SECURING COMMUNITY ACCEPTANCE IN NATURAL RESOURCE RICH AREAS

COLOMBIA

AND PERU

Columbia University School of International and Public Affairs

2020 CAPSTONE GROUP

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AGREEMENT: COMMUNITY PARTNERSHIP AGREEMENT

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CALLING FOR A PARADIGM SHIFT

Securing Community Acceptance in Natural Resource-Rich Areas Through a Community Partnership

Equitable development shouldn't be a privilege. It should be canon.

The prosperity enjoyed by the privileged has, among other things, been fueled by the successful harnessing of mineral and natural resources. Ironically, the people living right above mineral and fossil-fuel deposits have generally been left out of the prosperity equation, and, unfortunately, most have even suffered because of it. While minerals and fossil fuels have powered development in some parts of the world, other parts have been left with open mines, unrestored lands, polluted waters, and devastated livelihoods, which have had long-term—if not permanent—repercussions on surrounding communities. We, the 2020 Columbia University Capstone Team, support these peoples and communities in changing the approach to the contemporary culture of development through our work with the governments of Peru and Colombia. We call for a cultural paradigm shift that advances the Corporate Social Responsibility (CSR) and Environmental, Social, and Governance (ESG) standards—that both the public and private sector are increasingly incorporating in their growth strategies—through the establishment of an agreement that puts the communities on comparable, if not equal, footing with the companies and the government: **the Community Partnership Agreement**.

The Tía María copper mine of the Arequipa region of Peru is the poster-child of what has gone wrong in Latin America. Stalled for more than ten years, the Tía María project, a \$1.4 billion dollar investment from the Mexican-owned Southern Copper, expected to initiate construction in the Tambo Valley of Arequipa—a productive area that accounts for the vast majority of the agricultural and fishing activities of the region—in 2009.¹ Multiple disturbing Environmental Impact Assessments (EIAs), the first reviewed by UNOPS with 138 observations and the last called "insensitive to the communities" by the former ministers of mines and environment themselves,² coupled with the devastating environmental footprint of Southern Copper and its records, which evidenced corruption, in the country, triggered overwhelming opposition by the communities of the valley. For the past number of years, the farming communities have endured tumultuous strikes, police and army repression—leaving more than six dead—and the imposition of a project that brings no benefit to them but is one that the Ministry of Mines is willing to support.

For more information about the community of Tambo and the Tía María Project, see Peru's Tía María Mining Conflict: Another Mega Imposition, Truthout Organization, June 2015. https://truthout.org/articles/peru-s-tia-maria-mining-conflict-another-mega-imposition/; As Anti-Mining Protests Escalate, Peru's Vizcarra Sides with Mining Companies, World Politics Review, December 2019, https://www.worldpoliticsreview.com/articles/28403/as-anti-mining-protests-escalate-peru-s-vizcarra-sides-with-mining-companies; and Arequipa Governor Defends Tía María Mine Protests, Andean Air Mail & Peruvian Times, July 2019. https://www.peruviantimes.com/19/arequipa-governor-defends-tia-maria-mine-protests/31498/. Interview with former ministers of Mines and Environment Carlos Herrera and Ricardo Giesecke respectively, and

Interview with former ministers of Mines and Environment Carlos Herrera and Ricardo Giesecke respectively, and congressman from Frente Amplio, Marco Arana, Ideele Radio, July 2019, https://www.youtube.com/watch?v=KCcdgpZQpl8. Although the construction license was granted in 2019, the company and Peruvian president were forced to acknowledge the increasing social unrest, conceding that there would be no green light without the communities' consent.

Likewise, the northern Andes region of Cajamarca has endeavored to address its own mining mistakes in light of the lessons learned from Tía María to promote Peru's Mining Vision 2030, a groundbreaking new set of standards for the mining industry. Neighboring Colombia has taken inspiration from Cajamarca's ambitious project given that it has no shortage of mining-related social conflicts itself; the northeastern-most department of La Guajira, already damaged by civil war, has also been devastated by the draining or rerouting of water sources, the deterioration of air quality, and the displacement of indigenous communities, all in the pursuit of a profitable international coal-exporting business. This environmental and social distress simply cannot continue.

In a startling 2014 report entitled *Business risks facing mining and metals*, Ernst & Young states:³

"A failure of the controls can quickly put an organization into crisis... More importantly, it can also take a long time to restore the credibility required to regain acceptance by stakeholders, resulting in further delays and impacts. As part of providing acceptance, local communities and broader stakeholders **expect that an operator will act responsibly, deliver on their commitments** and provide an equitable share of the benefits that the operation generates. Operators need to acknowledge concerns such as equitable land access, environmental damage and the ongoing impact of large multinational companies on local economies" [emphasis added].

The need for greater community engagement, or at the very least more responsible development practices and activities, is far from new. And yet little has changed since 2014. Statements like the one published by Ernst & Young have been shelved, left to gather dust or watered down over the years. This fact highlights the serious but necessary need to nail down basic principles of human rights.

The question that then arises is how to re-mold development standards so that everyone benefits. The answer is not an easy one in that it requires not merely a framework shift, but rather, a cultural one. In contrast to the likes of a "Social License to Operate" (SLO), "Prior Consultation" (known as *consulta previa* in Spanish), or "Free Prior and Informed Consent" (which typically applies to indigenous communities only, leaving other marginalized peoples out), the Community Partnership Agreement was purposefully designed for its emphasis on a <u>partnership</u>. As the name suggests, we propose that communities become partners in the projects being developed on, and in, the vicinity of their lands. In order for the promises of companies and governments to be binding, they must be set forth in a binding agreement that specifies what the community will gain from its cooperation with the project and how it will participate in setting development

³ Ernst & Young, Business Risks Facing Mining and Metals 2014–2015, 2014, pg.16.

standards;⁴ how the company and/or the government, as applicable, will ensure that the community is in no way harmed from project development; and what the penalties are for failing to deliver on those promises.

The Government is incorporated into the Community Partnership Agreement as a signatory explicitly siding with the Community both during and after negotiations with the Project Company and its Parent Company, as required. A government should fulfill its higher commitment, namely supporting the community they were elected to represent. Sitting on opposite sides of the negotiating table does not mean that development isn't one of the primary goals of the government. On the contrary, the government is also expected to aid in the project's development given that positive economic activity is in all parties' interests.

The community's new role as partner has multiple positive implications. Tripartite engagement in development is a step toward rebuilding the foundation for trust amongst communities, their governments, and the corporations entering and profiting off their lands; helping decrease, if not eliminate, the risk of social conflict; ensuring the environmental integrity of development; and supporting beneficial outcomes for all parties. As such, the community is guaranteed a participatory say in development regardless of race, ethnicity, language, or residential status.

We admit that this paradigm shift pushes the envelope and may be considered controversial by some, but our goal is to ensure that sustainable natural resource development can be undertaken, with benefits for all. To achieve this, however, requires that communities have more of a voice than they have had in the past, given that previous development models have disregarded communitites' input and failed to protect these people and their lands. In expanding global operations, multinational corporations move onto community property—regardless of their status as legal, historical, or cultural lands—and in doing so effectively become a part of the community and their lives. Furthermore, the project will inevitably leave a "significant physical footprint" on the project development site and, consequently, disrupt the lives of the communities living there.⁵ Since the company's dayto-day operations encroach on the community, it should not be a stretch for the community to become a true legal partner in the company's project. In fact, corporations stand to benefit from this model: they can improve long-term financial sustainability, investor confidence, public perception, and thus market value. This is becoming ever more important as the next generation of leaders incorporates CSR, ESG, and social impact initiatives into Concept adapted from the context of pipeline construction in transit nations: "I am a lawyer and in order to make promises binding, the benefits that TAP AG claims will be provided should be set forth in a binding agreement, which clearly specifies what the benefits will be and set forth penalties for failure to deliver on those promises." From English translation of: "Gazsjellësi TAP, ja pse Shqipëria ka negociuar keq, përfitimet minimale," Monitor, last modified Sept. 25, 2016, http://www. monitor.al/gazsjellesi-tap-ja-pse-shqiperia-ka-negociuar-keg-perfitimet-minimale/.

5 Concept adapted from the context of pipeline construction in transit nations: "Naturally, it should follow that the transit nation should reap benefits from granting such privilege to a pipeline company, especially as it is most likely that the pipeline will have a significant physical footprint in the transit country and disrupt the lives of communities through which it is built." From English translation of: "Gazsjellësi TAP, ja pse Shqipëria ka negociuar keq, përfitimet minimale," Monitor, last modified Sept. 25, 2016, http://www.monitor.al/gazsjellesi-tap-ja-pse-shqiperia-ka-negociuar-keq-perfitimet-minimale/.

their business models.

Indeed, the private sector has begun to realize the need to incorporate such risk factors into their "risk-adjusted returns" and commit to sustainability. At the begging of the year, the CEO of world's biggest asset manager, BlackRock, focused his annual letter to investors on sustainability:

Over time, companies and countries that do not respond to stakeholders and address sustainability risks will encounter growing skepticism from the markets, and in turn, a higher cost of capital. Companies and countries that champion transparency and demonstrate their responsiveness to stakeholders, by contrast, will attract investment more effectively, including higher-quality, more patient capital.⁶

While the E and G in ESG investing have been more formally incorporated into legal processes, the same cannot be said for the social (S) component, which has now taken the spotlight with the COVID-19 pandemic. Acknowledging that the lines between the environmental, social, and governance criteria are easily blurred and that social impacts are often ripple effects of environmental ones, we make central to this partnership yet another paradigm shift: the concept of the Cumulative Impact Assessment (CIA). Normally, companies must conduct Environmental Impact Assessments (EIA) for each project they plan on developing on an individual basis and, in some cases, a prior consultation (consulta previa) process. What is often overlooked, however, is that while a single project may appear to have negligible consequences on environmental health or on a given community, the sum of multiple or all projects in a region may significantly breach environmental standards. For the sake of environmental and social health and wellbeing, environmental standards need to become stricter and the overseeing regulatory framework much tougher. Both companies and governments must acknowledge that the negative environmental and social consequences of development are usually the sum of its various parts. Taking a step further, companies should also be required to remedy any environmental damage arising from its activities, whether foreseen or unforeseen, and will require the involvement of the Parent Company as guarantor of its subsidiary; communities should not be left to live with the mistakes of the foreign corporation.

Furthermore, we recognize that the social problems that may arise from a project's development may not be rectified by technical or financial solutions. Instead, social problems require social solutions. For this, we propose that the Community Partnership Agreement come accompanied with a Sustainable Development Plan that is designed by the community in collaboration with the government, and is supported by a Social Wealth Trust Fund funded by the taxes and fees levied on the Project Company.

This Social Wealth Trust Fund is similar in form to sovereign wealth funds around <u>the world that are maintained by royalties on extractive/natural resource activities</u>, and <u>Fink, Larry, "A Fundamental Reshaping of Finance," January 2020, https://www.blackrock.com/corporate/investor-re-lations/larry-fink-ceo-letter</u>. one of the key purposes of this fund will be to carry out the development objectives of the Social Development Plan to the benefit of the communities most impacted.

This new model for global development practice expands beyond the field of energy and extractives and applies to all development projects. But before it can be applied, it must be fine-tuned. Because of the 2020 global coronavirus pandemic, the 2020 Capstone Team was regrettably unable to carry out its full research plan, but we look forward to the work and progress of our successors. We hope that future Capstone Teams will use our model to gain traction on the ground, namely by (1) testing the Community Partnership Agreement draft with local communities; (2) confirming key stakeholders' perceptions and expectations of project development; (3) suggesting preliminary business plans that incorporate community demands vis-a-vis development strategies; and most importantly, (4) delving further into the issue of land rights and land concessions that the government grants to private companies, which lay the foundation of legal enforceability of contracts and agreements. We are confident in this new trajectory for global development practice and excited to see our Columbia colleagues improve on this concept in the upcoming years. Until then, we implore you to genuinely consider the recommendations of this Capstone.

In an effort to make our proposal and all it entails clear, we have structured this report in the following way.

- 1. We first provide context to our two case studies: Peru and Colombia. It is important to note that our Capstone consists of two cases and one mission. The Peru Capstone has been multiple years in the making. During this time, the country has pioneered a consultation process to protect mining-adjacent communities from irresponsible practices that deteriorate environmental and community well-being. Colombia has expressed interest in learning from its neighbor in light of both its history with extractives and an upcoming energy transition. While the Colombia case will benefit from the progress made on community Partnership Agreement in the framework of renewable energy development, as would be the case in Colombia. We provide greater historical context, particularly pertaining to the destructive history of extractives, for both countries. This will make it clear why a Community Partnership Agreement is critical for both countries.
- 2. We then provide a template Community Partnership Agreement that builds on the draft crafted by our predecessors. We have both refined this document and included a number of new concepts into this agreement.
- 3. The ensuing chapter provides three separate guidebooks, one for the community, one for the government, and one for the private-sector project developer. Each of these guidebooks serve as a resource on how to understand the Community Partnership Agreement and how to work together with the other two parties to the agreement. It explains the key concepts of the paradigm shift as relevant to each party and provides a

question-and-answer section to address any unclear concepts. They are written in a way so that each can also function as standalone documents.

- 4. Additionally, to help foster community acceptance of new projects in both countries, we propose the adoption by companies of a human rights approach to community engagement. Chapter 5 highlights some of the most traumatic events suffered by various communities, indigenous groups included, and how these past grievances affect the trust these communities will put into any future Community Partnership Agreement. As a solution, ten recommendations are provided to overcome these challenges and engage in a community engagement process that is truly respectful of their human rights.
- 5. The report ends with metrics and indicator matrices that can be used as a guide for development standards that are to be met over the course of a project's lifetime. This toolkit is based on guidelines and key concepts published by the International Finance Corporation of the World Bank Group and as per the United Nations Sustainable Development Goals. At no point, however, do we quantify the metrics and indicators in this toolkit. Rather, the matrices serve as a preliminary list of key accountability measures that ensure equitable community development and monitor the results of project activities. This toolkit will be expanded upon by future Capstone teams and can be quantified on a project-by-project basis, as agreed to by the three project partners.

The content in this Capstone is meant to be "adopted and adapted," meaning that each proposal must be appropriately tailored to the local context. These are not "one-sizefits-all" solutions; we put forth new approaches to the issue of development and community engagement with the expectation that they will be integrated and implemented in a manner that assures an enforcement mechanism that has teeth.

The past cannot dictate the future because it is riddled with problems, and first among them, is private enterprise's failure to take into account the social impact of its activities. Continuing to do so would be irresponsible in terms of the economic viability and sustainability of a project, as well as feckless in its contributions to society. Hence the imperative for a comprehensive strategy for development in which all stakeholders have a seat at the table with a new mindset and bold approach.

BUILDING ON WORK BEFORE US

Using previous Columbia University Capstones as stepping stones for the future

Over the last seven years, Columbia University students have embarked on securing community interests in resource-rich areas. This capstone team has taken the research conducted in the following capstones, and due to the COVID-19 crisis, the students of the 2020 Capstone team want to especially thank the students before them for paving the way for this year's report.

2014: Colombia: Extractives for Prosperity

2015:

Mining in Peru: Benefitting from Natural Resources and Preventing the Resource Curse

2016:

The Peruvian Mining Sector: Exploring Issues Related to Social License, Corruption and the Trans-Pacific Partnership Treaty

2017:

MINING, SOCIAL LICENSE AND CONFLICT PREVENTION

2018:

Community Partnership Agreement: Securing Community Consent in Mining Areas in Peru

2019:

MINING VISION 2030: MAKING IT A REALITY



INTRODUCTION TO PERU: Securing Community Acceptance in Natural Resource Rich Areas in Peru

I. Cajamarca: more history of coexisting with mining

Located in northern Perú, Cajamarca is a region that has been invaded by mining companies for a long time. One of the most famous mines in the region is the Yanacocha mine, which started its operations in the early 90s. The Yanacocha mine, property of the Yanacocha Mining Company, is the largest gold mine in Latin America. Nevertheless, the region where this precious metal is extracted is the poorest region in the country. In 2013, 52.2 percent of the people in Cajamarca were living in conditions of poverty.¹

The project of the Yanacocha gold mine carries several social and environmental conflicts since its initiation. From the start, local people complained that the process of selling their lands had not been fair. Most of the people were not familiar with the process and legal terms of selling their lands, and were not aware that they would not be able to use their lands after selling them. Moreover, they were given false expectations about the project; company employees assured locals that they would be able to return to their lands in a few years. Additionally, the mining process was not thoroughly explained to the locals, as they had the perception that the mine consisted of "a few holes in the ground" and that they would be able to continue with their normal agricultural activities.² Another important aspect that needs to be noted is that these communities were not categorized as indigenous in the project's Environmental Impact Assessment (EIA), even though they met the definitions of an indigenous community. As they were lacking this classification, the companies and the government did not respect the specific rights that indigenous communities should have been granted.

In terms of the environmental impact, the Yanacocha mine has seriously affected the bodies of water that the communities used for agricultural irrigation. An investigation into the water quality of the mine area's rivers and streams found that the mine consistently breaches World Health Organization and Peruvian Ministry of Energy and Mines standards for a wide range of potential contaminants. Of major concern are fecal coliforms and copper present in levels, 160,000 times and 10 to 20 times higher, respectively, as compared to WHO standards.

After having this tragic experience with the mining industry, it is understandable that the local communities of Cajamarca are rejecting the arrival of new mining projects. The way companies approached the communities with false expectations and a lack of

 [&]quot;INEI: Región Cajamarca Se Convirtió En La Más Pobre Del Perú En El 2013 | America Noticias," accessed May 6, 2020, https://www.americatv.com.pe/noticias/actualidad/inei-region-cajamarca-se-convirtio-mas-po-bre-peru-2013-n134358.
Shanna Langdon, "Peru's Yanacocha Gold Mine: The IFC's Midas Touch?," n.d., 8.

empathy earned the companies the mistrust of the locals and the loss of their legitimacy as a respectful partner.

In 2011, when the Yanacocha Mining Company announced the construction of the Conga project, an open-pit gold mine, it was logical that a social conflict would arise. The proposed project would be located at the head of the water basin for the provinces of Celendín, Cajamarca and Hualgayoc, and would require draining four lagoons (Perol, Azul, Mala, and Chica) to make way for the infrastructure of the mine. The company planned to construct four artificial reservoirs to compensate for the loss of the lagoons. One of the reservoirs, Chailhuagón, was inaugurated in 2013, even though the Conga project was suspended in November 2011 due to public opposition to the project.³

The company claimed that these reservoirs would store twice the amount of water that the lagoons collected, and this water would be distributed to the impacted communities. However, the project's EIA did not categorize the Mamacocha lagoon as an "area of influence", and the Yanacocha Mining Company insisted that the lagoon was not going to be affected. Nevertheless, in campaigns against the mine, Mamacocha was pronounced as 'God's creation', or as water that nourishes the land, the crops, and local families. Mamacocha came to play an important role in the Conga conflict because of its significance for local people as a source of vitality that nourishes the land, the crops, and local families.

It has been more than eight years since the Yanacocha Mining Company announced the Conga project and, until this day, the company and the communities have not been able to meet a mutual agreement. This case is proof that the communities reject the mining projects, the fact that the Conga project has been stopped also shows the power that local communities have gained over their lands. Companies must change the way they are used to doing business if they want to continue making profits from the natural resources of the Cajamarca region.

II. Tía María: "Agro Si, Mina No" ("Agriculture Yes, Mining No")

Community acceptance is critical throughout the life cycle of a project. In the south of Peru, Tía María has demonstrated that the lack of a trustworthy relationship with the community can dictate the social viability of a project. Stalled for more than a decade, the Tía María project, which at one time was expected to transform Southern Copper into one of the top three producers of copper in the world,⁴ has been marked by an overwhelming opposition from the local community of the Tambo Valley in the Arequipa region. This \$1.4 billion dollar investment, expected to initiate construction in 2009. However, after producing a flawed EIA in 2011—which was later reviewed by the United Nation Offices of Project Services (UNOPS) with 138 observations—it lost all chances of gaining community acceptance. Among the most serious observations of the UNOPS report were that "the EIA did not present a hydrogeological study, that the water to be used Adriana Paola Paredes Peñafiel and Fabiana Li, "Nourishing Relations: Controversy over the Conga Mining Project in Northern Peru," Ethnos 84, no. 2 (March 15, 2019): 301-22, https://doi.org/10.1080/00141844.2017.1410490.

would not come from the sea as claimed but rather from an estuary—a very sensitive area due to the diversity of species present and its shallowness—and that the EIA did not take into account the planned extraction of gold," which requires a more dangerous extraction process that involves mercury.⁵ The mistakes were repeated in 2014, when the government and the company refused to have the new EIA reviewed by an independent party like UNOPS. The lack of transparency and honesty, coupled with Southern Copper's devastating environmental footprint and corrupt track record of its other operations in Peru, aggravated the already negative image of the company, which to this day overshadows the attempts of Southern Copper and the Peruvian Ministry of Energy and Mines to push the project through.

For the past years, the communities of the Tambo Valley have endured tumultuous strikes, police and army repression—leaving more than six farmers dead—and the imposition of a project that brings no benefit to the people but that the ministry seems willing to impose at any cost. In effect, the communities fear the destruction of their economic structure, which desperately needs water to survive. Indeed, the Tambo Valley area accounts for 90 percent of the agricultural and fishing activities that feed the region—an industry that employs fifteen thousand families in the area and produces a profit of around \$100 million dollars a year.

Today, after ten years of attempts to call out fraudulent "dialogue" and even the criminalization of community leaders,⁶ Southern Copper and the Peruvian executive branch were forced to acknowledge the increasing social unrest, conceding that the project could not progress without the communities' consent—even though the construction license was granted in July 2019. For their part, the communities still reject Tía María and confirmed this posture by electing in 2018 a new regional governor, Elmer Caceres Lilca, who openly opposes the project.

Leaving aside the politicization of the project, in the end, the communities' slogan "*Agro Sí, Mina No*" ("Agriculture Yes, Mining No"), speaks for itself. The reopening of the debate around Tía María is a new opportunity for the government to make things right by designing a plan with the community and Southern Copper to further the company's activities in a way that benefits the community and conserves their way of life.

A New Business Model for Mining

Our research has identified certain mining projects in the Cajamarca region that, at the moment, are in a planning stage. The projects El Galeano, La Granja, and Michiquillay gather a total investment of USD \$1.1 billion,⁷ and until this moment, they have not

⁵ Peru's Tía María Mining Conflict Another Mega Imposition, TruthOut, June 2015. https://truthout.org/articles/peru-s-tia-maria-mining-conflict-another-mega-imposition/#a8

⁶ Agro sí, mina NO!' the Tía Maria copper mine, state terrorism and social war by every means in the Tambo Valley, Peru, Alexander Dunlap, Center for Development and the Environment at the University of Oslo, Norway, February 2019. https:// www.sciencedirect.com/science/article/pii/S096262981830341X

^{7 &}quot;Cartera de Proyectos de Construccion Minera" (Ministerio de Energias y Minas, September 1, 2019), http://www. minem.gob.pe/minem/archivos/file/Mineria/INVERSION/2019/CP2019-SET2019%20ESP.pdf.

been granted the concessions to start operations. The concessions for mining projects are given by the Peruvian central government. These three projects represent a great opportunity for the local and regional governments of Cajamarca to formalize the social license concept—the equivalent of *consulta previa*, or Free, Prior and Informed Consent (FPIC) process—in the mining industry through the application of a Community Partnership Agreement (CP Agreement), explained in detail in following chapters.

Peru has a long history in the mining industry, this history has proven the need for a change to how mining companies do business in the country. It has taken a long time for companies to realize that they need to not only have the consent of the people, but also to have their support to achieve successful projects. This support can be achieved by creating partnerships with the communities, where all parties (the Project Company, Communities, and the Government) commit to an agreement that is beneficial for everyone. In order for this partnership to be a reality, the companies must indeed view the communities as *partners*, whose opinions and needs matter just as much as their profits. Therefore, the companies have to promote the economic and social development of the region by financing different projects that are not related to the mining industry, such as agriculture, textiles, farming, tourism, etc, as determined by the Community's Sustainable Development Plan (elaborated on later).

Far from losing touch with the social reality, the Peruvian Government has demonstrated interest in transitioning towards a new mining model. Since 2015, government officials have engaged with Columbia University Capstone Teams on a yearly basis, to produce academic research and actionable recommendations that deliver real "progress and development". Most recently, the administration of Martín Vizcarra launched the laudable Mining Vision 2030, commissioned the roundtable dialogue on regional development at Arequipa, and argued against the construction of Tía María in terms of the social license.⁸ Leaders supporting a more sustainable mining model have also come to the fore, such as Governor of Cajamarca Mesías Guevara. This suggests that the impediment to start the transition towards a new mining model is not the lack of government drive for change but the widespread harm, mistrust and disappointment that lead local communities to actively oppose the development of new mining projects.

Though social conflict against abusive mining activities is legitimate, the Peruvian Government cannot remain unmoved either and roadblock the future of the mining industry to appease protesters. Past mining experiences openly show how things can go wrong and such tragic incidents cannot not be allowed to be repeated ever again. But the past should not dictate the future of the country, particularly in a context of poverty and underdevelopment which will be accentuated further during and after the COVID-19 pandemic. Local communities, the government of Peru and mining companies face the

⁷Visión de la minería en el Perú al 2030," Ministerio de Energía y Minas, last modified Feb. 2019, https://www.minem. gob.pe/_publicacion.php?idSector=9&idPublicacion=583; "Tía María: Vizcarra espera que mesa de diálogo inicie "en los próximos días"," Gestion, last modified Jun. 29, 2019, https://gestion.pe/economia/tia-maria-vizcarra-espera-mesa-dialogo-inicie-proximos-dias-271762-noticia/; "Martín Vizcarra dice que Tía María no va en su gobierno: "No están dadas las condiciones", RPP, Jan. 29, 2020, https://rpp.pe/politica/gobierno/tia-maria-martin-vizcarra-dice-que-proyecto-minero-no-va-ensu-gobierno-no-estan-dadas-las-condiciones-noticia-1242550.

imperative of adapting and adopting a new mining model that benefits all stakeholders. The predatory practices and extractive mindsets from the past must give way to a CP Agreement that responds to the needs of the Peruvian society, environment and economy.

We acknowledge that the proposed CP Agreement is a bold and new concept. But we firmly believe that a paradigm shift is needed to move forward the unrealized promise of "progress and development". The CP Agreement is envisioned as a binding contract under Peruvian law with rights and obligations for its signatories, these being representatives from the local communities, central and regional governments, and mining companies. The new paradigm entails that the local communities must be treated as partners in the legal sense of the word, and have the right to development; the government must defend the interests of the local communities and oversee enforcement of the agreement; and mining companies must behave as true corporate citizens sharing the responsibility to strengthen the social, environmental and economic conditions of the regions where they operate.

Our report is based on new desk research and expert interviews conducted from abroad, and also builds upon previous Capstone reports. The report contains a CP Agreement template and a set of Guidebooks that explain the proposed legal contract in more accessible formats and language to different audiences. We designed these materials with a pragmatic approach in mind, and we urge representatives from the local communities, central and regional governments, and mining companies (referred to as Project Companies) to study our recommendations, use them for discussion and customize them accordingly. We hope that the proposed Community Partnership Agreement serves to advance the laudable Mining Vision 2030 and materialize a future where inclusive and sustainable mining represents an agent for development to the local communities, governments and mining companies across Peru.

Please see the Appendix for the original Mining Vision 2030 as well as quotes on Conga and on Tía María.

INTRODUCTION TO COLOMBIA: Securing Community Acceptance in Natural Resource Rich Areas in Colombia

Colombia's Constitution states that the government is the proprietor of the country's subsoil and natural resources. The concept of nationalized resources suggests that the citizens, as represented by their government, should reap the benefits of granting private companies access to the resources of their country. Yet, exploitation of these resources has often stripped communities of their livelihoods, degraded their health and environment, and stunted, rather than advanced, their development. To protect against such maladies and ensure that development projects truly advance the development of a country, region, or community, it is necessary to construct a community consultation process before the initiation of any development project. The government of Colombia currently charges its Ministry of Interior with the responsibility of overseeing the granting of a social license based on free, prior, and informed consent (FPIC)-a paradigm shift for engaging the community as a stakeholder in a development project. The process, however, lacks consistency, formality, and a legal enforcement mechanism. As the country embarks on a new development strategy under the administration of Iván Duque, the government recognizes an opportunity to improve the current community consultation process and avoid the mistakes of the past.

In this section, we introduce the Colombian Government's plan to push forward an energy transition, an ever increasing requirement in the face of impending climate change. Colombia, and the Department of La Guajira in particular, is resource-rich in terms of renewable sources of energy. And yet this very region of the country is likely to reject these responsible energy development plans due to the destructive history and relationship with coal mining. La Guajira has been one of Europe's main sources of coal since the 1970s, and while Europe and other importers benefited from this coal, communities in La Guajira bore the brunt of coal extraction. Communities are traumatized by the resulting local environmental degradation, displacement, and health consequences associated with the extraction and transportation of this fossil fuel. We endeavor for this introduction to highlight the need for a paradigm shift in project development in the context of Colombia.

Renewables: An Opportunity to Start Anew

The government's Mission for Energy Transformation (Misión de la Transformación Energética), launched in 2018, aims to diversify the country's energy grid by installing 1,500 MW of electricity generated from renewable sources by 2023—thirty times the country's current renewable installed capacity—and build three new transmission lines to fortify the interconnection system. This would allow the country to expand electricity

access to the approximately 3 percent of the population still without it, reduce costs from \$0.35 to \$0.28 per kilowatt-hour (kWh), and reduce reliance on hydroelectric power, which made up 80.3 percent of generation in the country in 2017. ¹The latter is especially vulnerable to the worsening climate change effects of El Niño, which caused a severe drought that nearly led to energy rationing between 2015 and 2016. Diversification of electricity generation would help alleviate such increasing stresses on the system.



Electricity Generation by Source, 1990–2017

Source: International Energy Agency, "Colombia," last accessed May 5, 2020, https://www.iea.org/countries/Colombia.

The country's northeasternmost province, La Guajira, has been the focus of renewable projects due to its immense solar and wind potential and thanks to vast swaths of desert land and its location on the west Caribbean coast. Data collected on radiation suggests the region has a greater capacity for harnessing solar power than either Japan or Germany, which are the second and fourth countries, respectively, with the most photovoltaic installations in the world. Furthermore, the World Bank estimates a regional potential of 18,000 MW of wind power, which could meet all of Colombia's energy needs twice over. The region's massive renewable energy potential is a result of the coast being at sea level, which allows it to pick up stronger winds nearer to the ground, while the flat terrain makes it much easier to install infrastructure.

Though the region appears to have the ideal conditions for the development of renewable energy projects, it is also home to the largest open-pit mine in the world, which has generated no shortage of social conflict and environmental devastation.

¹ Sustainable Energy Technologies and Assessments (Volume 36), "Assessment of solar and wind energy potential in La Guajira, Colombia: Current status, and future prospects," (December, 2019) by Gabriele Carvajal-Romoa, Mateo Valderrama-Mendoza, Daniella Rodríguez-Urrego, Leonardo Rodríguez-Urrego.

THE INDIGENEOUS COMMUNITIES OF LA GUAJIRA

There are nearly 1,374,000 indigenous people in Colombia organized into more than 90 groups and inhabiting 28.2 percent of national territory. La Guajira is Colombia's most ethnically diverse region, with 48 percent of the region's population made up of five different indegenous groups, including the Wayúu, Kinqui, Ika, Kogui, and Wiwa peoples.² The Wayúu are the primary indegenous group, making up 98 percent of the region's indigenous population. Although they have matrilocal settlement habits, they are a nomadic people, a point of contention with respect to proprietary land rights. Until the mid-1980s, most Wayúu territories were considered "empty" land. Those lands began to be titled as "reserves" in the mid-1980s and eventually came to include 21 dispersed reserves despite continuous disputes over additional lands, some of which were allocated to mining and hydrocarbon activity. We explain their plight in light of mining activities at Cerrejón.

CERREJÓN: FALSE PROMISES OF "PROGRESS AND DEVELOPMENT"

I. Cerrejón: A Brief History

According to the EIA, Colombia is the largest coal producer in Latin America with the second largest coal reserves in South America. It is also the location of one of the world's largest open coal pit mines and the largest in Latin America: Cerrejón. The largest producer is Carbones del Cerrejón Ltd., a consortium of Anglo-American, BHP Billiton, and Glencore Xstrata, each with 33.3 percent share.³ Colombia is considered a low-cost coal producer with highly sought clean-burning coal with a sulfur content of less than one percent.⁴ The graph below shows the primary export markets for Cerrejón's coal in 2017.⁵ Coal production in La Guajira taken together with the La Loma mines of the Cesar Basin (located south of Guajira) run by American company Drummond accounts for 90 percent of the country's total. Remaining production-designated for the domestic markettakes place in the vicinity of Bogotá in the departments of Boyacá, Cundinamarca, Norte de Santander, and Santander.⁶ Today, the Cerrejón mine produces about 30 million tons coal per year.⁷

The Cerrejón mine today is the product of numerous consolidations. Coal first

Carvajal-Romoa, Gabriele, et al. Assessment of solar and wind energy potential in La Guajira, Colombia: Current sta-2 tus, and future prospects. Sustainable Energy Technologies and Assessments, Volume 36 (December, 2019).

Xstrata is one of Glencore's subsidiaries. Glencore was one of the original companies engaged in coal mining in Co-3 lombia but was bought out by Xstrata in 2006. "Background Reference: Colombia," Country Analysis, U.S. Energy Information Administration, last modified Jan. 7, 2019, https://www.eia.gov/international/analysis/country/COL/background; "Carbocol and Intercor Coal Mine," Mining Technology, accessed Feb. 7, 2020, https://www.mining-technology.com/projects/cerrejon/. 4 "Background Reference: Colombia," Country Analysis, U.S. Energy Information Administration, last modified Jan. 7, 2019, https://www.eia.gov/international/analysis/country/COL/background.

⁵ "Economic Contributions 2017," Our Operation, Cerrejón Responsible Mining, accessed Feb. 8, 2020, https://www. cerrejon.com/index.php/nuestra-operacion/nuestra-empresa/?lang=en#.

[&]quot;Background Reference: Colombia," Country Analysis, U.S. Energy Information Administration, last modified Jan. 7, 6 2019, https://www.eia.gov/international/analysis/country/COL/background.

[&]quot;Sustainability Report 2017," 04.



came into the picture in the 1970s, when the Colombian government sought to tender 32,000 hectares of land in Cerrejón for coal production. Coal mining was, in fact, part of the national development strategy of the country, hence the government's continuous support of the industry even 40 years later.⁸ An Exxon subsidiary—International Colombia Resources Corporation (INTERCOR)—won the bid in 1975 and became operator of the El Cerrejón Zona Norte project in 1976, working with state-owned Carbones Colombianos S.A. (CARBOCOL). The license had a 33-year lifetime, covering the exploration (1977–1980), construction (1980–1986), and production (1986–2009) phases of the project, but was later extended to 2034.

Between 2000 and 2002, both INTERCOR and CARBOCOL sold their respective 50 percent shares in Cerrejón to BHP Billiton, Anglo American, and Glencore, all three of which already had separate mining projects in central and south Cerrejón.⁹ These companies were granted access to the Colombian coal sector because the government intended to both privatize the coal sector and obtain accurate geological surveys of coal reserves.¹⁰

⁸ Van Ackern, "When Mining Moves People: Development-Induced Displacement and Resettlement in La Guajira, Colomba," 145.

⁹ First, Anglo Coal and Glencore (amongst other entities, including Minorco) entered into a partnership in the Cerrejón Centrale open cast coal mine project. Cerrejón Centrale would later merge with Oreganal coal mines, then owned by Rio Tinto. Billiton would later buy out Rio Tinto's share in the project in 2000. The partnership was able to expand its presence in the region further with the acquisition of the Cerrejón South block, which was contracted to the partnership for 30 years by the Colombian government through state company Ecocarbon in 1997. Ecocarbon would later also award Drummond Coal, an American company, licenses to the Guaimaral and Descanso properties, adding to the company's operations in La Loma, Cesar. Today, Drummond is the second largest coal producer in Colombia after Cerrejón. Charles Kernot, The coal industry (Cambridge: Woodhead Publishing Ltd., 2000), chapter 9, 30-32; "Our history," Cerrejón Responsible Mining, accessed Feb. 8, 2020, https://www.cerrejon.com/index.php/nuestra-operacion/nuestra-empresa/?lang=en.

¹⁰ Charles Kernot, The coal industry (Cambridge: Woodhead Publishing Ltd., 2000), chapter 9, 31.

To advance this goal, CARBOCOL sold its stake in the project to the three project partners. This was done to fund the budget and was part of an economic reform required of Colombia by the International Monetary Fund.¹¹ It was the only government asset to be sold off in 2000 due to guerilla attacks and subsequent lackluster investor interest in the country's assets.¹²

In addition to coal assets, the three project partners also own CMC (Coal Marketing Company)—a Dublin-based marketing company set up to sell Cerrejón production worldwide—and have sole access to the 150-kilometer long railway connecting the mines to Puerto Bolivar, the largest coal-exporting port in the country.¹³



The Cerrejón Mine, Train Line, and Port in La Guajira

Source: "Sustainability Report 2017," Cerrejón Responsible Mining, Corporate Affairs and Communications Division, Dec. 11, 2018, https://www.unglobalcompact.org/participation/report/cop/create-and-submit/advanced/397681.

Today, "Cerrejón" consists of two companies: Carbones del Cerrejón Ltd., a 100 percent privately owned foreign partnership registered in Anguilla, British Western Indies and Cerrejón Zona Norte S.A., a 100 percent Colombian-owned limited liability company registered in Bogotá. The two subsidiaries are jointly referred to as Cerrejón.

¹¹ Van Ackern, "When Mining Moves People: Development-Induced Displacement and Resettlement in La Guajira, Colombia," 148.

Despite the privatization of CARBOCOL, the Colombia government still took on USD \$1.1 billion in the company's long-term debt, while only USD \$70 million in short-term debt was inherited by the three buyers. "International Consortium Buys Colombia's State Coal Company," Los Angeles Times, last modified Oct. 4, 2000, https://www.latimes.com/archives/la-xpm-2000-oct-04-fi-31013-story.html.

^{13 &}quot;Carbocol and Intercor Coal Mine," Mining Technology, accessed Feb. 7, 2020, https://www.mining-technology.com/ projects/cerrejon/.

Between 2002 and 2017, Cerrejón¹⁴ produced a total of about 470 million tons and exported 472.5 million tons of coal. Between 2002 and 2018, the company paid USD \$2.956 billion in royalties and USD \$4.544 billion in taxes to the Colombian government.¹⁵

II. Mining's Engagement of the Community

When INTERCOR arrived in La Guajira, it promised that the Wayúu community would receive substantial benefits from the coal mining project. For the Wayúu this "meant the solution to the problems of water supply, education, health, and sustainable development." According to Romedios Gomez from the Yanama Indigenous Organization, the communities ceded their ancestral lands because they "believed in the proposals of sustainable exploitation of resources" and that "the mining company would take [their] experience and knowledge of life in a semi-desert area, carried out over more than 3,000 years of occupation, into account, at the very least in terms of offering us employment."

But according to Gomez, the extractive process that followed did not meet these expectations and the communities' relationship with both the mining companies and the government quickly deteriorated. Many of the environmental impacts of the project were misrepresented. Communities felt that their social and cultural norms were violated and that they received little in terms of employment and compensation.

Nevertheless, according to the Carbones del Cerrejón Ltd. website, the company has won numerous awards for its sustainable practices. These include the 2018 "Recognition by the Ministry of Mines and Energy and the National Hydrocarbon Agency" for its management and engagement of communities along the Ranchería River Basin and the 2017 Andesco Prize for Corporate Social Responsibility.¹⁶ Since 2005, the company has published an annual Sustainability Report according to the standards set by the Global Reporting Initiative on issues from human rights to the environment, and adheres to the UN Global Compact.

It should be noted that the claims and recommendations in this report are made by the Columbia Capstone team as independent observers and researchers, which, though limited in their first-hand experience and knowledge of the local context, provides an outsider's perspective which provides an understanding of how the issues herein analyzed are perceived in the international arena and in the eyes of outside independent policy researchers. Furthermore, while the work of the Capstone team was carried out with the aid and support of the Mines and Energy Ministries of Colombia and Peru, the contents of the report, and the conclusions and recommendations, are presented by the Capstone team for further consideration by the Ministries, as well as other government agencies, and does not, necessarily, reflect their views or endorsement.

^{14 &}quot;Sustainability Report 2017," 12-13.

^{15 &}quot;Production and export," Economic Indicators, Cerrejón Responsible Mining, accessed Feb. 8, 2020, https://www. cerrejon.com/index.php/indicadores-economicos/?lang=en; "Royalties and taxes paid," Economic Indicators, Cerrejón Responsible Mining, accessed Feb. 8, 2020, https://www.cerrejon.com/index.php/indicadores-economicos/?lang=en 16 "Awards and Recognition," Our Operation, Cerrejón Responsible Mining, accessed Feb. 8, 2020, https://www.cerrejon. com/index.php/nuestra-operacion/nuestra-empresa/?lang=en#.

III. The Mining Process and Displacement from Extraction Activities

With regard to land use, the following steps have been taken at Cerrejón before, during, and after the mining process:

- a. Initial planning: land is scouted and explored until a location with suitable mining potential is discovered.
- b. Prior to mining: inventory of wildlife is taken and, if necessary, the animals are relocated from the mining region. Topsoil will then be removed and preserved for subsequent use in land reclamation once mining activities have ceased. The company will then move into drilling and blasting, during which boreholes are drilled and emulsion placed into them.
- c. Mining: land was continuously removed and dumped into trucks for removal from the mining site. This land was saved in backfill areas for future land reclamation. 190-tonne trucks have been used to remove the coal as it was uncovered during this process.
- d. Transportation: mined coal is unloaded at "plant hoppers," crushed, and reloaded onto silos that will then be loaded onto the trains. The coal is made wet and compressed into each train's wagon so as to prevent coal dust emissions. Once the train has made the 150-kilometer journey north, the coal is unloaded onto conveyor belts that lead onto the ship that will carry the coal to the destined export market.¹⁷

Since the conception of the mines in the 1970s, mass displacement¹⁸ has taken place as the Cerrejón mine expanded both infrastructure and extraction activities.¹⁹ Until 2000 (when mining was partially state-owned), there was no resettlement policy for communities displaced by mining activity. Rather, the companies purchased the land that was to be used for mining purposes and no additional support was lent to the communities by the company, the local government, or the central government.

The company's displacement and resettlement policies have reportedly included disputes surrounding where the communities would get relocated, which communities were eligible to receive compensation from resettlement processes, and how much they would be compensated. Moreover, communities that refused resettlement were forcibly displaced by intimidation and changes in their quality of life.

In one case, a community that originally lived in the coastal area of Media Luna, where a port was constructed to export coal from Cerrejon, was displaced several times as the company expanded its operations. When elements of the community resisted further

The use and meaning of the word "displacement" throughout this report may differ from its use and meaning in Spanish. In Colombia, specifically, the term refers to forced displacement and is therefore illegal, while the word here refers to communities that may have been resistant to moving but were ultimately compensated to some degree. Van Ackern, "When Mining Moves People: Development-Induced Displacement and Resettlement in La Guajira, Co-

lomba," 145.

^{17 &}quot;Sustainability Report 2017," 06-07.

displacement and insisted on remaining, the company enclosed their lands with a metal fence and positioned armed guards to watch over their territories in an attempt to intimidate them into leaving.

IV. Environmental Impacts of Mining at Cerrejón

In addition to the mining process itself, communities in the vicinity of the Cerrejón mine have been irreversibly damaged by the building of the Cercado Dam on the Ranchería River, the primary source of water supply for La Guajira. Not only do these communities have limited access to these precious water supplies, but the process through which the Cercado Dam was planned and constructed was also neglectful of these indigenous people of La Guajira. This controversy has been called "hydro-colonization" and considered privatization of an asset that belongs to the public domain.²⁰

Water is crucial to the extractives process but it is scarce in La Guajira. Due to its geography and water profile, La Guajira is very vulnerable to El Niño events, putting it at high risk of water scarcity or drought. The northern section of the region is mainly desert, thus annual rainfall ranges between 0 to 500 mm per year, close to that of the Sahara Desert. Hence the importance of the Ranchería River, the lifesource of La Guajira, which begins in the Sierra Nevada de Santa Marta mountains and eventually empties into the Carribean Sea in Riohacha, the capital of La Guajira.²¹



The Rancheria River, The Cerrejón Mine, and Neighboring Towns in La Guajira

Vidal Parra, "The Water Rights-Based Legal Mobilization of the Wayúu against the Cercado Dam," 45, 52.
"Sustainability Report 2017," 58-59.

Colombia's half century of armed conflict doubly affected the indigenous population of La Guajira and exacerbated the Wayúu's water crisis today. With sea access, a border with Venezuela, and land leading into the Sierra Nevada de Santa Marta and Serranía del Perijá mountain ranges of Colombia, combined with weak state presence, the peninsular region of La Guajira became a hotspot for armed conflict. The combination of geography and poor governance meant that illegal armed groups flourished in this region, vying to control all traffic and trade in and out. This led to the massacre, homicide, disappearances, displacement, and devastation of the Wayúu people and property. Yet, this violence did not just benefit the illegal armed groups but large-scale energy projects, as well; given that the Wayúu community had already been displaced, energy companies could plan and implement projects without their participation, let alone consent. Thus the planning stages of the dam took place between 2002 and 2005, the environmental license attained by 2005, and construction completed by 2010.²²

The Cercado Dam was intended to have three main purposes:

- 1. To provide water supplies to nine towns in La Guajira, namely Albania, Barrancas, Distracción, Fonseca, Hatonuevo, Maicao, Manaure, San Juan del Cesar, and Uribia;
- 2. To provide water supply for the irrigation of Gran Escala de Ranchería and San Juan de Cesar; and
- 3. For power generation purposes.

And yet the dam was not used for any of these stated goals. Rather, the majority of the water that used to flow freely through the Ranchería River is now mostly directed to Cerrejón for use during mining activities. While some of the water does make its way to the rice and palm farms of Lower Guajira, aqueducts were not built to supply any water

to communities and regions that traditionally had access through the natural flow of the river. The Wayúu people are no longer able to grow their own food (corn, beans, yucca, cucumber, melon), breed cattle (goats, donkeys, cows), graze their animals, nor fish or hunt.

Aggravating this situation is recent water scarcity caused by both drought and the overuse of water for mining purposes. In particular, the Cerrejón mine, according to one estimate, con"When the water reaches the Wayuu, it is a poisoned trickle." —NICOLÒ FILIPPO ROSSO,

sumes almost 35,000 cubic meters of water per day, contributing to the desertification effect of the Ranchería Basin. In addition to extreme water use, mining at Cerrejón has also led to the depletion and pollution of streams and groundwater. The company claims otherwise, reporting that in 2017, only 8.6 percent of total water used (or 1.1 million cubic meters) was taken from the Ranchería Aquifer or Ranchería River, which amounts to <u>only 13 perc</u>ent of total volumes permitted for mining purposes by Corpoguajira, the Re-Vidal Parra, "The Water Rights-Based Legal Mobilization of the Wayúu against the Cercado Dam," 50-52.

gional Autonomous Corporation of La Guajira, the "highest environmental authority" in the region. ²³ This compares to 91.4 percent (or 11.9 million cubic meters) of water that was sourced from the dewatering of coal seams, seawater desalination, and runoff from rain water.²⁴ Discharge is released back into the Madre Vieja Pond, Tabaco Creek, Bruno Creek, and Ranchería River, after water-oil separation, sedimentation, stabilization, and biological treatment, as mandated by environmental regulations of Corpoguajira.

La Puente Pit Project

Today, the company's project at the La Puente Pit has been stalled due to environmental and social concerns, namely with respect to potential damage to Bruno Creek. The Constitutional Court suspended the progress of the project in 2017 until a technical study would be undertaken to address the social and environmental impacts surrounding the mine's use of the creek.²⁵ Cerrejón mining activities had by this time already completed "partial modification of the streambed" of the last 5KM of the lower basin of the creek, which the company claims is on the property of the mine, away from any nearby communities. A 2016 Inter-Institutional Roundtable consisting of representatives of the central government discussed the environmental implications of this project on Bruno Creek.

These details may, of course, be contested by the entities implicated in this history of coal. The main take-away is that this controversial history has led to lasting impacts on La Guajira and its people, and these impacts will affect any future development plans in the region, even if these developments have good intentions such as supporting a green-energy transition.



The Bruno Creek and Ranchería River

Source:

"What do the engineering works for the partial modification of the course of Bruno Creek in La Puente project consist of? 23 On its website Corpoquajira is described as a corporate entity of public character integrated by local authorities. Its board is composed of La Guajira's governor and mayors and a delegate of the Ministry of Environment, Housing and Territorial Development, among others. "Sustainability Report 2017," 58-59; "Nature, policy and values"; "Mission and vision"; "Board." "Sustainability Report 2017," 58-59. 24

²⁵ "Sustainability Report 2017," 10-11.

Deforestation, pollution, and health impacts

The area of operations at Cerrejón includes up to 5,752 hectares of deforested land. In many cases, soil conditions within these lands have been irreversibly deteriorated. The disappearance of vegetation cover alongside the river has disrupted a large bulk of the surrounding region's ecosystem. Moreover, the opencast coal mining left behind large areas of waste material in addition to contaminating ground and surface waters. Dust from blasting mines adversely affected vegetation and contributed to erosion.

Many of these environmental impacts have resulted in community health issues. According to the National Department of Statistics in Colombia, about 4,151 children died in La Guajira between 2009 and 2013, 278 of which died due to undernourishment. This shortage of food is largely the result of poor water management and loss of crops. Recently, national outcry took place over the case of Moises Guete Uriana, a three-year-old boy who suffered severe respiratory problems and began vomiting blood. The outcry led a Circuit Judge to order Cerrejón to reduce its particulate emissions. In his court order, the judge lamented the lack of serious detailed studies of the impacts of mining activities on public health.

GOVERNMENT MANAGEMENT STRUCTURE

I. Regulatory Milestones and Relevant Government Agencies

At the moment, there are three phases for an energy project's formal registration in Colombia and three main regulatory milestones. They are the Pre-feasibility, Feasibility, and Detailed Engineering phases and are principally overseen and accompanied by the Mining and Energy Planning Unit (UPME) of the Ministry of Mines and Energy. During the first phase (pre-feasibility), the project must receive UPME's approval for interconnection to the energy grid; this approval is attained in the form of an Operational License. Prior Consultation, or consulta previa, is a process that takes place in the second phase (feasibility) and is overseen by the Ministry of the Interior; this process may or may not include FPIC. It is also during this phase that the government may issue a Request for Proposal (RFP) for development projects that advance the administration's agenda. The third and final phase, detailed engineering, calls for the most sophisticated technical assessments of a given project to-date. This is therefore the phase during which the Project Company seeks approval for an Environment License, which is formally granted by the Ministry of Environment and Sustainable Development.²⁶

As is the case in the rest of the world, there is no legally binding Social License, which is a nascent concept broadly viewed as a permanent process of building trust between stakeholders (such as impacted communities), though their levels of acceptance and

The environmental license in the Energy Mining sector is granted through the National Environmental Licensing Authority, in some cases it involves regional environmental authorities due to the nature and scale of the project.

approval of a project may vary. Therefore, a Social License is neither formally granted or denied by any public authority, nor does it mean the existence of a veto power at the head of the communities of influence of the projects. Nevertheless, it is the view of the Capstone Team that a Social License should be binding and enforceable as set for in the Community Partnership Agreement.

II. Prior Consultation – Consulta Previa

The Ministry of Interior is the government entity in charge of certifying, coordinating, and monitoring the prior consultation process through its National Authority for Prior Consultation Office, known as DCP for its Spanish acronym. Prior consultation is a fundamental right of ethnic groups recognized in the ILO Convention 169 and does not apply to other civil society groups, and therefore should not be interpreted to construe a Social License. At the moment, this process has five stages, which include the following steps below:²⁷



Source: Compiled by authors.

²⁷ These steps follow procedures listed in government documents such as "Presidential Directive No. 10," Presidencia de la República de Colombia (2013). https://www.mininterior.gov.co/la-institucion/normatividad/guia-para-la-realizacion-de-consulta-previa-con-comunidades-etnicas

In the regulatory procedure just outlined, FPIC is an additional step within the consultation process that is carried out if the project or activity in question meets one of three claims:

- 1. Displaces or forces communities to move;
- 2. Is associated with the storage or dumping of toxic waste in communities' lands;
- 3. Has a high impact on social, cultural, or environmental matters in a community that imposes existential risk to the community

A key component lacking in the *consulta previa* procedure is a veto mechanism by which communities can choose to deny a project, activity, or development. The Community Partnership Agreement we propose seeks to emulate such veto power through a cross-default mechanism based on a project's breach or inability to meet certain indicators within impact assessments, while also extending the agreement to include all impacted not only indigenous—communities so as to more closely resemble a binding Social License with broad support and representation..

III. Colombia's Commitment to Inclusive Development

To kick off its Mission for Energy Transformation, the government held a Reliability Charge (Cargo por Confiabilidad) auction in 2019 calling for RFPs from power generators committed to providing reliable and stable electricity in exchange for a compensation scheme through which the government pays generators for their capacity on a fixed dollar amount per kWh.²⁸ The government awarded contracts to 11 firms for 19 projects, of which 15 are on-shore wind projects and 4 solar, totaling 2,379 MW or 12 percent of the energy matrix—thereby surpassing the initial 1,500 MW goal. Firms include energy-sector multinationals including AES Corporation, EDP Renewables, and Enel Green Power, among others. While these power generators were set to begin operation by 2022, the coronavirus pandemic has delayed the administration's plans for at least a year.²⁹ The first stage of development to be carried out in 2020 was set to be the prior consultation process, which makes this report all the more timely.

While the Ministry of Mines and Energy typically only intervenes with regard to a project's operational license and registration, in 2019 the government—for the first time—engaged the Ministry of Mines and Energy to work more closely with the private sector during the consultation process. Building on this initiative, the Ministry invited the 2020 Capstone Team to research best practices and develop a set of tools that could be used to assess the consultation process as it pertains to renewables, for which we will draw heavily from the experiences of neighboring Peru—a pioneer in the field of *consulta pre*-

 [&]quot;Colombia: Cargo Por Confiabilidad – 2019 Auction Process," Clifford Chance, February 2019. https://www.clifford-chance.com/content/dam/cliffordchance/briefings/2019/02/colombia-cargo-por-confiabilidad-2019-auction-process.pdf
This is according to our government contacts.

via—and international institutions like the International Finance Corporation for experience in this field.

It is worth noting that the country has already embarked on a separate mission to incorporate community consultation into extraction projects related to unconventional sources of oil and gas.³⁰ The mission has given fruit to Decree 328, which establishes an institutional framework for carrying out a series of scientific investigations that take into account the environmental and social impacts of a project before even beginning the exploration phase. It would be best practice for renewable energy projects to follow a similar scheme of initial investigations (in phase 1) before project and land concessions are granted. Taking this concept one step further, companies should be obligated to incorporate such assessments when submitting their RFPs. The new renewable plans are past the concessions stage and siloed from government management structures. Nevertheless, a community consultation process, regardless of whether in the context of a fossil-fuel or renewable energy project, should be consistently applied across all types of infrastructure projects. The community consultation process we propose is applicable to all types of development projects and should therefore be carried out by these renewable energy companies immediately even though not yet formalized or institutionalized.

THE COMMUNITY PARTNERSHIP AGREEMENT IN THE COLOMBIA CONTEXT

The Colombian government has taken the laudable decision of prioritizing the green energy transition. The climate predicament is real and thus all countries should be taking the same steps as the Colombian government in building a more responsible, sustainable, and cleaner energy future. Ironically, the very region with the highest potential for ensuring a successful transition is the same one that is not interested in any energy or infrastructural projects. These communities are mistrustful of both government and the private sector, and are not necessarily going to distinguish between coal and solar and wind companies; they know that development in the past has not panned out in their favor. The Community Partnership Agreement is thus critical in the Colombian context, and the feasibility of the energy transition—though vastly different from fossil fuel activities and their repercussions—relies on its succesful realization.

³⁰ The Commission of Experts for Unconventional Sources recommended carrying comprehensive research projects and investigations that seek to create the institutional, technical and social conditions necessary to move to a commercial stage of exploitation. For this, they suggest designing processes of involvement and participation of project stakeholders. This process cannot be confused with that of Prior Consultation, since it is first and foremost a process of building trust between the parties which may or not include ethnic groups. Similarly, while there is a close relationship between the renewable energy transition and the exploitation of unconventional hydrocarbon deposits, these issues were addressed by different expert commissions.



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 Project 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 Project 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 Project Company) and Article 8 (parent company guarantee) and accompanying Schedule 6.]

> For further information please contact: Prof. Jenik Radon (jenik_radon@radonoffices.com), Octavio Roldán Montijo (or2245@columbia.edu), Andrea Avila Salgado (aia2132@columbia.edu), Bettina Braun (nbb2132@columbia.edu)
This Agreement is made on [insert date] among

(I) [insert name of the community] of [insert location of the community] (the "**Community**"); and (II) [insert name of the company] incorporated in [insert jurisdiction] under company registration number [insert company registration number] (the "**Project Company**"), and

[Note: We recommend that a community organize itself as a Community Board made up of community members, such as (a) trust with a board of trustees, (b) a closely held corporation with a board of directors, or (c) a pre-existing organizational structure, such as a committee of elders or representatives. The Community may also decide to keep the special legal status that the local law awards.]

(III) the obligations of the Project 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 or Regional Government") and the Government of [Insert Name] represented by [insert name of the Ministry executing this Agreement and name of representative] (the "Central Government").

(The Project Company, the Community, and the Government are referred to collectively as the "**Parties**" and individually as a "**Party**.")

Whereas:

Projects related to the exploitation of natural resources are distinct from other entrepreneurial industries' activities, owing to the all-encompassing impact that they might have 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 a result of projects on the exploitation of natural resources.

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

The Project 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 Project 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 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 Project Company for the benefit of the Community, Central Government and Local Government under this Agreement.

The Project 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 is a party.

The Parties agree that this Agreement is legally binding in accordance with its terms and judicially enforceable under the relevant laws of [insert name of jurisdiction that is host-ing the Project] and applicable international treaties.

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

Article 1 - Definitions and Interpretation

1.1 "Agreement" means the Community Partnership Agreement, sometimes referred to as the CP Agreement.

1.2 "Central Government" refers to the national government of the country where the Project is taking place, which is party to the Agreement. Also referred to as the State.

1.3 "Community" includes all groups and adult individuals of voting age, across the gender spectrum, who reside in the Environmental Impact Zone (1.7) of the Project, in whole or in part, including but not limited to the Displaced Community.

1.4 "Community Board" is the group of Community members that will sign the Agreement on behalf of the Community. As the Community's leadership, they should be chosen by the Community on the basis of their consistent involvement and participation in the Community, and may choose to organize per a pre-existing organizational structure or a closely held corporation led by a Board of Directors. Ideally, these people are considered pillars of the community. We advise against including elected officials of a transitory nature. Also referred to as the Community's Leadership.

1.5 "Consent" means the consent that the Project Company is required to obtain from

the Community under Article 4.

1.6 "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 the Government of [insert name of host jurisdiction of the Project] is a party or which is applicable to it.

1.7 "Community Negotiations Team" will be the team participating in the negotiations of the Agreement and will be made up of the Community Board, along with Local and Central Government officials that will side on protecting the Community's interest, and may potentially include—per the community's approval—NGO and third-party experts as individuals and not institutions.

1.8 "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.

1.9 "Environmental Impact Zone" includes but is not limited to the area of impact of the Project according to the Environmental Impact Assessment(s) prepared by the Project Company and approved by the Central Government's competent entity. The Environmental Impact Zone shall consider, at least, the zone in which objectively and where possible quantifiable, the significant environmental impacts caused by the execution of a project, work or activity, over the biotic, abiotic and socioeconomic means, in each of the elements of such means. The impacts should be assessed cumulatively with the impacts of surrounding projects and should be assessed on an ongoing basis.

1.10 "Exiting Company" is the Project Company transfering all rights and obligations to a New Company.

1.11 "Internal Emergency Fund" refers to a separate fund the Project Company must maintain at all times for the purpose of financing any crisis or breach of the Agreement that arises during any phase of the project, and must be set up before the signing of the Agreement so that the funds are immediately available as needed.

1.12 "Local Government" refers to the government of the municipality, township or village where the Project is located or nearest to, a representative of which may sign the Agreement as a governmental party the Agreement.

1.13 "Major Stage of the Project" means any of the stages as set out in Article 2.2.

1.14 "Material Breach" means any breach of this Agreement by the Project Company which has 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 Project Company.

1.15 "New Company" the Project Company succeeding the Exiting Company and taking responsibility for all existing liabilities and obligations under this Agreement.

1.16 "Operations License" means the concession granted by the Government and any and all licenses to be granted to the Project Company or any of its subsidiaries or affiliates by the Central Government in respect of the Project in accordance with any other relevant/applicable law in effect at the time of granting the concession and during the life of the Project. Also referred to as License to Operate.

1.17 "Project" means the proposed project to be carried out by the Project Company in [insert location] as described in Schedule 1 and any and all activities to be carried out by the Project Company in connection with the Project in accordance with the project as approved by the Central Government under the applicable laws.

1.18 "Project Company" refers to the company carrying out the private enterprise (Project), which is party to this agreement.

1.19 "Regional Government" refers to the government of the province or department where the Project is located, a representative of which may sign the Agreement as a governmental party to the Agreement.

1.20 "Restoration Fund" means the bank account that the Project Company must establish and maintain fully funded at all times in accordance with Article 2.8.(a)

1.21 "Social Wealth Trust Fund" means the bank account that the Project 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.(b)

1.22 "Sustainable Development Plan" means the long-term Sustainable Development Plan spearheaded by the Community Board and other members of the Community Negotiations Team, in consultation with the Social and Economic Development departments of the Local and Regional Governments, with the assistance and advice of the Central Government and any non- governmental organizations or third-party experts (as applicable), and as set out in Schedule 3.

1.23 "Third-Party International Institution" refers to independent institutions with relevant experience in project finance and sustainable development, engaged through regular auditing, dispute mediation, or other activity that would benefit from oversight.

1.23 The terms and conditions of this Agreement are to be interpreted in the best interests of the Community at all times. The Project 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 are to be constantly updated throughout the life of the Project.

Article 2 - Rights and Obligations of the Project Company

2.1 - Obtaining Consent

The Project 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 Project 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 Project Company agrees that any Consent given under this Agreement by the Community to the Project 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 Company or any third party.

For the purposes of this para (a), for consent to have been given by the Community, a supermajority vote (meaning at least two-thirds) 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 Project 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, such consent shall be deemed null.

The Project 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 Project Company must obtain consent from the Community before:

- (i) the Project Company begins exploration for the Project;
- (ii) the Project 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.

For the purposes of this para (ii), a "Major Stage of the Project" shall include each st-age 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 Project 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 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 Project 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 Project Company.

(iv) that each transfer of information acknowledges the possibility of unforeseeable impact and takes responsibility for it.

The 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 Project Company under this Agreement.

2.3 - Consent limited to the Project only

Any Consent given by the Community to the Project Company is only valid for the Project and any aspect of the Project in respect of which Consent has been obtained by the Project Company. Consent does not extend to any other activities in any other area. 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 Project 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 - Project Company to maintain Consent throughout the life of the Project

The Project 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 Project Company. For the purposes of this Article, the representative for the Central Government shall be [Insert Representative] 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.

2.6 - Full and accurate disclosure by the Project Company

The Project 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 Project Company under this Agreement has been disclosed and that this information is sufficient, true, complete and accurate. The Project 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 Project Company and Community

The Project Company shall meet with the Community at the start of exploration and thereafter, a minimum of every [2] months during each Major Stage of the Project until [24] 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 Project Company.

2.8 - Funds for the Community

The Project 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 Project Company shall ensure that each of the below funds is fully funded if, after a mandatory inspection to be completed by an independent third party every [5] years, a shortfall in the amount required to service the purpose of the Fund is reported by that independent third party to the Project Company and the Community as joint beneficiaries of that report. The 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 Project or Parent Company or any other third party.

(a) **Restoration Fund:** The Project Company shall set up a Restoration Fund and apply the funds only to restoring the project site to the original condition of the land, as best it can by applying the best and most advanced technologies, processes and standards after the project is completed. An amount of money will be set aside, to be determined, but no less than the amount required to restore the relevant territory. The Project Company needs to show that it has the available funds in order to attain a License to Operate. The Project Company is responsible for maintaining the account throughout the life of the project, otherwise it will lose its License to Operate. The reserves should be covered by insolvency-proof and liquidation-proof security. The Central Government and an appropriate third-party international institution will periodically audit the reserves. The amount necessary to restore the land is recalculated periodically to account for changes in the Project.

(b) Social Wealth Trust Fund: The Project Company shall apply the funds to three beneficiary accounts 1) a *Development Fund* to support the Community's Sustainable Development Plan, 2) a *Crisis Fund* for any emergency as determined by the Government and Community, which does not necessarily need to be used for damages caused by the Project Company, and a 3) *Rainy Day Fund*. Each of these three accounts will receive an agreed percentage of the taxes collected by the Central Government that are then designated to the Social Wealth Trust Fund. The percentage allocation is to be discussed in detail during CP Agreement negotiations.

The *Development Fund* will be deployed for the specific initiatives of the Sustainable Development Plan. This Plan will be spearheaded by the Community Board with other members of the Community Negotiations Team in consultation with both the Government (Central and Local) and third-party experts to meet their objectives. The Project Company is not responsible for developing this plan but rather for supporting it by sustaining the fund.

The Social Wealth Trust Fund will have a *Board of Trustees* with two requirements only: 1) ensure that money is coming in and 2) police money that is spent. They do not originate the proposals for spending the money but may have veto power on how the money is spent. Furthermore, there will always be an odd number of members and each must meet the criteria of independence *[to be defined by 2021 Capstone]* and competence. The Government will hold the *Board of Trustees* accountable for liabilities, potentially with the aid of local observers. Any of the Community, Local Government and Central Government shall have the right to audit and inspect the accounting and application of the Social Wealth Trust Fund at any time on reasonable notice to the Project Company and *Board of Trustees*.

(c) Internal Emergency Fund: The Project Company shall apply the funds contained within the Internal Emergency Fund for the purpose of (a) remedying any (i) breach by the Project Company of its obligations under the Agreement as shall be notified to the Project Company by the Community in accordance with Article 7, (ii) accident during the course of its operations or (iii) impacts to the Community and environment as a result of the effects of any natural disaster on the Project 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 Project Company's breach, an accident during the course of its operations or the effects of any natural disaster. *[Note: Capstone 2021 team to investigate further how to calculate how much should be maintained in the Internal Emergency Fund e.g. the scale of fixing an emergency will obviously differ from project to project.]*

2.9 - Cross-default between Agreements with the Community

(i) This Agreement does not alter any other obligations of the Project Company under the Operations License, any other agreements with the Community (including any land agreements the Project Company has entered into with the Community, which must also be obtained with their free, prior, informed consent), any other agreements with governmental entities or other communities and any applicable laws.

(ii) The breach by the Project Company of any obligations under the Operations License shall also constitute a breach of this Agreement, and a breach under this Agreement shall constitute a breach under the Operations Licenses and the applicable laws.

2.10 - No conflict

In the event of any conflict between the terms of the Operations License and any other agreements entered into by the Project 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: Capstone 2021 team to thoroughly review standard land agreements and mining/renewable energy projects concession agreements 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 Project 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 Project Company of its obligations and the full compliance by the Project 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 Project Company, the Community and a representative of Local Government [every 6 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 Operations License shall be immediately deemed suspended if:

(a) There is a Material Breach by the Project 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 renewed in a timely manner by the Project Company;

(c) Any statement or representation by the Project Company proves to have been negligently and/or willfully incorrect, misleading, or incomplete;

(d) Any statement or representation by the Project 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 [60 days], or if such an allegation of environmental harm or damage goes uninvestigated and unremedied within the said time frame [60 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 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 [90 days], after it is revoked, the Operations 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 Project Company in accordance with the following process:

(a) [Any member of the Community is free to complain either to the Community Board or directly to the Project Company. No member of the Community shall inhibit any other member of the Community from complaining to the Project Company]; and

(b) [Note: Capstone 2021 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 Project 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 Project 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 Project Company.

4.2 In order to maintain the Consent of the Community, the Project 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 Project Company has to fulfill in order to obtain or maintain Consent. The conditions should be confirmed through dialogue and negotiations between the Project Company and the Community. Proper assistance to the Community should be provided by professional advisors and the Government. Ideally, the Government should be responsible for managing 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 Social and Economic Development Departments (or equivalent) of the Local and Regional Government and as approved by the Central Government:]

(a) To support the Sustainable Development Plan by funding the Sustainable Development Fund 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 wrapping-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.

(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 Project 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 Project 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 Project Company.

[Note: Capstone 2021 team to examine the best standardized employment strategy to be adopted.]

(g) If employment by the Project 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 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 Project 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 employed members of the Community of the same standard as provided to the Porject 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 cell phones (to the extent they do not already possess them)] to facilitate communication between the Community and the Company]. [To provide publicly available computers in the local town hall/municipal office and in the local office of the 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 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 Social Wealth Trust Fund. [Note: Capstone 2021 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].

4.1 The Project Company shall bear the entire cost of performing its obligations and ful-

filling the conditions under this Agreement [but shall be entitled to tax credits, as determined by the Central Government, in respect to the infrastructure it provides under the Sustainable Development Plan as set out in Schedule 3].

<u> Article 5 – General Obligations</u>

5.1 The Project Company shall preserve the environment, and cultural, and social ties of the Community as they existed before the Project Company arrived. It shall not engage in any illegal, detrimental or corrupt business practices. The Project 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 Project 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 Project Company shall conduct all communication with the Community in the preferred local language(s) of the Community at all times. It is the Project Company's responsibility to provide at its entire cost multiple interpreters 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 Project 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 periodic follow-up reports of any individual and accumulated impacts subsequently discovered;

(c) a proposal from the Project 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 Project Company on how to optimize and share benefits, including royalty payments in the case they are agreed to as per Article 4.1(k), with

the Communities;

(e) a proposal from the Project Company on the creation of employment for Community members at the local Project site;

(f) any report, study, or assessment deemed necessary by the Community related to the Project created by the Project 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 Project 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 Project Company shall conduct the following to obtain Consent:

(a) Notify the office of [Insert Relevant Authority: i.e Defensoria 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 Project 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 Project 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 Project 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 Project Company in writing promptly if the Project Company has breached this Agreement. The Project 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 Project 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 Project Company of any breach, however, any member of the Community shall be entitled at all times to complain directly to the Project 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 Project 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 Project 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 Project Company breaches its obligations under this Agreement.

7.2 – Statute of limitations

Any member of the Community can notify the Project Company, Local Government and Central Government of any breach of this Agreement by the Project 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 Project 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 the relevant laws will apply to all other claims by the Community in respect of any other breach by the Project 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 Project Company. Upon receipt of a notice from the Community that the Project Company is in breach under Article 7.1 above, the Project Company shall promptly provide evidence to the Community, Local Government and Central Government that it is not in breach of this Agreement. The Project 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 Project 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 Project Company at all times. The Project Company also has the burden of proving non-compliance by the Community with any of its obligations under this Agreement. The Project Company's burden of proof extends to all foreseeable and unfore-seeable impacts of the Project existing at the time of the Agreement or occurring in future.

7.4 - Liability

The Project Company is strictly liable for any breach of the obligations of this Agreement. The Project 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 Project Company, such burden of proof shall extend to the activities which were undertaken by any predecessor company for which the Project Company is also liable.

7.5 - Breach

The Project Company will incur in a 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 Project 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 sac red place pertaining to the Community: immediately;

(b) for any other breach set out in Articles 7.5 (b) – (d): the 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 Project Company is not in breach of the Agreement or to cure the breach; and

(c) for any Material Breach: the Project 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 Project Company is not in material breach of the Agreement or to cure the breach.

7.7 - Consequence of breach

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

7.7.2 The Project 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 Company must stop operations immediately upon expiry of the Remedy Period.

7.7.3 The Project 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 Operations License shall be automatically revoked by the Central Government if the Project 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 Project Company, the Project 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 Project 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 Operations License. In the event of termination of operations and/or the License, the Project 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 Project 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 Project 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 Project 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 Project 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 Operations License

7.8.1 The suspension or revocation of the Operations License does not exempt the Project 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 License does not exempt the Project 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 Project 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 Project Company is prohibited from hiring state police forces, whether local or na-

tional, for security purposes at any time. The Project 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 or equivalent authority] office, or any functionally equivalent office in future should the [Defensoría del Pueblo or equivalent authority] 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 Project 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 Project Company is obliged to ensure that the Agreement continues in full force and effect and fully binding on the Project Company, uninterrupted, if the Project 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 Project Company resulting in a New Company assuming its obligations or if the Project Company is restructured).

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

9.3 The Project Company as Exiting Company and the legal successor as New Company shall both be liable to the Project Company for any existing liabilities at the time of transfer from the Exiting Company to the New Company. The New Company must have at least the same financial and technical qualifications and resources as the Exiting Company. Both the Exiting and New 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 Operations License. Upon termination or expiry of the Operations License and this Agreement, the Project 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 of 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 has arisen out of any environmental damage that does arise out of in connection with the Project, no matter when arising.

10.2 The Project 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 [Insert Name of the Country].

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 [Insert Name of the Country and specify if the courts that will have jurisdiction will be the Federal or Local courts]

11.3 This Agreement is not in conflict with any international and bilateral treaty or any other international agreement or instrument entered into by [Insert Name of the Country].

Article 12 - Language

12.1 The Project 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 Project Company.

Article 13 - Amendment

13.1 Any amendment to this Agreement shall only be effective if such amendment is made in writing and duly signed by all [five] signatories (as per Execution Page) to this Agreement (and notarized as required by the relevant laws of the host country) 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 any leader of the community) or any leadership committee of the Community and the Project 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 Project Company with respect to the Project generally in accordance with the Operations License or to perform an obligation of the Project Company generated by this Agreement; in which case such subcontractors are under the same obligations as the Project Company towards the Community and the environment.

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

(a) in the Official Newspaper [Insert Name of the Official Newspaper] or any other newspaper that in the future becomes the official newspaper;

(b) [in the database on agreements between communities and companies of the [Insert Name of the Ministry]];

(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 Project 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 Project 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 and the database on agreements between communities and companies of [Insert Name of the Ministry].

15.4 The Project 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, Project 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 BOARD
FOR AND ON BEHALF OF THE PARENT COM- PANY
FOR AND ON BEHALF OF THE PROJECT COM- PANY
FOR AND ON BEHALF OF THE LOCAL/RE- GIONAL GOVERNMENT AND AGREEING AND ACKNOWLEDGING THE TERMS OF THIS AGREEMENT APPLICABLE TO THE LOCAL/RE- GIONAL GOVERNMENT
FOR AND ON BEHALF OF THE CENTRAL GOV- ERNMENT AND AGREEING AND ACKNOWL- EDGING THE TERMS OF THIS AGREEMENT APPLICABLE TO THE LOCAL 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 Project 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 components of the Community's Sustainable Development Plan. Capstone 2021 team to flesh out the details of the below and the mechanics of how a tax credit system might fund some of the items below.]

The Project 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) Universal access to Electricity.
- (e) To the extent not already provided under the relevant laws.

ENVIRONMENT

(a) Train Community members to understand EIAs, monitor compliance with EIAs, take samples, monitor contamination and liaise with representatives of the Project 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.

(d) Local Government to continue operation of the hospital after the Project 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 Project Company assistance and/or fund-ing.

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 the Central Government or provided by a non- governmental organization [Insert Relevant Authority: i.e Ensena Peru] with Project 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 Project Company throughout the life of the Project.
- (b) Training in computer literacy and new technology.
- (c) Advance training in skills needed for 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 Project Company after each periodic review has been completed.]

REPRESENTION

(a) The review process will be led by representatives from the Community, the Project 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 Project 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 [3] months.

(b) During and Post Engineering Schedule: During these periods, Consent will be subject to renewal on a bi-annual basis, that is, every [6] 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: Capstone 2021 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 Project Company than the original Consent. This includes, but is not limited to, additional contributions to the Social Wealth Trust Fund and the Internal 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 Social Wealth Trust 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: Capstone 2021 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 Project 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 Project 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 "Project 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 Project Company all necessary financial and other resources that the Project Company may require to meet and satisfy, on a timely basis, the due and punctual performance and payment of the Project Company's obligations under the Agreement.

2.3 The Guarantor accepts liability for any and all failures, including omissions, by the Project Company to comply with the Guaranteed Obligations. In the event that the Project 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 Project 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 the Agreement 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 Project 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 Project 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 Project 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 Project Company may have under that bilateral treaty (if any) between the jurisdiction of the Project Company's incorporation and [Insert Relevant Jurisdiction: i.e 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 Project Company or (ii) exhaust any right or take any action against the Project 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 Project 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 Project Company of all or any part thereof or of fulfillment of any obligation of the Project 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 Operations 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 nonperfection 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 Project Company or any of its Affiliates or any insolvency, bankruptcy, reorganization or other similar proceeding affecting the Project 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;

(b) or; 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 Project 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 Project 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 Project Company;

(e) any sale or transfer by the Guarantor or the Project 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 Project Company;

(g) any increase in or partial release, extension in time or modification of any obligation of the Project 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 equitabledischarge 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 Project Company under the Agreement is rescinded or must otherwise be returned by the Community to the Project Company for any reason whatsoever, 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 Project 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 Project 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 Project 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 Project 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 Project 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 Project Company and/or the Community and/or the Governmentunderand pursuant to the Agreement without notice to or consent of the Guarantor.

Article 10 - Amendments to the Guarantee

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 Project Company.

11.2 The Guarantor agrees that if fulfillment of any obligation of the Project 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 12 - Governing Law

12.1 This Guarantee and any non-contractual obligations arising out of or in connection with this Guarantee shall be governed and construed in accordance with [Insert Relevant Jurisdiction: i.e Peruvian] Law without giving effect to any conflict of laws provisions and the Guarantor hereby submits to the jurisdiction of the courts of [Insert Relevant Jurisdiction: i.e Peru] and appoints the Project Company at _________ its agent for service of process.

Article 13 – Notices

13.1 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]

13.2 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.



GUIDEBOOK FOR THE COMMUNITY

How can this Guide Support your Community ?

The Colombian Context

According to the National Authority for Prior Connsultation Office in Colombia's Ministry of the Interior, as of November 2019, there were 2,992 Projects in the extractive industry undergoing the *consulta previa* procedure nationwide.¹ Out of those Projects, 2,744 are considered active; meaning they are in one of five phases of the *consulta previa* procedure. The remaining 248 Projects are currently suspended. It is important to note that they may be halted in any of the five phases with the possibility of reactivation to continue undergoing the *consulta previa* procedure in their last active phase. The top three regions with the highest concentration of active Projects in the extractive industry include the Caribbean, Pacific and Amazon regions.²

ACTIVE PROJECTS	SUSPENDED PROJECTS
Hydrocarbons Sector: 1,202	Hydrocarbons Sector: 33
Energy Sector: 1,062	Energy Sector: 66
Mining Sector: 480	Mining Sector: 149

National Extractive Projects Undergoing Consulta Previa

Source: Compiled by Authors.

In recent years, the Government of Colombia has shifted its energy production priority to renewable sources per its Mission for Energy Transformation.³ This mandate for modernization and diversification of the country's energy matrix entails installing 1,500 MW of electricity produced by renewable resources by 2023 along with three new transmission lines to strengthen the interconnection system.⁴ The province of La Guajira has become a focal point to advance this endeavor due to its robust solar and wind farm potential. There are currently 14 Projects of solar and wind under assessment that can generate an estimated 5,000 temporary jobs.⁵

In 2018, the Mining and Energy Planning Unit (UPME) of the Ministry of Mines and Energy announced a major clean energy initiative which will be the first transmission Project that will connect renewable energy plants with the National Interconnected

- Colombia's Ministry of the Interior National Authority for Prior Consultation Office
- 2 Economic Studies Group from the Dirección de Consulta Previa office
- 3 "Energía Evoluciona." Energía Evoluciona. Accessed May 8, 2020. https://energiaevoluciona.org/.
- 4 Sustainable Energy Technologies and Assessments (Volume 36), "Assessment of solar and wind energy potential in La Guajira, Colombia: Current status, and future prospects," (December, 2019) by Gabriele Carvajal-Romoa, Mateo Valderrama-Mendoza, Daniella Rodríguez-Urrego, Leonardo Rodríguez-Urrego.

5 "Se Adelanta La Viabilización De 14 Proyectos De Energía Solar y Eólica En La Guajira." ExpoSolar Colombia. Accessed May 8, 2020. https://feriaexposolar.com/se-adelanta-la-viabilizacion-de-14-proyectos-de-energia-solar-y-eolica-en-la-guajira/. System (Sistema Interconectado Nacional, SIN by its Spanish acronym).⁶ The project is crucial to Colombia's Mission for Energy Transformation, as it will transfer the energy that is generated in the wind farms of La Guajira nationwide and reduce the country's dependence on hydropower. Bogota's Energy Group (Grupo Energía Bogota, or GEB by its Spanish acronym) will build the transmission lines and begin its operations in November 2022.⁷ The energy return on its \$174.33 million investment will be an addition of 1,050 megawatts to the national electrical capacity.

The Peruvian Context

Cajamarca is the Peruvian region with the largest investment allocated by mining companies, the region represents 31.5 percent of the whole country's investments in this industry. Cajamarca has a total of six large mining projects that sum up to a total investment of USD \$18.2 billion. From all these projects, Quecher Main is expected to start operations in 2020. The following tables show the construction projects that appear on the *Boletin Estadístico Minero* report issued by the Ministry of Energy and Mines (MI-NEM) in January 2020. Of the six large construction projects announced in the region, only three have been granted a concession to the project.⁸

Portfolio of Mining Construction Projects					
Project	Company	Main Product	Total Investment in USD Million	Consession Status	
Quecher Main	Minera Yanacocha S.R.L.	Gold	300	Granted	
anacocha Sulfuros	Minera Yanacocha S.R.L.	Copper	2,100	Granted	
Conga	Minera Yanacocha S.R.L.	Gold	4,800	Granted	
El Galeno	Lumina Copper S.A.C	Copper	3,500	Not filed	
La Granja	Rio Tinto Minera Perú Limitada S.A.C.	Copper	5,000	Not filed	
Michiquillay	Southern Perú Copper Corporation, Sucursal del Perú	Copper	2,500	Not filed	

Potential Hub: Conga, El Galeno, and Michiquillay

The companies Southern Perú, Lumina Copper, and Buenaventura, in charge of the Michiquillay, Galeno, and Conga mining projects, have announced that they are evaluating whether to partner in the ownership of the projects. As seen in the above table, the Michiquillay and Galeno mine would extract copper while the Conga project would be a gold mine. This partnership would facilitate the operations of the mine and decrease operation costs as the companies could share production infrastructure and different services such as transportation vehicles.⁹ The three companies want to take advantage of the proximity to each other, as they are located in the La Encañada district in the south of the

⁶ S.A.S., Editorial La República. "El GEB Entra Al Negocio De Energía Eólica De La Guajira." Noticias de Economía, Finanzas, Empresas y Negocios de Colombia y el Mundo. Accessed May 8, 2020. https://www.larepublica.co/economia/el-geb-entra-al-negocio-de-energia-eolica-de-la-guajira-2600472.

⁷ This timeline has likely been altered by the coronavirus pandemic.

^{8 &}quot;Cartera de Proyectos de Construccion Minera" (Ministerio de Energias y Minas, September 1, 2019), http://www. minem.gob.pe/minem/archivos/file/Mineria/INVERSION/2019/CP2019-SET2019%20ESP.pdf.

^{9 &}quot;Michiquillay, Galeno y Conga Planean Ser Un Clúster Minero | Economía | Gestión," accessed May 6, 2020, https://gestion.pe/economia/michiquillay-galeno-conga-planean-cluster-minero-253984-noticia/?ref=gesr.

Cajamarca region.¹⁰ According to representatives from the companies, they hope to start mining operations in the Galeno and Michiquillay mines by 2021 and 2022, respectively. The Conga project has been suspended since 2011 due to social and environmental conflicts and discussions with the local communities, and there seem to be no future prospects for the project.

A. LEARNING FROM PAST EXPERIENCES

Unmet Promises

Projects rarely take place without elaborating, to some degree, plans to gain communities' support. But not all forms of promises are made equal. The aim of this report is to provide a roadmap for the pursuit of enforceable promises and institutional accountability mechanisms. But it is first important to acknowledge and provide examples of the false promises that were made to communities in the past, both in Colombia and Peru.

When Intercor arrived in La Guajira in the 1980s, it promised that the Wayúu community would receive substantial benefits from its coal mining project. For the Wayúu, this "meant the solution to the problems of water supply, education, health, and sustainable development." According to Remedios Gómez of the Yanama Indigenous Organization, the communities ceded their ancestral lands because they "believed in the proposals of sustainable exploitation of resources" and that the "mining company would take [their] experience and knowledge of life in a semi-desert area, carried out over more than 3,000 years of occupation, into account, at the very least in terms of offering us employment."¹¹

But, according to Gómez, the extractive process that followed did not meet these expectations, and the communities' relationship with both the mining companies and the government quickly deteriorated. Many of the environmental impacts of the project were misrepresented. Communities felt their social and cultural norms were violated, receiving little in terms of employment and compensation.

Those false promises extended to accompanying infrastructure projects as well. For instance, the Cercado Dam was built to supply water from the Ranchería River over to Cerrejón. The project was initially pitched as a large scale development project that would provide water to nine towns in La Guajira, to irrigate the Gran Escala de Rancheria and San Juan de Cesar, and for power generation purposes.

And yet the dam was not used for any of these stated goals. Rather, the majority of the water that used to flow freely through the Ranchería River was mostly directed to Cerrejón for use during mining activities. While some of the water did make its way to the rice and palm farms of Lower Guajira, aqueducts were not built to supply any water

^{10 &}quot;Cajamarca: Michiquillay, Galeno y Conga Planean Ser Un Clúster Minero - Mercados & Regiones," accessed May 6, 2020, https://mercadosyregiones.com/2018/12/27/cajamarca-michiquillay-galeno-y-conga-planean-ser-un-cluster-minero/ Remedios Fajardo Gomez, "The Systematic Violation of the Human Rights of the Indigeneous People, Black People, and Campesinos by the Coal Mining Multinationals in the Department of La Guajira, Colombia," in The People Behind the Coal, eds. Aviva Chomsky, Garry Leech, and Steve Striffler (Casa Editorial Pisandos Callos, Colombia: 2007), 17.

to communities that had access through the natural flow of the river. This controversy is called "hydro-colonization," as it privatized an asset that belongs to the public domain.



Source: Mapa de Proyectos Mineros en Cartera y Principales Unidades de Exploración Minera, last accessed May 6, 2020, http://www.minem.gob.pe/minem/archivos/file/Mineria/PUBLICACIONES/MAPAS/2019/2019_MAPA_PROYEC-TOS%20(BR).pdf

As for the case of Peru, the region of Cajamarca has been witness to false promises and misguided expectations from mining companies since the early 90s, when the Yanacocha company started the Yanacocha gold mine, which until this date, is still working and extracting gold. Since the development of this project, representatives from the company failed to clearly explain to the locals how a mining project was developed and all the social and environmental implications that a project of such scale would have in the community. Most of the people from the rural communities thought their lives were not going to be impacted and that the project would just last for a couple of years, which was clearly not the case. At the same time, the local community has filed serious complaints on the quality of water from the rivers and lagoons that they use for agricultural purposes. This negligence has caused severe economic and social damage to the quality of life of the locals, and has translated into the Community's rejection of mining Projects, such as the Conga Project, which has been suspended since 2016.

Displacement and Resettlement

Displacement can arguably have some of the most disruptive effects on communities. In mining, communities can get displaced in each phase of development (exploration, Project design and planning and construction, to operations and closure) and in transition between those phases. In fact, in the beginning of phases of a Project, mining companies can face high levels of uncertainty around their land requirements due to limited geological knowledge at the outset and a desire to defer costs relating to resettlement "as needed." The displacement of populations can therefore become incremental and take place in many unintended ways.¹²

Since the conception of the mines in Colombia in the 1970s, mass displacement ensued as the Cerrejón mine expanded both infrastructure and extraction activities. According to affected communities, displacement and resettlement plans included disputes surrounding where the communities would get relocated, which communities were eligible to receive compensation from resettlement processes, and how much they would be compensated. Moreover, communities that refused resettlement have been forcibly displaced by intimidation and changes in their quality of life.

In one case, a Community that originally lived in the coastal area of Media Luna, where a port was constructed to export coal from Cerrejón, was displaced several times as the company expanded its operations. When parts of the Community resisted further displacement and insisted on remaining, the company enclosed their lands with a metal fence and positioned armed guards to watch over their territories in an attempt to intimidate them into leaving.¹³

Another example on how these large scale Projects affect the land ownership of the locals is the Yanacocha mine Project. At the start of this Project, representatives from the company did not explain to the Community the process and concept of selling their land. The Community was not aware that they would lose the rights of their property and access to continue carrying out agricultural activities.

Environmental Impacts

Development Projects, particularly mining ones, inevitably have detrimental impacts on the environment, including water pollution, air pollution, and habitat and ecosystem disruption. While environmental impacts are often monitored by companies and governments, the objectivity of the monitoring arrangements can be objectionable, the reliability of measurements can be disputed, the standards can be outdated, the testing can

John Owen and Deanna Kemp, "Mining-induced displacement and resettlement: a critical appraisal," Journal of Cleaner Production 87, (January 2015): 478-488.

¹³ Christian Aid, "Undermining Human Rights: Ireland, the ESB, and Cerrejon coal", February 2020, 20, https://www.christianaid.ie/sites/default/files/2020-02/Cerrejon%20Report.pdf.

be sporadic and unsystematic, and the studies may not produce any actionable measures.¹⁴ Those issues can allow environmental degradation to take place and its effects to manifest and compound with little intervention.

The area operated by the Cerrejón mining company, for example, includes up to 5,752 hectares of deforested land. In many cases, the soil conditions within those lands have been irreversibly deteriorated. The disappearance of the vegetation cover, alongside the river, have disrupted large bulks of the surrounding region's ecosystem. Moreover, the opencast coal mining left behind large areas of waste material, while contaminating ground and surface waters. Dust from blasting mines adversely affected vegetation and contributed to erosion.

Many of those environmental impacts have resulted in health issues. According to the National Department of Statistics in Colombia, between 2009 and 2013, about 4,151 children died in La Guajira, 278 of which died due to undernourishment. This shortage of food is largely the result of poor water management and loss of crops.¹⁵ Recently, national outcry took place over the case of Moisés Guette Uriana, a two-year-old boy that suffered severe respiratory problems and began vomiting blood. The outcry led a Circuit Judge to order Cerrejón to reduce its particulate emissions. In his court order, the judge lamented the lack of serious detailed studies of the impacts of mining activities on public health.¹⁶

More proof that mines may have a strong negative impact on bodies of water is evident in the case of the rivers and lagoons near the Yanacocha gold mine in Cajamarca, Peru. An investigation into the water quality in the mine area's rivers and streams found that the mine consistently breaches World Health Organization and Peruvian Ministry of Energy and Mines standards for a wide range of potential contaminants. Of major concern are fecal coliforms and copper present in 160,000 times and 10-20 times higher than WHO standards, respectively.¹⁷

Socioeconomic Impacts

Development Projects can result in significant socioeconomic impacts, including changes to power dynamics within a Community, changes to livelihoods and economic structures, and cultural transformation. For instance, a company's pursuit of land through individual negotiations can significantly impact a Community's power structures, disrupting its ability for collective action as people living in dire economic situations accept deals that undermine collective interests. Meanwhile, the livelihoods of communities surrounding a mining Project can be significantly transformed. As environmental conditions changed in La Guajira, traditional subsistence farming systems could no longer be maintained as both water and land resources diminished. Relatedly, the introduction of

Aljeandro Pulido, "Coal and its effects: Case study, Cerrejon Zona Norte, 2003," in The People Behind the Coal, eds. Aviva Chomsky, Garry Leech, and Steve Striffler (Casa Editorial Pisandos Callos, Colombia: 2007), 74-79.

¹⁵ Diana Mojica, "The Fight of the Wayúu Ethnic Community Against the Drought in La Guajira, Colombia," Conference Paper, August 2016.

¹⁶ Christian Aid, 23.

¹⁷ Shanna Langdon, "Peru's Yanacocha Gold Mine: The IFC's Midas Touch?," n.d., 8.

new sources of income and migrant populations further marginalized and excluded the locals and exacerbated socioeconomic disparities. Finally, places that are deemed sacred by the local communities of La Guajira, like hills and mountains, were violated and exposed to make way for coal mining.¹⁸ Those are places that could have been protected as cultural heritage sites if genuine consent and participation of communities had taken place.

Violations of Individual and Collective Rights

Finally, development Projects can be accompanied with violations of individual and collective rights. People that speak up and organize against violations can suffer from harassment and violence. Since January 1, 2016, 734 activists have been murdered in Colombia for protecting human rights and the environment. Armed paramilitary groups have taken it upon themselves to attack those who oppose business activities. For instance, Sintracarbón representative Igor Díaz received threats from a right-wing paramilitary organization closely linked to Colombia's drug trade, saying that "anti-business rats will be exterminated."¹⁹ While mining companies and the government may not be directly complicit in these threats, they still benefit from an environment where the cost of resistance is high. Moreover, they chose to offer little protection for those activists.

In terms of collective rights, groups that are recognized as indigenous are granted special rights in both Peru and Colombia, including rights to political participation, to property and territories, and cultural rights. However, not all groups that claim indigeneity are necessarily recognized as such. For instance, Tamaquito, a Wayúu Community that has recently been resettled by Cerrejón,²⁰ was not awarded indigenous rights by the government of Colombia because they had not registered as a Wayúu reservation. Even when they attempted to register as the process of resettlement moved forward, their application was denied.²¹ This waived the company's responsibility over relocating and providing compensation for the people of that Community. According to indigenous reports, companies have gone as far as to bribe officials to deny the recognition of some indigenous groups.²²

Similarly, not all territories that are occupied/claimed by indigenous groups have been acknowledged as their territories by the state. Until the mid-1980s, most Wayúu territories were considered "empty" land. Those lands only began to be titled as "reserves" after the mid-1980s and eventually came to include only 21 reserves, despite disputes over additional lands. Moreover, in many cases, the titles that have been awarded to communities are not respected in practice.

¹⁸ Remedios Fajardo Gomez, "The Systematic Violation of the Human Rights of the Indigeneous People, Black People, and Campesinos by the Coal Mining Multinationals in the Department of La Guajira, Colombia," in The People Behind the Coal, eds. Aviva Chomsky, Garry Leech, and Steve Striffler (Casa Editorial Pisandos Callos, Colombia: 2007), 18.

¹⁹ Christian Aid, 28.

²⁰ Cerrejon Responsible Mining, "Tamaquito II becomes an indigenous reservation," February 16, 2020.

²¹ Rebekah Siddique, "Cerrejon and the Wayúu: Documenting Violence," Towson University Senior Honor Thesis, 2018, 17.

²² Remedios Fajardo Gomez, "The Systematic Violation of the Human Rights of the Indigeneous People, Black People, and Campesinos by the Coal Mining Multinationals in the Department of La Guajira, Colombia," in The People Behind the Coal, eds. Aviva Chomsky, Garry Leech, and Steve Striffler (Casa Editorial Pisandos Callos, Colombia: 2007), 18.

In a very similar case, during the Yanacocha gold mine Project in Cajamarca. The impacted communities were not recognized nor respected as indigenous communities. According to the Project's EIA, the communities did not fall within the indigenous people category, even though they met the definitions of an indigenous Community. As they were not categorized as indigenous, the companies and the government did not respect the specific rights that indigenous communities are to be granted.

B. COMMUNITY PARTNERSHIP AGREEMENT

This guide can be used together with a draft of the Community Partnership Agreement (CP Agreement), which our team has proposed to both the Governments of Colombia and Peru. The CP Agreement was developed in response to the lack of a veto mechanism in the *consulta previa* procedure, noting that without the right to say "no", or to condition the "yes", which is a normal right in contract situations, consent is really not consent. Thus, the CP agreement aims to serve as a binding document by which your Community can negotiate conditions for consent of a Project and enforce, if necessary, your veto power through a cross-default triggered by non-compliance of the Project Company's obligations. The Government, as another party to the Agreement, is expected to oversee the process and enforce the agreement.

Given that many of the Projects are underway, we encourage your Community to organize and negotiate, as early and as soon as possible, with the incoming Project Companies to come to an agreement that protects your rights and promotes equitable economic and social development for your region. The CP Agreement recommends the creation of a Community Board, a group chosen by the Community on the basis of consistent involvement and participation in Community affairs. The Community Board can be, and ideally should be, incorporated within a formal organization such as a closely held corporation or a trust. (Please note that these organizational structures and differences are detailed in the "Organizing for Dialogue" section of this guidebook.) The Community Board will become part of the Community Negotiations Team, composed of Local and Central Government officials who should leverage their power to protect and promote the Community's interests. The negotiations team may also include NGO and third-party experts, as individuals and not institutions, that the Community has vetted and approved as independent advisors and support. Once an agreement is reached, the Community Board (or, as noted above, the formal organization) will be responsible for signing the CP Agreement on behalf of the Community.

Under the proposed CP Agreement, the Project Company will be required to obtain your free, prior and informed consent (FPIC) before it starts any exploration process. The Project Company must ensure that your Community can easily access and understand all information, in both Spanish and your Community's local language[s], and you are given a reasonable time (enough time to read, digest and understand all of the information) to make decisions.

Asking the Right Questions

You have a right to ask the Project Company as many questions as you want, and recieve pertinent studies and materials, about anything you do not understand about the Project. Here are illustrative questions that your Community can ask the Project Company. They are organized based on topics and themes of interest mentioned under the Articles of the CP Agreement:

• Project Research and Logistics:

- * How does the Project Company and the Government define "Community?"
- * What studies or research has been done on our Community by the Project Company?
- * How long will the Project last?
- * Who will carry out and verify the necessary impact assessments?
- * Who will be the Project Company's point of contact to communicate changes in the Project to the Community and register complaints from the Community?

• Economic Impact:

- * How will the Project transform our local economy?
- * What will happen to my current job?
- * What employment opportunities will there be for our Community in the Project?
- * How many people will be coming from outside the Community to work on the Project?

• Social Impact:

- * How will this Project directly affect me or my daily activities?
- * How will the Project impact the Community's health and how do you intend to resolve any health related problems that arise from your Project?
- * Will we have to move?
- * Will we lose access to sacred and cultural heritage sites that are important to the Community?

• Environmental Impact

* How will the Project Company eliminate or mitigate the environmental impacts of the Project?

- * How will the Project Company ensure our access to potable water and other water resources necessary for the Community's everyday needs remain unaffected?
- * How will the Project Company go about restoring the land upon Project closure?

• Benefits:

- * How will this Project benefit our Community?
- * How will the Project foster better education and skills development opportunities for the Community?
- * How will the Project Company share its profits with the Community?
- * Why should we support the Project's development?

• Compliance:

- * What if the Project Company changes?
- * What if the Project Company's management changes?
- * How can the Project Company ensure continued prioritization of Community concerns?
- * How will the Project Company build trust with the Community and maintain a working relationship with Community leaders?
- * How can we ensure that the company keeps its promises?
- * How will the Project Company safeguard against corruption?

• Damages

- * What happens if there is an accident?
- * How will the Project Company indemnify the Community?
- * Does the Project insurance cover damages incurred by the Community?
- * Can the Community terminate the CP Agreement if damages result in a Material Breach?

The Project Company will be required to sign the proposed CP Agreement promising to:

[i] Not harm the health or damage the environment of your Community

[ii] Fairly share financial gains it makes from the Project with your Community via a Social Wealth Trust Fund

[iii] Treat the members of your Community equally and not discriminate in the provision of medical services or other critical and needed social services

[iv] Not do anything that is corrupt or breaks the law

[v] Prevent social conflict and at all times respect the freedoms of the Community, including the right of assembly and freedom of speech

The proposed CP Agreement will be a formal, legally binding partnership between the Community and the Project Company. It is meant to put the Community on equal footing with the counterparties by recognizing the Community as a *partner*, given that the Community's consent is vital to the success of the Project and its ability to provide widespread benefits to all stakeholders. This is especially the case if a Community has to give up its land to the Project Company, in which case the Community's contribution to the Project is comparable to that of an equity partner.

The next section highlights your course of action in the event that any actor violates this agreement.

C. COMPLAINT SYSTEM

The proposed CP Agreement will be legally binding, and if the Project Company breaks any of its obligations, the Project Company's License to Operate can be revoked (taken away) by the Central Government; and, in the case of significant or egregious violations, should be revoked. Assuming the CP Agreement is authorized for use in your country, we encourage your Community to enter into the CP Agreement (with all the necessary conditions, including FPIC) with a Project Company that is coming to your area before the Project starts any phase of exploration or operation, or finalizes its schedules. Once the agreement is in force, the Community has the right to report any breach of the agreement and should be able to take the Project Company to court if it is necessary and so chooses. The Community always has the right to seek the support of any level of government in the event of non-compliance

The following questions offer some guidelines as to a potential complaint system procedure.

The Project Company has broken the CP Agreement. What should I do if my rights are violated?

Generally:

- Report the breach directly to the Project Company's Community liason, the Ombudsman Office, or the Community Board, according to the procedure defined in the CP Agreement.
- Submit any evidence that supports the claim even though the burden of proof of compliance is and should be on the Project Company.
- Confirm the complaint is publicly recorded, in physical and hard copy, by any, or each, of the Local, Regional, and Central Governments.

- If the Project Company has not responded within the time frame given in the CP Agreement, notify the Local Government and your local Defensoría del Pueblo.
- Filing your complaint with other people that are impacted will help create more pressure and direct more attention to your grievances.

Currently in Colombia:²³

- In the event that there are complaints due to violation of the Community's rights or violation of the agreements between the Project Company and the Community, there are various routes that may be pursued. For instance, if the FPIC process wasn't developed within the legal framework, you may pursue the:
 - * Judicial route: Such as a protection action of individual human rights (*acción de tutela*) and popular actions regarding group rights (*acción popular*)
 - * Disciplinary route: Complaints submitted to the National Attorney General's Office (*Procuraduría General de la Nación*)
 - * Defense route: Request reports and alerts from the Defensoria del Pueblo
- If FPIC process was developed but an agreement is breached, such as environmental agreements, the previous courses of actions may be pursued as well as a request for the Project Company's environmental license to be revoked by the National Authority on Environmental Licenses (ANLA), or the State Council if the aforementioned option is not successful.
- Additionally, there are many civil society organizations that may provide support in these situations, especially national indigenous organizations such as:
 - * National Indigenous Organization of Colombia, *Organización Nacional Indígena de Colombia* (ONIC)
 - * National Indigenous Organization of the Amazonian Communities, *Organización Nacional de los Pueblos Indígenas de la Amazonía* (OPIAC)
 - * The Movement of Indigenous Authorities of Colombia, *El Movimiento de Autoridades Indígenas de Colombia* (AICO)
 - * Traditional Indigenous Authorities of Colombia- Major Government, *Autoridades Tradicionales Indígenas de Colombia-Gobierno Mayor*
 - * Tayrona Indigenous Confederation, Confederación Indígena Tayrona (CIT)
 - * Community Corporation of Lawyers Akubadaura, *Corporación Comunidad de Juristas Akubadaura*
- National entities such as the Attorney General's Office, the Defensoría del Pueblo, and the Constitutional Court sometimes play a key role concerning the rights of indigenous communities such as the FPIC process.
- 23 Information based on interviews with indigenous lawyers of the Corporación Comunidad de Juristas Akubadaura.

Currently in Peru:

- 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/

Someone other than the Project Company has violated my rights. What do I do?

- Document all of your complaints. The more documentation you have the better.
 - * 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. Details that could help prove that your complaint happened include:
 - » someone else seeing or experiencing the complaint
 - » changes in measured indicators like air pollution or water contamination
 - * Take videos or pictures of the changes or damages you're seeing.
 - » Before, during and after the Project activity is completed
 - * 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:
 - » Appendix IV contains a list of organizations that can be contacted in the event of such a violation

The appendix lists 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.

D. INFORMATION IS POWER

Knowing the Community's rights as well as your individual rights is truly important. These are the most powerful tools that Communities can use not only to protect themselves but also to negotiate with the companies. The importance of knowing what are the organizational structure and documents that guarantee protection of the Community's well-being is critical when a Project is going to operate in the area of your Community. This section discusses the rights of Communities and individuals affected by Projects, as well as the legal framework that the companies must comply with.

Firstly, we need to highlight that every citizen from Colombia and Peru is protected by human rights which are part of the countries' constitutions. Additionally, both countries have signed international human rights treaties (listed in the "Engagement" chapter of this report) which ensure every citizen with the following:

- Equality and Non-Discrimination You cannot be discriminated against based on your race, sex, language, religion, opinion, or economic and social background.
- **Right to Property** You have the right to your property and inheritance.
- **Right to Freedom of Assembly** You have the right to come together and collectively express, promote, pursue, and defend your ideas.
- **Right to Work** Everyone has the right to work without discrimination, to collectively bargain and to strike, and to work in just and favorable conditions.
- **Right to Health** Everyone has the right to protection of health and free access to health care.
- **Right to Food, Clothing, and Housing** Everyone has the right to an adequate standard of living, including adequate food, clothing, and housing.
- **Right to Water** Everyone has the right of access to clean, sufficient, and affordable water.
- **Right to Education** Everyone has the right to a free early childhood, primary, and secondary education; and to the enjoyment of the benefits of cultural freedom and scientific progress.
- **Right to Social Protection** Everyone has the right to an adequate standard of living and the highest attainable standards of physical and mental well-being.

It is important to highlight that companies cannot negotiate away your rights. The proposed CP Agreement must comply with your individual and collective rights regard-less of any additional propositions.

You also have a right to negotiate the terms on which a company may impact your Community. On this point, this guide will stress the importance of negotiating for the benefit of the Community's economic and social development and autonomy. Many times companies will negotiate to build a community center or a school or buy an ambulance for the Community. Though these actions have a positive impact, they may only produce short-term benefits. This guide strongly suggests you take into account your Community's main economic activities (e.g. agriculture, farming, fishery, textiles, tourism, etc.) and negotiate infrastructure and long-term or lasting Projects that work towards improving these economic activities. These are the actions that will help your Community to develop sustainably and to be self-sufficient in the future.

It should be noted that the efficiency of local courts and types of assistance Communities receive to gain judicial representation varies across Latin America. For example in Colombia, just like in many other Latin American countries, there are issues with the management and access to justice. These problems may be exacerbated depending on the territories in which the courts are located, and are especially prevalent in border regions, small urban centers, zones with limited state control and access to roads, or areas with armed violence, drug trafficking, corruption, cartels and other forms of organized crime. These complex situations hinder the efficiency of the justice system and make them vulnerable to varying interests and pressures. Additionally, the lack of an operations budget has a direct impact on the indigenous communities that reside in these territories and seek justice.²⁴

At the national level, decisions of courts, such as the Constitutional Court and the Supreme Court of Justice, deal with certain indigenous communities' rights and acknowledge the autonomy of the communities' territories and their right to the FPIC process. These rulings are achieved taking into account the realities and traditions of the indigenous communities in mind. Rulings such as the T-025 of 2004 or the SU-123 of 2017, or judicial acts like the 004 and 005 from 2009, or the 266 from 2017 recognize the FPIC process as a right that indigenous communities depend on to live in and protect their territories and natural resources. It is also a right that is constantly threatened by Project Companies and by (an overly centralized or distant) national government.²⁵

Finally, another important aspect to be aware of is that the Community has the right to report corruption if this occurs during any stage of the Project's planning or operation. This section will provide you with a comprehensive description of what corruption is and what are some of the most frequent acts of corruption that you may encounter.

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 in exchange to benefit a private party. According to Transparency International,²⁶ acts of corruption have the purpose of obtaining benefits for those who make the corrupt act at the cost of another's wellness.

Too often corruption has come to be accepted as normal. It is important, however, to note that it is an illegal act which causes long term damage to society. In this guide, we encourage communities and individuals to report any act of corruption that they perceive from government officials, companies, NGOs, independent advisors, members of the board or Community, etc. The impact of corruption is greater when it affects the vulner-able, in particular indigenous communities, senior people, people with disabilities, and communities that live in poverty. Therefore, it is your responsibility as members of the Community to avoid having corruption become a "socially accepted" act.

Corruption can also lead to, direct or indirect, violations of collective and individ-

²⁴ Information based on interviews with indigenous lawyers of the Corporación Comunidad de Juristas Akubadaura.

²⁵ Information based on interviews with indigenous lawyers of the Corporación Comunidad de Juristas Akubadaura.

Organisation for Economic Co-operation and Development, ed., Corruption: A Glossary of International Standards in Criminal Law, OECD Glossaries (Paris: OECD, 2008), http://www.oecd.org/corruption/anti-bribery/39532693.pdf.

ual rights.²⁷ Direct violations are acts of corruption that violate your right to exercise your rights. For example, money allocated for food or medicine that is misused by government officials causes a shortage of these products and directly and negatively affects the health and well-being of the Community.

On the other hand, indirect acts of corruption may be harder to detect as the effects of these do not appear immediately or are not readily discernable.²⁸ An example of this type of corruption may be a badly constructed infrastructure project, such as a bridge or a school, which should be built with the highest safety standards and quality materials. In the case that a government official and a contractor work together to benefit from the construction project at the expense of safety regulations, this act of corruption could ultimately endanger the lives of members of the Community.

The power of public office can also be abused through the following actions:

- Nepotism (giving jobs or preferences to someone because of a personal relationship rather than by merit)
- Ignoring Community complaints
- Intimidation by government officials and leaders, or incentivize extrajudicial acts, which may include threats to Community members deciding to speak out
- A government official is requesting money from a company to start a project or to accelerate the consent process
- A member of the Community receives money from the company to conduct a project and the member uses the money for personal expenses

Our template CP Agreement states that any reported act of corruption or bribery must be investigated within 45 days (but may be any other reasonable timeframe agreed to during the course of negotiations). If any confirmed act of corruption or bribery occurs, in connection with the securing or maintaining of the Operations License, the CP Agreement or the Consent, or in the conduct of the Project's activities or related activities, then your Community has the right to withdraw consent, at which point the Government should suspend the Operations License.

What does Free, Prior and Informed Consent (FPIC) mean?

The process of obtaining a Community's consent, typically through *consulta pre-via*, has unfortunately proven in the past to lack organization and to be prone to abuse of power. On many occasions, the companies have not disclosed the necessary information for the Community to make a conscious and informed decision. For these and many <u>other reasons</u>, the 2007 United Nations Declaration on the Rights of Indigenous People

^{27 &}quot;Radiografía de La Corrupción En El Perú," accessed April 23, 2020, https://www.defensoria.gob.pe/wp-content/up-loads/2018/08/Reporte-de-corrupcion-DP-2017-01.pdf.
28 "Reporte de Corrupcion DP 2017-01."

established a specific Free, Prior, and Informed Consent (FPIC) right that pertains to indigenous peoples.

This guide will describe the meaning of each term and how it should be used in the consultation process for the CP Agreement:

"Free": This term means that the consent must be voluntary by the Community, without coercion, intimidation or manipulation from any entity. Free consent is organized by the Community from whom the consent is being sought. The Community should not feel pressured to decide on a specific timeline externally imposed.

The agreement should provide that your Community must give its consent by organizing an official meeting with all members of your Community. There must be a supermajority vote (such as, at least two-thirds) of all members of the Community [who are over age 18]. Of those who vote, at least 50 percent 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 company cannot get consent to the Project from only one member of your Community, even if that member claims to represent the Community.

"Prior": This term means that the company must obtain consent from your Community before:

- the Project Company begins Exploration for the Project;
- every major stage of the Project or any major changes to those stages;
- every change in the scope of each major stage of the Project; and
- every major development which could adversely impact your Community during the entire life of the Project.

The Community must not feel intimidated or rushed to decide at any time. The company and the government should give the Community sufficient time to discuss, in their own language, and in a culturally appropriate way, matters affecting their rights, lands, natural resources, territories, livelihoods, knowledge, social fabric, traditions, governance systems, and culture or heritage (tangible and intangible).

"Informed": This term means that the Project Company, and the Local and Central Government should share with your Community all information before it begins working and before every stage listed above. The information must include a preliminary (baseline) assessment of the possible economic, social, cultural, and environmental impacts, including potential risks and benefits. Some of the basic details that the company must provide you are:

Project Related:

• How long is the Project expected to last?

- What is the delimited area where they will operate?
- What is the Project about?
- Will the Project be using natural resources for its operations?

Environment Related:

- Does the Project have an indirect or direct impact on the air quality?
- Does the Project have an indirect or direct impact on the bodies of water the Community relies on or on other bodies of water in the vicinity of the Project?
- Will the Project produce noise or odors that will reach the Community?
- Is the Project going to have an impact on the land which could affect the local agriculture?

Community Related:

- How many people will come and live in the Community?
- How many indirect and direct new jobs will this Project create?
- How is this Project going to affect the quality of life of the Community?
- What are the immediate changes that, as a Community, we will be noticing?
- Will people be displaced, and if so, how will they be compensated?

The Project Company and the Government must make sure that the information provided is sufficient, accurate and complete, and that the consent process is carried on in the Community's preferred language. The information should be readily accessible to every member of the Community (youth, the elderly, persons with disabilities, women), regardless of how remote their location might be.

The right to free, prior, and informed consent implies that when an indigenous Community gives its consent, the Community should also have the right to withdraw it at any stage when there is a breach in the CP Agreement.²⁹ FPIC has been used by many Communities as a smart negotiation tool to make companies more receptive to acquiescing to pertinent conditions.

The FPIC process, however, does not guarantee consent as a result. The result of an FPIC process can be any of the following outcomes: consent from the indigenous peoples' Community on the proposed activity; consent after negotiation and change of the conditions under which the Project will be planned, implemented, monitored and evaluated; or the withholding of consent.

It is important to note that in Colombia, reports like the one published by the National Indigenous Organization of Colombia within the framework of compliance with <u>the Joint De</u>claration of Intention (DCI) of 2019, highlight many FPIC processes and "Free, Prior and Informed Consent | Indigenous Peoples | Food and Agriculture Organization of the United Nations." the effects generated as a result of the infringement of this right. It is commonly observed that many times there are agreements that are incorporated in the Project's environmental management plans, but they are either not honored by the Project Companies, or may be reinterpreted and implemented under their own terms. It is unknown if formal compensation guarantees have been offered by the Government or Project Company when these types of agreement breaches occur. In these cases, typically the Community files complaints and lawsuits or starts a political movement.³⁰ To protect against such abuses, the CP Agreement incorporate the Government as the party that oversees and enforces the process, agreeing to be present at each stage of negotiation of any change to the terms of consent given to the Project Company under the CP Agreement.

E. ORGANIZING FOR DIALOGUE

Community cohesion—the sense of togetherness and shared values between members of a Community—is essential for peaceful and effective participatory decision-making related to land and natural resources.³¹

Regardless of whether your Community has coexisted with Project Companies for years, or whether it is new in this process, your Community has to be prepared and well organized by the time the negotiation process for the CP Agreement begins to take place. The biggest challenges that your Community will face are 1) reaching a widely-backed agreement on your position regarding the development of a Project, i.e. whether the Project should take place or not, and 2) to ensure that no other impacted Community was left out from benefiting from this new relationship. These two challenges point to the importance of Community organization and the enduring prevalence of Project-related issues over time. Agreements between Communities and Project Companies are not uncommon, they happen all the time in different parts of the world, even if informally. However, these instruments are also highly vulnerable when not made properly. Many agreements have fallen apart because of the lack of Community organization and agreement among its members. Therefore, the Community's organization must always strive for being inclusive and legitimate. We will analyze in the next chapter how to achieve inclusiveness and legitimacy.

The Community must be aware that the companies will come prepared with strong and skilled legal teams, as well as with a strong economic influence on the government. Indeed, governments support private investment in the extractive and energy industries because they perceive these operations as a large stream of revenue. Powerful ministries, like the Mining and Energy Ministry, will make their best efforts to incentivize these projects. However, governments have learned through diverse experiences that technical, economic, and environmental licenses are not enough to call a Project successful; without

³⁰ Information based on interviews with indigenous lawyers of the Corporación Comunidad de Juristas Akubadaura.

Rachel Knight et al., "Preparing in Advance for Potential Investors. Guide 1 For Community Members and Advocates Interacting with Potential Investors" (Columbia Center on Sustainable Investment, n.d.), http://ccsi.columbia.edu/ files/2018/09/50-namati_ccsi-guide-1-full-online-lr-compressed.pdf.

community acceptance, a Project simply cannot withstand the force of time. In recent years, governments efforts to recapture the Community's trust have been numerous and the communities need to acknowledge them and use these efforts in their favor.

This is why, if the members of the Community lack a sense of unity and common goals, Project Companies will undoubtedly and naturally prioritize their own interests rather than the Community's interests in the agreement. Moreover, if your Community builds a strong sense of unity and belonging, it is more likely that the companies commit to a fairer and more comprehensive agreement, and that the Government can, in turn, enforce those commitments.

How can your Community organize itself?

Communities organize themselves in various ways, naturally through regional and local governments, but also through social organizations tasked to represent and protect your communities' interests in different aspects of their lives. Likewise, your Community should organize itself for the purposes of this new relationship. This organizational body, which we'll call the Community Board, is important because your Community will not only have to negotiate the agreement with the Project companies throughout the life of a Project, but will also have to make decisions around management of finances, property ownership, the addition of new communities to the agreement and other issues throughout the life of the Project, which are typically decades-long endeavors. The Community Board, through the agreed structure, is the group of community members that will actually sign the CP Agreement on behalf of the Community. As the Community's leadership, they should be chosen by the Community. Ideally, these individuals are considered pillars of the community, as opposed to elected posts of a transitory and opportunistic nature; and they need to be independent.

While the Community as a whole will be in charge of making these important decisions, only a group of representatives will be at the table of negotiations with the company and the government officials. This group of representatives, or the Community Negotiations Team, doesn't make the decisions—the Community as a whole will decide. The Community Negotiations Team will be made up of the Community Board, along with Local and Central Government officials that are responsible for protecting the Community's interest, and can include—per the community's approval—NGO and third-party experts, preferably as individuals and not institutions, given institutions have internal responsibilities and goals, if not agendas, and not to mention internal organization challenges as well. The job of this group is to bring the concerns of the Community to the table of negotiations and defend the communities' decisions and needs before the Project Company and the Government. The representatives of the Community are only a reflection of the Community's voice and its unity.

Communities count on various effective options as to how to organize themselves

on an ongoing basis and during the lifetime of a Project:

• Pre-Existing Organizational Structure

Your Community may have already participated in negotiations of agreements with the same Project Company before (previous model) or you could have seen other Communities being represented as well in negotiations with given Project companies (external model). We recommend that the Community should take the following criteria into account even if opting for a previous/external model that has proven to be successful under similar circumstances:

- How different was the experience of the previous/external model?
 - * Was the Project similar in size to the one proposed to your Community?
 - * How many Communities were included in the agreement?
 - * Are the Communities similar in size and demographics (same percentage of children, women, elders, indigenous)?
 - * Are the Projects from the same industry (mining, renewable energy, hydrocarbons, etc)?
 - * Are the Local Governments ruled by the same regulations?
 - * How long did it take for this Community to reach an agreement with the Project Company?
- Who represented the Communities in the negotiations?
 - * What groups of interest within the Community were included (women, farmers, political leaders, defense groups, indigenous communities)?
 - * Were the representatives residents of the Community or external individuals?
 - * Were they elected in some way by the Community or were they government-appointed representatives?
- Regarding the agreement:
 - * Was the agreement in writing?
 - * Who signed the agreement?
 - * Were all the relevant stakeholders present at the signing of the agreement (company agents, Central/Regional/Local Government officials, Community members)?
 - * How was it published so the Community members would be aware of it?
- After the execution of the agreement:
 - * Does the previous/external group still represent the Community in new negotiations, or has the composition of this group changed over the time?

- * Has the Community experienced difficulties in expressing new concerns?
- * What are the mechanisms of complaint available for you?
- * How could the Community withdraw consent if need be?

Case Study: We have determined that the Espinar Project could serve as an example of how the communities affected by the mining project organized themselves to work with the companies and the government and ultimately reached an agreement. For this case specifically, the participatory process consisted of the creation of two committees: the Dialogue Committee and the Management Committee. The Dialogue Committee included 37 representative organizations from the region. This committee generated a document that included the rules of procedures for the agreement. The Management Committee was in charge of reviewing the projects proposed, which needed to be aligned with the so-cio-economic development plan of the region. Please note that this is a suggestion. and a model for comparison and learning. A model should never simply be adopted, but rather, should be adapted as needed and then adopted. (If the Project under consideration in the CP Agreement and the relevant region are not similar to the case highlighted above, you may want to look into a more similar case.)

Board of Directors

The Community could organize itself as a closely held corporation under the supervision of a Board of Directors. Nevertheless, there are several challenges for this option as there are many implications that need to be figured out, such as those of corporate law, member selection, regulations, and norms for the Board of Directors. If this is an option that you would like to pursue, we recommend to take into account the following questions when organizing the Board of Directors:

Who should be part of this Board of Directors?

- * What interest does each member of the board represent?
- * Should there be personal liability of the board members?
- * Is any member already part of a similar Board of Director for another Community and does this present a conflict?

It is important that the Board of Directors includes people who are linked to the Community—in other words, that they should feel they belong to the Community. Additionally, the board should include experts in topics such as environmental safety and health, local leaders, and respected and trusted NGOs.

In addition to the Board of Directors, we recommend to also create committees formed by members of the Community to evaluate different aspects, such as health, education, working conditions, environment or any social issue that may be relevant to your region. The committees' purpose is to bring dialogue and discussion on how the Project Company and its operations are affecting these sectors within your Community. The committees should collect the suggestions and complaints of how the Community is perceiving the impact of the Project Company's operation, in case that negotiations for the CP Agreement are necessary. All information gathered by the committees should be shared with the Board of Directors, who will have the responsibility to bring it to the Project Company's attention, as well as the different levels of the Government involved.

• A Board of Trustees

- * The Capstone Team's preferred option is that the Community organize itself by establishing itself not as a corporation but as a trust with members of the Community acting on a Board of Trustees, which will have the highest legal standards, fiduciary duties, e.g. duty of care.
- * The trustees will be held to a higher standard by law than that of any of the above organizational structures. It also has the potential to reduce corruption: the more demanding ethical obligations and standards of conduct of a trustee requires a greater commitment to the community from an individual, as opposed to the self-serving interests typical of elected or appointed officials and executives who have ascended to power.

Given the extensive reach of development Projects, we suggest thinking ahead and planning a coordinated response in the event that the Project, all of a sudden, starts affecting another Community. If another Community complains about the Project Company, you need to have a plan to dialogue and engage with the members of this Community, listen to their claims, and consider involving them directly in negotiations with the Project Company.

Organizing your Community for dialogue in a structured and transparent manner is key in achieving a successful negotiation. We highly recommend dedicating great effort, resources, and thorough attention to this topic and trying, to the greatest extent possible, to avoid leaving anyone behind.

Dialogue between the Community and the Project Company

- The Project Company needs to be required to meet with the Community from the initial stages of the Project, whether that be the exploration process or, even, as part of the Government's Request for Proposal (RFP); and from then on, meetings should be scheduled on a regular basis. The frequency of these meetings and duration need to be defined during the negotiation. [The 2021 Capstone Team should distinguish between the negotiations/discussions that take place before the signing of the CP Agreement, and negotiations/discussions that take place per the stipulations of the CP Agreement; and determine how conditions and schedules, such as frequency of meetings, can be defined for each.]
- The Project Company needs to communicate with the Community in the Community's native (or preferred) language. In the case that the Project Company's representative does not speak the same language as the Community, it is the company's responsi-

bility to count with multiple translators during the meetings. This point is specifically relevant, in order for the Community to make a fair and informed decision on its future; every member of the Community needs to understand what the Project Company communicates. Multiple translators, rather than a single translator, are necessary for comprehensive explanations of legal concepts and terminology that may be completely foreign to the Community's native language.

• The Project Company must ensure it is reachable at all times, especially in the event of an unexpected circumstance/emergency. The Project Company has the responsibility to designate an authorized and responsible contact person for the Community (or Community liaison) who will serve as a permanent bridge between the Community and the Project Company. This person needs to live within the area of the Community. Whether or not this person has other/different responsibilities, the person must be available at any time to receive calls or meetings from members of the Communities that need to discuss a situation or a complaint. The Community Board should always be in possession of the most updated contact information of this individual.

The Community's Obligations

Your Community is obligated to choose the Community Board representatives through democratic, open, and fair means; who should be available at meetings to review and to resolve issues with representatives of the Project Company. As an impacted Community, it is your obligation to be aware of these impacts and how they will be affecting you. The Project Company has the obligation to inform you but you also hold a civil obligation to get involved in any affairs related to your Community. If you want the Project Companies to consider you a serious partner, you need to take a serious attitude about the matter and be informed.

F. PROJECT AND POLICY IMPACT ASSESSMENTS

Project and policy assessments are researched reports carried out by a group of independent experts, intended as a tool for informed decision-making. Project impact assessments look at the specific impacts and outcomes that relate to a specific Project. Policy impact assessments tend to be more comprehensive and place those Projects in a larger policy framework that weighs them against alternatives and considers the impacts of simultaneous changes.

Impact assessment is a process that helps understand and respond to the environmental, social, cultural, and economic effects that are linked to or arise out of a Project. They are an iterative process, not a one-off activity. They lay out how we can identify, avoid, and mitigate negative results and improve on positive ones. They form the building blocks for a continuous monitoring and evaluation mechanism that updates, refines, and manages outcomes and impacts.

Impact assessments are normally initiated as part of a regulatory approval process

when a Project is under consideration. Those impact assessments are assigned by the government. Impact assessments can also voluntarily be initiated at the Project level, primarily before a major change, such as preparation for closure or expansion. Impact assessments can also be requested by Communities in order to initiate an inspection to determine whether violations have taken place or to assess the risk of certain outcomes taking place in the future.

Some impact assessments are designed to predict outcomes while others measure actual results. Not all impacts are predictable, but those studies can help provide insights on what might happen. Similarly, not all results are measurable, but they can offer some broad indication of what outcomes are being achieved. Impact assessments do not guarantee that Projects will be environmentally or socially friendly, or sustainable, or that they will be modified/rejected if harms are identified.

The Community should have the right to request any of the following impact assessments as a condition for consent and stipulation in the CP Agreement. These assessments form the building blocks for a continuous monitoring and evaluation mechanism that update, refine, and manage outcomes and impacts of a Project. The Community can use these assessments to detect any breach or provide evidence for a complaint. Note that the Project Companies should be, and be held, responsible for the accuracy, correctness, and completeness of all the assessments.

The assessments will be more effective if the following conditions are met:

- There is independence and expertise. (Trained social and environmental scientists would deliver the best advice, and accordingly, results.)
- They adopt participatory methods in deciding what the public also and in addition wants to measure, instead of what is easy to quantify, and how the public can contribute to monitoring.
- They are linked with clear monitoring and evaluation (M&E) and impact management programs.
- They are iterative and take place at various stages of Project development, including **prior** to Project approval and **after** closure.
- They can be clearly integrated into decision-making processes.
- Strong baselines need to be developed.
 - * What is a baseline? A baseline is the first round of measurement and data collection against which future data are compared. The baseline for health outcomes, for instance, measure the health conditions of impacted communities before the intervention takes place.
- Comprehensive measures of impacts are considered, including all activities from exploration to post-closure, and from extraction and processing to recycling and waste man-

agement.

- * This can be achieved through big picture assessments such as the Cumulative Impact Assessments (CIAs) and Strategic Environmental Assessments (SEAs) described below.
- There is flexibility, such as allowing indicators and measurements to adapt to the most recent international standards and to be refined and revised over time. (IFC standards and Equator Principles should be reference points.)
- They are sustainability-driven.
- There are contingency plans for gaps in data.
- Resulting plans are weighed against alternatives.

Environmental Impact Assessment

An Environmental Impact Assessment (EIA) is a process designed to identify the full scope of potential environmental impacts that a Project may have, as well as describe possible steps to prevent—or where it is impossible to prevent, to minimize—all negative impacts as much as possible. Minimization should apply the most advanced procedures and technologies. EIA's are commonplace and typically incorporated into most appraisal and pre-engineering phases of Projects.

A good EIA should include information on:

- Potable water availability/depletion
- Impact on water available for agriculture
- Water quality/pollution
- Wastewater management plan, including handling, storage, and disposal
 - * Water requirements for Project operations
 - * Tailings and hazardous effluents, including location and construction
 - * Water treatments
- Noise pollution
- Land pollution and soil erosion
- Air quality/pollution, as per international requirements
 - * Hazardous chemicals
 - * Greenhouse gas emissions
 - * Small particle emissions
 - * Dust pollution

- Potential force majeure events (natural disasters) and implications
- Impact on biodiversity
- Post-closure environmental impacts
- The Project's potential effects on human health

To focus more on the possible impacts on human health, an Environmental and Health Impact Assessment (EHIA) can also be conducted to identify, predict, and appraise the environmental factors of a Project that can affect human health.

Social Impact Assessment

Like the EIA, the Social Impact Assessment (SIA) is a process designed to identify the full scope of potential social impacts that a Project may have, as well as describe possible steps to prevent—or where it is impossible to prevent, minimize—all negative impacts as much as possible.

A professional SIA covers:

- Social impacts
- Cultural impacts
- Demographic impacts
- Economic impacts
- Social-psychological impacts
- Political impacts
- Impact on land use and ownership
- Impact on relationship dynamics within Communities and collective action
- Identifies and involves all potential social groups impacted by the Project, especially the vulnerable, underrepresented, and marginalized
- Clearly identifies winners and losers, including in social and political dynamics

SIAs can be conducted independently or be integrated with EIAs in an Environmental and Social Impact Assessment (ESIA). SIAs can also include a Gender Impact Assessment, which examines the effects that a Project can have on men and women, how they can affect work-life balances and gender inequities. They can also include Poverty and Social Impact Assessments (PSIAs), which look at the wealth distributional effects of the Project on the lowest income brackets.

Cumulative Impact Assessment

Cumulative Impact Assessments (CIA) consider the potential aggregate, incremental, and synergistic effects of the Project with other Projects in an area. These are assessments that include both Environmental and Social Impact Assessments, while assessing compounding and accruing effects over time. Like the EIAs and SIAs, CIAs are project assessments, but they place those Projects within a wider, spatial scope, in both time and geography. While a single project may appear to have negligible consequences on environmental health or on a given Community, the sum of multiple or all projects in a region may significantly breach environmental standards. As such, it is our recommendation that Community's opt for CIAs as the standard of measurment for a Project's impact and a condition for consent in the the CP Agreement.

A strong CIA should include:³²

- Spatial impacts
 - * Those are impacts which occur simultaneously in a given area
- Temporal impacts
 - * Those are impacts that vary over time and as the Project progresses
- Linked impacts
 - * Those are impacts that consider interactions such as when one effect can trigger another or instances where an activity can have multiple effects.

A Project that may have insignificant impacts on its own may have much larger potential impacts when considered in combination with other simultaneous or prior developments.

Strategic Environmental Assessment

The Strategic Environmental Assessment (SEA) is an assessment that is conducted at the policy level that includes planning and programming. It refers to a "range of analytical and participatory approaches that aim to integrate environmental considerations into policies, plans, and programs and evaluate the inter-linkages with economic and social considerations."³³ SEA is implemented at the earliest phases of decision-making to help formulate policies, plans, and programs and to assess their effectiveness and sustainability.

A good SEA:

- Takes place well before Project approval and identifies potential issues when there is still flexibility to make changes
- Delivers clear development outcomes and objectives
- Involves EIAs, SIAs, and/or CIAs
- Plans follow-up activities and constraints

Franks, DM, Brereton, D, Moran, CJ, Sarker, T and T, Cohen, "Cumulative Impacts: A Good Practice Guide for the Australian Coal Mining Industry," Centre for Social Responsibility in Mining & Centre for Water in the Minerals Industry, Sustainable Minerals Institute, The University of Queensland, Australian Coal Association Research Program, Brisbane, 2010, 11. OECD, "Applying Strategic Environmental Assessment: Good Practice For Development Cooperation," DAC Guidlines and Reference Series, 2006, 17.

- Has a broader spatial and temporal extent than CIAs
- Communicates clear standards and thresholds on various indicators
- Links to large-scale land use planning

SEAs can be national or regional. Regional assessments can be on the scale of a province, catchment, or political jurisdiction, where a new type of industry, extraction method, or exploitable resource is being considered.

G. A MONITORING AND EVALUATION SYSTEM

The assessments discussed above are tools that allow us to understand impacts, but not necessarily to manage them. Impact management can take place through systems and mechanisms that are applied in different stages of a development Project to monitor, report, evaluate, review, and react to changes.

A good monitoring and evaluation mechanism:

- Is managed independently by a team that has no stake in the Project
- Includes public participation mechanisms of reporting on and responding to impacts
- States clear inputs, outputs, intended outcomes, and intended impacts, that are supported with indicators and measurement tools
- Communicates clear standards and thresholds on various indicators
- Continuously predicts new impacts and refines assessments
- Indicators need to be measured every six months, or per whatever timeframe is stipulated in the CP Agreement, after baseline measurements are taken
 - * Baseline measurements should be taken well before any Project operations commence (i.e. collecting basic health records of the impacted Community)
 - * Indicators are measured in the total area of impact, not just in the direct area or indirect area of impact
- Presents clear mechanisms for responding to negative impacts in a timely manner
- Involves updates to Communities and other stakeholders on progress with regards to outcomes and impacts
- Facilitates evidence-based dialogue between stakeholders

The monitoring and evaluation process must be supported or backed by a fund that is used to correct adverse impacts, such as the Internal Emergency Fund, which is used to remedy breaches. The Restoration Fund, on the other hand, can act as a mechanism for impact management and response at Project closure or as the Project finishes with a certain phase.

- The Project Company should ensure that the Internal Emergency Fund can be immediately and readily used to clean up any environmental problems that occur as a result of the Project's activities, or natural disaster aggravating a Project's impact, during or after the Project's existence.
- Money from the Restoration Fund can only be used for clean up of environmental degradation arising from a the Project's activity to and restore the area to its original condition to the best extent possible, upon Project closure and for a set time period thereafter agreed to in the CP Agreement.
- These accounts cannot be touched by the Community or the Project Company and should be held in dedicated trust accounts.

H. Community Participation in Impact Assessment and Management

There is a range of ways that public participation in impact assessments can take place. It is important that the Community is made aware of the options that are available to be better able to negotiate the conditions of their relationship with incoming Project Companies.

Overall, when a Project Company or government proposes public participation in impact assessments, they can do so in three different ways:³⁴

1. Public participation in providing input for decision-making. This can take place through:

- Presenting impact assessment (IA) information to the public
- Involving the public in a way that helps fill gaps in IAs
- Engaging the public in ways that cross-check, or contest, the information presented in the IAs
- Involving the public in problem solving and social learning activities that help brainstorm options and ideas for decision-makers
- 2. Public participation in decision-making. This can take place through:
- Involving the public in workshops, problem solving, and social learning activities that increase their capacity to influence decisions
- Participation of representatives in decision-making processes that build on IA results

Ciaran O'Faircheallaigh, "Public participation and environmental impact assessment: Purposes, implications, and lessons for public policy making," Environmental Impact Assessment Review 30 (2010): 19–27.

- Referendums that give the public the final say on a decision
- In several situations where no decision-making powers were granted to the public, groups have pursued independent IAs and used them as a basis for negotiating with Project developers and imposing decision-making powers onto the Community

3. Public participation as a mechanism to transform decision-making structures. The assumption here is that the existing distribution of power in society is uneven and needs to be corrected to better account for the concerns of marginalized groups. Such groups can be included through:

- Deliberately involving representatives from marginalized groups in decision-making processes
- Improving group capacity to organize and influence decisions

The Project Company should initiate a Citizen Participation Plan to elaborate on the role of the public in the proposed impact assessments and management processes. Some features of a good Citizen Participation Plan include:

- Clearly stated provisions concerning public influence over decision-making
- Both obligatory and voluntary mechanisms
- Continuous 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
- The Community's consent as described in the FPIC process under Section D of this chapter

I. SUSTAINING FUNDS FOR THE COMMUNITY

Under the proposed CP Agreement, Article 2.8 states that the Project Company shall create, fund, and maintain three funds for the benefit of the Community, to be fully funded at all times with sufficient funds to carry out the purpose of each fund. In this guide, we will explain what each fund means to your Community and how you can take the most advantage of these funds.

- **Restoration Fund:** The purpose of this fund is to cover the restoration expenses of the Project site after the Project ends and any land of any Community member impacted by the Project's activities. For example, if the Project caused any pollution or damage to the water or land, these must be restored to its original condition applying the world's best available technology and the highest environmental standards.
- Internal Emergency Fund: The economic resources from this fund are specifically kept in case there is an emergency, accident, or breach of the CP Agreement, generated

by the Project Company. If an accident were to happen due to the company's operation, funds will be immediately and readily available to cover expenses to remedy the impacts and indemnify the Community.

- Social Wealth Trust Fund: This fund is funded by a royalty system as agreed to in the CP Agreement. It will have three beneficiary accounts: 1) a *Development Fund*, 2) a *Rainy Day Fund*, 3) and a *Crisis Fund*. Each of these three accounts will receive an agreed percentage of the taxes collected by the Central Government that are then designated to the Social Wealth Trust Fund. The percentage allocation is to be discussed in detail during CP Agreement negotiations.
 - The *Development Fund* will be deployed for the specific initiatives of the *Sustain-able Development Plan*. This is the fund in which you, as a Community, have control over how the money should be spent. The Project Company is not responsible for developing this plan but rather for supporting it by the payments it makes to the government which are deposited in the fund.
 - * The Sustainable Development Plan will be spearheaded by the Community Board, with other members of the Community Negotiations Team in consultation with Social and Economic Development Departments (or equivalent) of the local and regional government, to meet Community objectives as they pertain to the spheres of employment, health, education, infrastructure or any other socio-economic development objective.
 - * This Plan should empower the Community to define how it wants to grow and develop on its own terms, and how to harness the incoming increase of economic activity spurred by the Project. It will underscore the concept that the Community is a partner that shares in the benefits, profits, of the Project.
 - The *Crisis Fund* can be used for any emergency as determined by the Government and Community, and should not be used for damages caused by or arising out of the Project, except in special pressing circumstances.
 - These funds will not be available to the Project Company's creditors.
 - The Social Wealth Trust Fund will have a Board of Trustees.

How to Design a Social Wealth Trust Fund

Here we discuss a new opportunity to have a better control and management system for the funds that, as an impacted Community of natural resource Projects, you should receive. In Peru, these resources come in the form of a "Canon".

Our proposal consists of creating a Social Wealth Trust Fund for the money that your local government can collect as a tax on the Project Company's profits or production, which serves as a reimbursement for the industrial and other economic activities in your locality. Like other sovereign wealth trust funds around the world, our suggestion is that an external banking entity manages the fund and that it works in the same way. The
interest earned by the fund, along with a part of the fund's capital (similar to foundation endowments which are required to expend part of their capital annually), should be used to contribute to the Community's Sustainable Development Plan or any other Project that the Community may need. Taking into account that the fund will receive every year more money from the government, the Social Wealth Trust Fund should normally have increased earnings every year.

Now, this suggestion comes with complex logistics as you would need to make several decisions to proceed with this option.

1. You need to decide which private bank or financial entity should manage the fund. For this decision, you may want to research which institutions have experience managing sovereign wealth funds. We suggest you look into large international financial institutions rather than a local bank, as such institutions are more likely to be able to better manage the fund. Additionally, you must make sure that the bank doesn't have any corruption controversies.

2. You would also need to establish a Board of Trustees for the fund's management, which will have two primary responsibilities: 1) ensure that all funds to be deposited in the fund are actually and duly paid into it and 2) police or oversee how expenditures are made. The Board does not originate the proposals for spending the money but should have veto power on how the money is to be spent and how in fact it is spent. There will always be an odd number of members and each must meet the criteria of independence *[to be defined by future capstones]* and competence. Members could include a diversified group: a bank (typically a conservative party), individuals such as independent lawyers, bankers, or other professionals that are not nationals, or country experts that work in international institutions such as the CAF Development Bank, the IDB or the IFC. In the latter case, individuals—and not institutions—have to be members with the consequence of personal liability. If a community member can be deemed totally independent so as to be completely objective, they should also be a member of the Board of Trustees.

At this point we recommend conducting research on different sovereign wealth fund's Board of Trustees, such as that of the Alaskan Permanent Fund Corporation or the Norwegian Pension Fund Global. The Board of Trustees should include financial experts but also people who can relate to the Community. The board needs to comply with its fiduciary duty, which means that they are required to act in the best interest of the fund.

3. There needs to be a separation between the Social Wealth Trust Fund and your country's Ministry of Finance or Treasury. This action will shield the investments from political influence.

4. The Community would need to create Founding Documents which would work as a manual on how the money from the fund is to be used.

The Peru Case: a Canon Tax as a Fund for Sustainable Development

For the case of Peru, the government has in place a Canon Tax. This works as a reimbursement that local and regional governments receive from industrial activities in their region. There are six Canons in Peru derived from the following industries: mining, oil, gas, hydropower, forestry, and fishery.

How does the Canon work?

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

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 "participative budgets", which involve meetings with local authorities and Community organizations.

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

J. SUSTAINABLE DEVELOPMENT PLAN

Your Community will devise a Sustainable Development Plan in collaboration with the Local Government; the plan will be approved by the Central Government. As per the previous section, the company will have the responsibility of setting aside money to fund the Sustainable Development Plan, though it has no input as to the use of the funds. During the planning and development of this plan, the Community should consider all the immediate needs of the Community, as well as projects—that may or may not be associated with the Project Company's activities—aimed at furthering the development of your Community in the long term. Below you will find a list of objectives that we suggest you include in the Sustainable Development Plan:

- Clean drinking water 24 hours a day, seven days a week
- Hot and cold water 24 hours a day, seven days a week
- Fully functioning sewerage systems for the whole Community
- Universal access to electricity
- Internet for all Community members
- A hospital, doctors and nurses to staff the hospital, and training for doctors and nurses
- Dental hospitals and trained dentists

- Basic medicines as well as specialized treatment for particular conditions most prevalent in the Community
- A local school providing equal education for both girls and boys
- Professional teachers
- Training for skilled jobs, including in computing
- A certain proportion of jobs in the Project Company reserved for the Community throughout the life of the Project
- Training on best practices on agriculture and sustainable farming
- Jobs for women
- Infrastructure, such as roads and bridges
- Recreation facilities, such as parks and public Wi-Fi hotspots
- Mental health centers and specialized doctors and staff
- Schools and universities

You should consider hiring external advisors to assist in establishing which could be the most efficient development plan for your Community. For example, you could hire an Urban Planning Consultant or a Social Development Consultant to research the areas where your Community needs to improve the most and what are the strategic issues to solve for a long term sustainable development. See "How to Use Funds for a Sustainable Development Plan with SDG Indicators" in Chapter 6 for metrics that can be used to set development objectives according to the United Nations. The various levels of government may also provide valuable insight and support in fulfilling the plan, though the objectives should ultimately be determined by the Community. **The terms of "development" should depend on the individual, unique needs of your own Community.**

The creation of the Sustainable Development Plan also guides the Project Company as to how it might develop a trusting relationship with the Community by supporting the Community's needs and directly, or indirectly, investing in Projects that are truly beneficial to the long-term sustainability of your Community. Otherwise, they could invest in programs or infrastructure that you do not neec.

Another aspect that you should consider is that even if the Project Company's management team changes, the Project will remain active in your Community for much longer. Likewise, government administrations also change. Therefore you should make sure that both the Project Company and Government understand and support the Sustainable Development Plan that you, as a Community, will ultimately design and demand.

Here, one of our main recommendations is to think ahead, think about the future and future generations. The Sustainable Development Plan should be able to solve longterm needs. We want to emphasize this as it is very likely that the company will try to appease you with short term benefits. For example, they could offer you animals for your farms or some money. However, we are strongly suggesting you do not consider only these offers and negotiate for Projects that will continue to be fruitful 10–30 years from now.

GUIDEBOOK FOR THE GOVERNMENT

Guiding questions for government officials to consider and refer to regarding the implementation of the Community Partnership agreement

The aim of the Community Partnership Agreement (for the purposes of this Guide, referred to as the **CP Agreement**) is to ensure that a Project Company is required to obtain the Free, Prior and Informed Consent (FPIC) of a Community affected and impacted by prospective economic activities during all stages (including exploration) of a Project's life cycle. The mission of the CP Agreement is to ensure that Communities and Project Companies openly engage with each other; decrease, if not eliminate, the risk of conflict; and equitably provide a benefit for the Community, the Project Company and the country where these are located. Accordingly, the CP Agreement seeks to make sure that:

- there is effective and regular dialogue between all stakeholders involved in a Project in order to (i) develop the Communities' understanding of the impact of the Project Company on its members and environment; (ii) manage expectations of all parties; (iii) prevent the outbreak of social conflict as the Project unfolds; and (iv) ensure the Project benefits all stakeholders;
- 2. the Community is empowered to exercise its rights and negotiate for the realization of its rights (i) as neighbors to and partners in the proposed Project; (ii) when negotiating with a Project Company to ensure equitable benefits and treatment for all those impacted by the Project Company; and (iii) for the sustainable development and survival of the Community;
- **3.** the Government is empowered to enforce and formalize a community consultation (*consulta previa*) process to benefit private-sector relations where (i) the established and recognized Local, Regional, and Central Governments may grant access to the Project Company to pursue economic development; (ii) the respective Governments can continue regulatory checks ensuring the CP Agreement is followed in good faith by both the Community and Project Company; and (iii) the respective Governments can (and should) revoke the Project Company's License to Operate if found to be in violation of the CP Agreement. Currently, agreements between Communities and Project Companies are ad hoc, effectively nonbinding, and unsupervised by any regulatory body.

The Central Government has a linchpin role in overseeing, enforcing, and approv-

ing the process of negotiation and execution of the CP Agreement. It is vital that the Project Company is held accountable for the expectations it has created and put forth to each Community impacted by the Project Company's activities. The 2020 Columbia University Colombia and Peru Capstone Workshop Team (referred to as the **Capstone Team**) recommends that if a Project Company commits a Material Breach of the CP Agreement, the Central Government will automatically revoke the Project Company's License to Operate, thereby incentivizing the Project Company to follow through and take seriously its commitments to the affected Communities. The Central Government should also make granting of the License to Operate conditional on a Project Company entering into the CP Agreement.

This Government Guidebook gathers together all of the thoughts and questions that the Capstone Team has generated throughout the course of developing the CP Agreement and its implementation to assist the Governments of Colombia and Peru, as well as future Columbia University Capstone Workshop Teams in creating a legally binding mechanism for community acceptance of natural resource development projects. Many questions still remain unanswered and will have to be examined, studied and addressed. However, this Guide should explain to Government officials the rationale, purpose and intention of the CP Agreement while also highlighting areas in need of further research and refinement.

The Government Guidebook addresses the tripartite relationship between Community, Government and Project Company from a different perspective. Because a Project Company works and functions within a Community, it is effectively part of the Community and its everyday life, and both parties need the input of the established Government to interact efficiently. The Project Company needs to engage with the Community and to view the Community as its partner—admittedly a new perspective. It is in the Government's interest to ensure a sustainable working relationship between Project Companies and Communities to prevent social unrest and/or operational disruption of Projects, which inevitably and negatively affects the entirety of the country, in both the short and long term, and detracts from the goal of providing benefits for all. The history of such conflicts should make all realize that it cannot and should not continue in this fashion.

The questions in this Guidebook have underpinned the Capstone Team's drafting of the CP Agreement. These are questions which should be referred to at all times and should, in and of themselves, provide guidance. The Capstone Team hopes they are helpful to the Governments of Colombia and Peru 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.

A. THE PARTIES TO THE AGREEMENT

The Project Company as well as its Parent Company, the Community, and Local, Regional and Central Governments should all be a party to the CP Agreement. Under the CP Agreement, the Project Company will have obligations to the Community regarding its conduct of economic activities. The Parent Company, which is the ultimate corporate beneficiary of the Project's operations, needs to guarantee its obligations to the Community under the CP Agreement. The Community will have the right to pursue legal action against the Project Company and to hold it accountable for its activities if it breaks its promises to the Community, requiring the follow-through of guarantees made to the Community to act as the cornerstone of good relations. Local, Regional and Central Governments will be supervising, approving, and enforcing the contents of the CP Agreement and will hold the Project Company, and the Parent Company, accountable through its role as a State observer.

1) How will a Community organize itself?

There are various ways as to how a Community could organize itself for both the purposes of negotiating with the Project Company throughout the life of the Project as well as for the purposes of more effectively managing its finances, making decisions, and concerns about property ownership. The latter, henceforth referred to as the Community Board (the exact structure and organization of which is set forth below), is the group of Community representatives ultimately signing the CP Agreement. As the Community's core leadership team, members of the Community Board should be chosen by the Community on the basis of their consistent involvement and participation in the Community, and may choose to organize according to:

- Pre-existing organizational structures in the Community
 - * The Community may have already participated in negotiations of agreements with the same Project Company before (previous model) or it could have seen other Communities being represented as well in negotiations with given Project Companies (external model). We recommend that the Community should take the criteria laid out in the Guidebook for the Community (under section A) when assessing previous and external models.
- A closely held corporation led by a Board of Directors of Community members chosen by members of that Community.
 - * The challenge of this option is that there will be corporate law requirements including how the corporation is set up, how it should be governed, who owns the corporation and what duties the Board of Directors have to the corporation and its owners. The Community will need to be advised of the corporate law implications before undertaking this structure.
 - * 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 (i.e., the Community), although this raises the issue of whether such ownership interest can be passed on. It also enables the Community to hire out people and services, to make a profit (in accordance with corporate law) and to hold property. The Board of Di-

rectors would be appointed/elected on a rolling basis for fixed terms according to the rules set out in the corporation's constitutional documents as agreed upon and adopted by the members of the Community.

- A Trust
 - * The Capstone 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, which will have fiduciary duties, e.g. duty of care.
 - * The trustees will be held to a higher standard by law than any of the above organizational structures. In fact, it will be to the highest standard under existing legal structures. It also has the potential to reduce corruption: the demanding ethical obligations and standards of conduct of a trustee requires a greater commitment to the Community from an individual, as opposed to the interests of many elected or appointed officials, who have a tendency to focus on their careers, and executives who are naturally primarily interested in ensuring and furthering/increasing the profits of their companies.

Governments and Project Companies must respect the mechanism chosen by the Community to organize themselves and understand that traditional structures used by Western societies might not be their preferred mechanisms for self-organization.

Change in Law Recommendation: The Governments of Colombia and Peru should consider amending laws to establish a special and separate legal personality/entity for Communities so that they are empowered, and have an agreed upon and recognized capacity, to enter into agreements with Project Companies and have the standing to pursue legal action in courts if necessary. A suggested initial approach is set forth below:

- Securing the legal personality/entity's autonomy will require local elections of the officers thereof (voting being the basis for and affirmation of community participation), and who should be free from traditional party affiliations and politics. In order to secure fairness, openness and transparency, such elections should be overseen by an independent third-party (separate from the independent group disucssed prior), such as legal experts and/or trusted non-governmental organizations (NGOs) with knowledge of and experience in operating within the Community—or in similar communities with comparable environmental, health, educational, social and economic composition and concerns.
 - * That the officers are tolerant and respectful of dissenting opinions and accordingly open to hearing and addressing all viewpoints.
 - * That the officers operate in accordance with guided and expert advice, which provides clarifications and explanations of, among other things, legal matters, especially the consequences and ramifications of any decision, which will have to be explained to the Community at large.

- The legal entity's governing instruments should provide that an independent group, without a stake in the Project or any prospective special benefit from the Project and with no other conflicting political or economic interest, should be engaged to assist in the creation of the legal personality/entity—given its complex nature—to guide, support, and advise that entity, and to ensure that the Communities will not only be on equal or comparable footing with the Government and Project Companies, but that they also will be able to secure necessary financial, legal and social support and advice in entering into the CP Agreement.
- The legal entity's governing instruments should provide that the independent group can serve as a commentating and transparent voice and window, even as a forum and if necessary a mediator, between the Community and the Government, and the Community and the Project Company. They will provide information and opinions from the parties (The Government and the Project Company) to the Community, which will discuss and debate which way to proceed. The independent group must remain neutral and make every effort to address all concerns put forth by members of the Community.

2) Who from the Community will represent the Community in negotiating the CP Agreement?

There are various options as to how a Community might represent itself when negotiating with a Project Company, henceforth referred to as the Community Negotiations Team. It is important that the Community Negotiations Team is not represented by one person only (such as a president or a mayor), 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/groups could be used to negotiate with the Project Company, such as multiple presidents and executive committees.
- A committee of elders and other representatives could be set up for the sole purpose of negotiating with the Project Company.
- The Board of Directors of the corporation or Board of Trustees of the trust could represent the Community, alongside Local/Central/Regional Government officials that will side on protecting the Community's interest, and may potentially include—per the Community's approval—NGO and third-party experts as individuals and not institutions. This is our preferred choice for a Community Negotiations Team.
- If the Colombian and Peruvian Government established a special legal status for the Community, the Community Negotiations Team would consist of the individuals 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 also lead in negotiating with the Project Company.

- The Canadian model, for example, is a recent model that the Colombian and Peruvian Governments 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 Inuvialuit, 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 derived from modern indigenous treaties in Canada, our approach is that all Communities impacted by a Project's operations in Colombia and Peru—and not just those labeled "indigenous" in accordance with international law—should be considered and protected by Governments and Project 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 the Capstone Team believes should be adopted. The Local, Regional and Central Governments might contemplate a scheme of initiating a co-management board/committee with representatives of the Local Government and the Community all making decisions together as to how the land in their region is allocated to a Project.
- Governments and Project Companies must understand the power and relationship dynamics of the Community and know who are the individuals who can make decisions with legitimacy.

3) Who should be represented in the Community?

Naturally there are different, if not competing, interests within a Community that need to be heard and adequately represented. For example, those members of a Community who are going to be displaced by the Project Company need specific representation, as their interests differ significantly from those of Community members who will remain on their land.

- All of the demographics of the Community need to be represented: men, women, the elderly, the disabled, children, displaced and non-displaced.
- Women play such a significant role within the Community that their attendance at meetings and votes should be mandatory. Women should have the right to have their voices heard and be given a platform to speak out and make decisions openly—rather than behind the scenes—and with the full support of the rest of the Community.
- The CP Agreement anticipates that adults will represent the interests of their minority-aged children in negotiations of the CP Agreement.
- Governments and Project Companies must be conscious that the Community might be composed of people with different ethnicities, languages, value systems and traditions, which will add greater complexity to organizational structures and relationship management.

* If such minority languages, ethnicities, traditions and other demographics are found to be existing in such Communities, both the Project Company and the Community need to make a good faith effort to include their input within the decision making process, subject to final approval by the Local, Regional and Central Governments.

4) How do you manage conflicting interests within the Community?

Different members of the Community may want different things from the Project Company. Fundamentals such as a permanent clean water supply, sanitation, jobs, education, health, improved infrastructure, improved housing, internet, and technological training and equipment, should all integrated in a Sustainable Development Plan defined by the Community. Communities may have historical structures such as influential families or individuals whose interests have traditionally prevailed over the interests of the rest of the Community or who may benefit more from the Project Company's arrival. All members of a Community need to have a voice and members must actively work to neutralize all conflicts of interest.

- 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, that group should have the right to separately vote on that specific issue. The CP Agreement could contain a displacement protocol on which the displaced Community has the right to vote.

5) How do you make sure that everyone in the Community knows what is in the CP Agreement and what the Project Company is promising them?

In order for a Community to fully understand what a Project will mean for their Community, what the Project Company is promising them, and what their rights are if the Project Company breaks those promises, everyone in the Community needs to understand the CP Agreement and how it affects and protects them.

- The Government should ensure that the Community has access to legal counsel—chosen by the Community to draft the CP 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 CP Agreement—in order to establish an equal playing field with the Project Company. The Community's lawyers should defend and strengthen the Community's negotiating position against the Project Company.
- Full transparency is key in this regard: the CP Agreement needs to be widely publicized. Hard copies need to be made available per the terms of the CP Agreement, which might include the local church, in the town hall/office of Local Government, at the Project Company's local office and at the meeting place of the Community Board. These documents must be made available upon request and are not to be altered by any party.

- New technology, which makes information sharing much easier, should be harnessed, such as publishing the CP Agreement on a website or maximizing the use of smart-phones to improve communication between the Project Company and Community.
- An electronic screen could be put up in the town square of each Community where each CP Agreement is publicized, and the CP Agreement could be stored in a database run by the Local and Central Governments. There must be public access to the CP Agreements in the database at all times.
- The principle of equality should govern: if the Project Company and its workers have access to the CP Agreement, so should the Community.
- Local, Regional and Central Governments should verify that the Community accurately knows and understands in detail what is in the CP Agreement and what the Project Company is promising the Community. Widespread and representative surveys of the Community's knowledge of the CP Agreement could be employed for this purpose.

6) 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 Project should be taken on the basis of a democratic vote by ideally every member of the Community, but in the event that is not achievable, the Capstone Team has suggested minimum guidelines below.

- A supermajority of the Community (e.g. a minimum of two-thirds) should vote to approve the terms of the CP Agreement for the simple reason that the terms thereof affect everyone in the Community.
- A minimum of two members of the Community Board should jointly execute the final version of the CP Agreement so that there is no danger that one person signs the CP Agreement without the knowledge or consent of the remainder of the Community.
- Women, who are normally a majority of any Community, should represent at least 50% of the vote to approve the CP 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 Project Company or any other Third-Party International Institution. Two leaders selected by the Community, in addition to third-party experts managed by the Local, Regional and Central Governments, should undertake the final count. This is to ensure neither a particular party nor level of Government will instigate a corrupt vote count.

7) What is the Government's role and who, on its behalf, should sign the CP Agreement?

Representatives of Local/Regional Government should be present to monitor the entire process of the negotiation and signing of the CP Agreement.

- At least one representative of each of the Local, Regional, and Central Governments should be signing the CP Agreement in the capacity of supervisor and approver of the whole dialogue process between the Community and the Project Company.
- The CP Agreement should be sent to the Central Government for its review, and finally to the Community's lawyers for their review and Community Board's signature (the Community should always be the last to review the CP Agreement).
- The Local, Regional and Central Governments should be responsible and accountable for ensuring the Project Company treats the Community fairly and without discrimination at all times.
- The Local, Regional, and Central Governments should keep a complete copy of the CP Agreement.
- The Local, Regional and Central Governments should play a proactive role in managing the needs, priorities and expectations of the Community.

B. Enforcement

8) How do you make the CP Agreement binding on the Project Company and enforce its obligations?

The CP Agreement must have mechanisms in place to hold the Project Company accountable in order for it to understand and appreciate that there are very real consequences if it breaks its promises to the Community.

(i) Cross-default provision

The CP Agreement needs to contain a cross-default mechanism, meaning that the Central Government, once notified, shall automatically revoke the Project Company's License to Operate if it commits certain Material Breaches and does not remedy those breaches within a specified fixed period of time as set forth in the CP Agreement.

Change in Law Recommendation: Colombian and Peruvian laws will need to be changed to link a Material Breach by the Project Company under the CP Agreement to the revocation of its License to Operate granted by the respective Government. The license to operate will need to specify that a breach of the CP Agreement constitutes a breach of the License to Operate. Such a breach should trigger:

- Project Companies owned by publicly-listed Parent Companies to notify their shareholders if there is a Material Breach under any of the subsidiary's Project Agreements. Shareholder pressure may accordingly encourage compliance. Ideally, the Project Company would also be required under the CP Agreement to register the CP Agreement with the stock exchange on which its Parent Company is listed.
- The Local, Regional, and Central Governments need to publicize the reason for revocation of a Project Company's License to Operate on its own website to ensure trans-

parency. Public information shared by the various levels of Government will present external pressure on the Project Company and will be an additional tool to ensure compliance with the CP Agreement.

- The initial phases of Request for Proposals (RFP) and Project agreements to include the License to Operate alongside a CP Agreement.
- Financial institutions funding the Project need to include a cross-default in their loan agreements with the Project Companies, in respect of which the bank can also exercise a right to accelerate the loan and call for its repayment given a breach of the CP Agreement.

(ii) An effective complaints mechanism

The Community should have an easy and effective process by which to bring complaints to the Project Company and Local, Regional and Central Governments. A clear process must be defined for what happens in the event of a breach, ensuring all relevant players are aware that something has gone wrong and can determine how best to fix it. The Community should be able to complain at any time and should be able to take the Project Company to court if found to be in breach of the CP Agreement.

- 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 Project Company breaches its obligations. Either the Community or Project Company, or both, should appoint a liaison officer as the point person with which to register complaints.
- The Community has the right to directly seek out the Local, Regional and Central Governments and its entities to complain of the Project Company's noncompliance with the terms of the CP Agreement.
- All members of the Community should also be made aware of the possibility of complaining to the Ombudsman's Office in the event that a social conflict is breaking out. The Community is also entitled to complain to Local, Regional and Central Governments 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 the law.
- Minor complaints should easily be managed by the Project Company but those that are Material Breaches will need to be dealt with effectively and immediately by both the Project Company and various levels of Government.
- Local, Regional and Central Governments should have an effective response system when there is a breach of the CP Agreement so that it exerts pressure on the Project Company to comply with its obligations.

- An complaint database should be operated and maintained by relevant authorities and be made as publicly accessible to the Community, Government and Project Company as the CP Agreement.
- [Further research could be done by the 2021 Columbia University Capstone Workshop Team about the detailed practices that companies have put in place in Colombia and Peru in terms of appointing a Community liaison person to whom complaints can be communicated. Most Project 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 Project Company and the Community is challenging, and particularly frustrating for the Community.]

9) What kind of remedy periods should be given to the Project Company before it is considered to be in breach?

Different types of breaches require different remedy periods by the Project Company depending on the impact each has on the Community.

- Under the CP Agreement, environmental, water, animal, or sacred place-related breaches should be fixed immediately; for all other breaches the Project Company can have a specified period of time (e.g. 30 days) to fix or remedy the breach. This is with the exception of other breaches, which may have a materially adverse impact on the Community, for which the Project Company shall have a specified period of time to remedy the breach before it becomes a Material Breach that automatically triggers the revocation of the License to Operate.
- The burden of proof should be on the Project Company, which has knowledge of its own actions, to prove that it did not commit a breach of the CP Agreement and, more generally, that it is in compliance with the CP Agreement.
- For Material Breaches, the Project Company should be required to stop operations, which will serve as an incentive to remedy the breach, and must continue to pay staff (including Community members it employs) while it fixes those breaches.
- A Project Company should generally police itself, but the Community needs to be empowered to verify the information that is being presented by the Project Company so that it can hold the Project Company accountable.
- The Local, Regional and Central Governments must support the Community by actively monitoring the situation on the ground and holding the Project Company accountable to the CP Agreement.

10) How should the Project Company be required to fix any breaches of the CP Agreement that it commits?

• Under the CP Agreement, the Project Company has to establish and maintain a fully-funded Internal Emergency Fund, which should be used by the Project Company to fix the impacts of any breach it commits, accidents during operations or natural disasters such as earthquakes (e.g. cleaning up environmental waste, protecting the health, safety and water supply for the Community). The Internal Emergency Fund should be fully funded at all times throughout the lifetime of the Project, for the simple reason of ensuring that funds are available when needed, inspected and audited periodically by an independent third party, and must be set up before the signing of the CP Agreement so that the funds are immediately available as needed.

• [Further research could be done by the 2021 Columbia University Capstone Workshop Team as to how much should be maintained in the Internal Emergency Fund. The scale of fixing an emergency will obviously differ from Project to Project. The Capstone Team 2021 could also determine the exact mechanics of independent inspection, funding of and drawdown from the Internal Emergency Fund maintained by the Project Company.]

11) How can you require the Parent Company to be accountable for its actions?

- The CP Agreement will have a Parent Company guarantee. The Parent Company needs to be responsible for the prompt performance of all obligations and payment of all liabilities of the Project Company under the CP Agreement.
- [Further research could be done by the 2021 Columbia University Capstone Workshop Team as to whether a Community should sue an international Parent Company, or the Project Company subsidiary, in the local court or in another jurisdiction.]

12) What happens if a Project Company is succeeded by another Project Company?

If a Project Company is succeeded by another Project Company, the Exiting Company must ensure that the Community knows who the relevant Community liaison personnel is in the New Company and must ensure a smooth transition. The Community must be able to hold both the Exiting and New Companies responsible, irrespective of how they internally allocate responsibility; there can be no gaps in responsibility.

- Both the Exiting and New Companies should be liable for the existing liabilities at the time of transfer from the Exiting to the New Company.
- The New Company needs to have at least the same financials and technical qualifications as the Exiting Company.
- It is important that both the Exiting and New Companies remain liable for any environmental damages whatsoever arising out of or in connection with the Project.
- Whichever Project Company is operating the Project at its closure should be responsible for any environmental and other damage of which it has actual knowledge as well as for any damage that cannot be known or seen at the time of closure of the Project but which later reveals itself arises from the Project's activities, in respect of which the Project Company should have uncapped liability.

13) How do you ensure that the CP Agreement is only changed or 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 CP Agreement. All members of the Community must vote on any amendment to the CP Agreement in accordance with the voting process (as put forth in this document section A.3 through A.6) established for the obtaining of consent from the Community by the Project Company.
- There should be no room for bilateral amendments between the Project Company and one Community leader or executive leadership committee of which the Community is not aware.
- Both Local and Central Government must accompany the CP Agreement amendment procedure and play a similar role to the one exercised during the CP Agreement signature.

14) How do you hold the Project Companies accountable within the various ministries of the Central Government?

- All ministries need to be proactive in monitoring the performance of Project Companies operating in Colombia and Peru.
- A coordinating ministry must be defined to ensure that other ministries are aware of (i) the template CP Agreement and (ii) that a CP Agreement is being entered into by each Community impacted by a Project's operations and its Project Company.

C. CHANGES IN THE LAW

15) What regulatory changes are recommended to accommodate the CP Agreement?

- The granting of a License to Operate to a Project Company should be made conditional on the signing of a CP Agreement with the relevant impacted Communities.
- If a Project Company commits a Material Breach of the CP Agreement and does not rectify that breach within a certain period of time, the law should allow the Central Government to automatically cancel the Project Company's License to Operate, without discretion. This can be done by (i) introducing a regulation to that effect, (ii) changing existing law to specify that this is the case and/or (iii) writing into the License to Operate that a breach of the CP Agreement is a violation of the license, e.g. the License to Operate should contain a provision requiring the Project Company's compliance.
- Communities should no longer be divided up into zones of direct and indirect impact, although gradations of impact need to be considered. This causes 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 situation can

be avoided by changing the law so that a Project Company has to consider all members—not just the indigenous—of a Community impacted by its activities, which is key to our proposal.

• The Central Government could set up a registry where every signed CP Agreement in the country will be posted and publicly available (this could be at the Central, Regional and Local Government level, with a preference for more points of access). This is important not only to hold a Project Company accountable but also to ensure equal treatment by Project Companies to Communities nationwide and to provide a template for future CP Agreements.

16) How effectively is the *consulta previa* process working in practice?

In Peru and Colombia, *consulta previa* is a participatory mechanism for gaining Indigenous Communities' acceptance of natural resource projects. Both countries focus—almost exclusively—on engaging Communities recognized as "indigenous" by the Central Government, and have instituted procedures for discourse. Agreements reached, however, remain effectively nonbinding and thus do not allow such communities to turn down or reject Projects.

- Limiting *consulta previa* to indigenous Communities restricts its application for other Communities which may be rural and have traditional roots, but that are not officially "indigenous." The Government should expand the purvey of *consulta previa* to all Communities impacted by the Project, whether directly or indirectly impacted, indigenous or not indigenous.
- A *consulta previa* process should be universally applicable to all kinds of development projects, including all natural resource industries.
- The siloed nature of the current consultation process also creates agreements with different communities that are incongruent with one another. While every Community's agreements with the Project Company need not be the same, they should be comparable and compatible; in short, they should not be confliciting.
- Insufficient resources and funding for the government agencies involved in overseeing *consulta previa* also diminishes the Government's ability to enforce the process and develop a legacy of trust with the Communities.
- The Central Government should consider launching a public relations campaign to educate the public as to how the *consulta previa* process works.

D. FREE PRIOR INFORMED CONSENT (FPIC)

The purpose of the CP Agreement is that the Project Company should obtain the Free Prior Informed Consent (FPIC) of the Community to proceed with the Project before the start of exploration, as well as at each major stage of operation, and upon any material development during the life of the Project. There should be a dialogue roundtable set up from the outset for which every stakeholder in the Project must attend to enable the Project to be fully explained to the Community. According to the World Bank, Governments, Project Companies, and Communities should undertake trilateral negotiations right from the start of the Projects. Government officials representing the Local, Regional and Central Governments are expected to participate. Universities and non-state organizations are encouraged to join the dialogue roundtable as observers without voting rights, with the prior approval from the Communities.

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

- There should be a meeting of the Community with the Community Board and Negotiations Team each time a decision is required to be made in respect of, and throughout the life of, a Project.
- When a representative of the Community Board signs the CP Agreement, he/she must do so with the express authorization of a vote from the Community as set out previously.
- Every change or amendment of the CP Agreement should be registered with the official registry(ies)/databases set out above.
- Members of the public should have open and complete access to the registry(ies)/databases and be able to download copies of the entire CP Agreement for their review.
- The Central Government could launch an education campaign for Communities nationwide so that members of Communities know what their rights are and what they can ask for from a Project Company.

18) How do you prevent intimidation/manipulation/corruption/coercion of any member of the Community by the Project Company, or any other Community member, third party or governmental institution?

- Measures should be taken to avoid having a Project Company or Government communicate with only a single individual of a Community regarding issues that concern the Community as a whole, as there is the risk that the individual chosen has too narrow an approach and, even worse, is corruptible or represents only their own interests or the interests of those close to them, or is perceived by the rest of the Community as no longer belonging to that Community and has lost the trust of the Community the individual may claim to represent.
- For the reasons above, Communities should be encouraged to have a multi-member Community Board and a Community Negotiations Team, which represents them in their negotiations and signing of the agreement 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.
- We also recommend against choosing an elected official for the Community Board

given the often transitory nature of short-term elected posts. On the other hand, local officials are encouraged to take part in the Community Negotiations Team, which should include a wider range of Community representatives.

19) What is considered a major stage of a Project for the purposes of obtaining consent from a Community?

- At a minimum, this should cover exploration (physical, aerial and subsoil), the start of operations, the processing of extracted soil (if applicable), the transport of extracted soil and materials and the disposal of waste (if applicable), any substantial change in equipment, technology or labor, any material development that might impact the Community, any change in scope or condition of the operations and restoration of operations. Defining minimum standards from the outset is imperative.
- If the Project Company considers a stage to be non-major and not requiring the consent of the Community, then the burden of proof is on the Project Company to show that the change is minor. The Project Company has to decide what is material but that should be an objective fact. For example, a Project Company might change its materials during operations and consider it not to be a major change requiring the consent of the Community though it causes sickness amongst members of the Community. The Project Company should be fully responsible for the consequences of its decisions, in this case, the resultant sickness.
- A Project 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 Project Company should provide the Community with all plans as to the building of any structure to support any part of its activities and its procedures for the transporting of machinery, resources and people in respect of the Project.
- The Project 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 whether there is anything which might contaminate the water; or reduce, divert, or eliminate the supply of water to the Community; or might impact any lake or river which is considered sacred to the Community.

20) How often should the Project Company be required to re-engage with the Community about the Project or to change or refine the scope of the CP Agreement?

- The Project Company should be required to meet with the Community regularly according to the time period specified in the CP Agreement (e.g. every six months), though it will need to convene more frequently as required if a Project Company is changing its operations or starting on any other major stage as noted above.
- The Project 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.

• The Project Company must perform meaningful engagements with the Community, using their preferred languages, making information accessible on the ground though various means and formats, and facilitating high levels of attendance and participation at the meetings.

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

- A Project Company should be opening a conversation and continuing dialogue with the Community in layman's terms at all times.
- NGOs and universities might be employed or engaged by the Government to run education campaigns to ensure the Community is fully informed about what a Project is and what are its potential impacts on the Community and surrounding environment.
- The Capstone Team's Guidebook to the Community is specifically designed to prepare Communities for what to expect when a Project Company plans to arrive in their area.

22) What happens if a Community does not want to give its consent to a Project once a Project Company has given the Community all relevant information?

- It is likely in this scenario that the Community and the Project Company will continue to negotiate until the Community is happy with the terms of Project and what it means for the Community's 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 per the terms of the CP Agreement.
- An unwanted Project will undoubtedly lead to social unrest. It must be remembered, a Project functions, and operates, within a Community; thus the consent of the affected and impacted is essential to the Project's success over time.
- The Community's ability to hold a vote (with a supermajority required to approve the Project as above) must be meaningful in this respect.
- It is fundamental that a Community's consent is obtained before any firm arrangement is achieved between the Project Company and Central Government; the deal cannot be decided by the time the Project is presented to the Community.

23) What kinds of information should be provided to the Community by the Project Company?

- The potential or actual effect or impact on the water and environment in clear and simple language.
- A detailed description of the Project proposal, including whether explosives will be used, what will be built on the land acquired, or to be used, by the Project Company.
- All anticipated eco-systemic and socio-economic impacts. The Project Company will

need to carry out health, social and environmental impact assessments and provide that information to both the Local and Regional Governments and to the Community in a form that is straightforward for the Community to digest and understand.

- All anticipated Project risks (see Checklist for How to Manage Risks), which should include all risks to the environment along with the Project Company's plans to eliminate or minimize those risks at the appraisal, development and decommissioning stages of the Project. The CP Agreement should require the Project Company to use the best and most advanced technology, processes and standards, and to clean up waste immediately.
- The Project Company's proposal on how to monitor, avoid and mitigate the adverse impacts of the Project and how Community members can participate in monitoring the impacts of the Project.
- Community members should be encouraged to monitor the impact of the Project on their land and Community. A Third-Party International Institution might be engaged to do this monitoring on behalf of the Community at the Project Company's expense.
- The Project Company's proposal on optimizing and sharing benefits and profits with Communities affected by the Project. This might best be served by way of a royalty system whereby the Project Company pays a regular royalty to a Trust Fund which will fund the Community's Sustainable Development Plan (see more below). The Project Company should not pay any profits directly to the Community either lawfully or illegally as this has the potential to result in mismanagement or breed corruption.
- The Project Company's proposal on creating employment for Community members either at the Project Company or in the surrounding area.
- The Project Company's proposal on how and when to fulfill the conditions of consent.
- All reports and studies done by the Project 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.

24) How do you empower the Community to review the Project 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 those of the Project Company.
- Publishing the CP Agreements on a central website/registry/database, informs the impacted Community of what other Communities have asked for and what they have been granted, allowing the relevant Community to use past CP Agreements as a template rather than starting from scratch.

- Ensuring the Project Company and the Local, Regional and Central Governments all have copies of the CP Agreement provides multiple access points of information for the Community.
- It is very important that there be a physical paper and digital trail of everything agreed to by the Project Company, the Community, and Local, Regional and Central Governments.

25) How should the Project Company give notice to the Community of any change of information requiring a change of consent?

- The Project Company should immediately inform the Community Board, as well as the Community liaison in the case one exists.
- This should be published in local newspapers, on the Project Company's website, in the Local Government building and sent to all members of the Community by mail, or other preferred format. If the latter is not possible, the Project Company must make a good faith effort to contact each individual member of the Community through a petition form requiring a member's signature as approval of receiving information.
- 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.

26) How do you make sure the Project Company has communicated all relevant information about the Project to the Community?

- The Project 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 Project Company has omitted information that turns out to be important, it will be responsible for indemnifying any damage arising therefrom to the Community as a result.
- The directors of the Project Company should confirm that they have provided all relevant information to the Community.
- The CP Agreement is going to be signed by the Parent company as well—as it is the ultimate decision maker and gains from the commercial success of the Project Company—and will be aware of what information has been provided to the Community and will be guaranteeing the Project Company's obligation to provide all relevant information to the Community.

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

• The Project Company must provide the information in Spanish and the local language(s) spoken in the Community. It should provide summaries, repeat explanations and multiple translators.

- The Project Company should provide the information orally, in hard copy and using new technologies.
- The Project Company should provide a point of contact, such as a Community liaison, that can be readily reached for more information on the Project. The contact of this person should be provided to the Community Board.

28) How will a Community communicate to the Government that it has given its consent to a particular stage of the Project and that the consent is still in action or has not been withdrawn?

- The proposed public registry where the CP Agreements are registered could have a section where a Community can notify the Government that it has given consent or that the consent has been withdrawn.
- [Further research could be done by the 2021 Columbia University Capstone Workshop Team as to how this consent notification process would work in practice.]

29) How do you ensure that there is a minimum level of information that the Project Company should provide as to the scope of the Project?

- The CP Agreement contains schedules which sets out the information that the Project Company should provide about the scope of the Project. It should, at a minimum, match the scope of the Project agreed to under the License to Operate. It should include detail that is as accurate and updated as possible.
- The CP Agreement should include a map of the area and specify who has to be moved if there is any relocation required.
- The Project 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 Project Company's development plan and what the Project Company will be employing in terms of equipment and methods when doing the work at the Project site.
- The baseline assessments of environmental, social, and engineering factors currently required in the appraisal stage of a Project should be included in the CP Agreement, along with how the Project Company intends to manage risks, including the protection of Communities cultures and livelihoods.

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

- The Project Company is required under the CP 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 (i)

the Community, (ii) Project Company, (iii) Local Government, (iv) Regional Government, (v) Central Government and (vi) any third-party experts or NGO or advisors to the Community should be present.

- 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.
- The Community should be given ample time (e.g. at least three months) to digest all the information that is given to the Community by the Project Company. The process of obtaining consent should also be given ample time (e.g. at least six months to one year), during which the Project Company will not be able to proceed with any activity.
- [Further research by the 2021 Columbia University Capstone Workshop Team should distinguish between time periods necessary for consenting to the CP Agreement, and time periods defined within the CP Agreement for the consent of ongoing Project developments.]

31) How do you ensure the Community is adequately represented by advisors and professionals?

- The Community should be able to build up a panel of trusted advisors it can refer to throughout the life of the Project, potentially with the aid of the Local, Regional, or Central Governments.
- The Project Company should not interfere with or have access to the advice provided to the Community, which should be independent, confidential, and given entirely with the best interests of the Community in mind.
- The Central Government might initiate a program whereby newly qualified lawyers who have just finished law school are required to spend a year providing legal advice to Community members in rural areas of the country.
- The Central Government should provide advice to Communities as to which law firms might be able to best act in their interests.

E. CONDITIONS FOR CONSENT

32) What conditions might the Community put in place for its consent?

- The CP Agreement has a set of mandatory conditions that the Project Company must comply with to maintain the consent of the Community predominantly concerning the provision of necessities, such as water, to the Community.
- A Project Company is likely to want to know what the minimum threshold is for environmental harm, which should be clearly defined in the CP Agreement.
- 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 Project.

- The CP Agreement has a template list of 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.

Conditions in relation to the environment could include:

- The Community should be able to withdraw consent for any material environmental harm or damage arising from the Project or any related activity.
- There should be zero tolerance for any spills of waste water the Project Company is responsible for.
- The Project 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 impacted and how to monitor any contamination and its remediation.
- 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 Project Company.
- The Project Company has the burden to prove that the environmental harm or damage could not have arisen and/or been caused as a result of the Project Company's (or any predecessor Project Company's) activity. There should be a heavy penalty on the Project Company if the Project Company has caused any damage.
- Mechanisms such as enabling (i) a Project Company representative, (ii) a Community representative and (iii) a third-party expert to each take samples for the purposes of verifying whether there is contamination, for example, will hold the Project 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.

Conditions in relation to land purchase/use could include:

- How much compensation should be paid to each member of the Community to buy his or her land.
 - * Often, when a Project 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 Project Company.
 - * The Project Company should be required to pay an amount for the highest and best use of the land, which takes into account the proposed use of 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 Project Company should also be obliged to pay royalties, in the form of a Social Wealth Trust Fund, to the Community because without the Community's land, nothing could be extracted or produced, and so the members of the Community are major and valuable contributors to the Project. The Community members could be viewed by analogy as "equity" partners in such economic ventures.
- The Project Company should not be depriving a Community member of his/her capacity to earn income from the land.
- If the Project 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 Project 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 extend beyond the area impacted by the Project's operations.
- 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 Project, particularly when they are displaced. Displaced Communities are currently viewed as externalities, or one-time costs that Project Companies need to account for. Displaced Communities should instead be treated as partners, as integral parts of the economic venture, because without the collaboration and participation of these displaced Communities, the Project could not go ahead.
- [Further research could be done by the 2021 Columbia University Capstone Workshop Team as to how much Project Companies pay Communities for their land as per the existing land agreement process in each country to see if it could be improved and to make sure it is compatible with the function of the CP Agreement. A cross-default provision could be included in the land agreement, in which a breach of the CP Agreement is also a breach of the land agreement and vice versa. The Central Government might investigate whether it could standardize how much a Project Company should pay Communities as a minimum amount for the land it acquires/uses.]

Conditions in relation to relocation/displacement could include:

- The Project Company should pay relocation costs for any Community member who is displaced from his or her land.
- The Project Company should adequately explain to the Community what displacement is going to mean for the Community. The Project 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 different Communities are being fairly and equally 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 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.

F. CORRUPTION

33) How do you find out if there has been corruption in the conduct of the economic activities? Who should monitor against corruption?

- Peru for example has a number of entities (and most prominently the Fiscalías Especializadas en Delitos de Corrupción de Funcionarios) in place to prosecute corruption.
- The royalty scheme for the Social Wealth Trust Fund should be made publicly available and should be regularly updated such that any discrepancy is readily apparent to the Community, journalists, NGOs, and the public at large.
- The Government, or Community, should engage experienced Third-Party International Institutions to audit the financial accounts agreed to in the CP Agreement.
- [Further research could be done by the 2021 Columbia University Capstone Workshop Team as to how to make the CP Agreement corruption-proof and how to reduce corruption within Communities and Local Governments generally, and more specifically with regards to eliminating corruption in how taxes and fees, such as the Canon Tax in Peru, are invested for the development of Communities.]

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

- All parties to the CP Agreement need to be involved in the process as much as possible to increase transparency.
- The Project Company is obliged to comply with anti-bribery regulations domestically, internationally, and per laws of the country where its Parent Company is incorporated.
- The Project Company should lose its License to Operate if it commits any corrupt act.
- The Project Company should lose all profits it earned from the date it committed the corrupt act.
- The penalty must be sufficiently high that the Project Company is deterred from committing any corrupt acts and is incentivized to follow best practices in corporate responsibility.

- 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 CP Agreement and so is aware of the contractual requirement to protect the dialogue between the Community and the Project Company from corruption.
- There needs to be monitoring/policing of sub-contractors too; in short, the entire supply chain. The Project Company is fully responsible for its subcontractors. Any corruption by any subcontractor should be imputed to the Project Company.

G. A COMPENSATION SCHEME AND ADDITIONAL Funds

The CP Agreement contemplates that the Project Company will maintain three, which will be funded from royalties, taxes, non-administrative or other fees, and corporate profits, that will go towards equitable and universal development, particularly for the region in which it operates.

The Social Wealth Trust Fund: The Project Company will pay into a Social Wealth Trust Fund, which will consist of three separate accounts: 1) a *Development Fund*, 2) a *Rainy Day Fund*, 3) and a *Crisis Fund*. Each of these three accounts will receive an agreed percentage of the taxes collected by the Central Government that are then designated to the Social Wealth Trust Fund. The percentage allocation is to be discussed in detail during CP Agreement negotiations.

- The *Development Fund* will be deployed for the specific initiatives of the *Sustainable Development Plan*. The Project Company is not responsible for developing this plan but rather for supporting it by sustaining the fund.
 - * The Sustainable Development Plan will be spearheaded by the Community Board, with other members of the Community Negotiations Team in consultation with Social and Economic Development Departments (or equivalent) of the local and regional government, to meet Community objectives as they pertain to the spheres of employment, health, education, infrastructure or any other socio-economic development objective.
 - * This Plan should empower the Community to define how it wants to grow and develop on its own terms, and how to harness the incoming increase of economic activity spurred by the Project.
 - * See "How to Use Funds for a Sustainable Development Plan with SDG Indicators" in Chapter 6 for metrics that can be used to set development objectives.
- The *Crisis Fund* can be used for any emergency as determined by the Government and Community, and does not necessarily need to be used for damages caused by the Project Company.

- [Future capstones to determine the function of the Rainy Day Fund, and whether this should instead be replaced by the Advisor Fund proposed by the 2018 Capstone.]
- These funds will not be available to the Project Company's creditors.
- The Social Wealth Trust Fund will have a Board of Trustees with two requirements only: 1) ensure that money is coming in and 2) police money that is spent. They do not originate the proposals for spending the money but may have veto power on how the money is spent. Furthermore, there will always be an odd number of members and each must meet the criteria of independence *[to be defined by future Capstones]* and competence. Members could include a bank (typically a prudent or conservative party), ordinary individuals such as independent lawyers, bankers, and also other professionals that are not nationals, and country experts that work in international institutions such as the CAF Development Bank, the IDB or the IFC. In the latter case, individuals—and not institutions—have to be members so as to have the capacity to be personally liable. If a community member can be deemed totally independent so as to be completely objective, they may also be a member of the Board of Trustees. The government will hold the Board of Trustees accountable for liabilities, potentially with the aid of local observers.

The Restoration Fund: The burden of responsible and sustainable development does not end upon contract termination. The Project Company is liable to restore the relevant territory to its original condition after the project is completed, or to as close to these original condition as possible before departure from the project sites. However, worldwide practice has shown that often Project Companies do not at that time have the necessary funds available for the restoration and often leave the project site abandoned. We therefore recommend the approach taken by Germany, which focuses on setting aside funds at the start of the project, with periodic review of the amounts necessary for restoration and providing security for these funds.

- The Project Company will be required to maintain a Restoration Fund, fully funded under the Agreement.
- Unlike the Social Wealth Trust Fund, this fund is not financed through a portion of tax payments made to the Government. Instead, the Project Company, or its guarantor Parent Company, will set aside funds, in an amount to be determined, but in no less amount than required to restore the relevant territory when the project will close.
- The Project Company needs to prove that it has the available funds in order to attain a License to Operate. The Project Company is responsible for maintaining the account throughout the life of the Project, otherwise it will lose its License to Operate.
- The reserves are audited regularly (per the CP Agreement) by the Government and appropriate Third-Party International Institution. They will make sure that the Project Company continues to fund the Restoration Fund on a regular basis and that the amount necessary to restore the environment is recalculated periodically. Since it often

takes several decades before the property can be made usable again, changes in value must be compensated for by regularly checking the amount of the security deposit.

- The reserves must be covered by insolvency-proof and liquidation-proof security in their entirety. The purpose of security deposits is to avoid that costs for the reutilization will be borne by the state budget or communities if the Project Company fails to fulfill its obligations.
- As a rule, security deposits are to be demanded from private companies. The authorities can accept various means of security. In principle, any suitable security can be accepted which is intended to guarantee the financing of the necessary measures in the event of insolvency of the entrepreneur. As a rule, bank guarantees or insurance contracts are suitable. In individual cases, a pledge of the company shares to the federal state can also be an alternative.
- This fund is sometimes referred to as an abandonment fund.

Internal Emergency Fund: A separate fund the Project Company must maintain at all times for the purpose of financing any crisis or breach that arises during any phase of the project, and must be set up before the signing of the Community Partnership Agreement so that the funds are immediately available as needed.

H. OTHER INFRASTRUCTURAL DEVELOPMENT

35) What should the Project Company be responsible for building in the Community?

Normally the State should pay for infrastructure, but if the infrastructure is considered necessary to the operation of the Project, then the Project Company should be considered responsible for its building and funding. While this is not yet a universal practice, the Capstone Team has advised it for the following reasons:

- If the Project Company builds infrastructure that would traditionally be built by Local Government or Central Government, the Project Company should be awarded tax credits for such work because the Project Company should not serve as a substitute for the State in this regard.
 - * The State will bear the base burden of funding such an infrastructure project given that the infrastructure will go to serve the Community long after it has served the Project Company.
 - * The Project Company will bear the obligatory extra burdens placed on building such infrastructure. This includes any additional use of the infrastructure that is not considered part of daily civil use.
 - * There are metrics available to measure the added use of the road to be calculated and thereby billed to the Project Companies.

- » Examples include the Government building a paved road for both the Project Company's and the Community's use. Should the road experience increased wear and tear attributable not to the Community but, rather, to the Project Company's operations (through heavy machinery, large vehicles, and general functions), the Project Company will be held responsible for paying the initial rebuilding of the road as well as any future upkeep throughout the duration of the Project Company's operations within the region.
- » Prior to the departure of the Project Company from the region, an infrastructure assessment shall be executed to check the structural integrity of the road, or other infrastructure in question. The Project Company will be held responsible for improving the infrastructure to normal use prior to leaving.
 - This was enacted in 2005 in Mozambique: the Nacala Railway was previously created by a mining company for the sole purpose of extracting resources from the land in the 1980s. The Government of Mozambique rehabilitated the railroad for civil use in 2005 that now serves the companies operating in the region as well as members of the public and Community.
- The Project Company can build any additional infrastructure that the Community agrees should be built as part of the Sustainable Development Plan. The Local Government and Central Government both need to be aware of what the Project Company is agreeing to do for the Community.
- The Community should be made aware that a tax credit system is part of the infrastructure's funding and that this arrangement should not establish a regime where Communities expect Project Companies to fund and maintain public works that the Governments should be expected to provide. A risk of creating such an expectation is that it gives Communities the power to protest to demand further economic provisions or concessions from Project Companies.
 - * The focus should be on public works that provide long-term benefits and build resiliency. The Prospectors and Developers Association of Canada cautions against short-term direct capital awards from mining companies, for example, to communities because it is "not necessarily what communities want or need to meet the objectives of long-term sustainability."
- If Project Companies do construct and maintain infrastructure and services during their operations of the Project, the Government needs to establish and maintain a continuance plan for when the Project closes so that the infrastructure and services continue to operate.

Change in Law Recommendation: The Governments of Colombia and Peru might consider changing the law or regulating to provide for a minimum contribution by the Project 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.

36) Who will maintain resulting infrastructure once the Project Company has left the natural Project site?

- The Local, Regional, and Central Governments should share responsibility in the upkeep of infrastructure that continues to be used by the Community.
- The Project Company should be responsible for ensuring that there is sufficient training for the Community to carry on activities, particularly in the fields of health, education and the environment, once the Project Company has departed.
- The Sustainable Development Plan should take into account the boom and bust economics cycles resulting from the sudden increase, and eventual stop, in economic activity associated with a Project by planning ahead to avoid a surge in poverty once the Project site has closed.
- The Restoration Fund will be used to restore the relevant territory to its original standards after the Project is completed, or to as close to these original standards as possible before departure.
- [Further research could be done by 2021 Columbia University Capstone Workshop Team to establish the exact mechanics of the Restoration 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.]

37) What kind of role should the Project Company play in the following fields as part of the Sustainable Development Plan?

Employment:

- The guiding principle is that there should be no discrimination between employees of the Project Company who come from outside the Community and employees who are from the Community.
- A Project Company might have a team of skilled contractors that it habitually uses on a Project, but the Project Company should be required to train some 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 Project site are imported by the Project Company from elsewhere. Training over time would mean fewer and fewer employees would be non-locals or foreigners.
- Since the Project Company is in the best position to know what it needs in terms of labor and when, the Project Company should set an employment plan and schedule.
- It is cost effective for a Project Company to use local labor, so if a Project Company is not using local labor, then it should have the burden of proving why a local does not

qualify for employment.

- The Project 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 Project Company should make sure that all of its hired subcontractors have the same obligations regarding employment as the Project Company, i.e. the obligation to use the local labor force and suppliers should be passed on to all subcontractors.
- [Further research needs to be done by the 2021 Columbia University Capstone Workshop Team as to whether requiring a Project Company to favor local suppliers over other suppliers expressly violates international agreements or treaties, and if so, what appropriate measures can be adopted to ensure a Project Company is in compliance with international law but engages local suppliers.]

Infrastructure:

- The Project 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 per domestic law.
- The Project Company should, at a minimum to avoid creating inequalities and accordingly antagonisms if not conflicts, provide electricity, potable water, and a functioning sewage system to the Community to the same extent it provides these to employees, as well as any publicly available Wi-Fi, computers and other readily accessible technology, so that the Community can access the Internet and copies of the CP Agreement.

Health:

- If a Project Company builds a hospital, then it should also get a tax credit for building that infrastructure. The Governments would need to maintain that hospital once the Project Company has departed.
- The hospital must accept anyone from the Community.
- The Project 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 and 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 among employees.
- Project Companies should consider funding highly-skilled health professionals to come to the area impacted by the Project Company and train 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 1–2 years working in different parts of the country immediately after medical school.

Education:

- In the case that the Project Company provides educational opportunities to the children of its employees (whether foreign or domestic), the company should provide the same access to education to children of the community. Any sign of inequality will cause friction, social conflict and protest.
- If a Project Company builds a school, it should receive the same tax credits as above.
- If the Project Company does not build a school but there are sufficient taxes and fees, such as the Canon Tax in Peru, to build a school, the 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 if there is a sufficient number of children within the Community who could use the school.
- There should be a campaign to inspire youth in the Community to attend university.
- The Local Government should initiate partnerships between Communities and the local universities to encourage Community youth to consider professions beyond those associated with the Project site, which may be unsustainable in the long term once the Project Company has departed.
- [Further research might be done by the 2021 Capstone Team on the use of sovereign wealth funds in other countries 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 addresses the Community's actual needs.]

38) How might a Project Company share its profits with the Community?

- This will depend to a certain extent on the financial model of the Project Company.
- There are various options:
 - * Keep existing taxes and fees, such as the Canon Tax in Peru, but re-assess the way in which these are spent by Local Government including initiating a campaign, led by the Central Government as to how to invest vast sums of money at a local level in health, education, and infrastructure, as noted above, in an appropriate, sustainable and non-corrupt way.
 - * The Project 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 as part of a Sustainable Development Plan, as suggested previously (otherwise there is a risk that paying large sums directly to the Community might result in waste or bad investment or at worst, corruption). Communities are not yet necessarily organized or equipped to handle the large sums of money that the Project Company would be able to pay out once it has started operations.
 - * The Project 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 company pays dividends

to its usual shareholders. (This has the potential for accounting manipulation so that the Project Company does not necessarily pay as much money to the Community as it ought to do and so the Capstone Team favors a royalty scheme for this reason.)

* [Further research should be done by the 2021 Capstone Team as to how royalty structures work in detail and what royalty payment mechanism might best be implemented for Projects in Colombia and Peru.]

39) How do you make sure a Project Company protects cultural characteristics, traditions, practices, heritage, language and sacred sites of Communities?

- The rights of the indigenous are most fragile and need to be protected. A Project Company should hire an expert, such as an anthropologist, to advise it as to the Communities that are going to be impacted by the economic activity, their relevant cultural practices, structure, and traditions.
- The Ministry of Culture, or equivalent government agency, should be involved in this process.
- The Project Company should work with the Government to hire multiple translators that are vetted and trusted by the Community to objectively and transparently communicate relevant information between the Project Company and the Community.
- When the first stages of dialogue are opened between the Project Company and the Community, time should be specifically set aside for the Community to explain its culture to the Project Company and, in particular, whether there are any specific sacred sites in the area that require extra protection and consideration by the Project Company. There may also be specific cultural practices or festivals that require preservation by the Project Company.
- The Community should have the capacity to complain to the Project Company if its cultural heritage is not being adequately protected and the Project Company should respond appropriately and within an adequate time frame.
- Respect and depth of understanding by the Project 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 Project Company and the Community and preventing social conflict.
GUIDEBOOK FOR THE PRIVATE SECTOR

A GUIDE FOR THE PROJECT COMPANY IN THE IMPLEMENTA-TION OF THE COMMUNITY PARTNERSHIP AGREEMENT.

The aim of the Community Partnership Agreement (henceforth herein, the CP Agreement) is to ensure that the Project Company is required by law as well as the binding contract to obtain the free, prior, informed consent (FPIC) of all communities affected and impacted by prospective activities for all stages (from exploration to closure) of a project's life cycle. Typically, FPIC applies to indigenous communities only, however we seek to expand this notion more broadly to all communities, regardless of ethnicity, race, language, or status. We specifically chose the term *Community Partnership Agreement* over alternative nomenclature, such as a "social license to operate" (SLO), in order to ensure that the Agreement treats all signing members, particularly the appropriate members or representatives of the Community, as true legal partners in the Project. This partnership is a novel concept that will hopefully, with time, become universally applied to global development projects, which have often sidelined civil society. The mission of the CP Agreement is to ensure that communities and the company openly engage with each other; decrease, if not eliminate, the risk of conflict; and provide various benefits for all, the Community, the Project Company, and the country overall. Accordingly, the CP Agreement seeks to make sure that:

- 1. There is effective and regular dialogue between all stakeholders involved in a project so that relevant Communities develop an understanding of both the scope and impact of the Project and Project Company on its members and environment, to manage expectations of all parties, and to prevent the outbreak of social conflict as the Project unfolds, thereby ensuring benefits for all Project stakeholders;
- 2. The Community is empowered to negotiate and exercise its rights, as neighbors to and partners in the proposed Project, when negotiating with a Project Company, to ensure equitable benefits and treatment for all impacted by the Project Company and the sustainable development and survival of the Community; and
- **3. The Government guarantees a formalized consultation** (*consulta previa*) process to benefit community-private sector relations, where current agreements between Communities and companies are ad hoc, unsupervised, and not audited by any regulatory body.

The Project Company has a linchpin role in ensuring the success of the process of negotiation, execution, and continuous observance of the CP Agreement. It is vital

that the Project Company is accountable for the promises it makes to each community impacted by the Project Company's activities. The 2020 Columbia University Capstone Workshop Team's (the *Team*) recommendation is that if a Project Company commits a Material Breach of the CP Agreement, the Central Government will automatically revoke the Project Company's License to Operate, which would incentivize a party, here the Project Company, to mendation is that if a Project Company commits a material breach of the CP Agreement the Central Government will automatically revoke the Project Company commits a material

ect Company's license to opertake its commitments seriously and to keep its word, its promises.¹ The proper observance of the CP Agreement is in the Project Company's best interest as it will not only reduce risks associated with social and environmental conflicts, but will augment the Project Company's long-term financial sustainability, thereby improving investor confidence, public perception, and thus market value. As international standards continue to place a higher premium on companies with Corporate Social Responsibility (CSR) initiatives or Environmental, Social, and Governance (ESG) goals,

"When corporations ask well and listen carefully, their projects get local support and even valuable input"

—Jenik Radon, Margo Tatgenhorst Drakos, and Tarek Farouk Maassarani, *Getting Human Rights Right*

the Project Company will be increasingly able to meet its obligations through compliance with the CP Agreement, as well as bolster its reputation in the industry.

This Guide gathers the extensive thoughts and questions that the Team has generated throughout the course of developing the content of the CP Agreement and its implementation. Many questions however remain to be answered. Still, this Guide can begin to explain to the Project Company the rationale, purpose, and intention of the CP Agreement while recognizing that this Guidebook is the first of many drafts that will be augmented through further research and refinement.

This Private-Sector Guidebook addresses the tripartite relationship between Community, Government, and Project Company vis-a-vis the proposed CP Agreement. The Project Company works within, functions alongside, and affects the local Community, so much so that it is effectively part of the Community and its everyday life. Thus, all parties must be equally committed to trustworthy and effective interaction. The Project Company needs to engage with the Community and to view the Community as its partner, and in doing so must likewise cooperate with the Government to maintain this working rela-

¹ Ernst & Young, Business Risks Facing Mining and Metals 2014–2015 (2014), 16. Similarly, the International Bar Association proposes to link breaches of Community Development Agreements to mineral licenses. Heffron, et al., "Emergence of the 'social license to operate' in the extractive industries?" Resources Policy (September 2018), 6; International Bar Association, Model Mine Development Agreement (2011), 22.2.

tionship in order to prevent social unrest and/or disruption to operations, which inevitably affects all parties negatively.

This Guidebook provides questions and context for the Project Company to better understand and meet its obligations under the CP Agreement. This document is a dynamic document which will be further developed by subsequent Columbia University Capstone Workshop Teams. We as independent, unbiased policy and law student consultants are unfortunately unable to provide ideal solutions to all possible or unforeseen questions and disputes that may arise over the course of the tripartite relationship. However, our goal is to lay the roadmap for a proper structure that both prioritizes sustainable, responsible development while serving the interests of all parties involved.

A. WHY THIS COMMUNITY PARTNERSHIP AGREE-MENT IS UNPARALLELED

This CP Agreement aims to set a new standard in global development practice. Until now, outcomes in development have predominantly favored corporations, namely in terms of financial gain. The Team endeavors to set in motion a new global principle that strengthens the core function of CSR and ESG directives: placing greater emphasis on human rights and equitable and sustainable development of the peoples whose lives are most affected by corporations entering their lands. We do not discriminate between project types, i.e., this CP Agreement and all subsequent agreements apply equally to renewable/ energy projects, mining/extractive activities, or other forms of infrastructure development. Each project is held to the same high standards.

Each company endeavoring to do business on any Community's lands should acknowledge the fact that this land belongs not to the corporation but to the people whether legally, historically, culturally, or through mere settling of particular regions—and that the corporation has, more often than not, profited tremendously off these very lands at the expense of community development and livelihood. Domestic land law aside, the principle here is that these people should have significant participatory say with respect to the terms of development and that corporations must recognize the authority of these people as they do the authority of the government. Unfortunately, history has shown that project development has often hurt local communities and that few private or public entities take into account the well-being of the marginalized or impacted in light of potential profit. Equitable development and prosperity should be a right, not a privilege.

Building on the above, the Project Company should be aware that environmental standards set forth in this CP Agreement will now also be tougher given that current laws and standards do little to prevent environmental catastrophes. Namely, the Team puts forth the concept of legalizing Cumulative Impact Assessments (CIA). As of now, the Environmental Impact Assessment (EIA) is the prioritized legal investigative procedure usually conducted on a project-to-project basis. While an individual project may fulfill domestic EIA requirements, multiple projects taken in aggregate may significantly breach

environmental standards, especially if the requirements are lax. Henceforth, EIAs should not be so lenient, for the sake of communities and general environmental health, particularly in the face of climate change. The Project Company, by entering this country for the purpose of developing its Project, agrees that aside from the usual EIA carried out at the beginning of a project, the Project Company will also carry out a CIA that takes into account other EIAs undertaken in the region (to be more clearly defined in future versions of this Guidebook) at every stage of a project, series of projects, or surrounding projects, regardless of whether developed by the Project Company itself or any other domestic or international company in the region, and hereby acknowledges that negative environmental consequences of development are usually the sum of its various parts.

To limit environmental impact, companies should be using only the highest standard equipment—to which it often has physical and financial access but, for cost-savings purposes, forgoes for lower-standard equipment—and to commit to strict international development practices, which is often easily avoided when domestic law prioritizes development over sustainability. A healthy, inhabitable environment should be a right, not a privilege. In order to ensure this is the case, the Project Company will publish its EIA on its company website for a reasonable period so as to ensure transparency starting from the completion of the report and every subsequent version compiled and submitted to the relevant governmental authorities, including comments/responses/revisions to these documents.

B. The Parties to the CP Agreement

The Project Company, its Parent Company, the Community, and Government are all parties to the CP Agreement. With respect to the Government, while we differentiate between the Federal/Central, Regional/Provincial, and Local/Municipal levels of government, the appropriate authority/authorities party to this CP Agreement is determined by domestic law. Thus, for the sake of simplicity, we only refer to "Government," though the Project Company should be aware that this may entail any combination of involvement by the given country's various levels of government. We trust that the Government will apply appropriate mechanisms for checks and balances that will allow it to (1) avoid any level of corrupt acts or decision-making based on vested interests (regardless of whose interests those are) and thus to (2) best ensure the rights of its Communities while (3) working towards the success of the Project in collaboration with the Project Company.

Under the CP Agreement, the Project Company will have obligations to the Community with respect to the activities it conducts. The Project Company's Parent Company, which is the ultimate corporate beneficiary of operations, should guarantee all obligations under the CP Agreement if the Project Company fails to meet these obligations itself. The Community will have the right to sue the Project Company, and also the Parent Company, and to hold it accountable for its activities if it breaks its promises to the Community. The Government will be obligated to supervise, approve, and legally enforce the contents of the CP Agreement and hold the Project Company accountable through its role as a representative of its citizens.

C. PROPOSAL FOR THIRD-PARTY INTERNATIONAL INSTITUTIONS' ENGAGEMENT

This Capstone recommends that any Project, regardless of whether in the appraisal, development, decommissioning, or other closing phase, should involve an international institution (henceforth, Third-Party International Institution) that has:

- Various guidelines related to good practices in community development, project development, project implementation, and project engagement on the part of public and private entities;
- Experience supporting undeveloped, underdeveloped, marginalized, and/or non-recognized peoples;
- Know-how and expertise in project financing and development in conjunction with community development;
- Explicitly stated intention to promote sustainability in development projects.

We recommend engagement of two different types of institutions for different ends: (1) a recognized, independent accounting firm of international recognition to audit and oversee that all facets of the CP Agreement are being met at the appropriate standards, and (2) organizations such as the World Bank Group, the International Finance Corporation, the International Monetary Fund, the Inter-American Development Bank (in the case of Latin America), other regional development banks as appropriate, and the UN SDG Group to guide the standards and indicators for measuring implementation success.

The former is meant to be actively involved in the CP Agreement through regularly conducted audits of all relevant projects (and in aggregate) at reasonable intervals, as determined in the agreement or by applicable law, to ensure that there has been no breach of any agreement (i.e., illegal use of funds or accounting miscalculations, whether purposefully or by accident). The latter may be asked to nominate individuals to sit on the Board of Trustees of the Social Wealth Trust Fund (explained in greater detail later in this Guidebook), and at the least their work should be used to further inform the standards proposed in this Guidebook given their international recognition and legitimacy in this respect. In other words, the Project Company must onboard an international accounting firm if it obtains permission to construct and operate the Project, but we also highly recommend the direct involvement of the development banks or similar institutions given above in a Board of Trustees.

The institution(s) brought onboard for the purpose of ensuring proper implementation of the CP Agreement is subject to discussion and agreement amongst the Parties to the CP Agreement. However, under no condition will the Third-Party International Institution(s) be a national institution falling under the auspices of any one government or ruling regime. The intention is to choose a party that will:

- Be neutral to any conflicts amongst any combination of Parties to this CP Agreement;
- Prioritize the wellbeing of the Communities often overlooked or, to some extent, marginalized by the Government;
- Audit or support the audit of any environmental impacts of any Project on the Project's site, the vicinity of the site, and any other region affected by the activities of the Project (for example, the way polluted water can travel and affect areas far beyond the territory on which Project activity takes place);
- Oversee, from an independent perspective, that the CP Agreement is being carried out accordingly and justly;
- Mediate any discussions, meetings, disputes, and negotiations between the Parties; and
- Not benefit financially or receive any direct or indirect compensation from the Social Wealth Trust Fund and will rather be compensated through alternative schemes (to be discussed in further detail and agreed upon at a later date) that ensure it remains unbiased in overseeing the relevant Project(s).

In summary, Third-Party International Institutions are independent and thus have no stake in any of the decisions made directly or indirectly by the Board of Trustees of the Social Wealth Trust Fund or by any of the three parties to the CP Agreement.

This by no means is meant to imply that the recommended institutions are ideal. Rather, our aim is to:

- Identify Third-Party International Institutions that have relevant experiences that help prevent any unintended consequences of Project development;
- Recommend entities that have no connection whatsoever to any Government (including any individual at any level of government), any Project Company (including board members, presidents, executive committees, and any and all other levels of corporate structures with decision-making powers), or any Community (including any of its members);
- Bring in truly impartial oversight and sectoral expertise to protect the funds accumulating under the CP Agreement from falling into the wrong hands or from being used for means not in the best interest of the Community and/or its development.

We recognize the risk of finding an Achilles' heel in the involvement of any group or firm—even if internationally recognized and lauded—as auditors, consultants, or as members of trust funds. Nevertheless, this risk is lowered when onboarding a Third-Party International Institution(s) whose actions will be visible to and scrutinized by the international community. These parties are also the best chance at mitigating corruption at the public- and/or private-sector levels and at preventing vested interests from taking advantage of traditionally marginalized Communities who have neither the financial nor legal resources to protect themselves against powerful corporations and profit-seeking regimes.

The purpose here is to promote Project development while institutionalizing holding all Parties accountable to their promises and responsibilities. The purpose of the Project is to benefit all three Parties to the CP Agreement equally without favoring any of the Party/Parties over the others.

D. GUIDING QUESTIONS²

1) Where are my tax payments going and why?

The Project Company will be held responsible for sustaining three funds: a Social Wealth Trust Fund (expanded upon elsewhere in this Capstone) financed by a proportion (to be determined) of tax payments made to the Government, a Restoration Fund for restoring the land after the Project's completion, and an Internal Emergency Fund (elaborated in question 8).

The Social Wealth Trust Fund

The Project Company should know that its taxes and royalties will go towards equitable and universal domestic development. The fund should particularly benefit the region in which it operates, hence a proportion of taxes paid to the Government will be allocated specifically to this Social Wealth Trust Fund.

The Social Wealth Trust Fund will have three beneficiary accounts: a Development Fund,³ a Rainy Day Fund, and a Crisis Fund. Each of these three accounts will receive an agreed percentage of the taxes collected by the Central Government that are then designated to the Social Wealth Trust Fund. The percentage allocation is to be discussed in detail during CP Agreement negotiations. While the Rainy Day and Crisis Funds can only be deployed for their specific purposes at the time these specific events occur, the Development Fund will be deployed for the specific initiatives of the Sustainable Development

The guiding questions and some of the answers are adapted from Columbia University's 2018 Peru Capstone written by Marcelo Alzamora, Mia Brill, Virginia Burgess, Diego Filiu, Alberto Joseph Giménez de los Galanes, Nicolas Leon, Carl Mackensen, Mrig Mehra, Palvasha Shahab, Myrian Smith, Fabian Augusto Zetina Vasquez. Alzamora, Marcelo, et al., Columbia University Peru 2018 Capstone - Community Partnership Agreement, Columbia University SIPA (Spring 2018), 24-48. Henceforth referred to as "2018 Peru Capstone."

A company may typically pay three types of payments to a government: (1) income taxes after profits, (2) royalties, as a percentage of sales (but calculated as a percentage of the selling price, not profit), and (3) administrative fees, including licensing, inspection, and application fees, among other set price fees. Additionally, companies may pay non-obligatory fees in the form of CSR contributions. While some experts put forth that royalties on natural resources should range between 25–30%, according to Sovereign Wealth Funds in Resource Economics (2018), in Peru's case, mining companies must pay two different tax rates: a 29.5% income tax and an 18% sales tax. These make up Peru's "canon minero," which accounts for 50% of government revenue, half of which is distributed back to the regions impacted by the project. We propose an adopt and adapt strategy, in which the Social Wealth Trust Fund could follow the best elements of a funding structure like that of the "canon minero" while improving on some of its deficiencies.

Plan. While this plan will be presented to the Board of Trustees of the Social Wealth Trust Fund for approval, its formulation will be spearheaded by the Community Board with the support of other Local and Regional Government officials and in consultation with Social and Economic Development Departments (or equivalent) of the Local and Regional Government. As the signatories on behalf of the Community, the Community Board members will be the "core team" in charge of coordinating the Sustainable Development Plan and may consist of any members of the Community Negotiations Team (for more, please see Question 4). The Project Company is not responsible for developing the Sustainable Development Plan but rather for supporting it by sustaining the required payments to the Social Wealth Trust Fund.

The Restoration Fund

The burden of responsible and sustainable development does not end upon contract termination. The Project Company is liable to restore the relevant territory to its original standards after the project is completed, or to as close to these original standards as possible before departure. However, worldwide practice has shown that often Project Companies do not have the necessary funds available for the restoration and leave the mine abandoned. We therefore recommend the approach taken by Germany, which focuses on setting aside funds with the start of the project, periodic review of the amounts necessary for restoration and providing security for these funds.⁴

The Project Company will be required to maintain a Restoration Fund (sometimes also referred to as the Abandonment Fund), fully funded under the Agreement. Unlike the Social Wealth Trust Fund, this fund is not financed through a portion of tax payments made to the Government. With respect to this fund, a certain amount of money will be set aside, to be determined, but in no less amount than required to restore the relevant territory when the project will close.

The Project Company needs to prove that it has the available funds in order to attain a License to Operate. The Project Company is responsible for maintaining the account throughout the life of the Project, otherwise it will lose its License to Operate.

The reserves are audited periodically (annually) by the Government and appropriate Third-Party International Institution. They will make sure that the Project Company continues to fund the Restoration Fund on a regular basis and that the amount necessary to restore the environment is recalculated periodically. Since it often takes several decades before the property can be made usable again, changes in value must be compensated for by regularly checking the amount of the security deposit.

The reserves must be covered by insolvency-proof and liquidation-proof security in their entirety. The purpose of security deposits is to avoid that costs for the reutilization will be borne by the state budget or communities if the Project Company fails to ful-fil mining obligations incumbent on him.⁵ The authorities can accept various means of

^{4 § 55} Abs. 1 Nr. 7, § 56 (2) Federal Mining Law (Bundesbergbaugesetz); Information from the Department for Mining, Energy and Geology Lower Saxony.

⁵ Under German law, the authority has discretion to decide whether security is necessary. If the company is a state-

security. In principle, any suitable security can be accepted which is intended to guarantee the financing of the necessary measures in the event of insolvency of the entrepreneur. As a rule, bank guarantees or insurance contracts are suitable. In individual cases, a pledge of the company shares to the federal state can also be an alternative.

2) How might the Project Company share its profits with the Community?

The Project Company shares its profits by paying into the Social Wealth Trust Fund (as discussed above), which will fund the Community's Sustainable Development Plan, among other benefits to the Community. The Project Company may also choose to take a further step and establish alternative charity funds or initiatives for the Community's benefit.

As an aside, the Project Company should not pay any profits directly to Community members either lawfully or informally as this has the potential to breed corruption and a desire for recipient Community members to ascend to power to serve their own personal interests.⁶

3). What kind of role should the Project Company play in the fields of employment, infrastructure, health, education?

In developing and operating this Project, the Project Company will inevitably bring in foreign employees into the region. This implies that these foreign employees will, through the Project Company, have access to health, educational, and other infrastructural benefits specifically established for their use and welfare for the duration of their stay in the country. To avoid discrimination between foreign employees and local employees and non-employed Community members, such infrastructure should be accessible to all. The Project Company should consider that it may benefit from tax credits associated with such infrastructure. Please note that the tax credits referenced, though not defined as a whole number or percentage, should be (1) tax credits per project and not total national Project Company tax credits to ensure that the Project Company contributes its fair share towards domestic and particularly regional development and (2) are to be capped [*with this cap being determined by future capstones*].

Employment

The guiding principle is that there should be no discrimination between those who work for the Project Company who come from outside the community and those who are community members.

• The Project Company should provide equal employment opportunities for anyone from a Community who applies for or seeks employment.

owned company, the authority will typically not require security.2018 Peru Capstone, 48.

- Though the Project Company might employ a team of skilled contractors on any given project, the Project Company is required to train members of the Community so that they can either start work when operations begin and/or at later stages of the Project, depending on the activity required. The situation should be avoided where the majority of workers are non-locals or foreigners. Training over time would mean fewer local employees would be outsiders to the activities of the Project Company making use of their land. The Porject Company must be dedicated to educating locals in this regard. Furthermore, the Project Company should not delegate these people to the lowest-paid, menial tasks, only. While these individuals will likely not have the education level required to designate them as skilled labor, the Project Company should provide appropriate training and personal development opportunities to prevent their assignment to non-skilled tasks only.
- The Project Company carries the burden of proof in explaining why a local does not qualify for employment at the company and/or on the relevant project/development.
- The Project Company should use a certain proportion of local suppliers (to be determined), as agreed⁷ upon with the Community/Communities, supporting business growth and promoting greater scope of services provided by these local suppliers.
- The Project Company should ensure that all of its subcontractors have the same obligations regarding employment i.e., the obligation to employ local suppliers and labor forces.

Infrastructure

The Project Company should not substitute the state in building, operating, and maintaining ordinary infrastructure unless there is sufficient added value for the Community in its use of the infrastructure.⁸

• The Government may also consider giving tax credit to any infrastructure built by the Project Company. Although it is not yet universally practiced, if the Project Company ny builds added-value infrastructure, we recommend that the Project Company have access to tax credits for such value-added construction. The tax credit plan needs to be agreed between the Government and the Project Company before the building of such infrastructure. The Government would have to maintain that infrastructure once the Project Company has departed, and the Community will not be held liable or responsible (neither physically nor financially) for such a task.

Health

The Project Company must remedy areas that include the:

• Identification of potential hazards to workers, particularly, but not only, those that

The use of local suppliers is often negatively impacted by trade agreements. Any use of local suppliers needs to be in accordance with bilateral and multilateral trade and investment agreements to which the country has become a party.
To be further elaborated. Sufficient added value to be evaluated and determined amongst the relevant stakeholders. However, it should be noted that building additional necessary infrastructure for a project's completion is often one of the costs associated with project construction and activities in underdeveloped regions.

may be life-threatening;9

- Provision of preventive and protective measures, including modification, substitution, or elimination of hazardous conditions or substances;
- Training of workers on safety;
- Documentation and reporting of all occupational accidents, diseases, and incidents, with a preliminary due diligence having been conducted before commencement of Project construction/development as the benchmark for Community health prior to Project Company entrance;
- Emergency prevention, preparedness, and response arrangements.

If a company builds a hospital, it must be accessible to the entire Community and so the Project Company should also receive a tax credit for building this infrastructure. The government would need to maintain, as per international standards, that hospital both during constructions and operations as well as prior to Project Company departure from the region.

The Project Company will also:

- 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 and the same healthcare package such as family healthcare to all, regardless of employee status as foreign or local, as well as the transportation of local employees to specialist medical centers or hospitals if they need or request it in the same way they would treat their executives. There should be no discrimination between employees. If any local community individuals suffer from negative health as a result of company activities, the Project Company must apply the same employee standards to these non-employed local individuals. The burden of proof in this regard falls on the Project Company.
- The Project Company should fund highly skilled health professionals to come to the area impacted by the Project Company and train locals so that they are able to work as health professionals on an ongoing basis. Similarly, the Project Company should partner with the Government to launch a scheme whereby young doctors are required to spend one to two years in the relevant regions immediately after medical school. Not only will this improve access to healthcare in more neglected regions of the country but would also foster greater domestic integration.

Education

In the case that the Project Company provides educational opportunities to the children of its employees (whether foreign or domestic), the company should provide the same access to education to children of the community. Any sign of inequality will cause friction, social conflict and protest.

⁹ Performance Standards on Environmental and Social Sustainability, International Finance Corporation (Jan. 1, 2012), 5, https://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/Sustainability-At-IFC/Policies-Standards/Performance-Standards.

- If a company builds a school, it should receive tax credits appropriate to infrastructural development. Alternatively, the company must work jointly with the regional and central governments to ensure that all local children/students have access to education.
- The Government will monitor the application of Project Company funds designated towards education to ensure a school is built within a reasonable walking distance of the Community and that all children within the Community have access to the school.
- The Project Company should partner with regional and/or national colleges to provide internship programs for university and technical school students.

4) Who from the Community will represent the Community in negotiating the CP Agreement?

The Community will designate a Community Negotiations Team to negotiate terms with the Project Company, as well as a Community Board to sign all legal documents related to the CP Agreement. We elaborate on the distinction between the two Community teams:

- A Community Board chosen by the Community, as defined in the EIA. The Community Board may consist of any local leaders that make part of formal or informal pre-existing local leadership structures regardless of legal status. This Board, embedded in the Community, will be representative of its Community and therefore invested in all outcomes of the CP Agreement.
- The Community Negotiations Team will be made up of the Community Board, along with Local and Central Government officials that will ensure the Community's interests are protected, and may potentially include—per the Community's approval—NGO and third-party experts as individuals and not institutions.
- A combination of representatives from these two Community groups will be responsible for proposing to the Board of Trustees how to use funds from the Social Wealth Trust Fund designated for the Sustainable Development Plan.

Likewise, the Project Company needs to designate a (1) negotiating team and (2) representatives who will sign the CP Agreement on behalf of the Project Company. For both processes, top management of the Project Company and Parent Company should be involved.

For the signing process:

- Authorized signatories of each of the below categories are mandated for the signing of the CP Agreement and all relevant supplemental documents (if any):
- Management members of the Parent Company;

- Management members of the Project Company;
- Representatives of the Community;
- Representatives of the Local/Regional Government; and
- Representatives of the Central Government.

For all negotiation processes:

- The Project Company should be represented by multiple members of any of the following positions: founders, management, or comparable Project Company individuals and Parent Company executive and/or management board members, or other top management individuals at the Project Company.
- While other employees of the Project Company or Parent Company may be present at these negotiations, these individuals do not have the legal capacity to represent and/or take the place of the executive committee or top management individuals who are obligated to be present, as per the above bullet point.
- Public Relations representatives are not permissible for either purposes (1) nor (2).

5) How can the Project Company communicate with the Community?

The Project Company must maintain open and continuous dialogue with the Community throughout the lifetime of the project. This ensures that there will be a strong working relationship between the Project Company and the Community, which will aid the former in creating a stable and predictable environment for its day-to-day operations while meeting the obligations established in the CP Agreement. The following provides guidance on how to establish and maintain this relationship with the Community:

- The Project Company is required to meet with the Community from the first stages of the Project (in the case of a Project commencing with an exploration process, this would be the first stage), and from then on, meetings should be scheduled on a regular basis. The frequency of these meetings and duration of such communication need to be defined during the negotiation.
- The Project Company has the responsibility to designate a contact person, or liaison, for the Community; this individual will serve as a permanent bridge between the Community and the Project Company. This individual needs to live within the area of the Community and be available at any time to receive calls, organize or attend meetings, or tend to requests for information from members of the Communities that need to discuss a situation or a complaint, including an unexpected circumstance/ emergency. The contact of this person should be provided to the Community Board.
- The Project Company must make sure that it can relay information and communicate in the Community's native language. In the case that the Project Company's represen-

tative does not speak the same language as the Community, it is the Project Company's responsibility to hire multiple translators for each encounter with the Community and for each information dissemination event/process.¹⁰ This point is particularly critical in order for the Community to have all the information properly translated to make an informed and fair decision with respect to its future; every member of the Community needs to perfectly understand the Project Company's proposed operations and potential risks. Therefore the presence of translators is crucial for the negotiation to be fair and legal.

• Given that many legal terms and concepts are non-existent in indigenous languages,¹¹ the Project Company should use multiple means, formats, and ocassions to communicate the relevant information.

6) What are the mechanisms that supervise my Company's compliance? What makes the CP Agreement binding?

Cross-default mechanism

The CP Agreement contains a cross-default mechanism meaning that the Government, once notified, shall automatically revoke the Project Company's operating license if it commits certain Material Breaches and does not remedy those breaches within a fixed period of time under the CP Agreement.

- Legal Pressure: Governmental agency in charge of periodically monitoring the Project Company's compliance will report any breach. The appropriate Third-Party International Institution(s) may call for the enforcement of breach rules in the event that it uncovers fraud or similar events. If the complaint arises from the Community itself, the Community will submit its concerns to the appropriate Ombudsman office, which is chaired by an official appointed by the government and will follow-up with appropriate legal action.¹²
- External Pressure: Many companies are owned by publicly listed parent companies which are required to notify their shareholders if there is a Material Breach under any of their subsidiaries' material project agreements. This Material Breach will be uploaded onto the Project Company's website as soon as practicable and will be kept public for a period of time that is sufficient to guarantee transparency. The Project Company

¹⁰ Given that much of this dialogue with the Community will include technical and legal terms, multiple translators will be necessary to account for the nuance in language. Having multiple translators also keeps the translators in check, making sure that the information is being conveyed as accurately and fully as possible.

¹¹ For example, words and concepts such as "administration," "process" and "extractive industries" do not exist in Colombian indegenous languages, according to indegenous lawyers of the Corporación Comunidad de Juristas Akubadaura. Hence, the need to dedicate ample resources to explain such terms to communities.

¹² The location of the Ombudsman office depends on the country. Unfortunately, it is often the case that Ombudsman offices are only located in the respective country's capital as opposed to having additional regional or local offices. In other cases, the local or regional Ombudsman offices have budgets that are too small to hire sufficient staff, let alone competent staff. In an ideal world, the Community should be able to trust and rely on the Ombudsman office. If it cannot or does not, alternative mechanisms should be considered, such as for example through requesting the support of Third-Party International Institutions.

must similarly publicize any claims of breach for the same amount of time previously determined, even if such breach has not occurred or was proven to not have occurred.

Financial Pressure: All companies will specify events of default in their loan agreements with the banks funding their projects so that a default in the CP Agreement would trigger a cross-default with the Project Company's bank agreements. This is another paradigm shift proposed by this Capstone Project; such a cross-default mechanism triggered by a CP Agreement does not—but should—exist. The Community will in no way be held liable or responsible in the event of such financial pressure.

Complaints mechanism

- The Community always has the legal right to complain and can take the Project Company to court at any time for a breach. Breaches will be presented by the Community directly to the Project Company or to the Ombudsman office and should be recorded and publicly available on websites of the Municipal, Regional, and Central Governments, and kept as publicly available digital records with the applicable court, from the start of the dispute through a sufficient amount of time after the dispute has resolved in order to guarantee transparency on the issue and the case itself.
- The Community has its rights to seek the support of any level of government in the event of non-compliance with the terms of the CP Agreement by the Project Company and will pursue these rights in accordance with the law.

Impact Assessments

- The Project Company must carry out a baseline environment and social assessment well before any project operations commence (see Community Guidebook and Metric Tools Checklist chapter for greater detail). For example, it may consider undertaking a health assessment that would be used as a benchmark in the event of complaints filed on the basis of health. Any such assessment must respect privacy laws applicable to the relevant country.
- The Community always has the legal right to request that the Project Company or the Government carry out any of the following impact assessments at any stage and throughout the lifetime of the Project: Environmental Impact Assessment, Cumulative Impact Assessment, Social Impact Assessment, and Strategic Environmental Assessment.13
- These assessments form the building blocks for a continuous monitoring and evaluation mechanism that update, refine, and manage outcomes and impacts. The Community can use these assessments to detect any breach or support any complaint.
- Whether or not the Community makes such a request, we recommend the Project <u>Company</u> regularly perform Cumulative Impact Assessments¹⁴—which is the most Please read the Community Guidebook for an explanation of each assessment type.

Indicators should be measured every six months after baseline measurement per 2018 Peru Capstone. 14

¹³

comprehensive in that it takes into account both social and environmental factors—in order to maintain transparency, develop trust, and bolster its working relationship with the Community.

7) Do I have any remedy periods before being considered to be in breach?

Different types of breach require different remedy periods by the Project Company depending on the degree of impact on the Community.

- Under the CP Agreement, any and all environmental, water, animal, or sacred place-related breaches should be addressed immediately and diligently. The Project Company should have a reasonable period of time to fix the breach with the exception of other breaches which have a materially adverse impact on the Community, for which it shall have a set amount of time to remedy the breach before it becomes a Material Breach triggering automatic revocation of the license, as specified in the contract and/or law, as applicable.
- The burden of proof is on the Project Company to prove, within a defined period of time, that (i) it did not commit a breach of the CP Agreement and (ii) that it is in compliance with the CP Agreement. Here we specifically propose switching the burden of proof from the Community to the Project Company because the Project Company has complete knowledge of all its activities, including those that are alleged to have led to breach.
- For Material Breaches, the Project Company may not be required to stop all operations (as determined by the degree of impact and/ or in the CP Agreement, as applicable) but it will be required to allocate all necessary resources at its disposal to fix those breaches. During any and all breaches, or during remediation or suspensions, the Project Company will continue to pay staff (including the Community members it employs).
- The Project Company should refer to Risk/Impact Matrix for a list of potential risks that could result in a breach at the pre-appraisal, development, and decommissioning stages of the Project. [Future capstones should consider classifying risks/impacts by the potential degree of severity of a breach.]

8) What will happen if the Project Company breaches the CP Agreement?

Under the CP Agreement, the Project Company has to establish and maintain a fully funded Internal Emergency Fund. The funds in this account must be available at all times for the purpose of financing any crises, including unforeseen circumstances, that arise during any stage of the Project. This account must be set up before the signing of the

CP Agreement so that the funds are immediately available as needed. This is yet an additional paradigm shift seeing as companies are not required to have reserve remediation funds. This fund is an additional safeguard for the Community. The Internal Emergency Fund will be used by the Project Company to remedy the impacts of any foreseen and unforeseen circumstances that may have arisen from Project operations or natural causes. This may include, but is not limited to, any breach, accidents during operations, or results of natural disasters such as earthquakes i.e., cleaning up environmental waste and protecting the health, safety, and water supply for the Community. If the Internal Emergency Fund is insufficient to remedy the damages, the Project Company will fund restoration/ repair/remedy out-of-pocket. If the liabilities of the Project Company exceed its ability to pay, such event will entail financial support from the Parent Company ensured through Parent Company Guarantees, which include financial guarantees.

9) Why is the Project Company's Parent Company also in this CP Agreement?

The CP 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 subsidiary under the CP Agreement. The Parent Company should be responsible for the actions of its subsidiaries and any and all unintended consequences resulting from Project construction, operations, and default. If the Project Company is unable to meet its obligations under this CP Agreement, the Parent Company is liable to fulfill the obligations of its subsidiary (or other entity regardless of how it is legally connected to the Parent Company).

10) The Project Company succeeded this project from another company or the Project Company is going to transfer the mining project to a New Company. What are the Project Company's obligations?

If the Project Company (the "Exiting Company") is succeeded by another Company (the "New Company"), the Exiting Company must ensure that the Community knows who the relevant Community liaison personnel is in the New Company and must ensure a smooth transition in responsibility both to the Community and to the Project. The Community will be able to sue both the Exiting and New Companies; there will be no gaps in responsibility.

Both the Exiting and New Companies will be liable for all existing liabilities at the time of transfer. The Exiting Company should be a guarantor of liability for the New Company. The New 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, even during the course of transition. The Community will in no way be held respon-

sible for any mishandling of the transfer and/or for any environmental damages that occur during the transfer.

Whichever Company is operating the Project at its closure will be responsible for any damage of which it has actual knowledge and any damage that cannot be seen or identified at the time of closure but which later reveals itself and is present as a result of the Project activity, in which case the relevant Project Company should have uncapped liability in remedying any such damage.

11) What information does the Project Company need to provide to the Community?

In short: The probable or actual effect or impact on water and the environment in clear and simple language. The Project Company will undertake a risk assessment analysis of the Project, to be prepared before the commencement of Project construction. These results will describe the risks that the Project Company endeavors to protect against through appropriate mitigation measures. The Community should have access to this information in a form that is comprehensible, transparent, and easy to understand.

- A detailed description of the Project proposal in its entirety, including the use of any explosives for the purpose of the Project's development, what will be built on the land acquired, and what land will be used by the Project Company. These Project details will be provided in their entirety and, significantly, also explained in layman terms so that the Community is in full understanding of the Project and the potential for adverse consequences of its development and/ or operations. This will likely entail translation into the local language, and so the Project Company will need to ensure that the translation is accurate and does justice to the information that must be communicated.
- All anticipated eco-systemic and socio-economic impacts assessment. As per the International Finance Corporation's Good Practice Standards: The Project Company will need to conduct health, social, and environmental impact assessments of any and all the potential impacts and risks of the proposed development(s) as well as the potential effects of other human activities and natural/ environmental and external social drivers on the chosen project over time. For example, the development of a mine is likely in association with increased Community access due to road construction, which will bring further induced development. The assessment needs to include all these activities, both positive and negative, that may affect local communities, wildlife, or water availability and quality.¹⁵ The individual and resulting cumulative impact assessment reports will be done by an objective and competent third party, the Third-Party International Institution. The Project Company should provide this information to the Community in a form that is straightforward for the Community to grasp and under-

¹⁵ Good Practice Handbook on Cumulative Impact Assessment and Management: Guidance for the Private Sector in Emerging Markets, International Finance Corporation (August 2013), 24, https://www.ifc.org/wps/wcm/connect/industry_ ext_content/ifc_external_corporate_site/hydro+advisory/resources/cumulative+impact+assessment+resource+page.

stand.

- Any and all anticipated impacts of the Project on the environment, including all risks to the environment and what will be done by the Project Company to eliminate, remedy, or minimize those risks. The CP Agreement requires the Project Company to use the best and most advanced technologies, processes, and standards to this end and is obligated to use such technology, processes, and standards to clean up immediately.
- The Project Company's proposal on how to monitor, avoid, or mitigate the adverse impacts of the Project and how the overall wellbeing, including health, safety, and living standards, of Community members will be included in monitoring the impacts of the Project.
- The Community should be encouraged to monitor the impact(s) of the Project on their land and members. The appropriate Third-Party International Institution will be engaged in this monitoring on behalf of the Community at the Project Company's expense.
- The Project Company's proposal on optimizing and sharing benefits and profits with Communities affected by the project, such as through its regular payments into the Sustainable Development Plan, payment of employees, and funding of charitable causes, among others. As an aside, the Project Company should not pay any profits directly to the Community either lawfully or informally as this, and all payments that will be made, must be done in a transparent manner.
- The Project Company's proposal on creating employment for Community members either at the Project Company or in the surrounding area. The employment plan will include direct workers, contracted workers,¹⁶ supply chain workers, and any other workers directly or indirectly related to the company's scope of activities in the region. The workers will be informed of any and all risks that are relevant to the job, and the Project Company will explain what measures it will take to mitigate these risks. The following is a sample list, but is in no way comprehensible and will be expanded based not just on the individual job description but the overall activities undertaken by the Project Company (for the cumulative impact on the worker): general workplace health and safety, existence hazardous substances, electrical safety and isolation, physical hazards, ionizing radiation, fitness for work, thermal stress, noise and vibration, specific hazards in underground mining (fires, explosions, confined spaces and oxygen deficient atmospheres), etc.¹⁷
- All reports and studies done by the Project Company in relation to the Project in a form that the Community understands, in both Spanish and in any and all local dialect(s).

¹⁶ Performance Standards on Environmental and Social Sustainability, International Finance Corporation (Jan. 1, 2012), 2, https://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/Sustainability-At-IFC/Policies-Standards/Performance-Standards.

¹⁷ Environmental, Health and Safety Guideline for Mining, International Finance Corporation (Dec. 10, 2007), 19, https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/ehs-guidelines/ehsguidelines#EHSInfra.

In summary, all 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. Any questions raised by the Community that are not covered by the aforementioned information will be clearly and explicitly answered in detail, as per the guidelines above.

12) How should the Project 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 Project Company's website, in all Government buildings in the region and in the capitol and sent to all members of the Community by any format as stipulated in the CP Agreement. This is vital to making sure that the Community (i) remains fully informed of any developments in the Project that might impact the Community and (ii) consents to those changes, otherwise social unrest may occur.

If at any point Consent is lost, and trust in the Project is jeopardized, the Parties will determine the process through which Consent can be regained. Schedule 5 in the CP Agreement outlines six guiding principles for this consent renewal process.

13) What kind of avoidance and/or mitigation measures are we mandated to take to protect the environment from the adverse impacts of the Project?

The burden is on the Project Company to prove that the environmental harm or damage did not arise and/or was not caused as the result of the Project Company's (or that of the predecessor company's) activities. There should be a heavy penalty on the Project Company if it has caused any damage or any damage arises from the Project activities. The following discusses the issue of water, which has traditionally caused the most conflict with respect to allocation and access, particularly in mining projects, but the below also applies to any other adverse environmental impacts.

- The Project Company will be fully responsible for, for example, any spills of wastewater and there should be a zero-tolerance policy given the high risk of permanent damage to local and regional drinking water sources, as well as any sources of water that become directly or indirectly contaminated from any Project activity (i.e., such as groundwater or sources of water located far away from the Project site but are ultimately connected to the bodies of water that were directly contaminated).
- The Project Company will be required to make sure that there is a minimum level of safe, untainted, potable water for the Community to use for agricultural and/or farming purposes, for drinking, and for any other form of consumption. The Communities should have the right to continue living and functioning unaffected. The minimum

level of water required will be agreed upon by the Community and will be audited by a Third-Party International Institution that will ensure the determined level is adequate.

• Mechanisms such as enabling (a) a Project Company representative, (b) a Community representative, (c) a Government representative, and (d) the relevant Third-Party International Institution to each take samples for the purposes of verifying whether there is contamination, for example, will hold the Project Company accountable and educate the Community as to how to measure contamination of the environment, or at the least assure them that there are ways for contamination levels to be verified by different entities. Representatives can cross-check their findings against each other.

14) Relocation: What are the requirements when the Project Company displaces a Community?

The Project Company will use its best endeavors not to displace a Community from its lands.

The Project Company must adequately explain to the Community what displacement means for the Community. The Project Company carries the burden of proving that it has adequately explained displacement to the Communities affected.

Independent evaluators, Third-Party International Institution, and/ or a dedicated NGO may be requested 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. Communities must be guaranteed shelter and compensation for lost property.

A Community that is displaced to 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. Agrarian Communities must also be guaranteed access to land that will enable them to continue traditional farming and/or herding practices.

15) What does the Project Company need to do when it is closing the Project?

• A long-term sustainability plan must be in place by the time the Project Company leaves so that the Communities affected do not experience loss and/or diminished live-lihood once the Project Company leaves the region. The plan will guarantee that the Community, like the Project Company, benefits from the relevant Project(s) not just over the course of Project construction and operations but also for years after Project completion. Just as a corporation can benefit from the profits made off its projects over the course of years, the sustainability plan allows the Community to continue prospering and promotes continual economic and social development.

- The Project Company should be responsible for ensuring that there is sufficient training and know-how for the Community to manage its livelihood and all new infrastructure once the Project Company has departed. For example, Communities should be prepared to be comparatively self-sufficient in terms of health, education, and the environment, or at least have the know-how to request, find, and/or procure the resources they require. The Project Company should ensure the Communities have the support of their Government in both managing this transition and guaranteeing support post-exit.
- Utilization of the Restoration Fund by the relevant Communities as applicable.



A HUMAN RIGHTS-BASED Approach to Community Engagement

According to the United Nations, human rights are rights inherent to all human beings, regardless of race, sex, nationality, language, religion, or any other status.¹ Because of the United Nations unique contribution in creating a comprehensive body of human rights law, subsequently made widely available to every individual on the planet,² we cannot deny the growing need for human rights compliance around the world. After World War II, the international human rights regime was originally designed to protect individuals against the exercise of power, and force, by states. The focus in advancing human rights was primarily in ensuring that the civil and political rights of people would be protected, promoted and given precedence against governmental initiatives. Along the years, but without minimizing the necessity of governments' compliance with their human rights obligations under international and domestic law, individual rights became intrinsically at risk from decisions taken by private actors, and more particularly corporations. This new identified threat was formerly recognized by the United Nations in 2011 when it released the UN Guiding Principles on Human Rights,³ the first international legal instrument acknowledging that corporations cannot be passive in the pursuit of greater compliance with human rights norms.

Businesses can impact virtually all human rights. But according to the UN Guiding Principles, businesses are required to consider, at a minimum, the rights contained in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Labor Organization's eight core conventions outlined in the Declaration of Fundamental Principles and Rights at Work. Additional standards are to be considered when business activities occur near indigenous lands and communities.

The internationalization of supply chains in the energy sector further complicates the exercise of getting human rights right. In developed countries, where many major companies in the extractive industry originate from, strong legal frameworks are in place to ensure protection and promotion of human rights of their populations. An individual will know his/her rights, and should they be violated, will be in a position to seek redress. The situation in developing countries is quite different and the more isolated a community is, the less likely it will receive basic assurances that their rights will not be violated "What Are Human Rights?": United Nations, accessed April 25, 2020, https://www.un.org/en/sections/issues-depth/ human-rights/.

2 The Universal Declaration on Human Rights is the most translated document in the world.

3 Office of the High Commissioner, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, 2011. https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf. either by governmental action, or by private sector actors. Communities, especially indigenous communities like the Wayúu people in La Guajira, Colombia, in addition to not being well represented by their respective governments, live in areas where sophisticated human rights enforcement frameworks are not in place.

A human rights-based approach to community engagement can improve local acceptance of natural resource development projects. For companies, getting stakeholder engagement right is a key element of securing a Community Partnership Agreement, like the one we propose. Governments also have a responsibility to ensure that communities are adequately consulted before decisions are made on natural resource developments.⁴ Being proactive will dramatically increase the private companies' credibility in pursuing a Community Partnership Agreement. It would also make them leaders in changing policies and practices among the whole industry. Ultimately, it will attract the attention of other countries, who might feel increasingly interested in conducting business with companies showing esteem for the underrepresented. Having a human rights legacy is not to be underestimated when consumers all around the world ask for greater human rights compliance on account of private companies. In response, governments all around the world are tightening companies' obligations towards that end. ⁵Setting a precedence and being innovative in enforcing a human rights-based approach allows corporations to be a step ahead of what will most likely become by an obligation by law.

Over the last decade, headlines of business practices violating human rights have emerged from various economic sectors. For any future project, past allegations of human rights violations may add suspicion among community members already wary over the new enterprise. Natural resource projects are particularly vulnerable to community resistance as they are long term, complex, and capital intensive ventures in need of good relationships with their neighbors: the local and indigenous communities who have inhabited these lands for decades, if not centuries. This is why prior to any interaction with these communities, it is highly important that all private and public actors involved in natural resource projects bear in mind certain facts. Local communities, and especially indigenous communities, have been living for decades if not more on or next to lands used for natural resource development projects. Sadly, these spatial connections have often resolved in conflicting and violent relationships. A great bulk of these experiences triggered human tragedies, leaving a life-long print on the mind of individuals and overall communities. Furthermore, communities, private companies and national authorities often come from a different social, cultural and historical space. For instance, these traumatic events are very different from what people living in urban areas of the country, or people living in other countries, have witnessed and lived through during their own lives. The fact that many extractive companies are international companies adds to this complex issue around interpersonal backgrounds.

⁴ This needs to be expanded in future Capstone projects. Due to Covid-19 crisis, and the impossibility to travel to the countries, in addition to complicating our interactions with government officials, the role of government in implementing a human rights-based approach when interacting with local communities was not explored. In Peru, a great resource is to rely on is the Ombudsman's office to develop this strategy.

⁵ KPMG, Addressing human rights in business, Executive perspectives, December 2016, 6 and 30.

These past experiences burden heavily any future consultation and negotiation with these communities. For the overall success of acquiring community acceptance, or a social license, engagement with local and indigenous communities must reflect and take into account these past struggles to be better equipped in preventing new ones. Should future natural resource development projects include a Community Partnership Agreement, which we adamantly support (there is a template in Part III of this report), the following guidelines should not be overlooked and must be taken seriously.

These guidelines apply to new conventional energy projects, to future renewable energy projects and to any ongoing project where interactions with the local and indigenous communities occur. These guidelines apply to representatives from the private sector, national and international corporations. They include general guidelines that shall radiate throughout the engagement process with communities, more defined regulations leaning towards a human rights-based approach and the development of grievance mechanisms. As this is a complex issue, which has been overlooked on natural resource development projects, we need to widen our approach and look beyond past and current practices. One source of inspiration is derived from the recommendations and guidelines followed by commissions of inquiry and fact-finding missions on international human rights and humanitarian law of the Office of the United Nations High Commissioner for Human Rights.⁶

Respectful engagement will require ultimately an active engagement with human rights-based non-governmental organizations and other advocacy organizations to bridge the cultural gap and amend past grievances. Early on, and throughout the project development, it is increasingly important to establish a respectful dialogue and maintain credibility in treating communities on equal footing and as partners.

Engagement with local and indigenous communities often causes concerns for companies and government officials. But engaging with these communities following human rights principles is effective and efficient in ensuring local acceptance of natural resource projects. Ultimately, a human rights approach of community engagement fully treats members of these communities as real partners, contributing to the paradigm shift we are advocating in this 2020 Columbia Capstone report.

A CASE FOR APPLYING A HUMAN RIGHTS-BASED AP-PROACH: REFLECTIONS ON PAST TRAUMATIC EVENTS EXPERIENCED BY LOCAL AND INDIGENOUS COMMUNI-TIES

Approaching local and indigenous communities in a respectful, efficient and pragmatic way can prove harder than anticipated. For most, the great lack of trust in represen-

⁶ Office of the United Nations High Commissioner for Human Rights, Commissions of Inquiry and Fact-finding Missions on International Human Rights and Humanitarian Law: Guidance and Practice, 2015. https://www.ohchr.org/Documents/Publications/Col_Guidance_and_Practice.pdf.

tatives from the national and local authorities, and representatives from private companies prevents them from engaging in meaningful negotiations. These representatives should always keep in mind the struggles these communities have endured over long periods of time. Their sufferings include, but are not limited to, lack of access to water and sanitation, longstanding water pollution, land grabbing and forced relocation, absence of economic benefits for their communities, physical abuse and killings of social and environmental activists from within their communities. Other negative impacts for indigenous communities have been specifically documented:

- Physical or economic displacement and resettlement;⁷
- Reduced ability to carry on traditional livelihoods due to loss of access to land and/or damage or destruction of key resources (forests, water, fisheries);
- Displacement of artisanal miners, destruction of, or damage to, culturally sacred or spiritually significant sites and landscapes;
- Social dislocation and erosion of cultural values as a result of rapid economic and social change;
- Social conflicts over the distribution and value of mining-related benefits:
- Increased risk of exposure to diseases such as AIDS, tuberculosis, and other diseases, mental health disorders, accidents and injuries, and nutritional disorders;
- Further marginalization of some groups (e.g. women);
- Outsiders moving on to traditional lands due to areas being opened up by the construction of roads;
- Increase in social problems such as alcoholism, drug use, gambling, prostitution etc.; and
- Large-scale uncontrolled in-migration contributing to increased competition for resources and social tensions.

Stories of past human rights violations

Past Capstone reports, drafted by Columbia University students, served as our starting point of reference as we intended this report to grow from past research and on-field interviews done by other teams. The focus of these reports was Peru, but their conclusions are applicable to Colombia, as well as other countries.

Privatization of land

In the 1990s, the Yanacocha Mine, a gold mine located in the Cajamarca region of Peru, made a request to the Peruvian state for mandatory easements and expropriation of lands held by the Campesino Communities. In the expropriation process, the State

⁷ International Council on Mining & Metals, Good Practice Guide Indigenous Peoples and Mining, 2nd Ed., 19.

assigned a monetary value to the land to be expropriated, summoned the parties to meet and approved the expropriation by way of a resolution. Ultimately, Yanacocha determined the amount of compensation and the State's role was limited to summoning the parties to meet. The private contracts contained shockingly beneficial terms for Yanacocha. In 1993, 609.44 hectares of Negritos land was expropriated in favor of Yanacocha in return for approximately USD \$30,000. In 1995, 800.10 hectares of Negritos land was subject to the easement requested by Yanacocha in return for approximately USD \$18,000. One month after receiving the title, Yanacocha mortgaged the expropriated land for USD \$50 million to the International Finance Corporation and a German Bank. A year later, in 1994, Yanacocha obtained a second mortgage over the expropriated land to the amount of USD \$35 million from the same two financial institutions. Finally, to make matters worse, there is no evidence that the very small compensation amounts were ever transferred to the members of the communities.⁸

Looking at the difference in value between the compensation promised to these communities and the money gained by the Yanacocha mine from various transactions with international institutions and banks, we can only assume members of these communities felt robbed by a private corporation, with the assent of their own government and international institutions. It is very likely these communities now have a hard time trusting any outsider interested in their land.

Social conflict and mining

Southern Copper's USD \$1.4 billion Tía María copper mine is the prime example of social conflicts in the context of mining in Peru. Conflicts go back to 2009 when Southern Copper submitted its first Environmental Impact Assessment (EIA). The community consultation launched that year rejected the project by an outstanding majority (90 percent). The United Nations Office for Project Services (UNOPS) reviewed the EIA and made over 100 observations. In the midst of a social conflict that led to the death of three people and dozens wounded, Peru's Ministry of Energy and Mines (MINEM) rejected the EIA in 2011. Two years later, Southern Copper presented the new EIA, largely based on the previous one with updated information, and new parts; the community and CSOs rejected the EIA arguing that major issues remain unattended. MINEM confirmed the copper mine would not cause any adverse environmental effect, but in 2015, communities began an indefinite strike against Tía María, where protests left people wounded in clashes between the community and the police officers. The government of Peru remained still in favor of it, and a construction permit for the mine was expected later in the year 2015. In November 2019, protests by farmers and peasants erupted again when MINEM announced its approval of the construction license for the Tía María mining project.⁹

When researching the roots behind this entangled and violent conflict, it becomes clear that this crisis was just the tip of the iceberg of an underlying problem which first started back in the 20th century. The resistance posed by local communities arose from

^{8 2015} Columbia Capstone Report, 24.

⁹ Cesar Uco, "Protests erupt after Peruvian government approves controversial Tía María mining project," World Socialist Web Site, November 4, 2019, https://www.wsws.org/en/articles/2019/11/04/peru-n04.html.

Southern Copper's negative environmental track record, which has led to mistrust by communities around Tía María. In the mid-20th century, Southern Copper established copper refining and smelting facilities in Ilo, Peru. These facilities contributed to large amounts of water and pollution in the area and it severely affected the health of the community members. The negative legacy of the mining company has colored the perception of these companies by the local communities.

Air pollution

For decades in Peru, the people of La Oroya, where a smelting operation is located, have been exposed to high levels of air pollution stemming from the complex's emissions of toxic substances, including lead, cadmium, arsenic and sulfur dioxide. By 2006, La Oroya was even identified as one of the 10 most polluted cities in the world. According to independent studies, 97 percent of children between the ages of six months and six years, and 98 percent of the those between seven and twelve years old still have high levels of lead in their blood. The percentage reaches 100 percent in La Oroya Antigua, the area closest to the smelter. The effects of lead poisoning in children range from developmental delay, intellectual disability, seizures, abdominal pain or even hearing loss, and are irreversible.¹⁰

Arbitrary killings, excessive use of force and mining projects

Social conflicts surrounding mining projects in Peru have had widespread and tragic ramifications in Peru. The suspension of the Conga project, as a result of social conflict and continued local community opposition over the fear of contamination and reduced local water supply due to mining activities, was followed by two months of bloodshed. This situation resulted in the declaration of a state of emergency, five protesters were killed and prominent environmentalists were the targets of arrests.

At Las Bambas project located outside of Cusco, local police who were hired by the mining company killed three protesters and wounded 17 others as local residents blocked the street that led to the Las Bambas mine. Local protestors also allege that local police shot at the ambulances which were taking the injured to local hospitals, the delay of which resulted in the death of the three individuals who were shot. A state of emergency was later declared for the Las Bambas mine, with the police and armed forces being allowed to intervene by using force and arresting without charge.¹¹

Between 2015 and 2019, Colombia has been ranked the second most dangerous country in the world for defenders focusing on business, with 181 attacks recorded. Thirty-three percent of these attacks involved defenders focusing on mining activities, 24 percent related to oil, gas and oil activities, and 11 percent related to renewables. ¹²The most commonly documented type of attacks were killings, followed by death threats, and <u>beatings and</u> violence. The companies—most often the subject of advocacy from those

10 2015 Columbia Capstone Report, 152.

11 2017 Columbia Capstone Report, 5-6.

¹² Business & Human Rights Resource Centre, Business & Human Rights Defenders in Colombia, March 2020, 1

attacked—were the AngloGold Ashanti, the Big Group Salinas, Cerrejón Coal, Ecopetrol and Empresas Públicas de Medellín (EPM).

Physical assaults of members of local communities

Máxima Acuña, a subsistence farmer in Peru's Andean region, stood up for the right to peacefully live off her own property. Her plot of land was sought by the mining companies of Newmont and Buenaventura to develop the Conga gold and copper mine. To compel Acuña to give up her land, the mining companies employed "armed forces" to beat her and her daughter up. A provincial court found Acuña guilty of illegally squatting on her own land. Thankfully, with the help of an NGO that represented local communities in cases against mining companies, Acuña gathered documents to show proof of legal ownership over the land and appealed the ruling. She ultimately prevailed.¹³

Water availability

Another example of a social conflict resulting, this time, from water issues is the Conga mining project—a gold and copper mining project in the northern region of Cajamarca. This project has been the target of especially fierce opposition because it will entail the destruction of four high mountain lakes. Tensions surrounding the proposed project erupted in civil unrest after the Conga EIA conducted by the Newmont Mining Corporation was approved in 2010. An international expert review concluded that two of the four lakes were to be emptied out to extract the gold, while the other two would be used to deposit the earth and rock removed. No detailed hydrological or hydrogeological studies were carried out for the project even though they are essential for preventing leakage of toxic waste. The local communities that would potentially be affected were not all informed about the Conga mine project. Community perceptions that their water will be depleted/contaminated must be taken into account and addressed.¹⁴

In La Guajira, Colombia, members of the Wayúu community are no longer able to grow crops with basic irrigation systems fed by well water. They now have to dig deeper and deeper to find water or need to buy it with the proceeds made from selling traditional handicraft.¹⁵ The El Cercado dam built by the government to provide water in times of drought only supplies water to rice and palm crops owned by private companies and allegedly supplies the mine as well. No individual can draw water from it. The Cerrejón mine uses 2.7 million liters per day of potable water from the Rio Ranchería and its aquifer, when an average person in La Guajira has access to only 0.7 liters of untreated water a day.

Water pollution caused by heavy metals

In Espinar, people living in communities near the mining complex Tintaya Antapaccay not only lack access to running water for most of the day but suffer from water <u>contamination</u>. A study commissioned by the government established that the mining

^{13 2016} Columbia Capstone Report, 120.

^{14 2015} Columbia Capstone Report, 139.

Lucy Sherriff, "Colombia: Dying of thirst, Wayúu blame mine, dam, drought for water woes", Mongabay, November 1, 2018, https://news.mongabay.com/2018/11/colombia-dying-of-thirst-wayuu-blame-mine-dam-drought-for-water-woes/

company was the one responsible for this contamination exposing communities and livestock to arsenic, thallium and lead. This contamination was the central driver of social conflicts and violent protests in 2012. Despite a dialogue between the government, community leaders and the mining companies, the conflict over a lack of effective policies to address health concerns about the presence of heavy metals in the bodies of people and livestock continues today. The state's promise to implement an integral health action plan to provide assistance to people at risk of contamination did not prove fruitful due to a lack of sufficient resources and institutional capacity.¹⁶

In La Guajira, Colombia, members of the Wayúu community noticed the Rio Ranchería started to show signs of contamination after operations began at the Cerrejón open-pit coal mine in 1985.

Threats to cultural and spiritual values and traditions

Nature, and particularly water, plays an integral role in Wayúu culture. The Wayúu community has been living in La Guajira for at least 3,000 years. One of their main deities is Mareiwa, the goddess of the rains, water and creator of life. In addition to putting their lives at risk, the lack of water and the contamination of water described above destroys the spiritual connection of these communities with nature and *Madre Tierra* (Mother Earth).¹⁷ These communities now suffer from social trauma from the conduct of mining companies, with the assent of their own government, which compounds the lack of trust in both state institutions and corporations documented in both countries.

DISTRUST IN INSTITUTIONS AND CORPORATIONS IN BOTH PERU AND COLOMBIA

Poverty and inequality within communities have instilled a legacy of distrust in the state. The perception in rural regions, where natural resource projects typically take place, tends to be that economic growth has not been equal and that economic gains have not been evenly distributed. Added to this perception is the distrust of rural and indigenous communities stemming from past exclusion from reform processes and national economic growth. For instance, in the 1990s, the Peruvian government favored foreign investment at the expense of sustainability and indigenous rights in rural regions. Foreign investors received unrestricted access to lands and changes in the national legal system were enacted to foster a more robust mining sector.¹⁸ Such reforms were undertaken without any formal consultation process in rural areas and failed to take the needs of the affected communities into account.

The appearance of the state, which only seems to act to suspend legal rights, is negatively perceived by rural communities and contributes to the distrust that currently exists. This adds to the already existing distrust of rural and indigenous communities based

¹⁶ Peru Support Group, Espinar: Continuing Problems with Mine Developments, March 18, 2018, https://perusupportgroup.org.uk/2019/03/espinar-continuing-problems-with-mine-developments/.

¹⁷ Lucy Sherriff, "Colombia: Dying of thirst,"

^{18 2017} Columbia Capstone Report, 4.

on past abuses of power and human rights violations committed by the state during the armed conflict against the terrorist organization Sendero Luminoso in the 1990s. These historical grievances remain unresolved until today.

Latinobarómetro, a private non-profit organization, is responsible for carrying out an annual public opinion survey involving 20,000 interviews in 18 Latin American countries, including Colombia and Peru. Its latest results concern the year 2018 and they reflect the stark distrust from both societies in their public institutions and private corporations: 80.2 percent of Colombians and 84.6 percent of Peruvians believed the leaders in their respective country only work towards their own private interests and not for the interest of the greater good, and only 21.9 percent of Colombians and 13 percent of Peruvians trusted their respective government¹⁹ (ranging from a lot to some trust). Trust in companies runs a little bit higher with 44.4 percent of Colombians and 36.9 percent of Peruvians trusting to some extent (a lot to some trust) in national companies. Trust in international companies. Numbers in Peru run similar to the trust in national companies with 34.9 percent of its population trusting international companies.

These numbers should serve as a wake-up call, with neither the government nor companies, national and international, recieving even half of responses in their favor. These studies were all conducted in Spanish, meaning that these numbers do not capture the opinions of indigenous peoples who only speak their indigenous languages. But as these individuals reside in the poorest areas, it is highly likely that they reflect the same level of distrust in national institutions and corporations. Testimonies from these communities confirm such assertions, and various interviewees familiar with the Wayúu indigenous community in Colombia confirmed the general and immense feeling of exhaustion shared by many among the community. This feeling is mainly driven by the many promises made by, and subsequently broken by, both governments and private sector representatives, and now fuels an instant and profound suspicion and resentment against any outsider.

With such numbers, we hope to highlight that a deep and worrying distrust characterizes relationships between individuals in both countries and their governments, and between individuals and corporations. We cannot emphasize enough that such distrust will impact any future relationship between these actors and these communities. Such distrust is a living legacy and must be addressed, even if it cannot be alleviated except with the passage of time, assuming, of course, it is properly and respectfully addressed.

Mental health of local and indigenous communities

Given what these local and indigenous people have experienced, and to which they continue to be subjected, we can assume that they suffer from high rates of neuropsychi-

¹⁹ Latinobarómetro Análisis de datos: Latinobarómetro, accessed April 16, 2020, http://www.latinobarometro.org/latOnline.jsp.

atric and behavioral problems. Although relatively few data exists on the mental health status of indigenous communities in Latin America, a 2017 study established that indigenous peoples in the Americas, including Latin America, were at greater risk of developing post traumatic syndrome disorder (PTSD) and social phobia than similar non-indigenous groups elsewhere.²⁰ Higher rates of trauma and discrimination may increase the risk of PTSD and social phobia, in particular. These health disorders are distinguished by a fear factor, in opposition to other mental health issues like anxiety and depression, for which no difference was found between indigenous and non-indigenous cohorts.

Speaking on the right everyone has to the enjoyment of the highest attainable standard of physical and mental health, the UN Special Rapporteur highlighted in its 2019 report that "explanation of mental health inequities extended well beyond the biological and individual to the social, economic and political."²¹ A crucial determinant of mental health identified by the report is the quality of social relationships over the course of life, across generations, between government and people, between different nations, and between mankind and nature. The report further added that social relationships are deeply influenced by "scars of the past", including historical injustices, the legacy of colonialism, racism, and land appropriation. Social trauma, such as systemic racism, violent conflict and displacement can damage communities for generations, creating intergenerational trauma.

Colonization which started in the 15th century by outsiders that now dominate their societies has adversely affected physical, social, emotional, and mental health and wellbeing in indigenous communities.²² These effects on mental health are still sustained today by various practices, in part driven by the intent to further develop natural resource projects on their ancestral land. Traditional indigenous peoples have been careful custo-dians of the environments that provided them with sustenance, protecting habitats from human and pests' interference. Yet colonization destroyed traditional food-gathering and practices, traditional laws, languages, dress, religions, sacred rituals and remedies. This disruption of traditional society was worsened by socioeconomic and political marginalization, as well as racial prejudice, and the brutal dispossession of lands. These oppressive factors caused severe inequalities in indigenous communities' health status. Although these practices have reduced in scale over the last 500 years, they have never stopped. More importantly, they remain active in areas where mining activities, and future renewable projects are set to take place, as shown in our above-mentioned case studies.

The health of individuals is dependent on, and not separate from, healthy relationships with wider social, cultural and natural environments, such as the links between ancestors, the community and the land. Even with the best designed engagement program and Community Partnership Agreement, conflicts and disagreements will arise from the

²⁰ Steve Kisely, "The prevalence of depression and anxiety disorders in indigenous people of the Americas: A systematic review and meta-analysis,", Journal of Psychiatric Research 84, (January 2017): 137-152, https://doi.org/10.1016/j.jpsychires.2016.09.032.

Office of the High Commissioner on Human Rights, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/HRC/41/34/, 2019, 2, §5.

Gracey, M., Kind, M., "Indigenous health part 1: determinants and disease patterns", Lancet 374 (2009): 65-75.

social trauma felt by these communities, fueled by past grievances and resentment.

How future companies and government officials anticipate and respond to these situations can be critical to determining the future quality of relations with the community, and ultimately, the company's Community Partnership Agreement. This is particularly the case with indigenous communities, where there is a historical lack of recognition of land and resource rights and interest, as well as a negative legacy associated with poorly

planned past projects.

TEN RECOMMENDATIONS TO IMPLEMENT A HUMAN RIGHTS-BASED APPROACH FOR A MEANINGFUL ENGAGE-MENT WITH LOCAL AND INDIGENOUS COMMUNITIES

An integrated approach of ethics and human rights can ensure an effective engagement with local and indigenous communities. For private sector actors, engaging with community members in an efficient but respectful way is a real challenge. Yet, being able to interact with local and indigenous communities in a constructive way is absolutely key to the success of a Community Partnership Agreement. Indeed, negotiations and discussions are doomed to failure if participants are not willing to interact with each other. Interpersonal relationships in the context of natural resource development projects must remain professional at all times, with inclusive and pre-defined protocols reflecting due diligence towards the past and current human rights violations suffered by local and indigenous communities.

Some of these guidelines draw inspiration from recommendations followed by commissions of inquiry and fact-finding missions on international human rights and humanitarian law of the Office of the United Nations High Commissioner for Human Rights,²³ as well as fact-finding visits and reports followed by NGOs (also called the Lund-London Guidelines).²⁴ They also rely on a growing body of rules, recommendations, guidelines, and case studies on how business models and companies need to address and act accordingly to their growing influence and address the state of human rights of individuals.²⁵

#1: Engage in a human rights impact assessment process for every prospective project

As illustrated above, human rights related dynamics among local and indigenous communities are quite complex, and, with regards to indigenous communities, are often

²³ Office of the United Nations High Commissioner for Human Rights, Commissions of Inquiry and Fact-finding Missions on International Human Rights and Humanitarian Law: Guidance and Practice, 2015. https://www.ohchr.org/Documents/Pub-lications/Col_Guidance_and_Practice.pdf.

²⁴ International Bar Association: Human Rights Institute, Guidelines on International Human Rights Fact-Finding Visits and Reports, June 1, 2009. https://www.refworld.org/docid/4a39f2fa2.html.

²⁵ The Danish Institute for Human Rights, Human Rights Impact Assessment: Guidance and Toolbox, 2020.

rooted in acts conducted more than 500 years ago by European settlers. Having a clear picture of the state of affairs with regards to human rights for these communities is therefore far from being an easy task. The lack of interest from government officials in further advancing their rights, and truly represent the adversities met by members of these communities, further impede this process.

But, having a base line assessment—a picture of where human rights stand prior to any development is initiated by business—that is supported by reliable qualitative and quantitative data is essential for both members of these communities and corporations' prospects. For the former, a company cannot protect and preserve their resources by meeting essential rights, like the right to water and sanitation, if it is not aware of the subsistence economy of these communities. Even more, it cannot provide for missing essential services like health and educational services. For the latter, corporations will get to know exactly what they are getting themselves into. Conducting a business with a high risk of local resistance requires to extensive preparation, no matter the type of corporation or where it decides to locate some of its activities.²⁶

Assessing human rights impacts will ultimately help companies to proactively shape a strategic approach to human rights based on relevant risks and opportunities, rather than reactively responding to external pressure or unexpected incidents.²⁷ The human rights violations cited in this report are examples of events companies were not prepared for and reacted poorly to. Conducting a human rights impact assessment will help achieve four important goals for any company:

- Meet expectations and address pressure from key stakeholders;
- Manage reputation, operational, legal and financial risks;
- Engage, retain, and motivate staff;
- Demonstrate leadership and management standards.

The mandatory elements for a successful human rights impact assessment are:

- Based on internationally recognized human rights standards and principles;
- Focused on participation of rights-holders, duty-bearers and other human rights stakeholders;
- Attentive to equality and non-discrimination;
- Focused on accountability, including transparency, access to information, and access to remedy;

This human rights assessment must be undertaken by an independent entity, name-

In February 2019 Amazon canceled its plan of building a massive corporate campus in New York City after severe backlash from the community in Long Island City, Queen, where it originally planned to locate its second headquarters. The move to NYC was strongly supported by both the Mayor and the Governor, with great financial incentives in play, but yet community resistance got the upper hand. J. David Goodman, "Amazon Pulls out of Planned New York City Headquarters", New York Times, February 14, 2019, https://www.nytimes.com/2019/02/14/nyregion/amazon-hq2-queens.html. BSR, Conducting an Effective Human Rights Impact Assessment: Guidelines, Steps, and Examples, March 2013, 6.

ly a party without any conflict of interest, preferably a local and respected nongovernmental organization that has demonstrated its ability to work with, and in favor of, the community's interests, and in an open and transparent manner. A specialist expert consultant or an international development agency may also be considered.

A human rights assessment will vary depending on the community, but key parameters will need to be taken into account. A public report will be issued to the local press and to the community as a means of accountability and transparency. Special care will be given to communities where the illiteracy rate is sky-rocketing and where most members do not speak Spanish. The wording used in the report will also need to reflect the level of education among members of the community.²⁸ The report distributed to the community must be translated into the local indigenous dialect if needed or must be presented orally to the community in the indigenous dialect by a certified interpreter (see below recommendations on tackling communications barriers and language bias).

Key recommendations for the company to follow will also be provided as a means of concluding the report. These recommendations shall serve as a baseline on which the company will build a partnership with members of the community to address the identified problems.



Figure 1: What a human rights impact assessment process must look like

Source: Human Rights Impact Assessment: Guidance and Toolbox, The Danish Institute for Human Rights, 2020, 9.

Donal A. O'Neill, "Impact Assessment, Transparency and Accountability – three keys to building sustainable partnerships between business and its stakeholders", Peace through Commerce, Chap. 8 (November 2006), 13.
10 key criteria for a successful human rights impact assessment:²⁹

- Meaningful participation of affected or potentially affected rights-holders during all stages of the impact assessment process;
- Engagement and consultation processes are inclusive, gender-responsive and take into consideration the needs of individuals at risk of vulnerability or marginalization;
- Capacity building of vulnerable individuals to empower them to participate;
- Transparency applied to the impact assessment process and publicity of findings;
- Human rights expertise is the sole driver for the impact assessment process;
- International human rights standards are used as the benchmarks against which impacts will be measured and analyzed, and to design mitigation measures;
- Identifies all actual and potential cumulative impacts and legacy issues;
- Impacts are addressed according to the severity of their human rights consequences, including the scope, scale and irremediability of particular impacts;
- Impacted rights-holders have avenues whereby they can raise grievances regarding the impact assessment process and outcomes as well as the business project or activities.

#2: Long-term commitment to community engagement with adequate resources—a dedicated community engagement team

As in any relationship between various stakeholders, the perception each has of other participants is key. In a community engagement processes, it is critical that communities perceive both the companies and government as long-term partners, with whom they interact prior to, during, and after the exploration and exploitation phases of a natural resource development project. Local and indigenous communities often rely on identified spokespersons and well-known representatives. These identified individuals, or groups of individuals, rarely change over time among one community.

The same identification of points of contact within the private company is key. These representatives shall be involved in all discussions surrounding the design and implementation of a Community Partnership Agreement, relaying any concerns and information community members pass along. By ensuring a smooth communication of this information, inputs from community members shall be reflected at several levels in the decision process undertaken when operating a mining facility, or in planning a new natural resource development project.

This community engagement team needs to be well-supported by the upper management with sufficient financial resources to provide for the salaries of a sufficient number of workers with the required qualifications. Greater competence and credit will be afforded to each team member if a high status is bestowed on her by the upper man-

Human Rights Impact Assessment: Guidance and Toolbox, The Danish Institute for Human Rights,2020, 30-39.

agement, a status that must be reflected in her salary.³⁰ This team will take over from the external contributor to the human rights impact assessment ensuring planned activities reflect on the state of human rights in the community and aim to improve them.

Finally, gaining local acceptance for natural resource projects takes time. The schedule in negotiating a Community Partnership Agreement cannot be determined solely on economic grounds or according to the expediency of a business schedule. Depending on the community, on its willingness to collaborate, to trust a company, and to believe in a project, the timeframes can vary. It should not be modified for reasons of profit-making or by applying an engineering timescale, as it would endanger any progress made towards local acceptance. Building on the human rights assessment report to find adequate solutions to social, economic and environmental problems faced by communities will constitute an additional long process of collaboration with members of the community. It is highly likely a company will not have the full expertise, or even desired funds, to fully commit to, and succeed in advancing the human rights of a community on its own. Reliance on governmental actors and other third parties such as international institutions, or NGOs, will then be key to creating a virtuous circle overcoming all the challenges usually met when advancing the state of development of a society.³¹

Recommendations:

- Set up a community engagement team among private companies serving as a focal point in charge of collecting and disseminating data collected from within local and indigenous communities.
- Provide for adequate resources including financial and non-financial resources, ensur-• ing several members constitute the community engagement team, with a low labor turnover.
- Ensure members of the community engagement team are experts in local and indigenous communities' engagement, by requiring relevant credentials and past experiences in the field.
- Members of the team shall comprise, at a minimum, of a unit head, a human rights ۲ adviser, an anthropologist, a specialized gender adviser, a psychologist or psychiatrist or mental support staff, and if needed, an interpreter.
- Each member shall receive a decent salary, similar to the salary earned by an upper-lev-• el engineer in the company. This salary shall not be conditioned on the results of the community engagement process.
- Each community engagement activity shall be made public with the production of a • report, translated in indigenous dialect if needed and distributed to the community and local press.
- The work schedule of the community engagement team shall reflect the state of ne-۲

Jenik Radon et al., "Getting Human Rights Right", Stanford Social Innovation Review (Winter 2008), 57. Donal A. O'Neill, "Impact Assessment, Transparency and Accountability", 19-20. 30

³¹

gotiations with local and indigenous communities. The state of interpersonal relationships with members of the community shall be the only indicator necessary to determine this timeframe.

- The human rights impact assessment report shall serve as a baseline for each engagement activity to rely on and grow from.
- The problems identified in the human rights assessment report will require finding solutions in areas such as public health, access to water and sanitation, and it will be the responsibility of the community engagement team to secure that these solutions are fully implemented and adequately funded.
- If necessary, companies must demonstrate willingness to rely on third parties for expertise, and funding to advance the state of human rights for the communities.

#3: Manage community members' expectations—clarify and align government and company roles

The government and company both hold key roles in community engagement. Their obligations are reflected in the UN Guiding Principles on Business and Human Rights, also called the United Nations "Protect, Respect and Remedy" Framework, endorsed by the Human Rights Council in June 2011.³² These principles rest upon three pillars:³³

Figure 2: UN Guiding Principles on Business and Human Right

UN Guiding Principles on Business and Human Rights – schematic overview



Source: Study of the Implementation of the UN Guiding Principles on Business and Human Rights by the European Parliament, 2017

Office of the High Commissioner, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, 2011. https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf.

33 These three pillars need to be further developed, as they are context-specific to each individual country and project. They constitute a great basis to develop a more integrated approach and human-rights compliant framework for each company willing to conduct business in any given setting.

- The state duty to protect against human rights abuses committed by third parties, including business, through appropriate policies, regulation, and adjudication;
- The corporate responsibility to respect human rights by acting with due diligence to avoid infringing on the rights of others, and addressing harms that do occur; and
- The access to effective remedy when adverse human rights impacts result from a company's activities with victims being able to seek redress.

- Manage community members' expectations by clarifying each stakeholder's role;
- Ensure that one stakeholder's failure to comply with its obligations does not allow for another stakeholder to sidestep its own obligations; and
- Have the community engagement team in a company serve as a watchdog over each actor's compliance and enforcement of its own obligations.

#4: Build trust with community members by relying on civil society and community-based organizations

As of today, both private companies and government officials are not trusted by members of local and indigenous communities, without regard to a specific involvement with any past traumatic experience.³⁴ It is a general feeling built over time and generation. More worrying, the feeling of exhaustion characterizing the general mood of many communities has a dire consequence of having members refusing to talk to, or meet with, or listen to, representatives of both government and private companies.

One way to show clean hands is to work closely with community-based organizations. These communities have been working with these communities for long period of time with some of its members coming from the communities. They have often time gained the trust of members of the community. Relying on civil society and community-based organizations can therefore help the private sector to bridge the gap between communities and themselves. In Colombia, we were able to identify one key organization that has been involved with providing legal counsel and assistance to indigenous communities on various topics. This organization is called Akubadaura – comunidad de juristas. Another organization called Fuerza de Mujeres Wayúu, is also key in interacting with the Wayúu community, represented by women advocating for the wellbeing and future of their communities.

Recommendations:

Criteria to consider when assessing if a civil society or community-based organization is considered trustworthy by a community:

• Mandate of the organization

³⁴ See above, Section on Mental health of local and indigenous communities.

- Nongovernmental v. governmental
- Legal representation v. local advocacy
- Do they equally represent interests of men and women among the community?
- Do they represent all members of the community spread over different localities, or are they closely related to one specific locality?
- Composition of the organization
- Are members mostly from the community itself?
- Are community members in a leadership position?
- Location of the organization's headquarters
- Capital city v. rural location
- Press coverage: Is there any press coverage arising from the organization? From the local press? If so, of what nature?

Additionally:

- Take the time to build a sufficient level of trust with these organizations showing a real intent to cooperate and to depict communities' interests in discussions regarding the Community Partnership Agreement
- Show good faith and signs of empathy towards the communities
- Accept harsh criticisms and issue an apology when necessary

#5: Understand local, regional and international context impacting communities and act upon it

One key component in making community engagement meaningful is understanding the factors that are specific to the socio-economic, political, cultural and geographical context of a project. Context-specific factors later shape a project's impacts and determine the different ways members of a community can be affected.

The importance of understanding history, culture and internal systems within the communities.

Anthropologists are key professionals in understanding the dynamics between various communities, and within them. In Peru's Apurimac region, communities were already in dispute over land issues prior to the start of mining activities. The mining projects then fueled the disputes with how the benefits of the mine's activities were distributed within the communities. Factors such as the location of the community relative to the mine site, and the perceived area of direct impact, were integrated to calculate such benefits. This led to a greater fragmentation between communities that competed for benefits from the mine.³⁵

Although it is already accepted practice for companies to hire anthropologists to map the different stakeholders amongst communities, one interviewee told us that, in Colombia, most of these anthropologists lacked knowledge over the specificities of the communities in question.³⁶ They also did not speak the local dialects—in this case, the Wüinpümüin and Wopumüin, the two main dialects of the Wayúu people.

Recommendations:³⁷

- Qualified anthropologists, from the community itself if possible, must be hired by companies;
- High-level education, proven-track of research on the specific community and dialect proficiency must constitute floor-benchmarks in the hiring process;
- Key characteristics to research track record:
 - * Demographic information
 - * Land ownership and tenure from a legal and customary perspective
 - * Cultural heritage significance and association with particular sacred sites (in the case of indigenous communities)
 - * Livelihood and subsistence data on how the community meets its basic food and shelter needs
 - * Information about the ethnic composition and relations in the area, as well as the history of migration
 - * Current conflicts between local and regional governments, and indigenous and local communities, and historical grievances with extractive industries in the particular region

Be mindful of local and regional events unrelated to natural resource development projects.

Traumatic experiences caused by interests for the development of new mines at the expense of the wellbeing and safety of these communities should not be weighted in isolation to other events/sources of tension within the communities.

As of the time of this writing, in April 2020, we can think of two current circumstances creating a lot of uncertainty in both countries. One them is the close proximity of Colombia—particularly of La Guajira region—to Venezuela. Approximately, five million refugees and migrants have left Venezuela as a result of the political turmoil, socio-eco-

Tony Andrews et al., "The Rise in Conflict Associated with Mining Operations: What lies beneath?", Canadian International Resources and Development Institute, 88. https://www.researchgate.net/publication/316922130_The_Rise_in_Conflict_Associated_with_Mining_Operations_What_Lies_Beneat

³⁶ Jenik Radon et al., "Getting Human Rights Right", 56.

³⁷ International Council on Mining & Metals, Good Practice Guide Indigenous Peoples and Mining, 2nd Ed., 22.

nomic instability and the ongoing humanitarian disaster.³⁸ Colombia hosts the greatest number of refugees and migrants from Venezuela, accounting for a total of 1.8 million people. Peru is also facing a staggering number of Venezuelan migrants and refugees, approximately 861,000 people. These figures underestimate the real dimensions of this migration crisis since many people do not register with the authorities. Doctors without borders have documented that many of these migrants and refugees, after sleeping on the streets on arrival, live in slums where they face poor living conditions and a lack of access to water and sanitation leading to poor health.³⁹ These great numbers have stretched the public services of both countries and local and indigenous communities, already lacking basic health services, end up having no access at all. La Guajira has especially struggled with the influx of migrants and refugees, which now account for roughly 19 percent of the population,⁴⁰ as well as reports of tensions with locals and increased rates of crime in the northern state.⁴¹ Such a human tragedy cannot be overlooked when private actors interact with local and indigenous communities of this region.

This is particularly true with the Wayúu community, as this indigenous group has always been spread over both Colombia and Venezuela. Internal conflicts and violence between neighboring Wayúu families have been reported, sparked by the migration crisis.⁴² Wayúu people have citizenship rights in both countries and some families had migrated to Venezuela decades ago to take advantage of free education and other benefits. Today, conflicts over land, water and animals are increasingly common as thousands of indigenous Wayúu, who once left their Colombian homes for Venezuela, return. Because of their ancestral presence in both countries, these "new" families have to be part of the social license of any future natural resource development project. Going back to our previous recommendation, anthropologists play a key role here in identifying these "moving" communities. In addition, negotiators on the private side should be mindful of these internal conflicts (see below for specific recommendations from the fact-finding missions) and ensure that the community leaders they interact with represent all members of the indigenous Wayúu community. A migratory crisis should not feed the problems faced by natural resource development projects.

This political unrest at the border further triggered smuggling of contraband fuel in La Guajira. Controlled by local mafias and armed insurgent groups, this contraband fossil fuel frequently causes deadly accidents and violent clashes between smugglers. This even sparked a dispute between legitimate fuel retails and the government over subsidies provided by the government to counteract the demand for the contraband—often much

³⁸ "Venezuela Refugee and Migrant Crisis: Overview": International Organization for Migration, accessed April 21, 2020, https://www.iom.int/venezuela-refugee-and-migrant-crisis.

³⁹ Médecins Sans Frontières, "Venezuelans in Colombia: an unattended crisis.", December 18, 2019, https://www.msf. org/venezuelans-colombia-unattended-crisis.

Bram Ebus, "Under a Merciless Sun: Venezuelans Stranded Across the Colombian Border", International Crisis Group, February 25, 2020, https://www.crisisgroup.org/latin-america-caribbean/andes/colombiavenezuela/under-merciless-sun-venezuelans-stranded-across-colombian-border.

Steven Grattan, "'Living a daily tragedy': Venezuelans struggle to survive in Colombia", The Guardian, November 1, 2019, https://www.theguardian.com/global-development/2019/nov/01/living-a-daily-tragedy-venezuelans-struggle-to-survive-in-colombia.

Julia Symmes Cobb, "In indigenous Colombia, Venezuelan migration sparks conflict", Reuters, March 12, 2020, https://www.reuters.com/article/us-colombia-wayuu/in-indigenous-colombia-venezuelan-migration-sparks-conflict-idUSKBN20Z108

cheaper than the retail price—resulting in a fuel strike by station operators on February $2020.^{43}$

Both countries have also suffered from conflicts with paramilitary groups and the adverse consequences that unfolded: Peru with the Sendero Luminoso and Colombia with Las Fuerzas Armadas Revolucionarias de Colombia, known as the FARC. The Apurimac region of Peru, where the Las Bambas project is located, has suffered from intense violence associated with Sendero Luminoso and the military in the 1980s. The legacy of this conflict for the communities has been a deep distrust for outsiders, community fragmentation, displacements, and a tendency for violent actions in order to defend themselves against perceived threats.⁴⁴

Recommendations:

- Ensure these local and regional events are part of the study and work undertaken by anthropologists.
- Have one member of the community engagement team stay up-to-date and monitor strategic information on how local and regional events have new and changing impacts on communities.

Design and implement plans in case of a world pandemic, such as the Covid-19 crisis.

The current Covid-19 international health crisis illustrates the importance for all stakeholders engaging with communities to stay alert over the risks international threats pose to these communities.

Mining Watch Canada⁴⁵ has identified ten factors in which the extractive industry is creating additional risks for the local communities to suffer from Covid-19:

- The isolation of mines from adequate health care facilities in comparison to other industries
- The confinement and congestion of these mining facilities without the possibility of implementing social distancing
- The transient nature of the workforce with engineers and managers flying in and out from various countries
- The makeshift nature of exploration camps resulting in subpar access to sanitation, no possibility of washing hands, and close encounters with remote communities
- The respiratory and pulmonary illnesses already faced by communities caused by air pollution near the mining facilities

 ⁴³ PWKD, "Colombia: La Guajira Fuel Stations Shut Over Fuel Subsidy Dispute", Petrol World, February 13, 2020, https://
 www.petrolworld.com/latin-america/item/34222-colombia-la-guajira-fuel-stations-shut-over-fuel-subsidy-dispute.
 44 Tony Andrews et al., "The Rise in Conflict", 60, 87.

^{45 &}quot;COVID-19: Mining Companies Putting Workers and Communities at Greater Risk": Mining Watch Canada, accessed April 21, 2020, https://mailchi.mp/miningwatch/mining-companies-putting-workers-and-communities-at-greater-risk-from-covid-19?e=69d959cbe9.

- Reduced access to clean water caused by the mine's operational needs, preventing both mineworkers and communities from washing their hands adequately
- The diminution of protests to prevent contagion is perceived as a greenlight by authorities and companies to pursue mining activities
- No paid sick-leave or health benefits for many mineworkers pushing them to avoid disclosing their health status if they start to fall ill
- Overwork caused by lockdown shifts in response to Covid-19 leading to additional accidents and an amplified risk of infection
- Consent from mineworkers and members of communities to keep operations running should be sought, given that mining is not an essential service

From these elements, we can draw several recommendations that companies should implement when engaging with communities. Authorities, both local and national, should also ensure that these relevant steps are undertaken by the mining companies. These recommendations are essential to reassure communities and to demonstrate good will from both companies and authorities in taking into account the communities' concerns and worries with regard to pandemics.

Recommendations:

- Provide masks and adequate access to clean water and hand sanitizer to local and indigenous communities
- Delay negotiation rounds until it is safe for communities to interact with outsiders
- Do not profit from the lack of resistance from local activists because it is unsafe for them to assemle
- Prevent members of the engagement team from interacting with community members if they show any sign of illness

#6: Address mental health issues within local and indigenous communities

Peru and Colombia have both been strongly impacted by a history of colonialism with common features of human tragedy: oppression, exploitation, subservience and varying degrees of loss of identity. The post-colonial era of these countries has furthermore been characterized by significant periods of political turmoil, authoritarian central governments, disfunctional governance, weak economies, deep poverty, widespread corruption, and distrust of government. Some of these features still characterize national and local governments in both countries, and the consequences of all them still persist today. The political and social instability, and resentments arising from these factors, create a broad enabling environment for conflict and affect the mental state of members of local and indigenous communities living around current or future natural resource development projects.⁴⁶ Overall, research on mental health, and the multitude of impacts it has on trust-building and willingness to cooperate, is lacking, and even worse so with regards to indigenous communities and their vision of what being healthy means.

Recommendations:

- Ensure that members of the community engagement team are fully briefed on recognizing and managing stress and social trauma to prepare them properly for the realities of the situation and to promote the well-being of persons they interview
- Plan for relevant psychologists, psychiatrists, or mental support staff, experts in social trauma and social phobia, to attend sessions and meetings with members of the community; intercultural practitioners are to be prioritized
- Cooperate with identified healers among the community while bearing in mind what conventional medicine sees as mental health may differ from the local or indigenous meaning
- Offer to provide funding schemes to members of the community suffering from mental health disorders allowing them to access treatment

#7: Address communication barriers and bias

In Colombia, 95.09 percent of its population of 15 years and older are literate, and 83.32 percent of its population of 65 years and older are literate. In Peru, 94.41 percent of the population of 15 years and older are literate, while only 79.01 percent of the population of 65 years and older is literate. Women, in particular in Peru, have lower rates of literacy, with a 20-point difference between women and men among older populations.

Yet these numbers hide wide disparities between different regions of both countries. Overall, La Guajira had a literacy rate that is 33 percent lower than the national average in 2005. Illiteracy is widespread amongst these communities, with estimates of 80 percent of Wayúu peoples in Colombia not finishing primary school. The illiteracy rate among Afro-Colombians living in rural areas in the country is similarly critical.

In Cajamarca, Peru, only 50 percent of the population has reached a primary school level of education, and in Chetilla, one of the department's districts, the illiteracy rate among women ranges from 45.1 to 58 percent.⁴⁷ In addition, interviewees confirmed that most community leaders speak and understand Spanish, but that it is not the case of all members of the communities, especially the older generations. Yet these members should not be left out. Furthermore, in Peru's and Colombia's indigenous cultures, the oral tradition is preferred over written language. Many people that speak indigenous languages do not write them. Most of these communities, and many development projects, are located in remote areas encumbering their access to education.

⁴⁶ See above, Section on Mental health of local and indigenous communities.

^{47 &}quot;We have introduced our literacy program in the district of Chetilla, Cajamarca": Dispurse Foundation, accessed April 21,2020, https://dispurse.org/engelska/news/we-have-introduced-our-literacy-program-in-the-district-of-chetilla-cajamarca/.

- Recruit interpreters that must be experts in the required local and indigenous language and demonstrate background knowledge of the culture, economy, politics, and history of the community
- Conduct recruiting interviews with several selected candidates and research each selected interpreter's credentials
- Select interpreters that are prepared for field visits, including ones that may entail some hardship
- If protection is provided to ensure security and safety for representatives of communities, fully brief interpreters on the policies and rules related to the confidentiality of information, and the protection of sources, and how to deal with members of the communities suffering from trauma
- Ensure interpreters are aware that they must act at all times in an independent, unbiased, objective, lawful and ethical manner
- Favor oral communication over written communication with indigenous communities

#8: Provide for the security and safety of local and indigenous representatives

Important to note that many of the community-based organizations in both Colombia and Peru have suffered from threats of violence and murder. It is therefore paramount for any private actor to put in place safety measures to protect these activists, already facing grave threats to their life. Here are two examples in Colombia:

- Fuerza de Mujeres Wayúu, a local NGO we identified as a key actor in reaching out to implement a gender-oriented approach to any interaction with these communities, received death threats in April 2019.⁴⁸ Defamatory and threatening pamphlets about Fuerza de Mujeres Wayúu were posted on a fake Facebook profile. Six members of the organization were named in the threats, including its director.
- In September 2018, two members of the Ríos Vivos Antioquia Movement were shot dead because of their opposition to the hydroelectric project "Hidroituango" (Ituango Dam). This project is under construction on the Cauca River and represents one of the largest embankment dams in Latin America. It is carried out by the EPP, the Public Companies of Medellín. In addition to these suspicious killings, the movement has been denouncing a smear campaign allegedly paid by EPM and targeting in particular the spokesperson of the movement.⁴⁹

^{48 &}quot;New Death Threats against Fuerza de Mujeres Wayúu": Front Line Defenders, accessed April 21,2020, https://www. frontlinedefenders.org/en/case/new-death-threats-against-fuerza-de-mujeres-wayuu.

⁴⁹ Business & Human Rights Resource Centre, Business & Human Rights Defenders in Colombia, 4.

- Ensure that actions and meetings with representatives of communities do not jeopardize the safety of such persons.
- Implement due diligence procedures for the prevention of harm and human rights abuses of individuals and communities when interacting with them. Companies that invest or work in areas/sectors with high levels of attacks need to internalize in their engagement process the risks faced by community leaders and defenders.
- In some cases, appoint a source protection adviser, especially in areas of high levels of attacks, with a mission to ensure company representatives dealing with local activists and community members benefit from protocols ensuring their safety and the absence of reprisal.

#9: Apply a gender-lens at all stages of community engagement

Applying a gender-lens in rounds of negotiation and discussion with communities is important to ensure that the conversation surrounding the definition and implementation of the Community Partnership Agreement do not further marginalize and disadvantage women and girls. This gender analysis helps fully understand how cultural, social, religious, legal and economic issues affect men and women, and how these potential differences need to be accounted for when engaging with these communities.⁵⁰

Women must be included in the process of negotiating with the communities. Any agreement reached without the participation of women will only include consent of less than 50 percent of the population, leaving gaps in addressing the community's needs.

Despite the fact that women have proven to be key agents of change and defenders of community rights, dialogue spaces can be "defeminized". Interactions with communities frequently lack the participation of women in consent negotiation processes even though women face the direct consequences of violence due to social conflict in their communities.

It is important to note that in La Guajira, there is strong involvement of women in advocacy groups within the Wayúu community, which have a matrilocal family structure. The Wayúu women have historically been organized in defense of their land, environment and self-determination. Fuerza de Mujeres Wayúu⁵¹ is one identified community-based organization that was founded in 2006 in order to denounce human rights violations against the indigenous Wayúu people. They also raise awareness on the disproportionate effects that conflict and displacement have on women and seeks to empower and improve the skills of indigenous women.

^{50 2017} Columbia Capstone Report, 58.

^{51 &}quot;Sütsuin Jiyeyu Wayúu - Fuerza de Mujeres Wayúu": Universidad de Antioquia, accessed April 21, 2020, https://bit. ly/2VsrMZY.

- In gathering and analyzing contextual information, private sector actors should seek to understand the nature, extent and underlying causes of discrimination against women in each community, and to gather disaggregated information according to sex and age
- Consider the possibility of finding gender-specific impacts of development projects and address these impacts accordingly
- Having a woman as part of the engagement team can often facilitate dialogue with members of the community, and ensure members of the engagement team, and their interpreters, do not display gender bias
- To ensure gender issues are integrated in the engagement process with communities, both authorities and private sector actors shall hire a specialized gender adviser as part of their engagement team with experience in working with communities on gender issues; this gender adviser will provide advice and support to private sector actors in conducting all necessary activities and meetings to gain community acceptance

#10: Secure free flow of information that communities are willing to share

For the success of a Community Partnership Agreement, local and indigenous communities must be in a position to share any information they deem useful and important to pass along. In addition to the lack of trust displayed by these communities, and for which we propose these remedial recommendations, negotiation rounds and other interactions with members of these communities should not be conducted using interaction techniques pressuring them to answer in a preferred way.

For instance, reports from journalists and external observers visiting local and indigenous communities reveal a disturbing pattern displayed by companies that are trying to control what they can see, and who they can talk to. One example is the Colombian community called Cerrejón 2,⁵² a name given by the mining company, which alleges is living with ample water, crops and food. Journalists have been allowed to visit this community, under an escort from the mining company tightly policing conversation with the tribe's leaders and steering the subject to agricultural programs the mining company has established and sponsored in the community. Such conduct cannot be implemented on the part of companies, or even government officials. Independent and impartial observers, both journalists and non-journalists, need to have unlimited access to all communities living around these mining operations. These coercive practices raise questions as to the veracity and truthfulness of the claims made by these community leaders and mining officials. Unlimited access would, on the contrary, depict the reality of what goes on in these communities.

Another consideration is the remote and rural nature of the areas in which these

⁵² Lucy Sherriff, "Colombia: Dying of thirst,".

communities are located. As demonstrated above, many in these communities can only communicate orally. This means they need to travel outside of their living location if the engagement teams do not travel themselves. One interviewee explained to us that the issue of travelling is often overlooked and seriously impedes the possibilities for members in the community to fully express themselves.

Recommendations:

- Organize meetings in locations easily accessible to local and indigenous communities
- Ask open-ended questions allowing the interviewees to provide information without suggesting an expected answer
- Ask specific questions to clarify, verify and corroborate information
- Assess the interviewee's credibility and reliability throughout the interview
- Stay aware of potential bias of the spokesperson and community representatives, and mitigate its impacts by trying to reach out to different groups among the communities (women and marginalized groups)
- All notes and documents, together with other materials provided by communities should be kept secure at all times
- Provide external observers with unlimited access to local and indigenous communities



METRICS TOOLS CHECKLIST: How to Measure Success

In order to track a project's success, we have developed a matrix of tools that could allow all three parties of the Community Partnership Agreement to coordinate on meeting development standards throughout a project's lifetime in the most transparent manner possible. This framework draws heavily from the World Bank's IFC guidelines and can be adjusted to fit the particular objectives of a project or industry. This list is neither limited nor exhaustive, and rather than a mathematical formula, it is a qualitative checklist by which to guide a project's compliance throughout its lifetime.

While the Environmental Impact Assessment is typically conducted separately from the Social Assessment (if at all conducted), we put forth a new concept. Adding to CSR and ESG standards that are becoming increasingly discussed and demanded in development, we suggest either both assessments take place simultaneously or, in the case they remain separate, the Social Assessment include an environmental component. Separating environmental from social impacts is nonsensical, as the status of each is intricately interlinked and related events are never siloed. This is in line with the same reasoning that underpins the cross-default mechanism in the Agreement.

Moreover, we stress the importance of formalizing Cumulative Impact Assessments. While a company will typically carry out a separate Environmental Impact Assessment (and separate Social Assessment) for each of its projects, we implore the international community to recognize the importance of Cumulative Impact Assessments, which aggregate the results of all individual EIAs and Social Assessments undertaken. While it is often easy to skirt responsibility under lenient EIA conditions per an individual project, it is much more difficult to deny environmental degradation when taking into account the sum of all damages inflicted by all projects in a given location. Thus, we propose that all assessments undertaken, whether environmental, social, or otherwise, should henceforth be mandated as cumulative assessments.

Lastly, as partially indicated above, we derive inspiration for these matrices, checklists, and indicators from the World Bank Group and UN SDG initiative, given the extensive work undertaken by these institutions with respect to social development and environmental sustainability. While many would argue that these standards, indicators, and development goals are far from ideal, they universalize and internationalize concepts that most countries acknowledge. These institutions have some level of legitimacy and authority in this subject matter, and so our purpose here is to capture some of this legitimacy in constructing norms that will one day have legal power.

www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/publications/publications_policy_gn-2012. The Technical Commission could follow the example of Colombia's Independent Interdisciplinary Commission of 13 experts, which produced a report on how the country should proceed in carrying out the technical investigations necessary before exploration and exploitation of unconventional For more on biodiversity, please see: Performance Standards Guidance Notes, International Finance Corporation (2012), Note 6 (GN6), https:// 2

oil and gas projects.

Tool	PURPOSE	METRIC	TIME AND Frequency	OVERSIGHT
Cumula- tive Impact Assess- ments	Tracks the environmental and social factors that are continuously and progres- sively impacted by a single project in conjunction with project expansions and sur- rounding projects, wheth- er developed by a single Project Company or not and regardless of Company origin (whether domestic or international)	 Valued Environmental and Social Component (VECs) include:¹ Physical features, habitats, wildlife populations (e.g., biodiversity) Ecosystem services Natural processes (e.g., water and nutrient cycles, microclimate) Social conditions (e.g., health, economics) Cultural aspects (e.g., traditional spiritual ceremonies) 	At every stage of a project, series of projects, or surrounding projects	Conducted by the Gov- ernment and reviewed by an International Organization such as the IFC
Communi- ty survey	Track community perception of the project company and top concerns over time to anticipate, mitigate, and address social unrest	Company favorability ratings should be +%, indexed to the national average or some other threshold determined by the community. Any concern backed by +% of respon- dents should be actively addressed; threshold determined by the communi- ty.	At the beginning of every quarter, to be submitted to shareholders along with fi- nancial reports and published publicly	Conducted by the Local/ Re- gional Govern- ment (or as re- quired by law), and reviewed by the Board of Trustees

I INIS LIST IS DERIVED FOR THE IFC'S GOOD PRACTICE HANDBOOK: CUMULATIVE IMPACT ASSESSMENT AND MANAGEMENT: GUIDANCE FOR THE PRIVATE SECTOR IN Emerging Markets (2013).

Tool	PURPOSE	METRIC	TIME AND Frequency	OVERSIGHT
		Goals could include, but are not limited to, the following:		
		Reduce extreme poverty		
		Boost food security ¹		Davialoned his the
		Reduce deaths from pollution		Community Board
		Upgrade educational institutions	ΙΤ	and other members
	In collabora-	Increase relevant skills training/education	Initiated as of first day of	of the Community Negotiations Team
Sustainable	tion with the	Reach universal access to water and sanitation	construction, to	in consultation with
Develop-	community and local	Reach universal access to electricity	be tracked over monthly meet-	Social and Econom- ic Develonment
ment Plan	government, establish and	 Reduce informality and promote entrepreneur- ship 	ings, with yearly progress reports	departments of the local and regional
	track com-	Build resilient infrastructure and shelters		government; re-
	munity goals	 Safeguard cultural heritage sites 		viewed and man- aged by the
		 Achieve sustainable management of natural resources 		Board of Trust- ees for the Social
		 Mitigate climate-change risks 		Wealth Trust Fund
		• Expand conservation of oceanic and terrestrial ecosystems		
		• Promote the rule of law and ensure equal access to justice for all		
				-

A focus on achieving SDG Goal 2 would ensure sustainable food production to meet the community and Project Companies nutritional needs, increase agricultural productivity, and reduce child malnutrition, the last of which is a critical issue for Colombia's La Guajira region.

	PURPOSE	METRIC	FREQUENCY	OVERSIGHT
Local con- tent re- quirements	Ensure integration of local economy	% of employees must be locals (not including expats) % of services, manufactured and con- sumer goods must be domestic	All year long, with audits once a year	Audit conduct- ed by local or central govern- ment and re- viewed by inde- pendent third party
T Social Wealth Trust Fund C	To ensure Project Compa- ny's activities are benefit- ing the community, and in particular, funding the community's Sustainable Development Plan	% of royalties, taxes, or non-administra- tive fees ¹	Monthly con- tributions with quarterly report- ing	Local govern- ment
bo Green n bonds ali i	Attract investment and boost project's market value by committing to meet metrics above, ultimately aligning Project Company's success with sustainable initiatives that benefit all parties	% carbon reduction % increase in electricity efficiency % decrease in water use # of social projects Other Metrics may include and not limited to: habitat restoration mitigation of climate change impacts	Yearly progress reports to share- holders and cen- tral government	Orchestrated by Project Com- pany; audited by independent third party, e.g., NGO, ratings agency, Central Bank

egy, in which the Social Wealth Trust Fund could follow the best elements of a funding structure like that of the "canon minero" while improving on some accounts for 50% of government revenue, half of which is distributed back to the regions impacted by the project. We propose an adopt and adapt stratexperts put forth that royalties on natural resources should range between 25–30%, according to Sovereign Wealth Funds in Resource Economics (2018), in Peru's case, mining companies must pay two different tax rates: a 29.5% income tax and an 18% sales tax. These make up Peru's "canon minero," which The Social Wealth Trust Fund can be funded by a number of sources, most commonly a combination of royalties and other fees. While some of its deficiencies.. https://books.google.com/books/about/Sovereign_Wealth_Funds_in_Resource_Econo.html?id=00s1DwAAQBAJ

CHECKLIST FOR HOW TO MANAGE RISKS

Below is an additional matrix detailing the most common risks associated with project development, from their visual impacts to polluting hazards. Such risks need to be considered, monitored, and mitigated throughout the appraisal, development, and decommissioning stages of the project, lest they cause irreversible damage to surrounding communities, vegetation, and wildlife. For example, scientists claim that our encroachment on wildlife has forced different species upon each other and heightened our exposure to pathogens, a phenomenon that is responsible for 70 percent of emerging human diseases, such as COVID-19.¹ Needless to say that cumulative assessments apply here, as well. Identifying all such risks before initiating a project should be considered part of the Project Company's due diligence in assessing the "risk-adjusted returns" that make their business viable.² This matrix is not exhaustive; it is subject to further expansion of terms, impacts, and interventions, and does not imply that any Project Company's liabilities are limited to the content below.

Please see the Global Assessment Report on Biodiversity and Ecosystem Services, report by IPBES (2019) as addressed in "Halt destruction of nature or suffer even worse pandemics, say world's top scientists," The Guardian, last modified April 27, 2020, https://www.theguardian.com/world/2020/apr/27/halt-destruction-nature-worse-pandemics-top-scientists. 2 "Climate Action: What Does it Take? Legal Teeth, Not Just Corporate Words," Journal of International Affairs (2020), 145–153.

Risk/ Activ- ity	Potential Impact	Apprais- al Stage	Development Stage	Decommissioning Stage
High or excessive noise levels ¹ and visual impact	Large scale mechanization causes disturbances to wildlife and communities in proximity to the area of development. May result in negative visual impacts to resources associat- ed with other landscape uses such as recreation or tourism. ² Project Company operations should prevent and minimize negative visual and auditory impacts through consultation with local communities and incorporating visual impact into the initial impact assess- ments	Initial siting and layout of project infra- structure and operations must min- imize such impact. Access roads need to be carefully placed in areas not proximate to indigenous people	Restrict flow of trucks moving in and out of the development area and limit hours of op- erations to specific time frames. Avoid stockpiling of excavated material. Minimize presence of ancillary structures on the site by minimizing site infrastructure. Bury collector system power lines in the case of an energy project.	Once a project is decom- missioned, companies are required to implement waste isolation methods, monitor and rehabilitate land developed. Cleared land should be promptly re-vegetated with local seed stock of native species. ³ Mitigation measures may include strategic placement of screening materials including trees and use of appropriate plant species in the reclamation phase as well as modification in the placement of ancillary facili- ties and access roads. ⁴

1 This could include ground vibrations to which wildlife, such as elephants, may be sensitive to. Choudhury, Chitrangada, et al., Oil: Uganda's Opportunity for Prosperity, Columbia University SIPA (Spring 2012), 59.

2 For example, for mining activities visual disturbances could include highwalls, erosion, discolored water, haul roads, waste dumps, slurry ponds, abandoned mining equipment and structures, garbage and refuse dumps, open pits, and deforestation. For wind energy plants, it could include a shadow flicker, which could have health implications for communities within the radius of the turbine.

Brvironmental, Health, And Safety Guidelines For Wind Energy, International Finance Corporation (August 2015), https://www.ifc. org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/ehs-guidelines/ehsguidelines#EHSInfra.

4 Environmental, Health, And Safety Guidelines For Mining, International Finance Corporation (December 2007), 14, https://www.ifc. org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/ehs-guidelines/ehsguidelines#EHSInfra.

Risk/ Activi- ty	Potential Impact	Appraisal Stage	Development Stage	DECOM- MISSION- ING STAGE
Release of air pollut- ants (air emissions)	Activities related to explosives, drilling, excavating, land clearing, construc- tion, as well as other daily general operations will release particulate matter and hazard- ous gases ¹ into the air and reduce air quality and lead to respiratory diseases such as silicosis, asbestosis, and pneumoconiosis.	Given their approval, Communi- ties can be preemptively relocated into a new area with fair agree- ments that will maintain their livelihoods and minimize exposure to pollution. Design a Dust Management Plan. Install healthcare facilities available to all affected by air pollution, for site workers as well as community members. Define limits for acceptable air quality standards in order to track levels throughout project lifetime.	During hours of operation, reduce vehicle speed to speed limits of 5 or 10 km/hr. Perform wet sweeping with water or chemical dust suppressants. Com- bine wet sweeping with vacuum truck operations. Installation of scrubbing processes, gas recovery and removal processes and minimal flaring, to be used only as required to prevent worse forms of pollution. ² Venting not allowed. Periodically monitor effectiveness of dust covers during transport. ³ Report particulate matter in air and gas emissions periodically.	Properly discard waste.
Land Use and biodi- versity ⁴	Land rights awarded to Project Company's often displace local communities, wheth- er forcibly or unin- tentionally as a result of a lack of property ownership on behalf of local indigenous peoples, weak exist- ing infrastructure, and a general lack of information on com- munities' cultural norms and lifestyles. Biodiversity will be diminished by the destruction or dis- placement of wildlife and their natural habitats.	Those that are harmed or affected by a project development should be compensated properly both monetarily and qualitatively before project initiation. Ensure communities and local Indigenous peoples are aware of the activities and are involved in the decision-making process. "Establish and implement proce- dures for reuse, recycle, and safe disposal of construction waste to a landfill site licensed to take such wastes." ⁵ "Identifying the preferred tech- nologies (including engineering controls) needed to implement the conceptual risk reduction mea- sures." ⁶	Follow guidelines established during pre-appraisal for proper land man- agement.	Restore de- graded land and animal habitats.

1 Includes fugitive sources of particulate matter (PM), volatile organic compounds (VOCs), carbon monoxide (CO), and hydrogen, as well as greenhouse gases, such as from SynGas production or from coal, oil, and gas preparation processes. Other emissions include gases such as hydrogen sulfide, carbonyl sulfide, carbon disulfide, ammonia, and hydrogen cyanide, among others, and exhaust gases such as nitrogen oxides and sulfur oxides. Environmental, Health, And Safety Guidelines For Coal Processing, International Finance Corporation (April 2007), 2-4, https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/ ehs-guidelines/ehsguidelines#EHSInfra.

2 Environmental, Health, And Safety Guidelines For Coal Processing, International Finance Corporation (April 2007), 4, https://www.ifc. org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/ehs-guidelines/ehsguidelines#EHSInfra.

3 Environmental and Social Management System Implementation Handbook; General, International Finance Corporation (November 2015), https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/publications/publications_ handbook_esms-general.

4 Colombia's Humboldt Biological Resources Research Institute is a great example of institutionalizing the protection of biodiversity.

5 Environmental and Social Management System Implementation Handbook; General, International Finance Corporation (November 2015), https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/publications/publications_ handbook_esms-general.

6 "Environmental, Health, and Safety Guidelines," International Finance Corporation, last accessed April 6, 2020, https://www.ifc.org/

Risk/ Activi- ty	Potential Impact	Appraisal Stage	Development Stage	DECOMMIS- SIONING STAGE
Manage- ment of waste, tailings and hazardous effluents ¹	Construction proj- ects generate large amounts of waste. Improper manage- ment techniques may contaminate water resources proximate to the development site, this includes inha- lation hazards from chemical exposure to processing facil- ities. ²	Define procedures for chemical, fuel and hazardous waste handling, storage, and disposal; waste segregation and collec- tion practices. ³ Identify potential force majeure events ⁴ that could lead to catastrophic environ- mental and social risks to assess response strategies and amount of Emergency Funds that must be available throughout the lifetime of the project. Construct program and timeline for transparent and consistent monitoring and reporting of waste management, to be reviewed by local community repre- sentatives and State Authorities with the aid of independent, third-party auditors.	Monitor and report waste management statistics quarterly. Protection measures include adequate worker training, work permit systems, use of personal protective equipment (PPE), and toxic gas detection systems with alarms. ⁵ The company should also under- take other air-quality measure- ment procedures, such as the monitoring of methane. Use of secondary contain- ment to restrict movement of waste into, for example, water sources. ⁶	Restore de- graded land, air and water sources. Provide a cumulative impact assess- ment of waste and hazardous effluents.
Water, water quality, and Wastewater Manage- ment ⁷	Water issues have historically been one of the most damaging and consistently pres- ent risks in project developments, given impacts are wide-ranging and multifold. If a project requires vast amounts of water for daily op- erations, the reduc- tion of surface and groundwater	Establishing a water balance (including probable climatic events) and related process plant circuit and use this to inform infrastructure design; Developing a Sustainable Water Supply Management Plan to minimize impact to natural systems by managing water use, avoiding depletion of aquifers, and minimizing impacts to water users; Consider the potential impact to the water balance prior to commencing any dewatering activities; Consultation with key stakeholders (e.g. government, civil society, and potential-	Segregate and contain storm- water, cooling water, among others. Stormwater settling facili- ties should be designed and maintained according to internationally accepted good engineering practices, includ- ing provisions for capturing of debris and floating matter. The quality and quantity of effluent streams discharged to the environment should be managed and treated to meet applicable effluent guide-	Final grading of disturbed areas, includ- ing prepara- tion of over- burden before application of the final layers of growth me- dium, should be along the contour as far as can be achieved in a safe and practi- cal manner;

1 The 2019 collapse of a tailings dam in Brumadinho, Brazil is a quintessential example of this risk.

2 Mines, in particular, generate large and continuous volumes of waste. Structures such as waste dumps, tailing impoundments/ dams, and containment facilities should be planned, designed, and operated such that geotechnical risks and environmental impacts are appropriately assessed and managed throughout the entire mine cycle. Environmental, Health, And Safety Guidelines For Coal Processing, International Finance Corporation (April 2007), 10, https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/ehs-guidelines/ehsguidelines#EHSInfra.

Should be managed based on the results of a job safety analysis and industrial hygiene survey, as well as according to occupational health and safety guidance as per international standards. Environmental and Social Management System Implementation Handbook; General, International Finance Corporation (November 2015), https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/publications/publications_handbook_esms-general.

4 While force majeure events could be sudden and unexpected, they can be anticipated to some degree. Projects will reduce their exposure to disaster risks by adjusting construction standards if an area is prone to flooding or ground tremors, for example, and should there-fore be able to identify all such risk scenarios ahead of times as appropriate due diligence before embarking on project construction.

5 Environmental, Health, And Safety Guidelines For Coal Processing, International Finance Corporation (April 2007), 10, https://www. ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/ehs-guidelines/ehsguidelines#EHSInfra.

6 Environmental, Health, And Safety Guidelines For Mining, International Finance Corporation (December 2007), 9, https://www.ifc.org/ wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/ehs-guidelines/ehsguidelines#E-HSInfra.

7 Environmental, Health, And Safety Guidelines For Coal Processing, International Finance Corporation (April 2007), 5-7, https://www. ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/ehs-guidelines/ehsguidelines#EHSInfra.

Risk/ Activi- ty	Potential Impact	Appraisal Stage	Development Stage	Decommis- sioning Stage
Water, wa- ter quality, and Waste- water Man- agement (cont.)	 availability affects local communities' access to drinking water,¹ agricultural irrigation, and other community water needs. Industrial Process Wastewater: Process wastewater may become contaminated with hydrocarbons, ammonia and amines, oxygenated compounds, acids, inorganic salts, and traces of heavy metal ions. Process Wastewater treatment: Techniques for treating industrial process wastewater in this sector include source segregation and pretreatment of concentrated wastewater streams. Contamination of water sources will have severe health consequences for communities and wildlife. Diverting or obstructing water flows could permanently affect ecosystems and livelihoods. 	ly affected communities) to understand any con- flicting water use demands and the communities' dependency on water resources and/or conser- vation requirements that may exist in the area. ² Design a tailings manage- ment strategy. ³	lines. In addition, dis- charges to surface water should not result in con- taminant concentrations in excess of local ambient water quality criteria outside a scientifically established mixing zone. Receiving waterbody use and assimilative capacity, including the impact of other sources of discharg- es to the receiving water, should be considered with respect to acceptable contaminant loadings and effluent discharge quality as per international stan- dards. ⁴	Revegetation of disturbed areas including seeding should be per- formed immedi- ately following application of the growth medium to avoid erosion. ⁵

Mines, in particular, can use large quantities of water, mostly in processing plants and related activities, but also in dust suppression among other uses. Water is lost through evaporation in the final product but the highest losses are usually into the tailings stream. All mines should focus on appropriate management of their water balance. Mines with issues of excess water supply, such as in moist tropical environments or areas with snow and ice melt, can experience peak flows which require careful management. Water scarcity is also of particular concern in arid regions. Environmental, Health, And Safety Guidelines For Mining, International Finance Corporation (December 2007), 2, https:// www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/ehs-guidelines/ehsguidelines#EHSInfra.

2 Environmental, Health, And Safety Guidelines For Mining, International Finance Corporation (December 2007), 2, https://www.ifc.org/ wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/ehs-guidelines/ehsguidelines#E-HSInfra.

3 Tailings management strategies vary according to site constraints and the nature / type of the tailings. Potential environmental impacts may include groundwater and surface water contamination due to the generation of acid rock drainage (ARD) and metals leaching (ML) containing runoff / leachate, sedimentation of drainage networks, dust generation and the creation of potential geotechnical hazards associated with the selected management option. Tailings management strategies should consider how tailings will be handled and disposed of during operation, in addition to permanent storage after decommissioning. Strategies should consider the site topography, downstream receptors and the physical nature of tailings (e.g. projected volume, grain size distribution, density, water content, among other issues).

4 Environmental, Health, And Safety Guidelines For Mining, International Finance Corporation (December 2007), 3, https://www.ifc.org/ wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/ehs-guidelines/ehsguidelines#E-HSInfra.

5 Environmental, Health, And Safety Guidelines For Mining, International Finance Corporation (December 2007), 3, https://www.ifc.org/ wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/ehs-guidelines/ehsguidelines#E-HSInfra.

How To Use Funds for a Sustainable Development Plan with SDG Indicators

To ensure that the community receives tangible benefits from the project's development, the community should work together with the local and regional governments to construct a Sustainable Development Plan. Such a plan would ensure that the community can define how it wants to grow and develop on its own terms. It will also empower the community to prosper from the incoming increase in activity nearby. Below is a list of potential objectives a community can work towards based on the UN's Sustainable Development Goals, a well-established blueprint for sustainable growth factors that would benefit all communities.

Develop- ment Objective	Relevance	SDG INDICATOR	
Reduce extreme poverty and inequality	Prevent extreme inequality between locals and foreigners (including nationals and non-nationals from outside the region) in natural resource areas exploited by private companies.	Proportion of population living on \$1.25 (the inter- national poverty line) a day by sex, age, employment status and geographical location (urban/rural)	
Boost food security ¹	An influx in local economic activ- ity will require greater volumes of food resources at the same time that communities face the risk of displacement, degradation of agricultural land, and scarce irriga- tion. As such, pursuing sustainable agricultural and food processing methods will be key to a Commu- nity's success, as well as the project's viability.	 Proportion of agricultural area under productive and sustainable agriculture Volume of production per labor unit by classes of farming/pastoral/forestry enterprise size Prevalence of undernourishment The agriculture orientation index for government expenditures 	
Reduce deaths from pollution	Air, water, and land pollution are increasingly associated with a multi- tude of respiratory, gastrointestinal, and immunodeficiency diseases and must be guarded against, especially in light of an increase in develop- ment activity in an area.	 Mortality rate attributed to household and ambient air pollution Mortality rate attributed to unsafe water, unsafe sanitation and lack of hygiene (exposure to unsafe Water, Sanitation and Hygiene for All (WASH) services) Annual mean levels of fine particulate matter (e.g. PM2.5 and PM10) in cities (population weighted) 	
Upgrade ed- ucational in- stitutions and increase relevant skills training &	Communities could ensure their integration into the new economic activity by improving their educa- tion system and programs related to the skills in demand locally.	 Proportion of youth (aged 15-24 years) not in education, employment or training Proportion of schools with access to: (a) electricity; (b) the Internet for pedagogical purposes; (c) comp- 	

1 A focus on achieving SDG Goal 2 would ensure sustainable food production to meet the community and Project Companies nutritional needs, increase agricultural productivity, and reduce child malnutrition, the last of which is a critical issue for Colombia's La Guajira region.

Develop- ment Objective	Relevance	SDG Indicator
skills training & education (cont).		uters for pedagogical purposes; (d) adapted infrastructure and materials for students with disabilities; (e) basic drinking water; (f) single- sex basic sanitation facilities; and (g) basic handwashing facilities (as per the WASH indicator definitions
Reach universal access to water ¹ and sanitation	Developing an adequate waste management and san- itation system will further protect the community from exposure to Project Com- pany's mismanagement of water sources and effluents and heighten a community's health standards.	 Proportion of population using safely managed drinking water services Proportion of population using safely managed sanitation services, including a hand-washing facility with soap and water Proportion of population using safely managed sanitation services, including a hand-washing facility with soap and water Proportion of wastewater safely treated Proportion of bodies of water with good ambient water quality Change in water-use efficiency over time Level of water stress: freshwater withdrawal as a proportion of available freshwater resources Degree of integrated water resources management implementation (0-100)
Reach universal access to electricity ²	Access to electricity is critical for any community's productivity and progress. Additionally, communi- ties should be the first to reap the benefits of energy projects, which represent a considerable portion of development projects under consideration.	 Proportion of population with access to electricity Proportion of population with primary reliance on clean fuels and technology
Reduce informality and promote entrepreneurship	To take full advantage of the increased economic activity associated with a regional project, local governments should facilitate the creation of businesses to serve the expansion of the population and required services while- providing a path for legal- ization of those still in the informal market. This will further increase tax collec- tion and proprietary rights.	 Proportion of informal employment in non-agriculture employment, by sex Total government spending in social protection and employment programs as a proportion of the national budgets and GDP Proportion of small-scale industries in total industry value added

Countries could follow the example of Uruguay, which incorporated water as a human right in its Constitution, 1

Expanding universal access to broadband would go a step further than full electrification by expanding access to digitalization, which is considered a human development right in countries such as Finland and Estonia.
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Develop- ment Objective	Relevance	SDG INDICATOR
Build resilient infrastructure and shelters	Any new infrastructure induced by the Project Company should meet the most advanced building codes to protect against disasters and improve community welfare.	 Proportion of urban population living in slums, informal settlements or inadequate housing Proportion of population that has convenient access to public transport, by sex, age and persons with disabilities Direct disaster economic loss in relation to global GDP, including disaster damage to critical infrastructure and disruption of basic services
Safeguard cultural heritage sites	To protect the rich cultural practices of outlying communities, the govern- ment and community representatives should define, as soon as possible, protected areas and landmarks. Such sites allow us to connect the past to communities' identities and will require the involvement of anthropol- ogists, architects, and other relevant experts.	Total expenditure (public and private) per capita spent on the preservation, protection and conservation of all cultural and natural heritage, by type of heritage (cultur- al, natural, mixed and World Heritage Centre designa- tion), level of government (national, regional and local/ municipal), type of expenditure (operating expenditure/ investment) and type of private funding (donations in kind, private non-profit sector and sponsorship)
Achieve sustainable management of natural resources	To protect against the exploitation of foreign private enterprises, the com- munity should be actively involved in all decisions related to capturing natural resources of their surrounding area.	 Material footprint, material footprint per capita, and material footprint per GDP Domestic material consumption, domestic material consumption per capita, and domestic material consumption per GDP Amount of fossil-fuel subsidies per unit of GDP (production and consumption) and as a proportion of total national expenditure on fossil fuels Hazardous waste generated per capita and proportion of hazardous waste treated, by type of treatment
Mitigate climate-change risks	Communities should understand the implications of climate change and how each development project adds or detracts from associated risks. This will empower the communi- ty to make comparative analysis of economic development activities and protect themselves against climate change.	Number of deaths, missing persons and persons affected by disaster per 100,000 people

DEVELOP- MENT Objective	Relevance	SDG INDICATOR
Expand conser- vation of oceanic and terrestrial ecosystems	To protect against the destruction of entire ecosystems and vital sourc- es of people's livelihoods, the com- munity should preserve as many areas as soon as possible before the escalation of projects.	 Index of coastal eutrophication and floating plastic debris density Average marine acidity (pH) measured at agreed suite of representative sampling stations Proportion of fish stocks within biologically sustainable levels Coverage of protected areas in relation to areas already developed or under development Proportion of land that is degraded over total land area
Promote the rule of law and en- sure equal access to justice for all	Guaranteeing the rule of law will protect the community against cor- rupt practices, strengthen institu- tions that empower them to take on private interests, and ensure compli- ance of the Agreement.	 Proportion of victims of violence in the previous 12 months who reported their victimization to competent authorities or other officially recognized conflict resolution mechanisms Total value of inward and outward illicit financial flows (in current United States dollars) Proportion of persons who had at least one contact with a public official and who paid a bribe to a public official, or were asked for a bribe by those public officials, during the previous 12 months Proportion of businesses that had at least one contact with a public official and that paid a bribe to a public official, or were asked for a bribe by those public official, or were asked for a bribe by those public official, or were asked for a bribe by those public officials during the previous 12 months Proportion of population who believe decisionmaking is inclusive and responsive, by sex, age, disability and population group Proportion of population reporting having personally felt discriminated against or harassed in the previous 12 months and responsive international human rights law



LOOKING TOWARDS THE FUTURE IN LIGHT OF THE GLOBAL CORONAVIRUS PANDEMIC

The coronavirus pandemic has so far stunted economic activity, shuttered schools and businesses and severely limited travel. In the age of globalization, this is unprecedented. Much more significantly, however, it has sharpened the divide between the privileged and the disadvantaged, as well as highlighted how mankind's treatment of the environment can become the seed of its own destruction. The 2020 Columbia University Capstone group has taken every due measure to complete the capstone as well as bring to light what truly is afflicting those living in these resource-rich communities. Given the COVID-19 crisis has stymied travel, which is key to attaining on-the-ground perspectives from those living in these areas and afflicted on the daily, the Capstone team has presented the aforementioned suggestions based on numerous virtual interviews with government officials, non-profit organizations, members of the media, and representatives from environmental, health care, water quality, legal, education and technology groups, and many more. Contact with the respective mining companies operating in each studied region had proved promising given the approval of a tour, yet subsequent contact has gone unnoticed once our travel plans were canceled. The Capstone group would urge the following team to equally take measures to make a substantial effort in communicating with the project representatives the following year to truly receive a well-rounded perspective from the start and create an objective capstone report.

Equitable and environmentally responsible development is even more pressing in light of this medical emergency, particularly in mining regions. Uninhibited economic activity—through rampant deforestation, destructive farming and agricultural processes, intensive mining and development, and the exploitation of wild species—have created the "perfect storm' for the spillover of diseases."¹ In the developed world, creating fiscal stimulus packages is much easier than listening to the message being sent to us from nature. But for those living in resource-rich regions of the world, this entails the additional burden of managing health risks and other social safety nets while those living far from the region—but involved in the development project—simultaneously remain largely unperturbed.² Access to health care is an even greater concern for these regions, particularly for the indigenous. We hope that this global crisis can provide the impetus for the framework change we have proposed in this Capstone—particularly with respect to environmental standards and support for underserved communities—in order to mitigate the effects of future global pandemics and other disasters and their inevitable social ramifications.

¹ Carrington, Damian. "Halt destruction of nature or suffer even worse pandemics, say world's top scientists." The Guardian. Last modified April 27, 2020. https://www.theguardian.com/world/2020/apr/27/halt-destruction-nature-worse-pandemics-top-scientists.

² Bauer, Andrew. "Three Proposals for Mineral-Dependent Countries During the Coronavirus Pandemic." Natural Resource Governance Institute. Last modified May 1, 2020. https://resourcegovernance.org/blog/proposals-mineral-dependent-countries-coronavirus-mining

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Carolyne is a French law student who has been working on climate change issues and forestry crimes respectively in the UN and Interpol since 2017. She is dedicating this year of study to focus on human rights, management of natural resources and climate change law. Carolyne intends to dedicate her career to empowering local communities and future generations in the face of these challenges.

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Catherina is a Master of Public Administration student concentration in Urban and Social Policy with a focus on U.S. and Management policy. She is a five-year student at SIPA, having graduated the year prior from Columbia University's Columbia College with a degree in English and Political Science. She has worked in newsroom across New York City, including MSNBC, NY1 and PBS POV, and even spent one year as a National Park Ranger at the Statue of Liberty. Currently, she has been at the New York Daily News covering breaking news and urban policy for the last three years.

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Elizabeth is an MPA candidate graduating in May 2020 with a degree from SIPA in Economic Policy Management, focused on Global Energy Policy. Before SIPA, Gonzalez worked for five years at Americas Society/ Council of the Americas (AS/COA), where she researched and wrote about economic and political trends in Latin America, and traveled to eight different countries across the region to manage webcasting of the organization's programs. She is a Cubana from Miami that has now lived in New York City for 10 years.

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Octavio is a Master of Laws Candidate at Columbia Law School. He is a Mexican qualified lawyer who specializes in corporate law, mergers and acquisitions and infrastructure projects. Before joining Columbia's LL.M. Octavio worked for a transactional law firm in Mexico City where he advised clients on, among other matters, the implementation of projects under Mexico's new energy reform.

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Rocío Peña Nahle

Rocío holds a Sustainable Development Engineer degree from Tecnológico de Monterrey, MX. After working as a junior researcher at a chemical industry company, Rocío started a position as ESG Client Service Analyst at MSCI. During her role at MSCI, Rocío analyzed companies' ESG performance and helped clients to include this into their investments decisions. The inmersion in the financial industry led Rocío to pursue the Sustainability Management Master program at Columbia University.

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NANCY TALAMANTES

Nancy's collective work and research has centered on defusing distrust and fostering engagement between diverse individuals and institutions in Latin America. She developed her functional skill set and cultural competency by volunteering for a refugee center in Brazil as a translator, conducting research in Cuba on methods to restore bilateral cooperation, serving as a public relations consultant for the Embassy of Ecuador in Washington, DC, coordinating educational exchange programs in Nicaragua and, most recently, managing the communications and media relations efforts of Americas Society and Council of the Americas. As an aspiring U.S. Foreign Service Public Diplomacy Officer, she's pursuing a Master of International Affairs at Columbia University's School of International and Public Affairs (SIPA) to enhance her foreign policy analysis and advocacy skills within the international security realm. She previously served as the President of SIPA's Progressive Security Working Group.

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Johnny is a Master of Public Administration Candidate focused on Urban and Gender Policy at Columbia University's School of International and Public Affairs. After graduating from Tec de Monterrey with a B.A. in Business Administration, Johnny spent three years at McKinsey & Company's Mexico office advising clients from the public, private, and social sectors. He aims to work on city infrastructure and governance issues in his career post-graduation.

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Beibei Zou

Bella is a second year Master of International Affairs student with a concentration in International Economic Policy. Bella grew up in China and has studied and worked there, as well as, Europe, Australia and Latin America. Before coming to SIPA, Bella worked at Mobike, the largest dockless bike share company in China, which was later acquired by Meituan at \$2.7 billion. Bella led the Mobike international team in expanding from China to over 40 cities in 16 countries around the world, including Santiago de Chile and Mexico City.

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Professor Jenik Radon

Jenik Radon is Adjunct Professor, School of Public and International Affairs, Columbia University, where he teaches sustainable natural resource development with a focus on risk and strategic management, sovereignty and human rights, especially environment and social license. Radon has also taught at Monterrey Tech, Queretaro, Mexico and at Externado University in Bogota, Colombia, focusing on the extractive sector. Radon participated in the constitutional peace process of Nepal and served as a drafter of the interim (2006) peace constitution. Serving as an advisor during Estonia's independence struggle, Radon co-authored the country's foreign investment, mortgage/pledge, privatization and corporate laws and was an architect of Estonia's privatization. He was awarded the Medal of Distinction of the Estonian Chamber of Commerce and Estonia's Order of the Cross Terra Mariana, which was personally presented by the President of Estonia. Radon served as Georgia's key foreign advisor/negotiator of the oil and gas pipelines from Azerbaijan to Georgia to Turkey and was awarded Georgia's highest civilian award, the Order of Honor. Radon presently advises public authorities and civil society in emerging nations around the world, including Afghanistan, Georgia and Namibia. His expertise is the negotiation of extractive industry agreements, especially oil and gas and sustainable natural resource development contracts, as well as the drafting of necessary legislation. He has authored "Walk Tall!, A Beautiful Tomorrow For Emerging Nations, An Anthology of Inclusive Principles For National Growth and Prosperity: Equity, Rule of Law and Sustainable Natural Resource Development," which was published in conjunction with the 2018 APEC conference in Papua New Guinea and has written numerous articles and reports, including: "How To Negotiate Your Oil Agreement," in Escaping the Resource Curse, ed. Macartan Humphreys, Jeffrey Sachs, and Joseph Stiglitz.

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Appendix

MINING VISION 2030 (ORIGINAL TEXT IN SPANISH)

PROPUESTA DE VISIÓN

Al 2030, la minería en el Perú es inclusiva, está integrada social, ambiental y territorialmente, en un Marco de buena gobernanza y desarrollo sostenible. Se ha consolidado como una actividad competitiva e innovadora y goza de la valoración de toda la sociedad.

¿CÓMO ES LA MINERÍA AL 2030?

1. ES INCLUSIVA E INTEGRADA SOCIAL Y TERRITORIALMENTE

Promueve el desarrollo integral del país, especialmente de los territorios en donde opera, fomentando la responsabilidad y el valor compartidos, lo que se traduce en mayor bienestar para la ciudadanía. Para ello, participa en la planificación y ejecución de las acciones orientadas a cerrar brechas sociales, en el ordenamiento territorial consensuado sobre la base de información técnica, sólida y confiable y, junto al Estado, impulsa el desarrollo de los territorios a través de la diversificación productiva y la articulación de la minería con otros sectores económicos. Con estos propósitos, fortalece la institucionalización de la participación ciudadana, la Consulta Previa a los Pueblos Indígenas de acuerdo a la ley vigente, y el diálogo multiactor. De igual modo, su quehacer se guía por el respeto al Estado de derecho y a los derechos humanos, comportándose de acuerdo a altos estándares sociales.

2. ES AMBIENTALMENTE SOSTENIBLE

Opera con responsabilidad y con altos estándares ambientales, velando por el respeto y salud de las personas y los ecosistemas para aprovechar los recursos naturales de manera sostenible, haciendo un buen manejo integrado de los recursos hídricos y energéticos con el propósito de mitigar las causas y efectos del cambio climático, promoviendo la economía circular. Asimismo, mejora continuamente los procesos de cierre de minas, incorporando los cambios tecnológicos. Fomenta y completa la remediación de pasivos ambientales de manera integral y eficiente, promoviendo su reaprovechamiento económico. Todo lo anterior, apoyado, regulado y supervisado por una institucionalidad pública sólida con procesos de fomento de buenas prácticas, evaluación y fiscalización ambiental efectivos y eficientes.

3. ES COMPETITIVA E INNOVADORA

Está en el cuartil más favorable de costos y productividad a nivel mundial, promoviendo la innovación, y posicionándose como un referente en seguridad ocupacional. Para ello, reduce las brechas de capacitación de los trabajadores, e invierte en investigación, desarrollo e innovación (I+D+i) en toda la cadena de valor minera, incrementando así el valor que esta le aporta al país. El Perú es un destino atractivo para la inversión minera por su marco normativo moderno, claro, eficiente, estable y predecible, en donde el Estado garantiza el respeto al estado de derecho, así como estándares ambientales y sociales.

4. OPERA EN UN MARCO DE BUENA GOBERNANZA

Está comprometida con el sistema democrático y la descentralización. Forma parte de un sistema de gobernanza mediante el cual se toman e implementan acuerdos sobre el desarrollo, con la participación de todos los sectores y niveles de gobierno, del sector privado, de la sociedad organizada y de las comunidades; asegurando la coordinación intersectorial, multinivel y multiactor. Así, junto con el Estado, logra prevenir, gestionar y transformar los conflictos sociales en oportunidades de desarrollo y paz social. Contribuye a fortalecer las capacidades de las instituciones y de los actores, superando las asimetrías de información y capacidad de representación, para la correcta toma de decisiones y la implementación oportuna de las mismas, y para combatir la corrupción y operar con altos niveles de transparencia. Respeta el marco normativo y regulatorio, y asegura buenas relaciones laborales. Por su parte, el Estado promueve la mejora continua del marco normativo y regulatorio para garantizar el respeto a los derechos de todos los actores involucrados, asegurar el Estado de derecho e impulsar el desarrollo, la competitividad y productividad de la actividad minera. Asimismo, asegura el uso eficaz, eficiente y transparente de los recursos fiscales generados por la actividad minera con el n de cerrar las importantes brechas de bienestar en la población.

ACCIONES TRANSVERSALES

Además de lograr los atributos mencionados, al 2030 el Estado ha conseguido la formalización, la mejora del desempeño ambiental, de las condiciones de trabajo y la competitividad de la pequeña minería y minería artesanal (MAPE); al igual que la erradicación de la minería ilegal.

Mining Vision 2030 Group. February 2019

https://www.minem.gob.pe/_publicacion.php?idSector=9&idPublicacion=583

Official statements about Conga (original text in Spanish)

"Conga es un proyecto que tiene muchas falencias desde el punto de vista técnico, desde el punto de vista legal, desde el punto de vista económico y también desde el punto de vista social.

Hay que decirlo con todas sus letras, cuando se emitió el Estudio de Impacto Ambiental (EIA) para favorecer al proyecto Conga estuvo plagado de muchas inexactitudes, incluso de actos de corrupción.

Este tipo de proyectos, por ahora, deben seguir en suspenso porque quien va a decidir es el pueblo de Cajamarca".

Governor-elect of Cajamarca, Mesías Guevara. December 10, 2018

https://gestion.pe/economia/proyecto-minero-conga-debe-seguir-suspenso-dice-virtual-gobernador-cajamarca-nndc-252371-noticia/?ref=gesr

"Lo que sí vamos a hacer es una mesa de diálogo donde haya cuatro patas. Donde esté el gobierno nacional, por un lado, por otro lado, el gobierno regional, las comunidades debidamente representadas y por supuesto las empresas mineras. Pero acá yo insisto que la actividad minera mientras continúe con esta actividad irracional, prácticamente obsoleta, ningún proyecto va a salir adelante".

Governor-elect of Cajamarca, Mesías Guevara. December 19, 2018

https://rpp.pe/peru/cajamarca/conga-va-o-no-va-esto-dice-el-nuevo-gobernador-regionalde-cajamarca-noticia-1170528?ref=rpp

"Ningún proyecto minero va a salir sino tiene la licencia social, así mandemos al ejército no van a salir adelante, porque las comunidades se van a rebelar. Yo voy a favor del desarrollo del país, pero no voy por las hojas o las ramas, yo voy de frente a la raíz del problema".

Governor of Cajamarca, Mesías Guevara. November 2, 2019 https://www.radionacional.com.pe/informa/politica/mesias-guevara-ningun-proyectominero-va-a-salir-sino-tiene-la-licencia-social

Official statements about Tía María (original text in Spanish)

"Sólo con diálogo y concertación se fortalece la democracia, en el cual creemos fervientemente. Dar cumplimiento a la Licencia social, es un imperativo.

La imposición de la fuerza, aun siendo un mecanismo legal, no puede ser utilizado antes poblaciones indefensas y cuyas demandas no se han atendido".

National Assembly of Regional Governors presided by Gov. Mesías Guevara. July 10, 2019

https://larepublica.pe/economia/2019/07/10/vizcarra-sobre-tia-maria-estamos-dispuestos-al-dialogo/

"Más que preguntarnos si Tía María debe ir o no por decisión de las autoridades (del Gobierno), primero debemos preguntarnos si cuenta con licencia social. De eso tenemos que ser respetuosos".

Governor of Cajamarca, Mesías Guevara. July 17, 2019 https://larepublica.pe/politica/2019/07/17/mesias-guevara-proyectos-mineros-cuestionados-no-pueden-imponerse/

"Hemos dicho que los proyectos son importantes, pero no se pueden imponer. Desde un principio hemos dicho que el proyecto Tía María, si no tiene licencia social, no puede empezar.

Estamos dispuestos a entablar una mesa de diálogo, hay disposición. Los alcaldes desean conversar, la sociedad civil, las universidades, los trabajadores, todos quieren hablar, pero por un grupo que dice 'no', no podemos postergar".

President of Peru, Martín Vizcarra. August 6, 2019 https://elcomercio.pe/peru/arequipa/tia-maria-arequipa-martin-vizcarra-proyecto-minero-licencia-social-empezar-video-noticia-nndc-662581-noticia/?ref=ecr

"En este gobierno no hay forma (que vaya Tía María), dadas las condiciones. Si no se generan consensos, no vamos a forzarlo, pero hay otros proyectos que sí están saliendo porque se generaron las condiciones adecuadas.

(La licencia de construcción) no es una licencia social. Eso lo tenía claro la mina, la empresa y la población. Es parte de un proceso, un paso más".

President of Peru, Martín Vizcarra. January 29, 2020 https://larepublica.pe/economia/2020/01/30/martin-vizcarra-sobre-tia-maria-no-hay-forma-que-vaya-en-este-gobierno-el-proyecto-minero/

COMMUNITY GUIDEBOOK APPENDIX I

Information is Power

The following explains where each of the rights in the "Information is Power" sections are listed in Peru's constitution and in international and regional treaties and conventions.

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.

Right to Property

a. Article 2 of Peru's Constitution says that "Every person has the right...To property and inheritance."

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.

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.

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.?

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.

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.

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."

Community Guidebook Appendix II

Consulta Previa (Community Consultation) Process

The formal *consulta previa* [Ley No. 29785] in Peru 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 territory since before the establishment of the state; territorial connection, understood as the occupation of an area within the country by the ancestors of the population in question; distinct institutions (political, cultural, economic, and social) that are preserved, partially or in their entirety, by the group.

Community guidebook 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.

General

- Is the need for the project and its objectives explained?
- Are the main components of the project described?
- Is the location of each project component identified, using maps, plans, and diagrams?
- Are all activities involved in all of the project's phases described (exploration, development, exploitation, mineral processing, closure, reclamation)?
- Are all activities involved in the ore beneficiation and other processing described?
- Does the EIA describe additional components that are required for the project (roads, water, leach pads, tailings impoundments, mine waste dumps, sanitation facilities, campsites)?
- Are any developments likely to occur as a consequence of the project?
- Will the project involve widespread land disturbance, site clearance, or extensive earthworks?
- Will the project involve the storage, handling, use, or production of toxic hazardous substances? Are these substances identified and quantified?
- Has the project assured a reclamation fund with the necessary financial warranties?
- Does the EIA include a detailed assessment of project alternatives?
- Does the area experience high levels of pollution or other environmental damage?

Air

- Will the project generate emissions of air from fuel combustion, production processes, materials handling, construction activities, or other sources?
- Will the project involve disposal of waste through burning (slash, construction debris)?
- Will the storage of wastes or raw materials affect air quality?
- Will the project release noise, vibration, light, or heat to the environment?
- Will the project be located in an area subject to adverse atmospheric conditions (temperature inversions, fogs, extreme wind)?

Water

- Will the project require large volumes of water or disposal of large volumes of sewage or industrial effluent?
- Will the project involve disturbance of drainage patterns, such as dams or relocation of watercourses, or increased flood potential?
- Will the project require channel dredging or straightening or crossing of streams?

- Will the project involve the alteration of coastal features with the construction of infrastructure?
- Will the project be located near a relevant watercourse (freshwater or groundwater) or wetlands?
- Will use of water affect the availability of existing local supplies?
- Will the project cause significant changes in wave action, sediment movement, erosion, or water circulation?

Land

- Will the project result in widespread disturbance of land surface?
- Will the project conflict with present zoning or land use policy?
- Will the project conflict with indigenous territories?
- Will the project be located on lands of high agricultural value?
- Is the project likely to cause erosion?
- Could the use of erosion controls result in other adverse impacts?

Ecology

- Will the project be located in the vicinity of important or valuable habitat?
- Are there rare or endangered species in the area?
- Will the project be located on or near a coastline susceptible to erosion?
- Will the project be located in an area susceptible to earthquakes or seismic faults?
- Will the project be located in an area of steep topography that may be susceptible to erosion?

Is the project located in or near protected areas or a place with unique natural features?
Wastes

- Will the project require disposal of spoil, overburden, or mine effluents?
- Will the project require disposal of municipal or industrial wastes?
- Will the project have the potential to contaminate groundwater?

Hazards

- Will the project (construction, operation, decommissioning) involve the storage, handling or transport of hazardous substances (flammable, explosive, toxic, radioactive, carcinogenic, mutagenic)?
- Will the project involve the regular use of pesticides, fertilizers?

Social

- Will the project involve employment of large numbers of workers?
- Will the project make significant demands on facilities and services?
- Will the project result in changes in health conditions?
- Will the project affect the income of other productive sectors or communities?
- Will the project be located in an area of high population density?

Historic and cultural features

• Will the project be located in the vicinity of important or valuable historic or cultural resources?

Community guidebook Appendix IV

Community Resource List

Colombia

Akubadaura Comunidad de Juristas https://akubadaura.org/es/

Comité Cívico por la Dignidad de La Guajira Dirección:: Calle 23# ##7h - 85, Riohacha, La Guajira, Colombia

Corporación de Apoyo a Comunidades Populares (CODACOP) http://www.codacop. org.co/

Comisión Nacional de Comunicación de los Pueblos Indigenas (CONCIP) http://concip.mpcindigena.org/

Coordinadora Andina de Organizaciones Indígenas (CAOI) http://www.coordinadoracaoi.org/

Coordinadora Latinoamericana de Cine y Comunicación de los Pueblos Indígenas http:// www.clacpi.org/

Defensoría del Pueblo https://www.defensoria.gov.co/

Enlace Continental de Mujeres Indígenas de las Americas (ECMIA) http://ecmia.org/

Mesa Permanente de Concertación con los Pueblos y Organizaciones Indígenas (MPC) http://www.mpcindigena.org/

Movimiento Alternativo Indigena y Social (MAIS) http://www.mais.com.co/

Organización Nacional Indígena de Colombia (ONIC) https://www.onic.org.co/

Peru

[NGOs, defensoría 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 Nº 388 En provincias: Map of offices: https://www.defensoria.gob.pe

LIST OF OFFICES:

AMAZONAS

Oficina Defensorial de Amazonas Dirección : Jr. Triunfo Nº 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 Nº 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 Apurimac Dirección : Av. Díaz Barcenas Nº 116 - 118 - Abancay [Apurimac] Teléfono : 083-322877 083-323260 Representante : Artemio Solano Reinoso Email: odapurimac@defensoria.gob.pe

Módulo de Atención Andahuaylas Dirección : Av.Pedro Casafranca Nº 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 054-275592Representante : 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. Bolivar 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 Nº 312 - Huanta Teléfono : 066-322149 Representante : Roy Antonio Huamán Janampa Email: mahuanta@defenso-ria.gob.pe

CAJAMARCA

Oficina Defensorial de Cajamarca Dirección : Jr. Soledad N° 319 - Barrio san Sebastian Teléfono : 076-343489 076-369926 Representante : Agustín Fernando Moreno Díaz Email : odcajamarca@defensoria.gob.pe

Módulo de Atención Jaén Dirección : Calle San Martín Nº 1020 - Jaen [Cajamarca] Teléfono : 076-433559 076-433936 Representante : Genoveva Gómez Vargas Email : majaen@defensoria.gob.pe

CUSCO

Oficina Defensorial de Cusco Dirección : Calle San Miguel Nº 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 Maria Dirección : Jr.. San Alejandro Nº 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 Nº 620 - Satipo [Junin] Teléfono : 064-546683 064-545460 Representante : Gremy Sonia Azocar Yupanqui Email : ma-

satipo@defensoria.gob.pe

Módulo de Atención de la Merced Dirección : Jr. Ripamonti Nº 199 - La Merced [Juni 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 Nº 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 Nº 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 Nº 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 Nº 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 Nº 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 : odmadrede-

dios@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 Nº 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 Nº 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 Nº 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 Nº 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]

COLUMBIA UNIVERSITY

2020 CAPSTONE

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