutrition in children.



EDUCATION

- (a) A school at close proximity to the centre of the Community (tax credit project).
- (b) Education should be on an equal basis for both girls and boys.
- (c) Professional teachers to be provided by Central Government or provided by a non-governmental organization such as Enseña Perú with Mining Company assistance and/or funding.
- (d) Training for skilled jobs for all willing members of the Community.
- (e) Education campaign to inspire young people to want to attend university.
- (f) Educational scholarships for students with potential.

EMPLOYMENT

- (a) Jobs in the mining company throughout the life of the Project.
- (b) Training in computer literacy and new technology.
- (c) Advance training in skills needed for mining at various stages of the Project.
- (d) Training in how to farm sustainably in the new Project environment.
- (e) Use local suppliers from the Community (if compliant with international law).
- (f) Employment campaign to increase job prospects for women and to provide childcare for those women who want to work.

INFRASTRUCTURE

- (a) Construction and maintenance of roads (tax credit project).
- (b) Upkeep of urban areas - town squares and buildings (tax credit project).
- (c) Bridges (tax credit project)
- (d) Internet for everyone in the area impacted by the Project.
- (e) Soccer field / basketball courts to maintain the physical health and wellbeing of the Community.



SCHEDULE 4: CONSENT REVIEW AND MAINTENANCE PROCEDURE

[This Schedule will delineate the review process through which Consent will periodically be reviewed and through which Consent can be maintained provided the Community agrees to continue to provide its Consent to the Mining Company after each periodic review has been completed.]

REPRESENTATION

- (a) The review process will be led by representatives from the Community, the Mining Company and Local Government.
- (b) Each party will decide who will represent their interests during the review process. The Community will make the decision as to who will represent the interests of the Community during the review process democratically or through customary consensus. The Community must also ensure adequate gender and/or minority representation in whoever it elects to represent its interests.

REVIEW

- (a) The Parties will review whether the Mining Company has fully performed its obligations and fulfilled the conditions of the Consent granted to it by the Community by reference to and in accordance with the terms of the Agreement either during the period since (i) execution of the Agreement or (ii) the last review (as applicable).
- (b) Only if there is unanimous agreement amongst the members of the Community that the conditions of the Consent have been, and are continuing to be met, shall the Consent continue in force.

REVIEW PERIOD

- (a) Pre-Engineering Schedule: During the exploration phase, the Consent will be subject to renewal on a quarterly basis, that is, every three months.
- (b) During and Post Engineering Schedule: During these periods, Consent will be subject to renewal on a bi-annual basis, that is, every six months.

ANY OTHER TERMS

- (a) The Parties can stipulate any additional terms they may deem necessary and can mutually agree upon with regards to how Consent should be reviewed and maintained.

[Note: Peru Capstone 2019 team to create detailed consent review and maintenance procedure here].

SCHEDULE 5: CONSENT RENEWAL PROCEDURE

Once Consent is lost, and trust in the Project is jeopardized, the Parties will determine the process through which Consent can be regained. There are six principles that should guide this:



- (a) The original breach must be remedied before the renewal process can be initiated.
- (b) The Project will be halted until the original breach is remedied, and until Consent is renewed.
- (c) The conditions of any renewed Consent may be stricter and more demanding on the Mining Company than the original Consent. This includes, but is not limited to, additional contributions to the Sustainable Development Fund and the Emergency Fund.
- (d) Additional Community benefit projects may be negotiated in order to obtain renewed Consent from the Community by way of enhancement of the Sustainable Development Fund.
- (e) Any renewal of Consent must be determined by the Community, either democratically or through customary consensus.
- (f) Any renewal of Consent process must ensure all party participation mechanisms which must ensure that all members of the Community have the opportunity to participate in the renewal of Consent process.]

[Note: Peru Capstone 2019 team to develop in more detail.]



SCHEDULE 6: PARENT COMPANY GUARANTEE

NOW, THEREFORE, the Parties mutually agree to the following terms:

Article 1. Definitions

Capitalized terms used and not otherwise defined herein shall have the meanings as set out in the Agreement. In addition, the following terms shall have the following meanings in this Parent Company Guarantee:

1.1 "Affiliates" shall mean a person or entity that directly or indirectly controls, is controlled by, or is under common control with, another person or entity

1.2 "Agreement" shall mean the Community Partnership Agreement, of which this Guarantee forms part, entered into by the Community, the Guarantor, Local Government, Central Government and the Mining Company.

1.3 "Central Government" shall have the meaning given to that term in the Parties section of the Agreement.

1.4 "Community" shall have the meaning given to that term in the Parties section of the Agreement.

1.5 "Demand" shall have the meaning given to it in Section 5 of this Guarantee.

1.6 "Government" shall mean either Central Government or Local Government or both of them together, as applicable.

1.7 "Guarantee" shall mean this Parent Company Guarantee.

1.8 "Guaranteed Obligations" shall mean each and every obligation of the Mining Company under the Agreement of whatever nature, including any financial and performance obligations and any liabilities.

1.9 "Guarantor" shall have the meaning given to the term Parent Company in the Parties section of the Agreement.

1.10 "Local Government" shall have the meaning given to that term in the Parties section of the Agreement.

1.11 "Longstop Date" shall have the meaning given to that term in Section 7 of this Guarantee.



1.12 "Mining Company" shall have the meaning given to that term in the Parties section of the Agreement.

1.13 "Parties" shall mean the Government, the Community and the Guarantor together.

Article 2. Guarantor as primary obligor

2.1 The Guarantor undertakes to give this Guarantee as a primary obligor and not only as a surety and hereby unconditionally, irrevocably and continuously guarantees to the Community and the Government the full and prompt performance and payment, each when due, of the Guaranteed Obligations.

2.2 The Guarantor shall make available to the Mining Company all necessary financial and other resources that the Mining Company may require to meet and satisfy, on a timely basis, the due and punctual performance and payment of the Mining Company's obligations under the Agreement.

2.3 The Guarantor accepts liability for any and all failures, including omissions, by the Mining Company to comply with the Guaranteed Obligations. In the event that the Mining Company fails, in whole or in part, or delays the prompt payment of any or all amount(s) to the Community and/or the Government (as applicable) under the Agreement, the Guarantor agrees to cause or itself make the payment of such amounts to be made promptly and punctually when and as such amounts under the Agreement become due and/or payable as if such amounts were paid by the Mining Company when and as due and/or payable under the Agreement. The Guarantor agrees that if receipt by the Community and/or the Government (as applicable) of any payment due and/or payable under this Guarantee should be hindered for any reason whatsoever, the Guarantor shall, at the Community's sole discretion, make such payment in escrow and the Community shall be the sole beneficiary of such payment or hold the payment on trust for the sole benefit of the Community and not to be applied for any other purpose.

2.4 Each of the Community and/or Government may opt to exercise its rights against the Guarantor without exercising any of its rights against the Mining Company, in which case the Guarantor shall be held wholly liable for the Guaranteed Obligations.

Article 3 - Notice

3.1 Each of the Community and the Government agrees to give the Guarantor prior written notice of any claim under the Agreement concurrently with making any Demand to the Guarantor in respect of the Guarantor's obligations under this Guarantee, and the Guarantor agrees that such



notification obligation shall be the exclusive and only obligation of the Community and the Government to the Guarantor in respect of any claim under the Agreement.

Article 4 - Notice Guarantor's Representations and Warranties

4.1 The Guarantor agrees that the Guaranteed Obligations shall be fulfilled and satisfied in accordance with the terms and provisions of this Guarantee, regardless of any right, provision, law, decree, or other authority having the force of law now or hereafter in effect which might in any manner affect the Guaranteed Obligations, or the rights on the part of the Community or the Government with respect thereto, as against the Guarantor.

4.2 The Guarantor represents and warrants to the Community and the Government that any of the Guaranteed Obligations of the Guarantor in this Guarantee are several, are binding (including on any successor, transferee or assignee of the Guarantor), and are enforceable in accordance with its terms.

4.3 In connection with this undertaking, the Guarantor represents and warrants to the Community and the Government that:

- (a) The Guarantor is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, specifically [INSERT JURISDICTION] and that the Mining Company is its direct, wholly-owned subsidiary;
- (b) The Guarantor is duly qualified in all respects to conduct business and is in good standing in each jurisdiction or place in which it conducts business and where its principal place of business and registered offices are located;
- (c) The Guarantor has the requisite corporate and financial power and authority to execute and deliver this Guarantee and perform all the Guaranteed Obligations in accordance with their terms under the Agreement;
- (d) Each of the execution, delivery and performance of this Guarantee has been duly authorized by all necessary corporate action;
- (e) The Guarantor does not require the acceptance of an agent or other third party for valid execution of this Guarantee;
- (f) There are no pending or threatened actions or proceedings by or before any court or administrative agency or authority which may adversely affect the financial condition or operations of the Guarantor or the Mining Company;



- (g) This Guarantee constitutes the legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms, and does not require registration of any kind;
- (h) The Guarantor has maintained and shall maintain throughout the term of this Guarantee all permits, licenses, registrations and other forms of governmental authorization and approval as required by and in accordance with all applicable laws in order for the Guarantor to execute and deliver the Guarantee, including any obligations of the Guarantor contained herein, and for the Guarantor to perform the obligations of the Guarantor in accordance with its terms under this Guarantee in accordance with all applicable laws;
- (i) The performance of any Guaranteed Obligations under this Guarantee and/or the execution of this Guarantee is not and shall not be in violation of or be a default under or in conflict with any term of the Guarantor's articles of incorporation and by-laws or any material obligation that the Guarantor may have to a third party and shall not violate or contravene any authority having the force of law or any indenture, agreement, or other instrument to which the Guarantor or any of the properties or assets of the Guarantor is or may be bound.

Article 5 - Waivers of Guarantor

5.1 The Guarantor acknowledges and agrees that it has no rights under any bilateral or multilateral agreement or treaty other than the rights that the Mining Company may have under that bilateral treaty (if any) between the jurisdiction of the Mining Company's incorporation and Peru and cannot claim the benefit of any such bilateral or multilateral agreement.

5.2 The Guarantor waives any and all benefits of diligence, presentment, and demand of payment.

5.3 The Guarantor waives any requirement that the Community or Government is obliged to (i) protect, secure, perfect or insure any security interest in or other lien on any property subject thereto belonging to the Mining Company or (ii) exhaust any right or take any action against the Mining Company, or any collateral, or (iii) file any claims with a court in the event of dissolution, receivership, assignment for the benefit of creditors, insolvency, or bankruptcy, or reorganization, rearrangement, composition or readjustment, or other similar proceedings affecting status, existence, assets or obligations, or the merger or consolidation into or with any corporation involving the Guarantor and/or the Mining Company.

5.4 The Guarantor waives to the fullest extent permitted by applicable law all applicable exemption rights.



5.5 The Guarantor expressly waives any subrogation or assignment of any of the Guarantor's obligations under this Guarantee.

5.6 The Guarantor waives notice of acceptance of this Guarantee, any requirement of diligence or promptness on the part of the Community or the Government in the enforcement of any obligation of the Guarantor under this Guarantee or applicable law, and any and all notices of any kind and description which may be required to be given by any statute or rule of law.

5.7 The Guarantor agrees not to take advantage of any right, statute, regulation, decree, or other authority having the force of law now or hereafter in effect in any jurisdiction which right, statute, regulation, decree, or other authority might otherwise permit the Guarantor to modify or affect in any manner its obligations under this Guarantee.

5.8 The Guarantor agrees not to invoke, or cause or permit to be invoked, any defense resulting from any alteration in the time, amount, currency, or other manner of payment by the Mining Company of all or any part thereof or of fulfillment of any obligation of the Mining Company under the Agreement which might, in any manner, otherwise constitute a legal or equitable discharge.

Article 6 - Guarantor's Liability

6.1 The Guarantor shall pay upon Demand and presentation of invoices all costs and expenses paid or incurred by the Community and/or the Government in connection with the enforcement of any obligation of the Guarantor under this Guarantee, including, without limitation, fees and expenses of counsel.

6.2 The liability of the Guarantor hereunder is irrevocable, continuing, absolute and unconditional and the obligations of the Guarantor hereunder shall not be discharged or impaired or otherwise affected by, and the Guarantor hereby irrevocably waives any defenses to enforcement it may have (now or in the future) by reason of:

- (a) any illegality or lack of validity or enforceability of any Guaranteed Obligation, the Agreement, the Mining License and any related agreement or instrument;
- (b) any change in the time, place or manner of payment or performance of, or in any other term of, the Guaranteed Obligations or any other obligation of any party under the Agreement, or any rescission, waiver, amendment or other modification of the Agreement or any other agreement, including any increase in the Guaranteed Obligations;



- (c) any taking, failure to take, exchange, substitution, release, impairment or non-perfection of any collateral, or any taking, failure to take, release, reduction, impairment, amendment, waiver or other modification of any guarantee, for the Guaranteed Obligations;
- (d) any default, failure or delay, willful or otherwise, in the performance of the Guaranteed Obligations;
- (e) any change, restructuring or termination of the corporate structure, ownership or existence of the Mining Company or any of its Affiliates or any insolvency, bankruptcy, reorganization or other similar proceeding affecting the Mining Company or any of its Affiliates or its assets or any resulting release or discharge of any obligation; or
- (f) the failure of the Community and/or the Government to assert any claim or demand or to exercise or enforce any right or remedy against any Person under the Guaranteed Obligations or otherwise.

Article 7 - Guaranteed Obligations to stand

7.1 Any Guaranteed Obligation shall survive termination or expiration of the Agreement.

7.2 This Guarantee is irrevocable and unconditional and shall remain in full force and effect until the earlier of the date that:

- (a) all of the Guaranteed Obligations are fully and irrevocably satisfied and discharged; or
- (b) five (5) years following termination of the Agreement (the "Longstop Date").

7.3 The Guarantor's obligations under this Guarantee shall be independent and absolute, and the Guarantor shall have no right of set-off or counterclaim with respect to any other claims it may have against the Community, Government or any other Person.

7.4 All of the Guaranteed Obligations shall bind the Guarantor and its successors, transferees and permitted assigns. The Guarantor may not assign or delegate its duties hereunder without the prior written consent of the Community and the Government, and any purported assignment or delegation without such consent shall be null and void. The Guarantor confirms that any assignee of the Community and/or the Government under the Agreement may exercise all rights and remedies of the Community and/or the Government under this Guarantee. No other person or entity shall be a beneficiary of this Guarantee or have or acquire any rights by reason of this Guarantee.



7.5 The Guarantor agrees that the Guaranteed Obligations are, shall be and shall remain, unaffected by:

- (a) the validity, regularity, or enforceability of the obligations of the Mining Company under the Agreement;
- (b) the absence of any action or judgment to enforce the Guarantor's obligations to the Community and the Government under this Guarantee;
- (c) the absence of any action or judgment to enforce any Guaranteed Obligations by the Community, the Government or the Mining Company;
- (d) the dissolution, the receivership, the insolvency, the bankruptcy, the assignment for the benefit of creditors, the reorganization, the arrangement, the composition or the readjustment, or other similar proceedings affecting status, existence, assets or obligations, or the merger or the consolidation into or with any corporation of the Guarantor or the Mining Company;
- (e) any sale or transfer by the Guarantor or the Mining Company of all or any part of its property or assets;
- (f) the transfer, whether by operation of law or otherwise of all or any part of the interest of the Guarantor in the Mining Company;
- (g) any increase in or partial release, extension in time or modification of any obligation of the Mining Company to the Community and/or the Government under the Agreement;
- (h) any other circumstance, including, but not limited to, any counterclaim or other defense by the Guarantor under this Guarantee against the Community and/or the Government, which might otherwise constitute a legal or equitable discharge or defense of a guarantor or surety under applicable laws; and
- (i) any other circumstance whatsoever which may or might in any manner vary the risks of the Guarantor and/or may or might otherwise constitute a legal or equitable discharge of a guarantor or surety, it being the purpose and intent of this Guarantee that, subject to the express provisions of this Guarantee, the Guarantee and Guaranteed Obligations of the Guarantor shall not be discharged except by payment and performance as herein provided and that a claim by the Community and/or the Government against the Guarantor under this Guarantee shall not be limited by reason of the fact that said claim by the Government may be limited by any right, provision, statute, regulation, decree, or other authority having the force of law.



- (j) In the event that any payment to the Community in respect of any amounts due by the Mining Company under the Agreement is rescinded or must otherwise be returned by the Community to the Mining Company for any reason whatsoever,
- (k) the Guarantor shall, irrespective of the foregoing, remain responsible and liable to the Community for such amounts to the extent provided herein as if such amounts had initially not been paid by the Mining Company. The Guarantor covenants that the Guarantor's obligations under this Guarantee shall not be discharged except by payment of the amounts due by the Guarantor.
- (l) This Guarantee shall continue to be effective or shall be reinstated, as the case may be, if at any time payment, or any part thereof, or any Guaranteed Obligation is rescinded or must otherwise be restored or returned by the Community and/or Government upon the insolvency, bankruptcy, or organization of the Mining Company or the Guarantor or otherwise, all as though such payment had not been made.

Article 8 - Community's and Government's obligations to Guarantor

8.1 To invoke its right to the payment and performance of any Guaranteed Obligation following the Mining Company's default in the performance of the Guaranteed Obligation when due, the Community and/or the Government shall provide the Guarantor with a written demand (the "**Demand**") that:

- (a) makes specific reference to this Guarantee;
- (b) states the relevant Guaranteed Obligation(s);
- (c) states that the Mining Company has not performed the specified Guaranteed Obligation(s);
- (d) where applicable, specifies the amount(s) of such Guaranteed Obligation(s) or the date(s) on which such Guaranteed Obligation(s) were due to be performed; and
- (e) is delivered to the Guarantor on or before the Longstop Date.

8.2 After the Community and/or Government has received indefensible payment in full in cash of all Guaranteed Obligations for which it has issued a Demand, it shall, at the Guarantor's request and expense, execute and deliver to the Guarantor, without recourse or representation or warranty, appropriate documents necessary to evidence the transfer by subrogation to the Guarantor of the Community or Government's interest in any insurance proceeds in respect of such Guaranteed Obligations.

8.3 If a Demand is delivered to the Guarantor that requires the performance of non-monetary



Guaranteed Obligations, the Government shall provide to the Guarantor (or any subcontractor approved by the Government) permits that are required to conduct that part of the Project associated with such Guaranteed Obligations, subject to fulfillment of reasonable and customary requirements for the grant of such permits.

Article 9 - Amendments to the Agreement

9.1 The Guarantor expressly agrees that the Mining Company may make and enter into amendments, modifications and changes to the Agreement without the approval or notification of the Guarantor, and to any and all actions, omissions or forbearances of any character of whatsoever which may be taken, or omitted, by the Mining Company and/or the Community and/or the Government under and pursuant to the Agreement without notice to or consent of the Guarantor.

Article 10 - Amendments to the Guaranteee

10.1 No amendment or modification of this Guarantee shall be effective unless in writing and signed by the Guarantor and accepted by the Community and the Government.

Article 11 - Non-waiver by the Community and/or Government

11.1 No act or omission of any kind on the part of the Community and/or Government including, but not limited to, any failure or omission to enforce any right or power conferred by the Agreement, in whole or in part, or any waiver of any covenant or condition herein set forth on any default or any exchange, release, surrender and/or other disposition of any collateral or any other security which may be held in connection with the Agreement, shall in any event affect or impair this Guarantee, nor shall the same be affected by any change in or loss of legal status by the Community, the Government, the Guarantor, or the Mining Company.

11.2 The Guarantor agrees that if fulfillment of any obligation of the Mining Company to the Government and/or Community is or would be subject to any prior action or omission, including, but not limited to, any performance or non-performance related to the Agreement, or otherwise, of any third party, the Guarantor shall, at the Guarantor's own cost and expense, be obligated to cause such third party to so act or omit, and the Guarantor shall concurrently fulfill the obligation to the Government and/or the Community.

Article 13 - Governing law

13.1 This Guarantee and any non-contractual obligations arising out of or in connection with this Guarantee shall be governed and construed in accordance with Peruvian Law without giving effect to any conflict of laws provisions and the Guarantor hereby submits to the jurisdiction of the courts

of Peru and appoints the Mining Company at _____ its agent for service of process.



Article 14 – Notices

14.1 All notices, demands, instructions, waivers, consents or other communications hereunder shall be in writing in the English language and deemed to have been properly effective upon receipt, and shall be sent by personal delivery, courier, first class mail or fax to the following addresses:

Guarantor: [Insert required information]
Central Government: [Insert required information]
Local Government: [Insert required information]
Community: [Insert required information]

14.2 The addresses and fax numbers by either Party to this Guarantee for notices given pursuant to this Guarantee may be changed by means of written notice to the other Party at least fourteen (14) Days prior to the effective date of such change.



MINING IN PERU AND YOUR RIGHTS: A GUIDE FOR YOUR COMMUNITY



Francisco Merma Saico stands outside his community in the Espinar region of Peru, with the site of the Tintaya mine behind him in the distance. Francisco and others in the Espinar region feel that the mining activities have harmed, rather than helped, their lives. When asked what he considered the worst and most important impact of the mining on his family, he replied that it was the negative health impacts of the mine.

Photo by Ale Loayza.



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How can this guide help you?

The aim of this guide is to help your community to understand what mining might mean for your community and the environment in which you live. The guide seeks to give you the tools to be in the best position to negotiate with a mining company that wants to mine in your area and to ensure that you are prepared to engage and work with the mining company to create a sustainable future for you and future generations of your community.



Vidal Merma, a Social Communicator in Espinar who documents the harmful effects of mining on communities, points out old, decrepit homes with no clean water or electricity; the homes are right outside of the fence which separates the mining project from local communities. Photo by Ale Loayza.

I. MINING

Mining, which is part of the extractive industry, is taking resources from the Earth, refining them and selling them. Mining is a substantial source of income for the Government of Peru and should be a source of income for the affected communities. In the past decade, 10.3% of the Government's income has come from the extractive industries. More specifically, Peru is the world's third largest producer of copper, silver, zinc and tin, and the seventh largest producer of gold.

Mining can have benefits and generate jobs and income for you, your community and region; but it can also have negative effects. There can be pollution of land, water, air and the general environment. It can create inequality, and people can get upset about this. Government officials can receive money from mining



companies, and not do what they're supposed to do. Also, the government might not be able to deal with the many issues that mining brings up, due to its own limitations. Frankly, mining is complex!

Mining involves many different people: your community, the mining company, the mining company's owners, people the mining company hires, local government, regional government, central government, foreign governments and non-governmental organizations. If a mining project comes to your community, all of these parties will be present in your community and they will all have different interests they want to further and protect.

In Peru, while the central government receives a steady source of income from mining. Too little has been done on the ground in the way of improvement or investment in the communities where mining takes place. Unfortunately, due to the institutional structure of the government, the central government is absent in many rural parts of Peru and lacks the capacity to implement progress and effect change. This occurs for a number of reasons, some of which we have just mentioned. In addition to a lack of government capacity, these reasons may also include corruption, coercion, or governmental officials not doing their best to represent the community.



Driving past the Tintaya Mine in Espinar, Peru. The Tintaya mine (also known as Antapaccay mine) is the main locus of economic activity within the Espinar region but has also been the source of social conflict for how the mine has affected the health and well-being of local communities. Photo by Mia Brill.



II. COMMUNITY PARTNERSHIP AGREEMENT

This guide may be used together with a Community Partnership Agreement [see pg. __], which our team has proposed to the Government of Peru. We hope that this Agreement will be supported by the Government and enacted as a requirement of the law. If enacted, we encourage your community to enter into the Agreement with a mining company that is coming to your area **before** the mining company starts operations or finalizes its schedules.

Under the proposed Community Partnership Agreement, the mining company will be required to obtain your **prior informed consent** [an explanation of what prior informed consent means is on pg. 4] before it starts operations, or finalizes its schedules. This means that the mining company must openly and honestly explain everything about the project to you. **You are entitled to ask the mining company as many questions as you need about anything you do not understand about the project.** Make sure you, as a community, know everything you want to know about the project. For example, ask the mining company:

- How will this project directly affect me?
- What will this mean for my community?
- Will we have to move?
- What will happen to my livelihood or job?
- What happens if there is an accident?
- Why should we do this with you?
- How will you help us?
- How will the project impact the environment, including our land and air?
- How will the mining project impact the community's health?
- How many people will be coming from outside the community to work in the mine?
- What job opportunities will there be for our community in the mine?

The mining company will be required to sign the proposed agreement promising to [i] not damage the health or environment of members of your community, [ii] fairly share financial gains it makes from the mining with your community, [iii] treat the members of your community equally and not favor its workers over anyone in your community that it employs when it comes to employment and living conditions and medical services, [iv] never do anything that is corrupt or breaks the law, [v] prevent social conflict, and [vi] to invest in your community in accordance with your preferred plans for how you want your community to develop.

The proposed Agreement will be a **formal, legally binding** partnership between the community and the mining company.

This means that if the mining company breaks its promises to you, you can formally complain to your local government. You can sue the mining company in court if there is a breach. Local and central government will also be part of the Agreement in a monitoring role.

The guide is a permanent work in progress until the Community Partnership Agreement is finalized.



Women walk in the town of Espinar, Peru. The Espinar region is known across the country for the occurrence of social conflict related to the presence of the mining industry. Photo by Mia Brill.

III. KNOW YOUR RIGHTS

This section discusses the rights of communities and individuals who are affected by mining, and the laws that must be followed by a mining company before it can start mining. Peru has national laws in place, and Peru has signed international treaties that give all individuals certain rights. This section tells you what rights you have.

Peru has signed and ratified the International Covenant on Civil and Political Rights [ICCPR], the International Covenant on Economic, Social and Cultural Rights [ICESCR], the Convention on the Elimination of All Forms of Discrimination against Women [CEDAW], and the Inter-American Convention on Human Rights. These are major international human rights treaties, providing a range of protections, which requires by law that the Government of Peru must respect, protect, and ensure the rights listed in the treaties. The Constitution of Peru also lists a number of rights for all individuals in Peru.

Your Rights Under National and International Law:



1. **Equality and Non-Discrimination:** You cannot be discriminated against based on your race, sex, language, religion, opinion, and economic and social background.
2. **Right to Property:** You have the right to your property and inheritance.
3. **Right to Freedom of Assembly:** You have the right to come together and collectively express, promote, pursue, and defend your ideas.
4. **Right to Work:** Everyone has the right to work without discrimination. Everyone has the right to collectively bargain and to strike.
5. **Right to Health:** Everyone has the right to protection of health and free access to health care.
6. **Right to Food, Clothing and Housing:** Everyone has the right to an adequate standard of living, including adequate food, clothing, and housing.
7. **Right to Water:** Everyone has the right to clean, sufficient and affordable water.
8. **Right to Education:** Everyone has the right to a free early childhood, primary, and secondary education.

Your Rights under the Community Partnership and Consent Agreement

The proposed Consent Agreement will be legally binding, and if the mining company breaks any of its obligations under the agreement, the mining company's license will be revoked [taken away] by Peru's central government. If the Agreement is enacted [signed by the community and company with all the necessary conditions, like prior informed consent], we encourage your community to enter into the Agreement with a mining company that is coming to your area **before** the mining company starts operations, or finalizes its schedules.

As mentioned in Part II of this Guide, under the proposed Agreement, the mining company will be required to obtain your prior informed consent before it starts mining operations, or finalizes its schedules.

What does free, prior and informed consent mean?

This means that the mining company must explain everything about the project to you and have your approval before it begins its project.

- “**Free**” means that your consent must be given openly and transparently without coercion, intimidation, manipulation or corruption of any member of your Community.
 - The agreement says that your community must give its consent by organizing an official meeting with all members of your community. There must be a supermajority vote of all members of the community [who are over age 18]. Of those who vote, at least 50% must be women. This supermajority voting system is to make sure that everyone in your community has a voice and that their concerns are heard.
 - The mining company cannot get consent to the project from only one member of your community, even if that member claims to represent the community.
-
- “**Prior**” means that the mining company must obtain consent from your community **before**
 - The mining company begins exploration for the mining project;



- Every major stage of the mining project;
 - Every change in scope of each major stage of the mining project and
 - Every major development which could impact your community during the entire mining project
- “**Informed**” means that the mining company, your local and central government should share with your community all information before it begins working and before every stage listed above.
 - The mining company must share all information related to how the project will impact you, such as, your water and your environment.
 - **You have a right to ask the mining company as many questions as you want about anything you do not understand about the project.**
 - The mining company must ensure that **your community can easily access and understand all information**, in both Spanish and your community’s local language[s].
 - You have the right to make a decision in a reasonable time period, enough time to read, digest and understand all of the information.

Notifying your Local and Central Government of Consent

- You should notify your local government who will notify the central government everytime you give consent to the mining company. The representative for the central government will be the Vice Ministry of Territorial Governance, which is responsible for the management of social conflict in mining areas, or any other agency that undertakes its functions. You should notify the local government of the details of the major stage of the project, and any change in the project that you have consented to.
- You have a right to notify your local government and/or central government or any of your government representatives of any complaints you have if you think any part of the consent agreement has been broken by the mining company.

Regular Dialogue between Your Community and the Mining Company

- The mining company is required to meet with your community at the start of exploration and after, a **minimum of every few, such as three, months during each major stage of the project** until 24 months after the project ends.
- The mining company must ensure that you can openly communicate with the company and quickly resolve any issues that arise.

Your Obligations under the Consent Agreement

- Your community is obligated to choose representatives through democratic, open and fair means, who should be available at meetings, in order to review and resolve issues with representatives of the mining company.

Incompetence and Corruption

What is Corruption?

Corruption is the abuse of public office for private gain. Public office is abused for private gain when a government official accepts, solicits, or extorts a bribe. It is also abused when anyone [including those not in the government] offers bribes to get around policies and gain a competitive advantage and profit.

Corruption can come in many different forms. Public office can also be abused for personal benefit even if no bribery occurs, through patronage and nepotism [giving relatives or friends jobs, instead of appointing someone based on merit], giving permissions and licenses where they are not due, ignoring community complaints, delaying processes, stealing from the state, or using state money for the wrong purposes.

You have a right to recognize and report corruption. Examples of corruption include:

- Being afraid to complain about something because your leader threatens you if you speak out
- A community member is forced to protest or riot because his or her leader threatens to turn off your water supply
- A government official demands a secret payment from a mining company in order to allow them to mine
- A government official uses public budget money for his or her own personal travel purchases
- A member of a community is paid by a mining company to build a school for his or her community but instead uses the money to build a new house for himself

The proposed Agreement says that any act of corruption or bribery that is reported must be investigated within 45 days. If any confirmed act of corruption or bribery occurs, in connection with the securing or maintaining of the Mining License, the Consent Agreement or the Consent, or in the conduct of the Mining Activities or Mining Related Activities, then your community has the right to withdraw your consent and suspend the mining license.



A woman sits outside of the Superior Court of Justice of Cusco, Judicial Seat of Espinar, in Espinar, Peru. Photo by Ale Loayza.

IV. ORGANIZING FOR DIALOGUE

- In order for your community to exercise its rights, you have to be organized in a structured and transparent manner.
- Your community is going to be interacting with mining companies. The industry has significant institutional, legal, and economic powers.
- Mining is crucial to the Peruvian government, who has an interest in seeing mining projects succeed.
- You have a responsibility to organize your community's resources and claims in the most impactful manner.
- The community is now represented by the Junta Directiva when dealing with mining companies. The compensation of Junta members is paid by the companies. This has led to conflicts of interests and to a misrepresentation of your community's needs.
- An alternative system is to set up a Board of Trustees. The members would not be compensated or paid by the company. They would have a moral stake in accurately representing the community. Unlike the Junta, they would be handling community affairs as a whole. They would only be tasked with interacting with mining companies. They would thus not be paid, but would also work less.
- Trustees, would have significant responsibilities and would need to be very trustworthy, would be chosen among the most qualified community members, with a regard for integrity and representativeness [gender, age, profession]. The choice of Trustees would be determined by the assembled community. Community members would also be able to call on Trustees during their entire tenure, in order to maintain effective dialogue. The community would reconvene to elect replacements when a critical mass feels dissatisfied by the record of one / several Trustees.
- Trustees would help reduce corruption and secure better outcomes for the community. They would liaise with the different institutions whose role is to support community demands and whose contacts are included below [Defensoría del Pueblo, Convenio Marco, etc.].

Columbia University capstone team member Fabian Zetina listens to Peter Jahnzen of Defensoría del Pueblo in Cusco discuss human rights in mining communities in Peru. Photo by Mia Brill.





V. TYPICAL TIMELINE OF A MINING PROJECT

The following is a typical timeline of the development of a large mining project. Years can pass between the discovery of minerals and the start of mining operations.

1. Environmental Impact Assessment

An Environmental Impact Assessment [EIA] is a process designed to identify the full scope of potential environmental impacts that a mining project may have, as well as describe possible steps for preventing or, where it is impossible to prevent all impacts, minimize as much as possible. Minimization should apply the most advanced procedures and technologies.

The EIA is a researched report carried out by a group of experts, intended as a tool for informed decision-making. EIAs do not guarantee that projects will be environmentally-friendly or that they will be modified/rejected if environmental harms are identified.

In Peru, EIAs are evaluated by SENACE [Servicio Nacional de Certificación Ambiental para Las Inversiones Sostenibles], which is part of the Ministry of Environment. Subsequent continued monitoring is carried out by OEFA.

Public participation is important, and should start as early in the process as exploration in the area begins. The following chart represents a typical EIA process. It is important to note both how complex this process is, and what avenues of public participation should exist throughout the process.

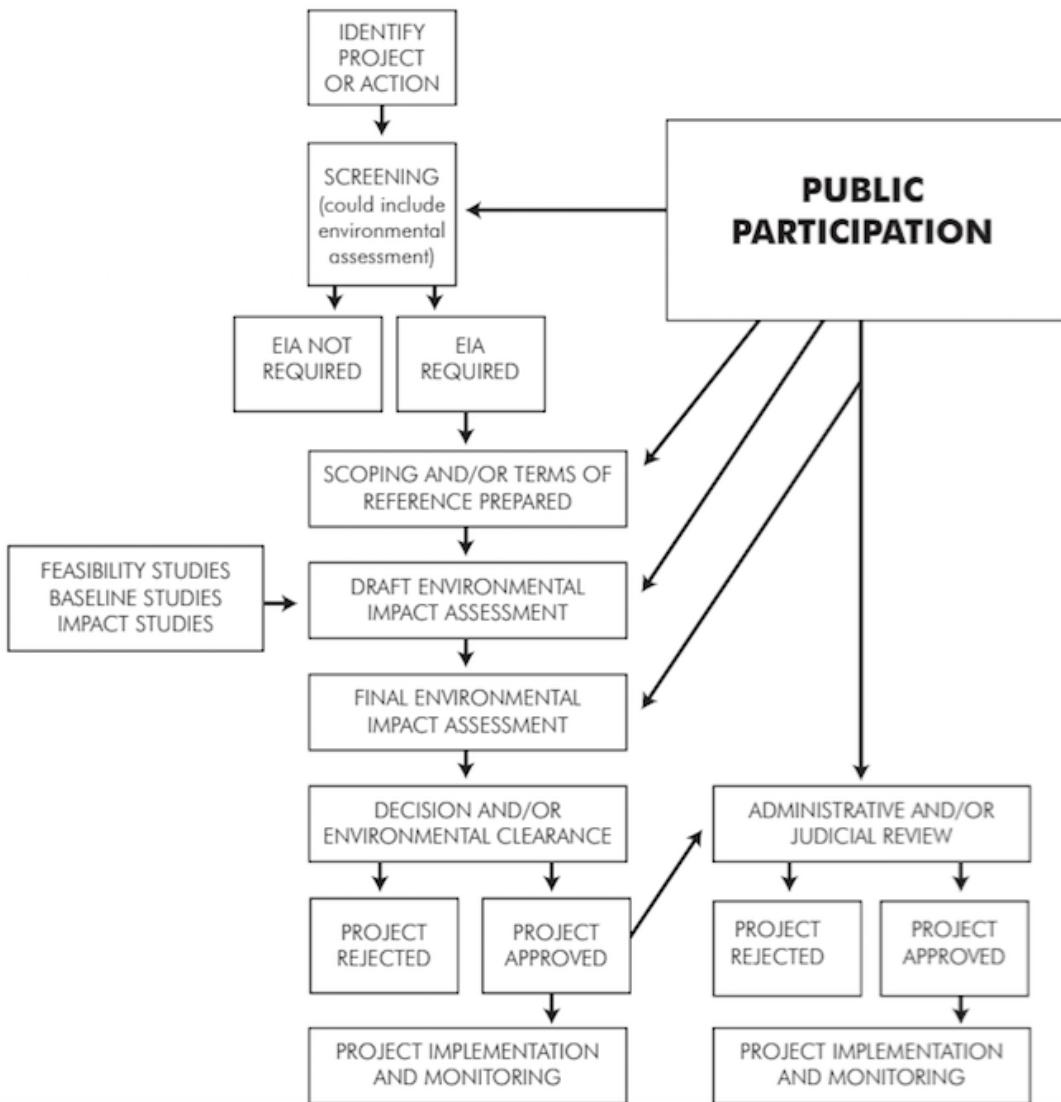


Figure 1. Public participation in the EIA process

Community engagement in communities with indigenous populations, is guided by the formal consulta *previa* process [see Appendix]. For non-indigenous communities, there is no formal process; however, before starting an EIA, the project owner must submit a Citizen Participation Plan to SENACE.

Some features of a good Citizen Participation Plan:

Includes both obligatory and voluntary mechanisms

Citizen participation through informational workshops, town halls, suggestion boxes, and permanent information offices created by the project owner.

Citizen participation mechanisms included in the EIA for the life of the project.

Community participation and consent should be obtained by the Mining Company prior to:

- [i] the Mining Company's exploration for the project;
- [ii] every major stage of the project;
- [iii] every change in scope of each major stage of the project; and
- [iv] every material development which could impact the community during the life of the project.

Adequate participation is contingent on the mining company ensuring that:

- [i] the community has ready and easy access to all information in a form that is understandable and in both Spanish and the community's local preferred or spoken languages;
- [ii] the information is sufficient, accurate and complete; and
- [iii] the community has the capacity, or is given the capacity, to make informed decisions in a reasonable time period so that the community has time to digest and understand the information and ensure that all members of the community have understood all the relevant information provided to them and/or have been provided with an adequate explanation of all the relevant information by the mining company.

Free, prior, and informed consent [FPIC], as defined in the "Know Your Rights Section" on pg. 4, should be acquired and maintained for the life of the project. This means that your consent must be given openly and transparently without coercion, intimidation, manipulation or corruption of any member of your Community [including through the imposition of timelines or deadlines]. That [continual] consent is secured before granting of concession of project development. That all information be conveyed in a way that is understandable, in a local language if necessary, and through channels of communication which are ongoing and constantly updated. All consent should be broadly collective and participatory [i.e., not limited to community leaders], and should ensure that the community has the right to say "no."

FPIC should also be legally binding and reviewed and/or renewed every year.

Four main sections of EIA

1. Project Description
2. Environmental and Social Baselines
3. Identification of Impacts
4. Environmental Management Strategy

For companies already in operation when new environmental obligations are established, the Programa de Adecuación y Manejo Ambiental [PAMA] is used to ensure a process for becoming compliant with the new norms.

In Peru, there are three categories of environmental assessments depending on size of the project:

1. Estudio de Impacto Ambiental Detallado [Detailed EIA] for large projects;
2. Estudio de Impacto Ambiental Semidetallado [Semi-detailed EIA] for medium projects;
3. Declaración de Impacto Ambiental [Environmental Impact Declaration] for small/artisanal projects.

2. Permitting Process for Mining in Peru

(from Miguel E. Gutierrez's presentation at PERÚMIN - 31 Convención Minera, organized by the Instituto de Ingenieros de Minas del Perú)

1. Environmental and Social Impact Assessment [ESIA]

- Legal requirements
 - Environmental Baseline
 - Social Baseline
 - Alternative Analysis
 - Project Description
 - Environmental Impacts Assessment
 - Social Impacts Assessment
- Impact Prevention, Mitigation and Monitoring – Community Relations Plan
 - Mine Closure

2. Beneficiation Concession [“Concesión de Beneficio”]

- Confers the right to extract or concentrate minerals and to recover metals through processing
- Granted by Ministry of Energy and Mines (MEM)
- Detailed engineering required for the Metallurgical Process

3. Mining Permit [“Autorización para el inicio de actividades mineras de explotación en concesiones mineras”]

- Confers the right to begin mining operations
- Detail engineering required for infrastructure associated with the mine operation

4. Water Permits

- Surface Water License [use of water for mining activities]
- Groundwater License
- Use of water for construction
- Discharge Permits
- Creek crossing
- Other

Phases of a mining project:



Figure 2. Phases of mining project

Discovery/Exploration

Studies

1. Profile study/scoping studies
2. Preliminary/Pre-feasibility study
3. Feasibility study

[Decision to invest]

Preparation/Development/Construction

1. Construction of access roads
2. Site preparation and clearing

Operation/Production

1. Disposal of overburden/waste rock
2. Ore extraction
3. Beneficiation [extraction of mineral content from ore]
4. Tailings disposal

Expansion

1. Site reclamation and closure/abandonment
 2. Monitoring and evaluation of post-mining landscape
- Carried out over the course of several years

Lease/liability relinquishment

Any remaining financial surety held by the government is also returned

Production process:

- Extraction
 - o Blasting/digging
- Processing
 - o Crushing
 - o Milling & Grinding
 - o Flotation/leaching
- Port
- Foundry
- Refinement

Mining operations are quite complex, involving heavy machinery, and requiring significant resources, such as water, electricity, and fuel. The following is an overview of a typical open pit mining operation.

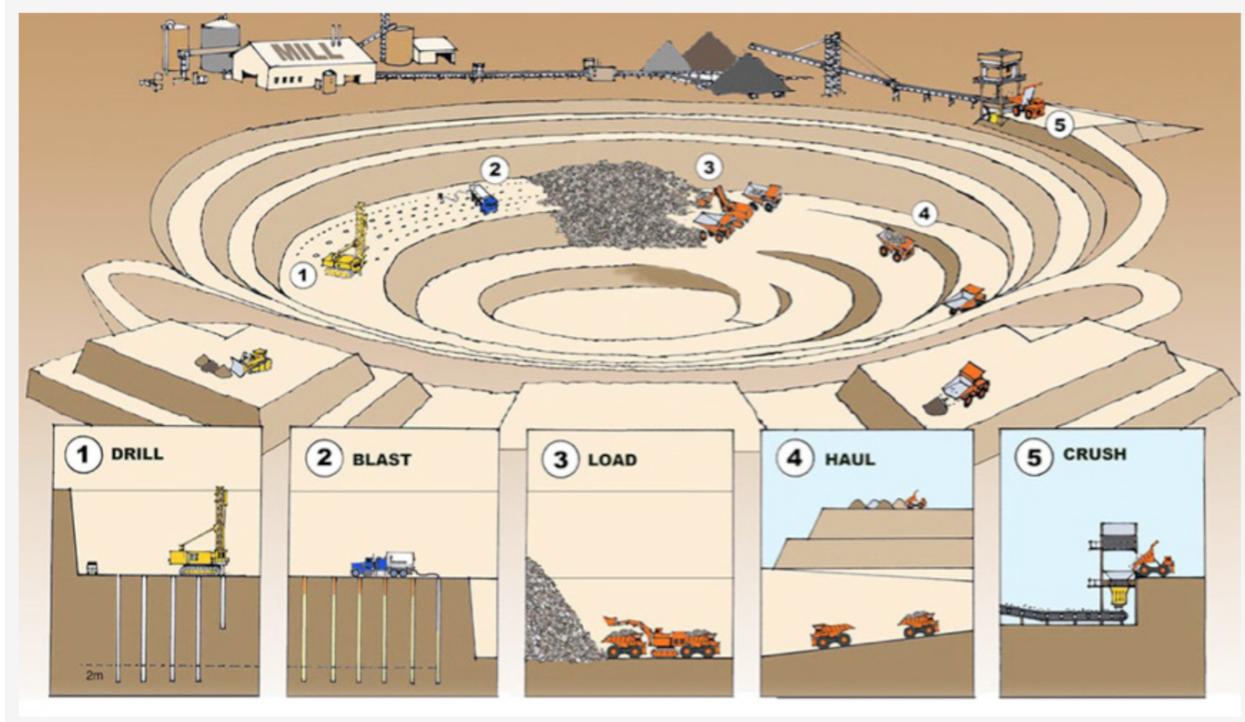


Figure 3. Open pit mining operation

Mining projects are long-term developments. The sites themselves may be in operation for decades. Such projects can generate vast revenues; however, they often require large amounts of capital to even begin operating, and they carry significant investment risk. The following graph represents the stages of a typical mining project, charted against both project value and investment risk.

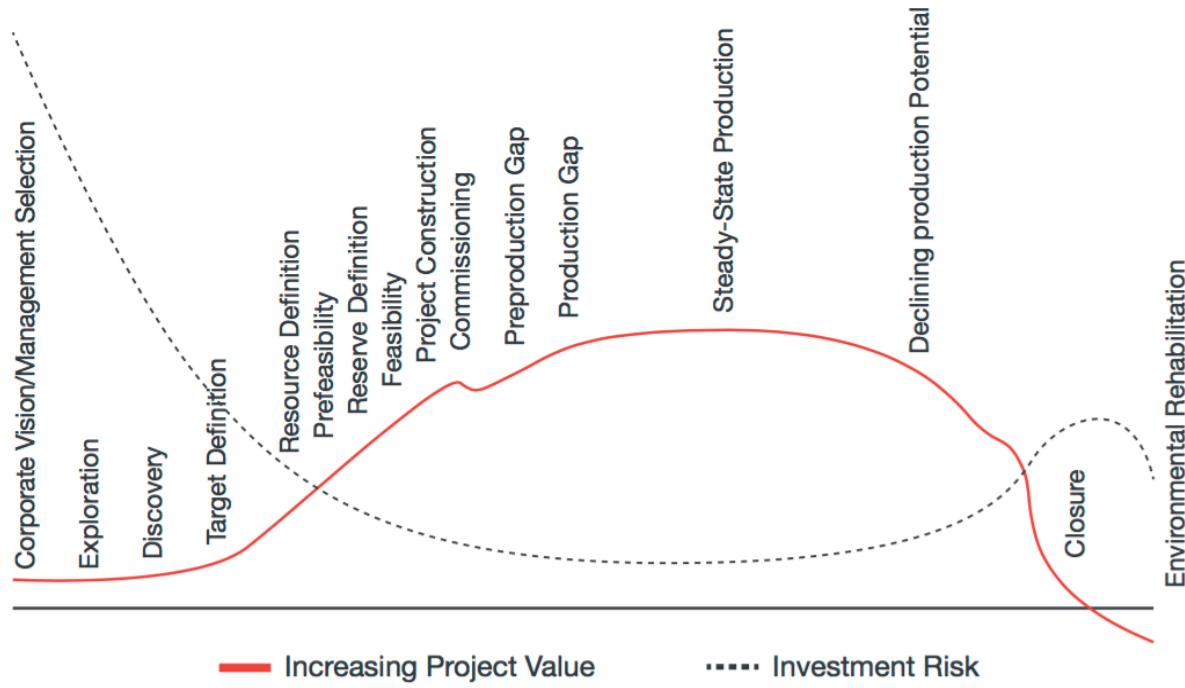


Figure 4. Project value and investment risk over the life cycle of a mine

3. Canon Tax

There are six Canons in Peru: mining, oil, gas, hydropower, forestry, fishery. The mining canon is the largest of the six canons.

The central government disburses 50% of the taxes collected to the region where the mining exploitation occurs. Prior to 2003, the percentage of tax disbursed was 20%.

The money is deposited in special accounts in the Banco de la Nación, and disbursed by the Ministry of Economy and Finance (MEF) for particular projects aimed at poverty reduction and development. The population can participate in the selection of projects to be undertaken through *presupuestos participativos*, which involve meetings with local authorities and community organizations.

This money does not revert back to the Central Government, even if not expended, and local authorities are obligated to report back to the community on the use of this money.

From discussions with stakeholders involved at various levels of this structure, however, we heard that this process is sometimes problematic, and can lead to ineffectiveness, waste, and even corruption.

We recommend that the money be held in trust, and that its use be more closely monitored. For more on our recommendations, please see Article 1 and Article 2.8 of the Consent Agreement.

The following diagram shows how the canon tax is distributed within the region.

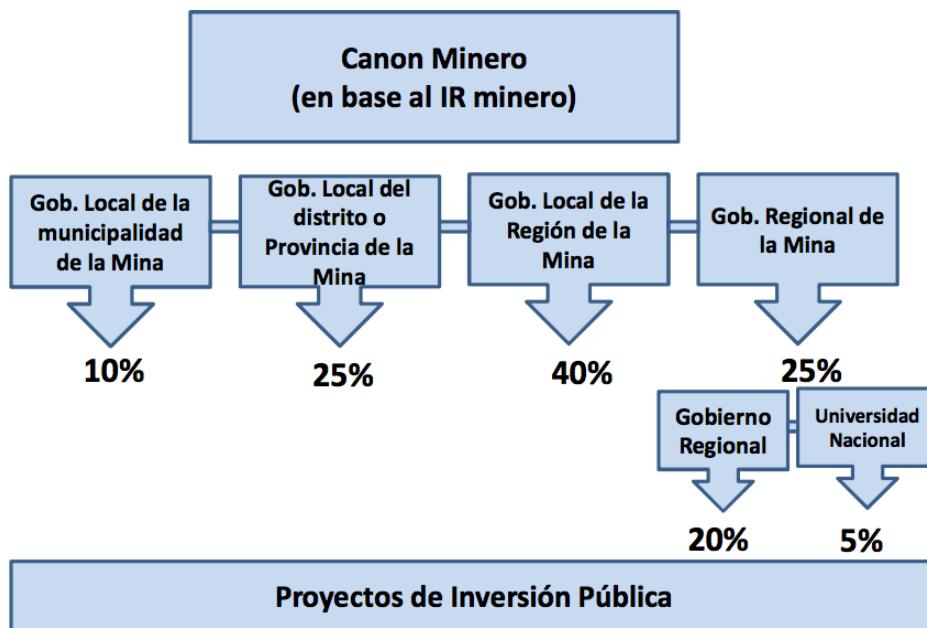


Figure 5. Distribution of the canon tax within the region

VI. ENVIRONMENTAL IMPACT

The following are ways to minimize harm to the environment from a mining project in your community. Environmental damage can affect the health, economy, and development of your community so it is important to consider the following **before a mining company begins a project in your community**.

1. Monitor environment throughout **lifetime** of project
 - a. Independent third party evaluators should be hired by community through the ‘Advisor Fund’ set up in trust by the mining company.
 - i. This trust fund is an account set up by the mining company. The mining company will create this fund. The community will only be able to use money from this fund to pay independent professionals to advise them on mining related impact; particularly, for an independent third party evaluator to monitor the environment, and collect information about the environmental impact of the mine.
 - ii. This is part of the social fund in the Community Partnership Agreement
 - b. NGOs or government agencies can also help with initial testing if they are not funded by the mine, or connected to the mine in any way. Organizations such as:
 - i. OEFA
 - ii. Senace
 - iii. Universities

- b. Evaluators should collect baseline measurements of water contamination, air pollution, and any other possible environmental impacts from any mining activity.
 - i. Baseline measurements are measurements taken **before the mining company starts any phase of the project.** The mining company should not begin any phase of a project before baseline measurements are taken.
 - ii. Evaluators should measure indicators including the ones below, and any additional ones that they deem relevant to the specific mining project.
 - 1. Water Pollution
 - a. Acid Mine Drainage: open rocks being mined for metal can pollute rivers, lakes, and groundwater.
 - b. Erosion of waste and soil into water: dust, rocks, and waste from mining can mix with lakes or rivers.
 - c. Waste Dumps: large piles of waste from mining can pollute groundwater even if they are not near lakes or rivers.
 - d. Dewatering: moving water for mining purposes can cause changes underground that affect availability of water.
 - 2. Air Pollution
 - a. Moving sources: cars and trucks both release air pollution through burning fuel, and by creating large amounts of dust in the air.
 - b. Non-moving Machinery: machines used for removing minerals, blasting rock, processing minerals and other mining activities release polluting gases and chemicals like carbon and also may release mercury, sulfur and arsenic.
 - c. Mercury: gold mines especially may release large amount of mercury into the air.
 - c. Indicators should be measured in **total area of impact**, not just in the direct area or indirect area of impact.
 - d. Indicators need to be measured **every six months** after baseline measurements are taken.
 - e. These measured indicators should be made available at the review meetings to be held between the community, the mining company and the local government, as outlined in the accompanying Agreement, to review compliance by the mining company and ensure continued consent.
 - 2. Monitor the health of the community throughout **lifetime** of project.
 - a. Basic health records for all members of the community should be established before the mine starts operations or schedules are finalized.
 - i. If this does not exist the community should work with the Regional Office of Social Development to establish basic health records for every member of the community.
 - b. Community should work with The Regional Office of Social Development should develop a list of specific illnesses or health problems that might result from the mining project.
 - i. These should be posted in public places with instructions on how to contact the Regional Office of Social Development if any member of the community identifies an illness, ailment or medical condition in their household or community.
 - 3. Understanding the Environmental Impact Assessment [EIA]

- a. SENACE should produce a brief summary of major impacts from EIA, translated into all local languages, and posted in all community spaces [church, school, hospital, police station, etc].
 - i. The community should work with SENACE to create this document and post it because they receive all EIAs for approval.
 - ii. SENACE is a part of the Ministry of Environment
 - b. EIA summary should include specific impacts on:
 - i. Potable water availability/depletion
 - ii. Impact on water available for agriculture
 - iii. Water quality/pollution
 - iv. Air quality/pollution
 - 1. Hazardous chemicals, as per SENACE requirements
 - 2. Greenhouse gas emissions
 - 3. Small particle emissions
 - 4. Dust pollution
 - v. Mining waste disposal plan and impacts of mining waste disposal
4. Abandonment Fund
- a. The mining company should set up an account of money to clean up any environmental problem that occurs as a result of mining activity and restore the area to its original condition to the best extent possible.
 - b. This account cannot be touched by the community or the company
 - c. Money can only be used for clean up of an environmental problem arising from a mining activity, **during or after** the project's existence and for restoration of the area to its original condition.
 - d. This fund will continue to exist after the mining project has closed



Road entering San Marcos, a small town in the Ancash region of Peru. This town is in the direct area of impact of the mining company Antamina. Columbia University capstone team members met with local community leaders, government offices, and mining company representatives to discuss ways to mitigate social conflict and create sustainable development in San Marcos. Photo by Mrig Mehra.



VII. REGIONAL / LOCAL / COMMUNITY DEVELOPMENT PLANS

Under the proposed Agreement, your community will devise a **sustainable development plan** in collaboration with the Mining Company and the Local Government; it will be approved by the Central Government. Under the plan, **the mining company will be required to set aside money to fund the sustainable development plan.** You may want to consider including the following in the plan:

- Clean drinking water 24 hours a day, 7 days a week
- Hot and cold water 24 hours a day, 7 days a week
- Fully functioning sewerage systems for the whole community
- Electricity
- Internet for all community members
- Train community members to understand EIAs, monitor EIAs, take samples, monitor contamination
- A hospital, doctors and nurses to staff the hospital, training for doctors and nurses
- Local Government to continue operation of the hospital after the Mining Company has gone
- A local school, including equal education for both girls and boys
- Professional teachers
- Training for skilled jobs
- Jobs in the mining company throughout the life of the project
- Training in computing
- Training in how to farm sustainably
- Jobs for women
- Roads, bridges
- Recreation facilities

You should consider that this development plan depends on the individual, unique needs of your own community.

In the absence of a sustainable development plan, it is most likely that the mining company and/or government will not be able to help you plan for your long-term future. If you have such a plan, and can present it to people, this will help you very much. This way everyone will know that the mining company has the long-term interests of your community in mind. Then they, and the government, will be able to better respond to your needs. If you don't state what you think is best for your community long term, others will probably assume things. This can lead to things that seem good in the short term, but are not beneficial in the long term. The life of the mining project will probably be quite long, and the mining company and government can make a lot of money from it. If they are going to be your long-term partners, it would be good to have a plan like this for your long term benefit.

Communities, villages, and towns are different from one another. So are different mining projects. There are many issues to be considered. Some of these include environmental issues, organizing, or how to deal with complaints. These are dealt with in other sections of this document. Here, we try to offer some ideas about how to think about the long-term success of your community. Here are some things to consider.



You should talk to people. This includes members of government, both local and national. It also includes people from the mining company. They build living accommodations for their workers that include running water, electricity, indoor plumbing, and so on. You may be able to get similar things. There are stories of locals being offered a number of animals as payment. While this community sold them, it may make more sense to plan for the future. This can be things such as those mentioned above, or other investments into the development of the region, such as schools, hospitals, and so on.

Mining companies can also invest in people. This means education, training, and professional growth. These skills could be used for the mining company, or for other things. If they are willing to do this for their workers, they could do it for community members also. If the mining company is going to be operating for 10, 20 or 30 years, this is a long time that it will be a part of your life. As community members, you have a right to development when such an operation takes place. This could mean tuition for school or other forms of investment beyond the short-term issues of your life. Try to think of what is best for your children, and children's children, after the mining project leaves.



VIII. COMPLAINT SYSTEM

What do I do if my rights are violated?

The mining company has broken the partnership agreement. What should I do?

- Notify the mining company of the breach according to the procedure in the proposed Community Partnership Agreement.
- If the mining company has not responded within the timeframe given in the agreement, notify local government and your local Defensoría del Pueblo.

Someone other than the mining company has violated my human rights. What do I do?

- Document all of your complaints.
 - Write down the time and day the problem happened, how it happened, who was there when it happened and when you noticed that something was wrong.
 - The more documentation the better
 - Any details that could help prove that your complaint happened should be written down, for example:
 - someone else seeing or experiencing the complaint
 - changes in measured indicators like air pollution or water contamination
 - Try to find a neutral/independent party [a person or an organization that was not involved in any way in the complaint] who can help you with documenting the problem
 - The list of resources and organizations can help you find this.
 - ex. Defensoría del Pueblo, La Fiscalía, SENACE
- You can also talk to others who have had similar experiences.
 - If you find others with similar complaints you should encourage them to file them too
 - Having more people file similar complaints can help to verify and provide more details on your complaint

The following organizations collect and handle complaints. Use the links below to submit complaints and learn more about what types of complaints they handle:

- Defensoría del Pueblo: <http://puma.defensoria.gob.pe/form-queja.php>
- SENACE: <https://www.senace.gob.pe/denuncias/>

The appendix lists more organizations and resources for information on mining, mining company operations, your rights, and what to do if you feel that your rights have been violated



APPENDIX I

“Know Your Rights”

The following explains where each of the rights in the “Know Your Rights” sections are listed in Peru’s constitution and in international and regional treaties and conventions.

9. Equality and Non-Discrimination:

- a. **Article 2[2] of the Peruvian Constitution** declares that every individual has the right to be treated equally before the law. The Constitution protects against discrimination for race, sex, language, religion, opinion, and economic and social background.
- b. **Article 26 of ICCPR** also says that “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”
- c. **Article 2 of ICESCR** also says that states must guarantee all rights listed in the Covenant without discrimination.

10. Right to Property

- a. **Article 2 of Peru’s Constitution** says that “Every person has the right...To property and inheritance.”

11. Right to Freedom of Assembly

- a. **Article 2 of Peru’s Constitution** says that “Every person has the right...To peaceful assembly without arms. Meetings on any premises, whether private or open to the public, do not require prior notification. Meetings held in squares and public thoroughfares require advance notification by the relevant authority, which may prohibit such meetings solely for proved reasons of safety or public health.”
- b. The right to freedom of assembly means that all people have the right to come together and collectively express, promote, pursue, and defend their ideas.

12. Right to Work

- a. **Articles 19 to 27** of the Peruvian Constitution recognize work-related rights:
- b. **Article 23** says that “No working relation can limit the exercise of constitutional rights, nor disavow or disrespect the dignity of workers” and “No one is obliged to work without pay or without his free consent.”
- c. **Article 24** says that “The worker is entitled to adequate and fair compensation that ensures both himself and his family material and spiritual well-being. Payment of wages and social benefits for the worker takes priority over any other obligation of the employer. Minimum wages are regulated by the State with participation of representative organizations of workers and employers. “
- d. **Article 26** says that equal opportunity without discrimination must be respected in labor relationships.
- e. **Article 27** protects workers from unfairly being dismissed from their job.

- f. Under **Article 28**, the State recognizes the right of workers to join trade unions, to engage in collective bargaining, and to strike. The constitution encourages collective bargaining and promoting peaceful settlement to labor disputes.

13. Right to Health

- a. **Article 7 of Peru's Constitution** says that everyone in Peru has the right to health: “Everyone has the right to protection of his health, his family environment, and his community, just as it is his duty to contribute to their development and defense. Any individual unable to care for himself due to physical or mental disability has the right to respect for his dignity and to a regime of protection, care, rehabilitation, and security.”
- b. **Article 11 of Peru's Constitution** says that “The State guarantees free access to health benefits and pensions through public, private, or joint agencies. It also oversees their efficient operation.”

14. Right to Food, Clothing and Housing

- a. **Article 11-1 of the ICESCR** states that “The States Parties to the present Covenant recognize the right of everyone to an **adequate standard of living for himself and his family, including adequate food, clothing and housing**, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.”
- b. The right to food, clothing and housing are recognized as non binding rights for the Peruvian government.

15. Right to Water

- a. Only 54% of households in urban areas have safe drinking water. For rural areas, only 1.2% of Peruvians have access to reliable sources of safe drinking water [according to the Ministry of Housing, Construction, and Sanitation].
- b. Peru's president signed **Law 30588** on June 22, 2017 which modified the country's 1993 Constitution and made access to water a constitutional right.
- c. The **ICESCR** also includes the right to sufficient, safe, and affordable water: “The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements.” [Committee on Economic, Social and Cultural Rights, General Comment No. 15: The Right to Water [Arts. 11 and 12 of the Covenant]]
 - i. the right to an adequate standard of living “including adequate food, clothing and housing,” includes the right to adequate water under **Article 11-1 of the ICESCR**.

16. Right to Education



- a. **Article 13 of the Peruvian Constitution** says that “The State recognizes and guarantees freedom of education.”
- b. **Article 16 of the Peruvian Constitution** says that “the State ensures that no one is prevented from receiving appropriate education on grounds of economic status, or mental or physical disabilities.
- c. **Right to Free Education: Article 17 of the Peruvian Constitution** says that “Early childhood, primary, and secondary education are compulsory. In public schools, education is free. In public universities, the State guarantees the right to a free education to those students who maintain a satisfactory performance, and lack the economic resources needed to cover the cost of education.”

APPENDIX II

“Consulta Previa”



Figure 6. Consulta Previa Process

The formal Consulta Previa [Ley No. 29785] applies only to indigenous communities, and consists of a 7-step process:

1. Identification of the legislative or administrative measure that mandates consultation
2. Identification of the indigenous or native peoples to be consulted
3. Publicity of the legislative or administrative measure
4. Information regarding the legislative or administrative measure
5. Internal evaluation of the institutions of the indigenous or native peoples over which the legislative or administrative measure will have a direct impact
6. Process of dialogue between the representatives of the state and the representatives of the indigenous or native peoples
7. Decision

Peruvian law (Resolución Ministerial N°202-2012-MC) defines indigenous peoples according to the following objective and subjective criteria:

The objective criteria includes historical continuity, meaning residence within the



APPENDIX III

“Checklist for Reviewing an EIA”

The Environmental Law Alliance Worldwide (ELAW) has developed a guidebook for evaluating mining EIAs (see 4. in the References section below). The following checklist is included in their Appendix, and could be used by your community to evaluate proposed EIAs.

EIA REVIEW CHECKLIST				
No.	Review Question	Yes	No	Notes
1. General				
1.1	Is the need for the project and its objectives explained?			
1.2	Are the main components of the project described?			
1.3	Is the location of each project component identified, using maps, plans, and diagrams?			
1.4	Are all activities involved in all of the project's phases described (exploration, development, exploitation, mineral processing, closure, reclamation)?			
1.5	Are all activities involved in the ore beneficiation and other processing described?			
1.6	Does the EIA describe additional components that are required for the project (roads, water, leach pads, tailings impoundments, mine waste dumps, sanitation facilities, campsites)?			
1.7	Are any developments likely to occur as a consequence of the project?			
1.8	Will the project involve widespread land disturbance, site clearance, or extensive earthworks?			
1.9	Will the project involve the storage, handling, use, or production of toxic hazardous substances? Are these substances identified and quantified?			
1.10	Has the project assured a reclamation fund with the necessary financial warranties?			
1.11	Does the EIA include a detailed assessment of project alternatives?			
1.12	Does the area experience high levels of pollution or other environmental damage?			
2. Aspects of the environment				
Air				

2.1	Will the project generate emissions of air from fuel combustion, production processes, materials handling, construction activities, or other sources?			
2.2	Will the project involve disposal of waste through burning (slash, construction debris)?			
2.3	Will the storage of wastes or raw materials affect air quality?			
2.4	Will the project release noise, vibration, light, or heat to the environment?			
2.5	Will the project be located in an area subject to adverse atmospheric conditions (temperature inversions, fogs, extreme wind)?			
Water				
2.6	Will the project require large volumes of water or disposal of large volumes of sewage or industrial effluent?			
2.7	Will the project involve disturbance of drainage patterns, such as dams or relocation of watercourses, or increased flood potential?			
2.8	Will the project require channel dredging or straightening or crossing of streams?			
2.9	Will the project involve the alteration of coastal features with the construction of infrastructure?			
2.10	Will the project be located near a relevant watercourse (freshwater or groundwater) or wetlands?			
2.11	Will use of water affect the availability of existing local supplies?			
2.12	Will the project cause significant changes in wave action, sediment movement, erosion, or water circulation?			
Land				
2.13	Will the project result in widespread disturbance of land surface?			
2.14	Will the project conflict with present zoning or land use policy?			
2.15	Will the project conflict with indigenous territories?			
Land				
2.16	Will the project be located on lands of high agricultural value?			
2.17	Is the project likely to cause erosion?			
2.18	Could the use of erosion controls result in other adverse impacts?			
Ecology				
2.19	Will the project be located in the vicinity of important or valuable habitat?			

2.	Are there rare or endangered species in the area?			
20				
2.21	Will the project be located on or near a coastline susceptible to erosion?			
2.22	Will the project be located in an area susceptible to earthquakes or seismic faults?			
2.23	Will the project be located in an area of steep topography that may be susceptible to erosion?			
2.24	Is the project located in or near protected areas or a place with unique natural features?			
3.	Wastes			
3.1	Will the project require disposal of spoil, overburden, or mine effluents?			
3.2	Will the project require disposal of municipal or industrial wastes?			
3.3	Will the project have the potential to contaminate groundwater?			
4.	Hazards			
4.1	Will the project (construction, operation, decommissioning) involve the storage, handling or transport of hazardous substances (flammable, explosive, toxic, radioactive, carcinogenic, mutagenic)?			
4.2	Will the project involve the regular use of pesticides, fertilizers?			
5.	Social			
5.1	Will the project involve employment of large numbers of workers?			
5.2	Will the project make significant demands on facilities and services?			
5.3	Will the project result in changes in health conditions?			
5.4	Will the project affect the income of other productive sectors or communities?			
5.5	Will the project be located in an area of high population density?			
6.	Historic and cultural features			
6.1	Will the project be located in the vicinity of important or valuable historic or cultural resources?			

APPENDIX IV

“Community Resource List”

[NGOs, defensoria del pueblo, fiscalia departments, prefecture, environmental advisors/testers local representatives, etc: so that the community knows who to reach out for each type of grievance]

NATIONAL:

Defensoria del Pueblo - National

Dirección: En Lima: Jr. Ucayali N° 388

En provincias: Map of offices:

Dónde estamos
Oficinas defensoriales [Ver Listado](#)



<https://www.defensoria.gob.pe>

LIST OF OFFICES:

AMAZONAS

Oficina Defensorial de Amazonas

Dirección : Jr. Triunfo N° 1108 - Chachapoyas [Amazonas]

Teléfono : 041-479100 041-478255

Representante : Segundo Roberto Guevara Aranda

Email : odamazonas@defensoria.gob.pe

ANCASH

Oficina Defensorial de Ancash

Dirección : Jr. Damaso Antunez N° 683, Barrio de Belén - Huaraz [Ancash]

Teléfono : 043-428975 043-427491

Representante : Rina Káren Rodriguez Luján

Email : odancash@defensoria.gob.pe

Módulo de atención Chimbote

Dirección : Jr. Enrique Palacios 112-120 Casco Urbano - Chimbote



Teléfono : 043-329678

Representante : Jealine Roslin Villanueva Ramírez

Email : machimbote@defensoria.gob.pe

APURÍMAC

Oficina Defensorial de Apurímac

Dirección : Av. Díaz Barcenas N° 116 - 118 - Abancay [Apurímac]

Teléfono : 083-322877 083-323260

Representante : Artemio Solano Reinoso

Email : odapurimac@defensoria.gob.pe

Módulo de Atención Andahuaylas

Dirección : Av. Pedro Casafranca N° 436-Andahuaylas

Teléfono : 083-421668 083-421817

Representante : Jorge Artemio Solano Reinoso

Email : maandahuaylas@defensoria.gob.pe

AREQUIPA

Oficina Defensorial de Arequipa

Dirección : Av. Bolognesi 456, Yanahuara

Teléfono : 054-275789 / 054-275775 054-275592

Representante : Ángel María Manrique Linares

Email : odarequipa@defensoria.gob.pe

AYACUCHO

Oficina Defensorial de Ayacucho

Dirección : Jr. Bellido 106 y Jr. Sucre 300 - Ayacucho

Teléfono : 066-316738 / #945998635 066-316738

Representante : David Gustavo Pacheco Villar Barra

Email : odayacucho@defensoria.gob.pe

Módulo de Atención de Puquio

Dirección : Jr. Bolívar N° 336 - Puquio [Lucanas, Ayacucho]

Teléfono : 066-452307 066-452290

Representante : Tulio Salustio Huamani Janampa

Email : mapuquio@defensoria.gob.pe

Módulo de Atención de Huanta

Dirección : Jirón Ayacucho N° 312 - Huanta

Teléfono : 066-322149

Representante : Roy Antonio Huamán Janampa

Email : mahuanta@defensoria.gob.pe

CAJAMARCA

Oficina Defensorial de Cajamarca

Dirección : Jr. Soledad N° 319 - Barrio san Sebastián

Teléfono : 076-343489 076-369926

Representante : Agustín Fernando Moreno Díaz

Email : odcajamarca@defensoria.gob.pe

Módulo de Atención Jaén

Dirección : Calle San Martín N° 1020 - Jaén [Cajamarca]

Teléfono : 076-433559 076-433936

Representante : Genoveva Gómez Vargas

Email : majaen@defensoria.gob.pe

CUSCO

Oficina Defensorial de Cusco

Dirección : Calle San Miguel N° 273 - Cusco

Teléfono : 084-240963 084-240998

Representante : Rosa Emperatriz Santa Cruz Córdova



Email : odcusco@defensoria.gob.pe

HUANCAVELICA

Oficina Defensorial de Huancavelica

Dirección : Augusto B. Leguía N° 392 - Distrito, Provincia y Departamento de Huancavelica

Teléfono : 067-451447 067-454320

Representante : Oswaldo Avelino Guerra Hernandez

Email : odhuancavelica@defensoria.gob.pe

HUÁNUCO

Oficina Defensorial de Huánuco

Dirección : Jirón Crespo y Castillo 164, Huánuco

Teléfono : 062-510364 062-518203

Representante : Lizbeth Wally Yllanes Nauca

Email : odhuanuco@defensoria.gob.pe

Módulo de atención Tingo María

Dirección : Jr.. San Alejandro N° 432

Teléfono : 062-563288 / 062-563491

Representante : Lizbeth Wally Yllanes Nauca

Email : matingomaria@defensoria.gob.pe

ICA

Oficina Defensorial de Ica

Dirección : Av. Cutervo Oeste N° 469, Urbanización San Isidro - Ica

Teléfono : 056-212950 / 056-239452 056-212950

Representante : Jorge Luis Hernandez Velarde

Email : odica@defensoria.gob.pe

JUNÍN

Oficina Defensorial de Junín

Dirección : Jr. Francisco Solano N° 149 Urb. San Carlos - Huancayo [Junín]

Teléfono : 064-217261 064-232134

Representante : Teddy Adolfo Panitz Mau

Email : odjunin@defensoria.gob.pe

Módulo de Atención de Satipo

Dirección : Jr. Los Incas N° 620 - Satipo [Junin]

Teléfono : 064-546683 064-545460

Representante : Gremy Sonia Azocar Yupanqui

Email : masatipo@defensoria.gob.pe

Módulo de Atención de la Merced

Dirección : Jr. Ripamonti N° 199 - La Merced [Junin]

Teléfono : 064-531676 064-531099

Representante : Gustavo Adolfo Mendoza Pérez

Email : malamerced@defensoria.gob.pe

LA LIBERTAD

Oficina Defensorial de la Libertad

Dirección : Calle Los Fresnos 455, Urbanizacion California - Trujillo

Teléfono : 044-28-4783 / 044-28-5283

Representante : José Luis Agüero Lovatón

Email : odlalibertad@defensoria.gob.pe

LAMBAYEQUE

Oficina Defensorial de Lambayeque

Dirección : Av. Libertad N° 475 - Urb Santa Victoria - Chiclayo

Teléfono : 074-274051 074-209649

Representante : Julio Hidalgo Reyes

Email : odlambayeque@defensoria.gob.pe



LIMA

Oficina Defensorial del Callao

Dirección : Av. La Marina N° 1120-1124 Mz. C, Lote 21, Urb. Los Cerezos II, La Perla Callao

Teléfono : 01-3110310 - 3110300 01-3110310

Representante : Delcy Yaniri Heredia Silva

Email : odcallao@defensoria.gob.pe

Oficina Defensorial Lima Este

Dirección : Jr. Los Jilgueros N° 108 - Santa Anita [Lima]

Teléfono : 3110312

Representante : Manlio Álvarez Soto

Email : odlimaeste@defensoria.gob.pe

Oficina Defensorial Lima Norte

Dirección : Av. Universitaria N° 2761, San Martín de Porres [frente a la empresa Cavassa]

Teléfono : 311-0311 486-7297/311-0311

Representante : Estela Lozano Reyes

Email : odlimanorte@defensoria.gob.pe

Oficina Defensorial Lima Sur

Dirección : Jr. Pablo Alas N° 492, Zona A - San Juan de Miraflores [Lima]

Teléfono : 3110313

Representante : Percy Gilberto Tapia Vargas

Email : odlimasur@defensoria.gob.pe

Oficina Defensorial de Lima

Dirección : Jr Ucayali N° 394 - 398 - Cercado [Lima]

Teléfono : 01-3110300

Representante : Alberto Michael Huerta Zapata

Email : odlima@defensoria.gob.pe

LORETO

Oficina Defensorial de Loreto

Dirección : Jr. Loreto N° 469 - Iquitos [Loreto]

Teléfono : 065-224185 / 065-224189 065-235450

Representante : Lisbeth Castro Rodriguez

Email : odloreto@defensoria.gob.pe

MADRE DE DIOS

Oficina Defensorial de Madre de Dios

Dirección : Jiron Loreto N° 148

Teléfono : 082-572143 082-571992

Representante : Guimo Nemesio Loaiza Muñoz

Email : odmadrededios@defensoria.gob.pe

MOQUEGUA

Oficina Defensorial de Moquegua

Dirección : Calle Siglo 648,Cercado Moquegua

Teléfono : 053-462908 053-464359

Representante : Manuel Ricardo Amat Llerena

Email : odmoquegua@defensoria.gob.pe

PASCO

Oficina Defensorial de Pasco

Dirección : Jirón Rockovich N° 95 - San Juan, distrito de Yanacancha

Teléfono : 063-423533 063-422378

Representante : Raquel Olga Álvarez Peña

Email : odpasco@defensoria.gob.pe

PIURA

**Oficina Defensorial de Piura**

Dirección : Calle Los Tamarindos D -19, Urb. 4 de enero - Piura

Teléfono : 073-307148 / 073-304142 073-307147

Representante : César Augusto Orrego Azula

Email : odpiura@defensoria.gob.pe

PUNO**Oficina Defensorial de Puno**

Dirección : Av. La torre N°687, Puno

Teléfono : 051-369183

Representante : Jacinto Ticona Huamán

Email : odpuno@defensoria.gob.pe

Módulo de Atención de Juliaca

Dirección : Jr. Piura N° 343 - Urb. La Rinconada [Juliaca]

Teléfono : 051-324389 051-328690

Representante : Oscar Quispe Huaraya

Email : majuliaca@defensoria.gob.pe

SAN MARTÍN**Oficina Defensorial de San Martin**

Dirección : Jr. 2 de Mayo N° 752 Barrio Lluyllucucha - Moyobamba [San Martín]

Teléfono : 042-563579 042-561305

Representante : Janet Emilia Álvarez Quispe

Email : odsanmartin@defensoria.gob.pe

Módulo de Atención Tarapoto

Dirección : Jirón Ramírez Hurtado N° 691-693 [Esquina con Av. Circunvalación] - Tarapoto [San Martín]

Teléfono : 042-521318 042-525235

Representante : Ausberto Santiago Tamay Silva

Email : matarapoto@defensoria.gob.pe

TACNA**Oficina Defensorial de Tacna**

Dirección : Calle Tacna N° 412 - Tacna

Teléfono : 052-247605 052-247605

Representante : Edward Percy Vargas Valderrama

Email : odtacna@defensoria.gob.pe

TUMBES**Oficina Defensorial de Tumbes**

Dirección : Calle José Galvez N° 211

Teléfono : 072-525434

Representante : Abel Chiroque Becerra

Email : odtumbes@defensoria.gob.pe

UCAYALI**Oficina Defensorial de Ucayali**

Dirección : Jr. Libertad N 144- distrito de Calleria, provincia de Coronel Portillo

Teléfono : 061-577934 061-578633

Representante : Nicolas de la Cruz Fernandez Baca

Email : oducayali@defensoria.gob.pe

CUSCO/ESPINAR:**Defensoria del Pueblo - Cusco**

Dirección : Calle San Miguel N° 273 - Cusco

Teléfono : 084-240963 084-240998



Representante : Rosa Emperatriz Santa Cruz Córdova
Email : odcusco@defensoria.gob.pe

Organismo de Evaluacion y Fiscalizacion Ambiental [OEFA] - Espinar
Calle Arequipa N 301

Secretario Convenio Marco de la Municipalidad Provincial de Espinar - Espinar

Capacitation

Centro Peruano de Estudios Sociales [CEPES]
<http://www.cepes.org.pe>

Madre Coraje
<https://www.madrecoraje.org>

FONAM [Fondo Nacional del Ambiente - Perú]
<http://fonamperu.org.pe>
<http://fonamperu.org>

Advocacy

GRUFIDES
<http://grufides.org>

Oxfam Peru

Director de País - Frank Boeren: FBoeren@OxfamAmerica.org

Coordinadora regional de Políticas y Campañas - Alejandra Alayza: AAlayzam@OxfamAmerica.org

Coordinadora de Programa - Christine Benoit: benoitc@oxfam.qc.ca

Coordinadora Respuesta Humanitaria y Reducción de Riesgos

Elizabeth Cano: ECano@OxfamAmerica.org

Coordinador Programa Regional de Industrias Extractivas - Vladimir Pinto: VPinto@OxfamAmerica.org

Coordinador de la campaña CRECE - PERU - Ricardo Torralba: RTorralba@oxfamintermon.org

Responsable Proyecto Regional CRECE UE - Giovanna Vasquez: GVasquez@OxfamIntermon.org

Calle Diego Ferré N° 365, Miraflores - Lima 15



National/International Institutions

Equator Principles

Extractive Industries Transparency Initiative [EITI]

Global Reporting Initiative [GRI]

Organismo Supervisor de la Inversión en Energía y Minería [OSINERGMIN]

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Note: For more information about this guide, please contact Professor Jenik Radon at jr2218@columbia.edu



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The Appendices



Photos on Previous Page

Clockwise from top left corner

1. Capstone team member Nicolas Leon meets with Robinson Renxon, Regional Director of Energy and Mines, in Cusco to discuss the capstone project and mining rights in Peru.

Photo courtesy of Nicolas Leon

2. Capstone team members Virginia Burgess and Ariana Bazalar are pictured here conducting an interview live for a simultaneous radio and local television broadcast in San Marcos regarding the capstone project. The capstone team in the Ancash region was able to meet with local radio personality and social commentator who invited the team to talk on his show the morning after their initial interview.

Photo courtesy of Mrig Mehra.

3. A statue of Jesus holding the cross sits atop peaks that open up to a verdant valley on the way from Huaraz to San Marcos. The elevation at this part of the road is over 4,500 meters.

Photo courtesy of Mrig Mehra.

4. Capstone team members Myrian Smith, Palvasha Shahab, Marcelo Alzamora, and Nicolas Nicolas Leon meet with the former President of Peru Pedro Pablo Kuczynski to discuss the capstone project.

Photo courtesy of the President's Office of the Government of Peru

5. Stef Castillo (from Universidad Peruana de Ciencias Aplicadas) and Columbia capstone team member Fabian Zetina meet with Peter Jahnsen of Defensoria del Pueblo in Cusco to discuss human rights in mining communities in Peru.

Photo by Mia Brill

The Team



Columbia SIPA, MPA '18

Human Rights and Humanitarian Policy

Regional Specialization in Latin America

Marcelo is a human rights and Latin American policy specialist, and was particularly drawn to the project because of the potential the mining industry has in being a positive changemaker in Peru, and its clear relationship with economic development and human rights considerations. He plans to continue working closely with the public sector in issues related to mining, specifically in strategic planning and community affairs.

Contact: ma3579@columbia.edu

Marcelo

Alzamora

Peru

Columbia SIPA, MPA '18

Human Rights and Humanitarian Policy

Gender and Public Policy

University of Pennsylvania, BA Political Science, '12

Mia is a human rights and women's rights professional who has worked at international and New York City-based human rights and public interest organizations. She plans to attend law school after SIPA and to work in public interest law.

Contact: mab2381@columbia.edu



Mia Brill

USA



Columbia Law School, LLM'18

Virginia is a British solicitor who trained at international law firm Allen & Overy LLP where she qualified as an associate into the firm's world-renowned project finance practice working on multi-million pound financings in the energy and infrastructure sectors. After over five years at the firm including time in the Budapest and Sydney offices, she transitioned into the UK film industry to work for the British Film Institute as an in-house film financing lawyer working on multiple feature films including human rights documentaries, an area of particular interest after completing a Certificate in International Human Rights Law and Practice at The London School of Economics in 2016. The project was an excellent opportunity for her to combine both her project finance experience and her enthusiasm for human rights.

Contact: vcb2113@columbi.edu

Virginia

Burgess

UK

Columbia SIPA, MPA '18

International Security Policy

Conflict Resolution

Diego Filiu is an American-born aspiring French diplomat. He lived in Syria, Tunisia, and France before leaving for the U.S. where he studied Political Science and Middle Eastern Studies at Columbia University. He then went on to study Security Policy at SIPA. Diego has worked in French Embassies across the Middle East, as well as at Eurasia Group.

Contact: df2514@columbia.edu



Diego

Filiu

France/USA

Duke University, MEM '12
Environmental Economics and Policy
Hertie School of Governance, MIA '18
Security and Sustainability
Columbia SIPA, MPA '18
Energy and Environment
International Organizations and UN Studies

Carl has worked on social and environmental justice issues including education, energy, and analytics in private industry and public service. Contact: chm2137@columbia.edu



**Carl
Mackensen
USA/Germany**



**Mrig
Mehra
USA**

Columbia SIPA, MPA '18
Environmental Policy and Management
Middlebury College, BA in Political Science & Economics, '13
Mrig is an environmental policy and community development professional. He worked at a rural high school with the Peace Corps as an English Language and Community Development Specialist in Mongolia for 27 months before attending SIPA. At SIPA Mrig organized waste management initiatives with the Environmental Coalition and worked with the New York City Department of Sanitation on their city-wide composting program as a graduate intern.
Contact: mrigmehra@gmail.com

LLM '18, Columbia Law School
Human Rights Fellow 2017-18, Human Rights Institute, Columbia Law School
Palvasha is a social justice and human rights lawyer who is keen on third world perspectives, globalization, and public international law. She has worked on the disruptive impact of coal mining in Pakistan. After having gained some civil litigation experience at MCAS&W Law Associates in Karachi, she was managing operations for Sindh province at the Human Rights Commission of Pakistan before arriving at Columbia Law School.
Contact: ps3007@columbia.edu



**Palvasha
Shahab
Pakistan**



**Myrian
Smith
Spain/USA**

Columbia SIPA, MIA '18
Energy and Environment
Conflict Resolution
Rensselaer Polytechnic Institute, BS in Biology, '11
Myrian is a United States Naval Officer who is attending SIPA as a United States Navy Fleet Scholar. She has a vested interest in energy and environment with a focus towards international justice. She will return to the Navy after SIPA to continue her career as a professional surface warfare officer.

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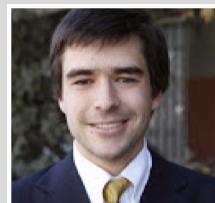
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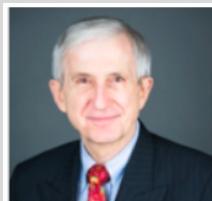
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