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The Importance of Consultation and Engagement in Environmental and Social Impact Assessments



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Introduction

Environmental and social impact assessments (ESIAs) are important tools for helping governments decide whether to allow the development of a proposed mine. Critical to this process is deciding what conditions should be imposed and whether the development will benefit the project-affected communities. If the benefits of the project are not deemed acceptable to the surrounding communities, the mine is likely to encounter conflicts, such as protests, roadblocks, or other legal and illegal actions. Support and trust in governments can also erode if a project is approved without community support. Therefore, the ESIA is an essential process through which communities can influence project plans and provide meaningful input to government decisions. Project approvals should be granted only when there is general community support, also referred to as a *social licence to operate*.

This report provides background on how consultation and engagement can be integrated into legal frameworks regulating ESIA and mining, drawing from the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development's (IGF's) *Guidance for Governments: Improving Legal Frameworks for Environmental and Social Impact Assessment and Management* (2020). Key elements of a strong legal framework for consultation and engagement surrounding mining projects should align with similar provisions as those in the 1998 Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. The Aarhus Convention addresses timelines, responses to requests for information, types of information to protect and disclose, and government decision reporting requirements, among other important provisions.¹

This report presents highlights of good legal frameworks that cover a mine's life cycle and then looks at case studies that illustrate how different jurisdictions have further integrated mechanisms into their legal frameworks to address Indigenous Peoples and mining conflict. The report's examples and case studies can be used by other jurisdictions to fill gaps and improve their ESIA legal frameworks.

This document focuses on large-scale mining; however, legal frameworks for artisanal and small-scale mining may also benefit from the inclusion of consultation and engagement to help reduce conflict and improve environmental and social performance.

Consultation and Engagement in the Legal Framework

Based on the IGF *Guidance for Governments: Improving Legal Frameworks for Environmental and Social Impact Assessment and Management* (2020), this section highlights consultation and engagement components and enabling factors that should be included in a legal framework to cover all parts of the mine life cycle from exploration through closure. This is followed by short discussions about key consultation and engagement tools that should be considered, including grievance mechanisms; multistakeholder mechanisms; participatory monitoring; and support for free, prior, and informed consent (FPIC) for Indigenous Peoples.

¹ Access the Aarhus Convention here: <http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>



Consultation and Engagement Throughout the Mine Life Cycle

Exploration

Exploration activities often have lower environmental and social risks; however, key stakeholders should be identified, notified of proposed exploration activities, and given the opportunity to comment on exploration permit applications during a legislated public comment period. Public comments should be considered in the decision-making process for granting an exploration permit and setting the associated terms and conditions.

Governments should make exploration permit compliance reports publicly available to help hold companies accountable and to build and maintain community trust in regulatory controls.

Planning

Government should ensure that public engagement and consultation are not just about the dissemination of information or an invitation to comment but rather a tool for meaningful dialogue about the project and its potential effects.

Engagement and consultation are multi-directional processes in which the company, the government, communities, and other stakeholders discuss the potential effects of the project, plans for engagement and monitoring, and proposed mitigation measures. There is a great deal of highly relevant local knowledge in communities that is important to the development of a quality project.

Government should oversee the implementation of the public engagement and consultation mechanisms provided in the legal framework to address limiting factors and assist in achieving effective engagement. Limiting factors for stakeholder participation can be funds, time, language, or knowledge. The involvement of communities

will likely require financial support from the government and companies. Government should work with companies to identify efficiencies and collaborative funding opportunities where government resources are limited.

For example, an application process could be administered to access funds for travel to meetings, adequate time for reviews can be included in legislation, local-language translators and interpreters should be available for live translation and interpretation during public consultation workshops, and non-technical summaries of the ESIA can be provided in local languages.

Government should carefully assess the questions being asked by stakeholders to ensure there are clear distinctions between concerns related to the project and issues unrelated to the project.

Government can also promote the use of a company grievance mechanism, a formal process for responding to stakeholder complaints about the project, a review process, or related issues that may be having negative effects on stakeholders. A local-level grievance mechanism should be established early in the life of the mine and can be one way to address, monitor, and manage environmental and social impacts and benefits. The mechanism should be culturally relevant and accessible to the community. The response and follow-up to a grievance submission are critical components of the mechanism, and social workers could be useful for keeping in touch with the community as its members express their grievances. Frequent use of such a mechanism by community members can be a positive sign, indicating trust in the mechanism and its ability to manage and respond to seemingly “small” complaints before they become major conflicts.



BOX 1. AN EXAMPLE OF ENGAGEMENT TOOLS IN LEGISLATION IN ECUADOR*

Ecuador's Ministerial Declaration 109 of 2018 outlines several tools for public participation in environmental regulation, including:

1. Public assemblies: Gatherings with the population in the area of the project's direct social influence to discuss environmental studies in a way that is relevant to the local community. This is a dialogue space where questions about the project are answered, and observations of the community are collected. In this assembly, the operator, the designated facilitator, and the persons responsible for the survey of the environmental study must be present.
2. Environmental education workshops: Workshops that allow the operator to know the perceptions of the population living in the area of direct social influence of the project, work, or activity so that mitigating and/or compensatory measures may be included in the Environmental Management Plan.
3. Informative workshop: A mechanism used to reinforce the presentation of the environmental study ... to the inhabitants of the area of direct social influence of the project, work, or activity.
4. Distribution of informative documentation about the project.
5. Website: A mechanism through which all interested parties can access information on the project, work, or activity.
6. Public information centre: A local, easily accessible public space where the environmental study, as well as documentation that contains the description of the project and the corresponding management plans, are made available to the area of the project's direct social influence. The location may be fixed or rotating, but a representative of the operator and those responsible for the survey of the environmental study must be present. The information must be presented in a didactic and clear manner and, at a minimum, contain a description of the project, maps of the location of the activities, and infrastructure of the project, communities, and properties.
7. Other mechanisms that are established for this purpose.

**Note that this is an unofficial translation of the declaration, taken from IGF, 2020, p. 71.*

ESIA Scoping

For proposed large mines entering the ESIA review process, the scoping stage should be developed by reviewing ESIA's of similar projects in similar areas and through an engagement process to ensure that all components and issues that are important for stakeholders are included in the ESIA for review.

ESIA Review

Once the ESIA report is deemed complete or acceptable, it should be made available for all relevant stakeholders for review and comment. The process should ensure that all potentially affected stakeholders have been engaged and consulted and their issues addressed. Transparency should be maintained during the review process. The results of the review and issues being tracked through the review process should



be made public. A range of tools can be used to manage the review process, including workshops, publishing complete and summary reports, and the use of issue-tracking tables. Opportunities should be available for stakeholders to comment and for proponents to respond to questions and issues throughout the review process.

ESIA Decisions

Decisions to approve or deny certificates and permits should be based on a rigorous review process, including input from a wide range of stakeholders. The legislative framework should include a clear, logical framework and methodology for approval or denial of environmental certificates based on the ESIA and related management plans. Methodologies should consider residual

effects, costs and benefits, sustainability, and public interest.

A summary of the public engagement and consultation conducted on the ESIA should be included in the government-issued decision document.

Construction and Operations

Ongoing Engagement

Continued engagement through the construction and operations phases is needed to continue to monitor real and perceived impacts, maintain accountability by the proponent, and maintain community trust in the government. Using community and worker grievance mechanisms, multistakeholder and participatory mechanisms, and continued public

BOX 2. EXAMPLES OF FUNDAMENTAL REQUIREMENTS FOR PUBLIC REVIEW OF ESIA'S IN MEXICO

In Mexico, under Article 34 of the General Law of Ecological Equilibrium and Environmental Protection (Ley General del Equilibrio Ecológico y la Protección al Ambiente [LGEEPA], 1988), once the Secretariat of Environment and Natural Resources receives the impact assessment manifest (MIA in Spanish, equivalent to an ESIA), the MIA must be publicly available for any person to consult. The law and regulations then specify the notification and public review timelines and minimum information disclosure requirements within the ESIA review process.

Chapter VI of the related regulations for the LGEEPA sets the requirements for public participation and the right to information. Under Article 41, the Secretariat must notify interested parties of the determination on whether public consultation is required within 5 days of receipt of the application. The minimum information required to be disclosed in the summary includes the following:

- Names of those responsible for the project
- A brief description of the work and activities
- The location and existing conditions
- The principal environmental effects, proposed mitigations, and restoration measures.

Based on this information, within 10 days, citizens can request that the MIA be made available to the public. The public then has 20 days to provide comments to the Secretariat.

Under Article 43, within 25 days of the start of the public comment period, the Secretariat and local officials can arrange a 1-day public meeting if the proposed works or activities may cause grave harm or endanger public health or ecosystems.



engagement can proactively identify and manage issues before they become serious. Overlooking these opportunities often leads to conflict between companies and communities that could otherwise be avoided. Participatory mechanisms and ongoing community engagement can be expensive for proponents, but failing to take these prudent steps can prove more costly in the long run (Davis & Franks, 2014).

There needs to be an ongoing process of communication, dialogue, and discussion with the community and stakeholders throughout the life cycle of the mine. Governments can promote and provide guidelines for community advisory councils, participatory or independent monitoring programs, or regular community meetings for the mutual exchange of information. These meetings can be coordinated by the proponent, but government representatives should be in attendance.

Maintaining Transparency

Governments need to be seen as independent, diligent, and working in the public's best interest to protect the environment and human needs. Regular and transparent communication on project compliance and enforcement is key to achieving public trust.

Communication can take many forms, but it needs to be accessible to all potential stakeholders. Communication can be through public registries on an environmental assessment (EA) process website during the planning stage and may move to the website of the department overseeing the permit (e.g., the ministry responsible for mines) for communicating compliance reports, non-compliance orders, etc. However, governments should not only rely on digital communications, as this may not be accessible to all key stakeholders. Ministries should also consider communicating compliance reporting and enforcement measures in newspapers or

newsletters in local government offices for communities with limited Internet connectivity. Communication methods must be culturally appropriate, should be regular and kept current, and should tie into a government grievance mechanism.

Closure

Governments should make sure that requirements for mine closure are clearly set out in the legal framework and require the ongoing implementation of closure plans over the life of the mine. It is undeniable that all technical information will not be available at the mine planning stage or even at the beginning of operations. However, as information becomes available throughout the successive phases of the life cycle of the mine, a good regulatory framework will require that closure plans are updated based on current information. Mine closure plans should address economical, ecologically sound, and socially sustainable mine closures based on current data and informed by local communities. A good closure and post-mining transition plan is one that also involves input from affected communities and other local stakeholders in order to understand local priorities and opportunities for land use and sustainable development outcomes.

Consultation and Engagement Tools

Grievance Mechanisms

The legal framework should accommodate a grievance mechanism in the ESIA review process and require the proponent to establish a culturally appropriate grievance mechanism for the project.

Using community and worker grievance mechanisms, particularly when combined with multistakeholder and participatory mechanisms, offers an opportunity to proactively identify and manage issues before they escalate into major conflicts or



legal disputes. The legal framework should provide guidelines for grievance mechanisms throughout the life of the mine.

Multistakeholder Mechanisms

Multistakeholder mechanisms are typically comprised of key stakeholder groups, including representatives of mine-impacted local communities, local government, and the mining company. They can provide oversight for public engagement and consultation and can aid with the monitoring and implementation of environmental and social management plans, resettlement plans, and mine closure plans. Multistakeholder mechanisms can also help build mutual understanding and opportunities to identify and promptly address environmental and social issues.

While the government may initiate the development of multistakeholder mechanisms, they may also be established through a community development agreement or be co-developed by stakeholder groups and governments. In either case, the participation of government in the mechanism can aid them in better understanding issues and opportunities related to social and environmental aspects of the mining project. Governments may also issue guidelines for the use of multistakeholder mechanisms in the ESIA and environmental and social management plans for the mining sector.

Participatory Monitoring

Incorporating participatory monitoring mechanisms for the management of environmental and social issues of greatest concern to local community members can be an effective way to complement government monitoring actions and build trust among stakeholders.

Governments can also consider approaches to complement their monitoring actions. One approach is to promote participatory

monitoring and issue guidelines. In participatory monitoring, communities are involved in monitoring or conduct it independently. Using participatory monitoring mechanisms for environmental and social issues of greatest concern to local community members can support government efforts, particularly when human and financial resources are limited. Communities are close to the mining site, which is an asset, and they have a vested interest in the good management of environmental and social impacts. Furthermore, participatory monitoring is an effective way to avoid conflict and build trust among stakeholders.

Participatory monitoring works best when initiated very early in the life of the mine with the input and participation of local communities. Participatory mechanisms should be proactive rather than reactive and attempt to identify and solve problems collaboratively (International Finance Corporation & On Common Ground, 2010). In some cases, these mechanisms are agreed to and established as part of community development agreements.

Free, Prior, and Informed Consent

Indigenous Peoples have special and protected rights under international law through conventions, protocols, and declarations such as the International Labour Organization Indigenous and Tribal Peoples Convention 169 (ILO Convention 169) (1989), the United Nations Convention on Biological Diversity (1992), and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (UN General Assembly, 2007).

UNDRIP requires that governments consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the



approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

Thus, Indigenous Peoples, in exercising their rights, can give or withhold consent to a project that may affect them and their territories.

ILO Convention 169 is the primary international treaty that governs Indigenous rights. ILO Convention 169 provides a legal framework for FPIC in the 24 countries that have ratified it. In these countries, consultation must have certain characteristics: appropriate proceedings, good faith, representative community institutions, and the aim of achieving an agreement. The consultation is the responsibility of the government when there are “legislative or administrative measures which may affect them directly” (ILO Convention No. 169, 1989).

Implementation of ILO Convention 169 has proven to be difficult. Some countries have adopted regulations, others have attempted but failed to adopt regulations, and some others are simply moving forward without regulations.

For countries where the protection of Indigenous Peoples is a sensitive issue, it is important that legislation clarifies and strengthens their role in the process of developing ESIA and related plans while putting in place tools and mechanisms to ensure their effective participation. The UNDRIP, jurisprudence of the Inter-American Court of Human Rights, and recommendations from UN supervision agencies and Special Rapporteurs offer good practice on how to meaningfully consult the public and uphold Indigenous rights. If every legislative approach considered these best practices, it would reduce the risk of conflicts and arbitration cases related to ESIA.

Consultation and Engagement Case Studies in Canada and Peru

The consultation and engagement mechanisms discussed above have been incorporated into ESIA legal frameworks throughout the world. Following are two case studies that provide examples of the integration of non-standard mechanisms in the legal framework to support effective consultation and engagement. British Columbia (BC), Canada, has recently introduced a mechanism that integrates FPIC into the ESIA process and is starting to see positive results. Peru has mechanisms and programs in place for communities to conduct participatory monitoring around mines to implement consultation and engagement through the construction, operations, and closure phases of mines.

Conclusions

Consultation and engagement mechanisms in ESIA legal frameworks have been evolving over time as practical experience is gained. Countries can learn from experience in other jurisdictions and incorporate lessons learned as they update their legal frameworks. Ultimately, the ESIA process is about engagement and consultation, and the decision to allow a project to proceed needs to be linked to the licence to operate. For a legal framework to be effective, there must be sufficient detail in black letter law to ensure that the implementation will be effective and result in meaningful public and community participation in the review, decision-making, monitoring and enforcement of mining projects.

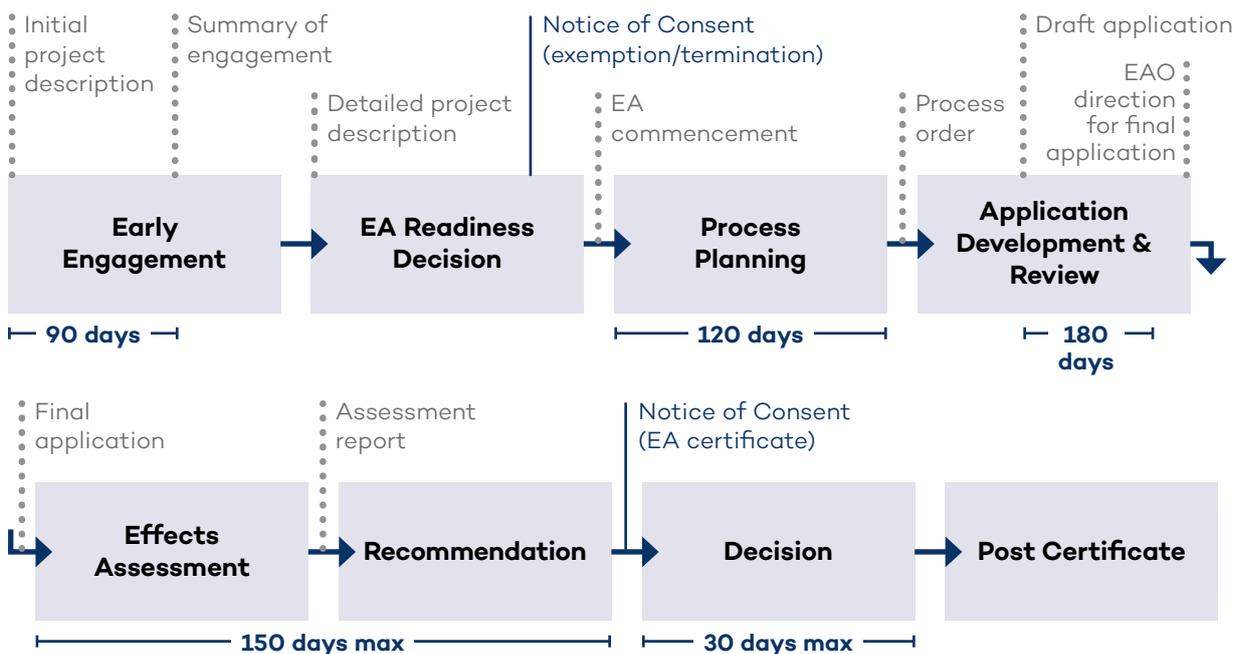


Case Study 1: Assuring FPIC in British Columbia, Canada

In Canada, ESIA's are legally required at both the federal and provincial government levels. To minimize duplication, the provincial and federal governments follow a coordinated or substituted ESIA review process. Both levels of government are responsible for updating and improving their legislation. BC, a province in Canada, updated its

Environmental Assessment Act (BC EAA; SBC 2018, c.51) in 2018 as a result of the provincial commitment to UNDRIP and the Truth and Reconciliation Commission's Calls to Action (Truth and Reconciliation Commission of Canada, 2014) resulting from the Supreme Court of Canada's decision in *Tsilhqot'in v. British Columbia*.

FIGURE 1. BC's assessment process requiring Indigenous consent



Source: Adapted from Environmental Assessment Office, 2020.



Clause 7 of the BC EAA provides requirements for Indigenous consent prior to a reviewable project proceeding, which supports the provincial commitment to FPIC under the 2019 Declaration on the Rights of Indigenous Peoples Act adopted for conformance with UNDRIP. To demonstrate consent, the ESIA process (Figure 1) has been revised to include two times within the process where an expression of consent is required from the Indigenous groups who have traditional territories overlapping the proposed project. The first expression of consent follows the readiness period when the decision is made that the project is ready to enter the ESIA process. The second expression of consent is after all parties have reviewed the effects assessment and recommendations have been given to the decision-making authorities. Therefore, the decision to allow a project to proceed considers consent. If a decision is made to proceed without consent, it needs to follow consultation with the Indigenous groups. This avoids veto power by any Indigenous group but provides a strong incentive to gain consent—and there must be a compelling rationale to proceed if consent has not been granted.

In addition to the two points for obtaining expressions of consent, there are opportunities to integrate Indigenous groups in the ESIA process. Section 7 of the BC EAA says:

- “7. Despite any other enactment and whether an environmental assessment certificate is required, a reviewable project may not, without the consent of an Indigenous nation, proceed
- a. on treaty lands if the final agreement with the Indigenous nation requires this consent, or
 - b. in an area that is the subject of an agreement, between an Indigenous nation and the government, that
 - i. requires this consent, and

- ii. is prescribed by the Lieutenant Governor in Council.”

Section 41 of the BC EAA also allows for the ESIA process to be modified and coordinated with other jurisdictions or authorities—including the option to have an Indigenous-led environmental assessment process—provided the following conditions are met:

- “a) take into consideration all of the matters referred to in section 25 [required assessment matters];
- b) give provincial authorities under other provincial enactments an opportunity to participate in the assessment;
- c) require obligations respecting the seeking of consensus with participating Indigenous nations that are similar to obligations under this Act;
- d) give the public an opportunity to participate in the assessment and to access records under the assessment;
- e) result in a report submitted to the chief executive assessment officer for referral to the ministers for a decision;
- f) give the chief executive assessment officer a right to require from the other party or jurisdiction further information regarding the assessment after the chief executive assessment officer has reviewed the report referred to in paragraph (e).”

BC is still in the process of implementing the new BC EAA and, through the implementation, will be able to realize FPIC with Indigenous groups. As evidence, a landmark agreement was recently signed under this new process between the BC government and the Tahltan Nation government (an Indigenous group in northwest BC). The agreement sets up a consent-based decision-making process for Skeena Resources’ Eskay Creek Revitalization Project (a proposed reopening of a gold mine). The agreement specifies



that the Tahltan Nation government would have a ratification vote after full review and engagement meetings concerning the proposed project development. The vote would take place to get consensus from the Tahltan community members on the decision to approve or not approve the project for development (Bramadat-Willcock, 2022). The structure of the agreements means that a majority of community members need to be in agreement—not just the leadership of the Indigenous group. In addition, the agreement presents a direct linkage to the provincial government’s decision and a legal tool to confirm consent.

As mentioned, approvals of proposed mining projects in BC also usually require coordination with the federal ESIA process. Canada also recently updated its ESIA legislation to the 2019 Impact Assessment Act. This act better incorporates Indigenous and community engagement into the ESIA process. The updated Impact Assessment Act follows a similar process to the updated BC EAA, including improved early and

ongoing engagement with Indigenous groups; however, the federal process does not include the same steps for proof of consent as the BC EAA.

It should be noted that Canada is still in the process of reconciliation with Indigenous Peoples for past violations of Indigenous and human rights. New legislation on integrating the UNDRIP commitments (e.g., Canada’s 2021 United Nations Declaration on the Rights of Indigenous Peoples Act) and integration of FPIC into the impact assessment legislation are just part of the work needed to right past injustices.



Case Study 2: Participatory Monitoring in Peru

Participatory monitoring can be an effective mechanism for integrating ongoing community consultation and engagement that can be implemented at any phase of a project, but it is particularly effective for supporting compliance monitoring during mine construction, operation, and closure. Nonetheless, there are challenges that need to be considered in the legal framework and when implementing participatory monitoring programs.

In Peru, an underlying objective of the participatory monitoring programs is to prevent conflict between mines and communities, which has been a historical challenge. From 2006 to 2009, there was significant growth in exploration and mining projects in Peru, which was the main reason for a 6% growth in the national economy over this period (Oxfam America, 2009). Most mines and exploration projects are in remote, poor areas of the country with poor government capacity, which has resulted in conflicts such as communities interfering in project operations in response to the fear of contamination of water and land, among other issues. There were more than 70 active conflicts with mining operations in 2009 (Oxfam America, 2009).

Although Peru had legislation in place in 2004 to provide citizens with the right to participate in environmental management and oversight, implementation was a challenge, and participatory monitoring committees were not specifically named in the legislation until 2008. The implementation of participatory monitoring committees has progressed and helped to reduce conflict, but there are still improvements to be made to demonstrate meaningful participation.

Peru's legal framework includes overarching principles, objectives, and the responsibilities of authorities and citizens in the detailed framework. Requirements start in laws and then work down through to regulations and guidelines, as follows:²

- General Law on Environment (Ley General del Ambiente, Law No. 28611, 2004) allows for the active participation of citizens in the monitoring of environmental controls, and the “state agrees with civil society in environmental management decisions and actions.”

2 Descriptions of the laws this section are unofficial translations from the original text by the authors.



- Article 3 states that every person has the right to participate responsibly in the decision-making process, as well as in the definition and implementation of measures and policies relevant to the environment and its components that may be adopted at all levels of government.
- Article 17 includes citizen participation as one of the mechanisms to be used for environmental management.
- Article 46 declares that every person, whether natural or legal, individually or as a group, can submit their opinions, positions, points of view, or suggestions on the decision-making processes on environmental management and on the policies and actions that affect it, as well as in their ulterior execution, follow-up, and monitoring.
- Article 47 states that every person, whether natural or legal, has the duty to participate responsibly in environmental management, acting with good faith, transparency, and truthfulness in accordance with the rules and procedures of the established formal mechanisms of participation.
- Article 48 requires public authorities to establish formal mechanisms to facilitate effective citizen participation in environmental management, decision-making processes, follow-up, and control. Authorities will also promote capacity building and encourage citizen participation in environmental management and environmental protection.
- Article 50 asserts that public entities have an obligation to promote adequate access to information related to citizen participation, establish mechanisms for citizen participation for every process involving natural and legal persons in environmental management, and ensure that every person, whether natural or legal, can have access to participatory mechanisms without discrimination or prejudice.
- Article 70 declares that the rights of Indigenous Peoples and farming and native communities recognized by the Constitution and in the treaties ratified by the state must be respected during the process of environmental territorial planning as part of the design and implementation of environmental policy.
- Article 72 states that projects to be developed within the territories of Indigenous Peoples and farming and native communities must adopt necessary measures to avoid affecting their social, cultural, or economic integrity. In addition, these populations have preferential rights to the use of the natural resources located within their territories, except when a third party has exclusive rights, in which case, they have a right to just and equitable participation in the economic benefits that may derive from resource exploitation.
- Article 134 establishes that competent authorities set measures to facilitate citizen oversight and the development and dissemination of mechanisms for reporting environmental regulation violations. Citizen participation can adopt different forms of auditing/ monitoring, including through visual inspection of contamination; measurements, sampling, or environmental monitoring; and



the interpretation, studies, or evaluations of other institutions.

- The National System for Environmental Impact Evaluation Law (Ley del Sistema Nacional de Evaluación del Impacto Ambiental, Law No. 27446; 2001), Article 1 provides **citizen participation as a core objective of the environmental assessment process**, and Article 14 includes the **minimum steps that must be followed in order to ensure citizen participation in the process**. In the associated regulation (Reglamento de la Ley N° 27446, Ley del Sistema Nacional de Evaluación de Impacto Ambiental, Supreme Decree No. 019-2009-MINAM), Article 3d specifies that citizens should be included in a strategic alliance for environmental management and the implementation of the ESIA.
- The Supreme Decree No. 046-2004-EM establishing provisions for mining projects requesting deadline extensions for environmental compliance (Establecen Disposiciones para la Prórroga Excepcional de Plazos para el Cumplimiento de Proyectos Medioambientales Específicos Contemplados en Programas de Adecuación Ambiental), Article 2 specifies that citizen participation is to be included in the follow-up monitoring program included in environmental management and adaptation plans.
- In the National Environmental Management System Framework Law (Ley Marco del Sistema Nacional de Gestión Ambiental, Law No. 28245; 2005), Articles 6, 9, and 27 set requirements to develop citizen participation mechanisms and support citizen environmental education and participation at all levels. It requires municipal agencies to promote mechanisms for society's participation in planning, management, and oversight. Article 28 of the law also sets obligations for citizens to defend the environment.
- The Creation, Organization, and Function of the Ministry of Environment Law (Ley de Creación, Organización y Funciones del Ministerio del Ambiente, Law Decree No. 1013; 2011) provides the structure for the Environmental Evaluation and Audit Agency (OEFA), which is responsible for auditing and enforcement, **including non-compliances that may be identified by participatory monitoring committees**.
- The Regulation on Transparency, Access to Public Environmental Information, Citizen Participation and Consultation on Environmental Matters (Reglamento Sobre Transparencia, Acceso a la Información Pública Ambiental y Participación y Consulta Ciudadana en Asuntos Ambientales, Supreme Decree No. 002-2009-MINAM), Article 36 specifies that government authorities will promote citizen participation in environmental auditing, but citizen auditing is not a substitute for government auditing actions. The **Citizen Oversight Committee** includes a group of citizens with the objective of contributing auditing work to be delivered to the competent authority; it commits to work that is conducted responsibly and in good faith.
- The Regulation for Citizen Participation in the Mining Subsector (Reglamento de Participación Ciudadana en el Subsector Minero, approved by Supreme Decree No. 028-2008-EM) specifies minimum conditions to assure citizen participation at each stage of mine development from exploration through closure. Details include requirements for access to information, Citizen Participation Plans during a detailed or semi-detailed environmental assessment process, a



Permanent Information Office and/or **Participatory Environmental Oversight and Monitoring Committee**, and possible participation mechanisms for closure. Within the regulation, citizens have the right to participate in the decision-making process for mining projects and access to information. Key principles defined in the citizen participation regulation include respect for cultural diversity, non-discrimination, citizen monitoring, and continuous dialogue.

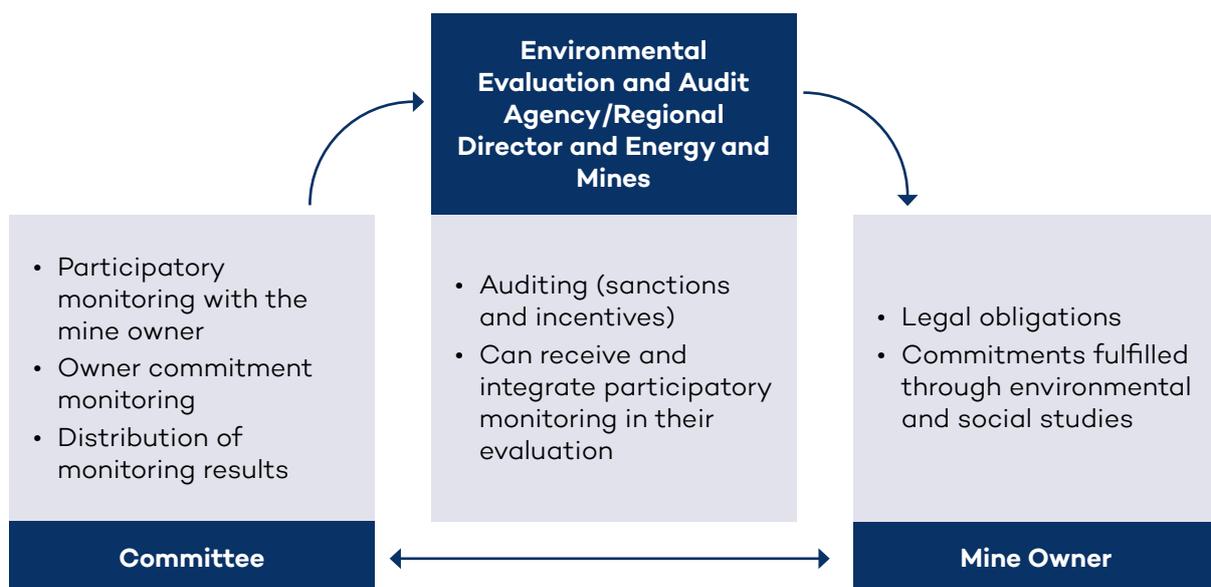
- The *Guide for the Implementation of Participatory Monitoring and Oversight Committees*, published by the Ministry of Energy and Mines, provides key requirements for committee structure and functions, an overview of experiences, and best practice examples (Ménard, 2011). The guidance provides principles needed above and beyond the principles included in the above Regulation for Citizen Participation, including co-

responsibility, consensus, democracy, dialogue, gender equity, social inclusion, social justice, accountability, intercultural respect, respect for the environment, and transparency.

As of 2019, Peru had 44 participatory monitoring and oversight committees in communities near mines or petroleum projects (Rumbo Minero, 2019). The committees in Orcopampa, Juprog, and Mallay were formed as tripartite agreements between the government, the community, and the mining companies (Pareja et al., 2019). Participants from the communities conduct environmental sampling and are involved in discussions about the results and performance of the mine. Figure 2 shows the interrelationship between the responsibilities of the participatory committee, government agencies, and the mining company based on government guidance.

Reviews of the effectiveness of the participatory monitoring committees in Peru have been carried out by UN Development

FIGURE 2. The interrelationship between monitoring, participatory monitoring, and auditing



Source: Adapted from Ménard, 2011.



Programme representatives and other independent reviewers. From the reviews, the following challenges were found (Núñez del Prado, 2020):

- **Enforcement:** The environmental oversight authority (OEFA) needs to be strengthened by improving the transparency of its environmental oversight mechanisms in mining.
- **Access to information:** Technical information needs to be provided in a manner that is understandable to local community members.
- **Environmental evaluation instruments:** Information used for the monitoring includes the results from the analyzed parameters and the standards or criteria set to protect health; however, a baseline is often missing for comparison and for determining cumulative effects.
- **Technical understanding:** There needs to be additional technical support to assist communities with understanding and interpreting the monitoring results.
- **Independence and trust:** Communities can lose faith in the legitimacy of any institutions conducting the monitoring if they are supported with logistics, refreshments, and equipment from the company.
- **Value of monitoring data:** Government agencies may assign a lower value to the data collected by the community than by the company.

- **Human health:** Monitoring does not address the health of people in the communities.
- **Financial resources:** A mechanism needs to be in place to sustainably finance ongoing, long-term monitoring.
- **Follow-up:** Results from the participatory monitoring need to be analyzed through follow-up discussions and comparison with results from government agency monitoring and auditing, and there need to be consequences if non-compliance is identified by the participatory monitoring program.

As with most legislation, implementation is critical to ensure the objectives of the legislation are met. Unfortunately, participatory monitoring only addresses one aspect of a very complex set of factors that cause conflict between mines and communities in Peru (Sáenz, 2018). Nonetheless, a legal framework should be comprehensive and cover the range of factors needed for the effective implementation of a participatory monitoring program. An effective program supports *meaningful* community participation in monitoring and enforcement and can result in a strong tool that promotes trust and helps reduce the risk of conflict.



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