
Environmental and social factors in mining: a spotlight on Colombia



Environmental and social considerations have been critical to the business of mining since long before the term ESG gained its current popularity. Mining activities are politically sensitive because they allow private companies to appropriate and profit from a state's finite natural resources, and because they normally entail significant impacts on the natural environment and nearby communities. As a result, mining tends to be highly regulated and require environmental licences and permits, which must be supported by environmental and social impact assessments and other studies and work programmes to minimise and mitigate risks and negative impacts.

Beyond those minimum legal requirements, the term “social licence to operate” was first coined in the mining industry towards the end of the last century to define a broad concept of public and stakeholder acceptance of a project. As well as creating employment, contributing to tax revenues, and providing materials that are critical to economic growth, mining companies invest in community infrastructure and social programmes, environmental conservation, and compensation to gain that social licence. However, much of this good work goes unnoticed, and mining continues to be viewed as a dirty and exploitative industry. Why?

When things go wrong in mining, the consequences can be devastating. Bad news, in the form of mine collapses, polluted rivers, or tailings dam failures, for example, makes headlines. Memories are long, and trust, once lost, can be very difficult to regain. Moreover, unfortunately, bad practices continue in parts of the industry. For example, labour and safety standards are often ignored by artisanal and illegal miners, child and even slave labour are used in parts of the world, and human rights abuses are sometimes associated with the scramble for mineral wealth in conflict zones.

Nonetheless, mining is essential to our modern life. The world is finally waking up to the scale of demand for mineral resources required to fuel the energy transition. For example, significant new sources of copper, lithium, cobalt, graphite, and rare earths, will be needed for increased electrification and the switch to renewable energy. There are also concerns about whether supply will be able to keep up with demand, and about over-dependence on China, which currently mines and processes a very large proportion of these so-called “critical minerals”. These concerns have prompted governments in the developed world to belatedly launch policies and legislation aimed at securing supply, such as the EU Critical Raw Material Act and the misleadingly named Inflation Reduction Act in the U.S.

This new focus on mining for the energy transition has put environmental and social factors under the microscope, and is also creating tensions. On the one hand, the social pressures that are driving the energy transition, are also demanding high environmental standards in the critical mineral supply chain. Environmental non-governmental organizations (“**NGOs**”) like Friends of the Earth and Earth.Org have drawn attention to the environmental impacts of mining for battery metals, and consumers are demanding information on the environmental impact of their EV supply chain, and miners are

installing on-site renewable power solutions and reporting on their greenhouse gas (“**GHG**”) emissions. Discussion of the energy transition increasingly references the need for a “just transition”; i.e. one that is people-orientated and inclusive, mindful of the employment and economic needs of society and, particularly, its less fortunate.

On the other hand, there is a pressing need to accelerate mine development with demand for battery metals expected to soar in the next decade or so, and to outstrip supply. However, a recent study by S&P Global Market Intelligence showed that the average time for development of a mine, from discovery to commercial production, is 15.7 years, with some countries, and minerals (including copper and nickel) significantly worse.¹ One element in that timeframe, and frequent cause of delays, is the obtaining of environmental licences and permits, and there have been calls by some in the industry for these processes to be streamlined and more standardised.

While the particular environmental and social challenges of mining operations vary from region to region, this article takes Colombia as an example of some of the issues facing miners. It will then consider some of the global standards, initiatives and practices that may serve as a baseline for governments and the industry to seek greater consistency in this area.

Colombia: A case study

In Colombia, mining has traditionally been focused on coal, construction materials, gold, silver, and precious stones such as emeralds. However, the country also has significant reserves of copper, nickel, and cobalt, which are critical to the energy transition. The Colombian National Mining Agency (“**ANM**” – *Agencia Nacional de Minería*) recently published its list of critical minerals and guidelines that require the Colombian Government to ensure the national supply of such minerals and of geo-scientific information that would allow for their exploration and eventual production.² On paper, Colombia’s government, like many others around the world, has recognised the strategic importance of these minerals, but new projects have been slow to progress due to environmental licensing delays and social and political conflicts.

Environmental



Large areas of Colombia are forested, sparsely populated, and host unique natural fauna and flora in sensitive ecosystems, including the Amazon rainforest. Mining activity will normally require vehicular access, accommodation and facilities for mine workers, the suppression of vegetation, moving of soil and rock, extraction and use of water from rivers or aquifers, and the storage of waste, which may contain contaminants. These activities will inevitably impact the natural environment at the mine site and its surroundings.

The Colombian Mining Code (the “**Mining Code**”) provides the basic rules for the exploration and production of minerals in the country, including environmental rules and considerations. Pursuant to the Mining Code, the rights to explore a mine are acquired by means of a 30-year concession agreement, which is divided into three phases: exploration, construction, and mining.

During the exploration phase, miners may require certain environmental permits and will need to follow the Mining and Environmental Exploration Guide issued by the Ministry of Mines and Energy and the Ministry of Environment and Sustainable Development of Colombia.

During the construction phase, miners need to comply with two main obligations before exploitation activities can start. Firstly, they must submit and obtain approval of a full Life of Mine Plan (“**LOMP**”) from the ANM, which must include obligations regarding mine closure and site restoration. Once exploitation has started, modifications to a project may require approval by the ANM of a LOMP modification. Such modifications must be approved before

¹ Discovery to production averages 15.7 years for 127 mines | S&P Global Market Intelligence (spglobal.com)

² Agreement 01 of 10 July 2023 https://acmineria.com.co/sitio/wp-content/uploads/2023/10/Acuerdo-01-de-10-de-julio-de-2023_Lineamientos-Minerales-Estrategicos.pdf

work can begin, and approval normally takes three to six months assuming the documents presented are correct and considered sufficient.

Secondly, the mine will require a comprehensive environmental licence, which will be granted by the competent authority after the satisfactory completion of an Environmental Impact Assessment (“**EIA**”). While the National Authority of Environmental Licences (“**ANLA**”) is the competent authority for large projects, authority for granting licences for small and medium mining projects is devolved to the local or regional environmental authority where the project is located. The EIA is an in-depth study of the environmental and socio-economic conditions of the affected area. In Colombia, the EIA has the following stages:

1. Screening, where the applicant files an application before the competent authority containing a description, the objective, the scope, and geographical information of the project, together with a copy of the mining concession agreement.
2. Scoping, where the competent authority formally authorises the environmental assessment, giving the applicant clear guidelines for the environmental assessment and a report (the “**Report**”).
3. The Report is then prepared and presented to the competent authority by the applicant. The Report should address project characteristics, construction and operation, and the different phases of project development and will include an Environmental Management Plan (“**EMP**”), defining how the mining company will manage, mitigate, and compensate environmental impacts throughout the life of the mine. Conduct of the EIA and preparation of the Report may take many months, as it may be necessary to conduct environmental baseline studies of conditions that vary during the course of the year, for example.

Following receipt of the Report, the competent authority must decide whether to grant an environmental licence to the applicant. According to Decree 1076 of 2015, a competent authority should make that decision within four months. However, depending on project complexity, the requirements of the Report, and considering the current political climate for mining, this timeframe may well be extended to one or two years.

The licence should give a summary of the environmental considerations and objectives that have been taken into consideration in its issuance. As well as site-specific conditions, these should include the project’s impact on GHG emissions and compatibility with the specific CO2 reduction target applicable to the Colombian mining sector, for example.

However, the grant of a licence is not necessarily the end of the process. Law 1437/2011 grants legal standing to any member of the public for judicial review (*acción de nulidad y restablecimiento del derecho*) of the administrative decision to grant an environmental licence. Governmental agencies, individual citizens, public interest groups and private parties have legal standing to challenge the decision, not solely the applicant.

If a licence is granted, the competent authority will supervise and audit the licensee’s compliance with its environmental obligations, including the EMP, and can issue penalties for non-compliance under Law 1333/2009. Specific environmental permits will be issued in accordance with the comprehensive environmental licence for the mine. If changes to the original project create new environmental impacts, the licensee may be required to seek modifications to the environmental licence as well.

In the absence of a specific legal framework for the exploitation of strategic minerals – the timing, costs and legal requirements of obtaining a licence remain challenging. Moreover, local environmental authorities are often poorly prepared to evaluate new mining projects associated with strategic minerals. Accordingly, Colombia would benefit from a reform of current licensing procedures to provide greater certainty to investors on timeframes, procedures, and legal conditions, in order to encourage exploration and development activities to meet demand for these strategic minerals.

Social



In Colombia, as in many other countries, minerals are often found in remote areas, away from major population centres. Some minerals reserves are in areas inhabited by indigenous people, who live traditional, subsistence lifestyles with little contact with the outside world. These local communities are often poor and unable to supply the educated workforce that mining activities require. Mining may attract migration to areas that do not have infrastructure for the increased population. An influx of outsiders can create or exacerbate social tensions between groups with different ways of life.

These social factors must also be dealt with in the environmental licensing and EIA process described above. Importantly, that process requires mining companies to carry out a process of “socialisation” of their proposed projects; i.e. providing public access to relevant information and consultation with communities.

Socialisation is present throughout the lifetime of a mining project. First, before ANM grants the mining title, the miner has to present the project in a social hearing before the communities and local authorities where the mine will be located. Then, in order to obtain the environmental licence, the miner has to publicise the results of the exploration stage and present the exploitation project before the communities and local authorities. In this hearing, the community can express their concerns, questions, or claims regarding the project. Accordingly, some agreements may be made and incorporated within the Social Management Plan (*Plan de Gestión Social*) that has to be presented and authorised by ANM and then complied with by the miner. In addition, the potential for a public hearing is always applicable under Decree 1076 of 2015 and can be requested by local or national authorities before the granting of the licence. While there is no general requirement for public consultation before the granting of an environmental licence, consultation is mandatory when the project positively or negatively affects the territory of an indigenous community.³

The Report will also likely require clear communication with the project’s stakeholders on both the positive and negative impacts of the project and how the unique environmental challenges of the territory will be addressed. Considering the potential for judicial review of licensing decisions, as well as the operational necessity for community support, it is highly recommended, to go well beyond the minimum requirements of the EIA process. Mining companies should take steps as early as possible to build a good relationship with local communities and understand their needs, for example, by involving them in community development initiatives. That may help bolster local acceptance of a mining project and prevent social conflicts, which could otherwise impact the development, costs, and even the viability of the project.

In some areas, local populations may already participate in artisanal and small-scale mining (“**ASM**”), which may conflict with new formal, mining projects. ASM projects provide valuable income to local economies, but without sufficient organisation and capital investment, they may be unable to access national or international markets to maximise returns. Labour and safety standards are difficult to enforce in ASM projects, and workers may find themselves exploited by middle-men, including organised crime. In some regions, illegal mining is organised directly by criminal gangs and paramilitary groups, and may be funding armed conflict and violent crime. When formal mining moves into areas dominated by ASM or illegal mining, it will be especially important to reach out to local communities, to ensure their support, and to implement effective security measures.

Some of the criticisms of the mining industry in Colombia come from the country’s historical dependence on extractive industries, and its perceived failure to diversify the economy and ensure that value is retained by communities in mining regions. Mineral resources are finite, and each mine site will eventually be exhausted and employment in the mining sector will move elsewhere. Mine development plans should be developed with their limited lifetime in mind; providing for safe mine closure and the restoration of the mine site and its

³ Indigenous and Tribal Peoples Convention of 1989 (ILO Convention 169).

surroundings, as is set forth in the Mining Code (Law 685/2001), LOMP and approved environmental licence.

In the best examples, mine planning goes beyond that, to also consider the legacy of the mine within its local community. How can the mine be developed to ensure continuing employment and wealth generation, maximising the social benefit of new infrastructure and population growth brought by the mine? One example is the Buriticá Project, Colombia's first new gold mine in decades. The developer, Continental Gold (majority owned by Zijin Mining) claims that it has invested significantly in micro-businesses, agricultural innovation, and community infrastructure construction. They have also claimed to implement a joint agricultural development program, assisting the coffee, banana, beekeeping, and mushroom cultivation industries.⁴

A Global Perspective



As well as national and local legislation, mining companies must consider the potential impact of international law. For example, Colombia is a member of the Organisation for Economic Co-operation and Development (“**OECD**”), and so, along with other members, has committed to promote the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (“**OECD Guidelines**”). In 2021, a coalition of human rights and environmental NGOs led by the Global Legal Action Network raised complaints with the National Contact Points for Australia, Switzerland, Ireland and the UK against certain companies such as Anglo American and Glencore as parent companies of the joint owners (at the time) of the Cerrejón coal mine in Colombia.⁵ The complaints alleged multiple breaches of the OECD Guidelines in relation to forced displacement of indigenous Wayúu and Afro-Colombian communities and air and water pollution in the vicinity of the mine.

Other international standards that may be directly or indirectly applicable include:

- International Bill of Human Rights;
- United Nations Guiding Principles on Business and Human Rights;
- International Labour Organization (ILO)’s Declaration on Fundamental Principles and Rights at Work;
- International Labour Organisation Convention 169 on Indigenous and Tribal Peoples (ILO 169);
- OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector;
- OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas;
- Minerals Security Partnership Principles for Responsible Critical Mineral Supply Chains.

The latter OECD Due Diligence Guidance is a good example of a widely accepted standard for responsible business conduct, which provides detailed recommendations to help companies respect human rights and avoid contributing to conflict through their mineral purchasing.

There are also a range of voluntary initiatives and certifications, which are helping to drive best practice in mining ESG. One example is the Towards Sustainable Mining (“**TSM**”) initiative, which provides a set of nine performance protocols covering different elements of “Community & People” and “Environment & Climate Change” against which mining companies measure and publicly report their performance. This reporting provides stakeholders with information on how companies are performing in important areas, such as community outreach, diversity & inclusion, health & safety, tailings management,

⁴ Key Projects-Zijin Mining Group Co., Ltd.

⁵ Cerrejon Coal Mine, Colombia | GLAN (glanlaw.org)

biodiversity, and climate change. These voluntary standards are becoming embedded within the industry. For example, the Minerals Council of Australia (“MCA”) has adopted the TSM as an independently verified mechanism to support improvement in ESG, and as a condition for future MCA membership.

Although not directly enforceable against mining companies, domestic courts may consider international standards when applying national legal and licensing requirements, and non-compliance could be damaging to the reputation of an international mining company. In addition, recently, the *Superintendencia de Sociedades*, a national regulatory entity for commercial companies issued a circular to compel companies from different sectors to adopt and comply with sustainability standards from the OECD and the International Sustainability Standards Board (“ISSB”). While further clarity is needed on timing and enforceability, the circular is currently expected to come into force in 2025. This is an example of a growing international trend towards formal regulation of sustainability, which had previously been dominated by voluntary industry standards.

National governments are also collaborating through global and regional organisations like the United Nations, OECD, and the Organisation of American States and Minerals Security Partnership to align ESG rules and procedures. It is hoped that this will go some way to addressing a recurring complaint in the mining industry; that there is little consistency between requirements in different mining regions, which can cause delays and complicate the global management of these issues. That is particularly important because some countries are beginning to apply their standards outside their territories, to the supply chains of goods that may eventually be sold there. The EU’s Sustainability Due Diligence Directive and its Carbon Border Adjustment Mechanism are examples of the extra-territorial reach of modern ESG legislation.

But beyond the applicable rules and regulations, the adoption and implementation of a tailored and effective ESG plan is critical to the success of any mining project. The history books are littered with the wreckage of mines that failed to secure their social licence, and suffered strikes, protests, and social unrest, and those that ignored environmental and safety risks and ended up saddled with massive liabilities and a reputation in tatters. Proper ESG planning must comply with applicable laws, but that should not be a tick-box exercise. It should also draw on globally recognised standards, internal policies, and best practices, and must identify, listen to, and engage all relevant stakeholders.

When done responsibly, mining can play a truly transformational role in the social and economic development of host countries. As countries continue to set net-zero targets, demand for strategic minerals will grow. This only heightens the importance of transparent disclosure, and the continued push for good governance of mineral resource wealth.

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