



Supporting Implementation of the Mining Policy Framework in Member States of the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development

# DOMINICAN REPUBLIC: Assessment of implementation readiness

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*October 2014*

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## Executive Summary

This assessment, conducted by the International Institute for Sustainable Development (IISD) between January and April 2014, with support from the Canadian Department of Foreign Affairs, Trade and Development (DFATD), evaluates the mining law and policies of the Dominican Republic and their implementation under the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF) Mining Policy Framework (MPF). The assessment concludes with this report, which involved desk-based research and an 11-day field study in the Dominican Republic with visits to mining areas and numerous discussions with a range of stakeholders.

The assessment team identified the following **major strengths** in the Dominican Republic's mining law and policy framework:

1. Environmental law in the Dominican Republic provides a comprehensive environmental management framework that is widely supported by government, industry, academic and civil society stakeholders.
2. A percentage of the net benefits from mining activities are required to be transferred to the municipalities where mining takes place.
3. Companies are required to consult with communities prior to mine development, and to provide semi-annual project reports to the Ministry of Environment.
4. Companies are also required to provide and update mine closure plans with their semi-annual reports, and to provide financial assurance for closure and post-closure expenses.
5. Artisanal and Small-Scale Mining (ASM) issues are being prioritized: 2014 has been declared "The Year of Small-Scale Mining" and the government has appointed a professional to the Mining General Directorate to focus on ASM issues.

The assessment team identified five **major weaknesses**:

1. Mining Law No. 146 is out of date in many respects and needs to be revised as soon as possible.
2. There is a widespread need for increased transparency, both in the permitting process and in revenue distribution from mining.
3. Mining has not been adequately integrated into national, provincial and municipal development strategies, preventing the Dominican Republic from optimizing the social and economic benefits from mining.
4. Planning for social and economic transitions for those whose livelihoods depend upon extractive industry activities has not been adequately addressed.
5. Artisanal and small-scale mining (ASM) needs to be formalized.

The major findings from each of the six MPF themes are summarized in the table below.

**TABLE 1. MAJOR FINDINGS FROM EACH OF THE SIX MPF THEMES**

MINING POLICY FRAMEWORK THEME	LEVEL OF PROGRESS	STRENGTHS	WEAKNESSES
Legal and Policy Environment	MEDIUM	<ul style="list-style-type: none"> <li>• The National Constitution subjects mineral exploration and exploitation to environmental and sustainability criteria.</li> <li>• Geological information is produced at the national level and is available to the general public.</li> <li>• Implementation of the Free Access to Public Information law.</li> <li>• Companies are required to submit semiannual and annual economic and technical reports.</li> <li>• Companies are required to submit environmental impact assessments and programs for environmental management and adaptation.</li> <li>• The system of environmental permits is divided by categories according to level of environmental impact.</li> </ul>	<ul style="list-style-type: none"> <li>• The primary national mining law, Law No. 146, has not been updated since 1971 and needs to be revised.</li> <li>• Inadequate coordination among ministries regarding policy formulation and land use planning.</li> <li>• Lack of detailed geological data.</li> <li>• Lack of detailed requirements for ongoing consultations with mine-affected communities.</li> <li>• Insufficient coordination and technical capacity in the environmental permitting process.</li> <li>• Insufficient integration of environmental, social and economic impact assessment</li> <li>• Legislation does not adequately address resettlement of communities due to mining activities.</li> <li>• The use of special contracts leads to lack of transparency and inconsistency in the permitting process.</li> <li>• The concession application process is inefficient.</li> <li>• Leadership in mining contract negotiations does not consistently include the Mining General Directorate.</li> </ul>
Financial Benefit Optimization	MEDIUM	<ul style="list-style-type: none"> <li>• Income tax is based on net profits and transfer prices are considered.</li> <li>• Mining entities are required by Law No. 64-00 to transfer 5% of their net benefits to municipal governments.</li> <li>• High level of capacity to negotiate special contracts.</li> </ul>	<ul style="list-style-type: none"> <li>• The wide variance in taxes required by current contracts complicates tax administration</li> <li>• The tax system does not allow sufficient flexibility to balance government revenues and an adequate rate of return for mining companies.</li> <li>• The fiscal policy in the law and in special contracts is not clearly linked to public policy objectives.</li> <li>• Information regarding the distribution of benefits from mining is limited and is not readily accessible to the public.</li> <li>• Weak administrative and financial capacity of some municipal governments.</li> <li>• Lack of integration with other sectors to optimize the benefits of mining.</li> </ul>
Socio-economic Benefit Optimization	LOW	<ul style="list-style-type: none"> <li>• Regulation 207-98 allows mining authorities to take into consideration socio-economic benefits.</li> <li>• Law No. 64-00 requires mining companies to pay 5% of net benefits to the municipal governments of the area where the mine is located.</li> <li>• The labour code (16-92) requires that Dominican nationals represent 80% of employees and 80% of total salaries paid by any company active in the country.</li> <li>• Health and safety standards are compulsory.</li> <li>• Many voluntary company-funded social programs are underway in the Dominican Republic.</li> </ul>	<ul style="list-style-type: none"> <li>• Explicit requirement for socio-economic plans are not part of the permitting process.</li> <li>• There is little integration of mining activities in the national development strategy.</li> <li>• Lack of clear guidelines and transparency regarding use of monies paid to municipal governments.</li> <li>• Low levels of education reduce access to potential benefits generated by mining.</li> <li>• Enforcement of health and safety norms appears to be weak.</li> <li>• Negative perception of mining in communities and civil society.</li> </ul>

MINING POLICY FRAMEWORK THEME	LEVEL OF PROGRESS	STRENGTHS	WEAKNESSES
Environmental Management	MEDIUM	<ul style="list-style-type: none"> <li>Environmental Law No. 64-00 provides a comprehensive environmental management framework.</li> <li>The Environmental Law requires a consultation process, involving communities in the evaluation of environmental impacts and in consideration of alternatives.</li> <li>The Environmental Law requires mining companies to submit detailed semiannual reports to the Ministry of Environment.</li> <li>The Environmental Law emphasizes the effects of mining on sustainable development and biodiversity.</li> <li>Companies are required to provide emergency programs.</li> </ul>	<ul style="list-style-type: none"> <li>The use of surface and groundwater is not strictly monitored, nor are appropriate penalties applied.</li> <li>The sanctions attached to violating the Environmental Law should be clarified and applied in a consistent manner.</li> <li>While standards regarding quality and quantity of mining effluent exist, there is a lack of consistency in the monitoring and implementation of these standards.</li> <li>Protection, specifically for water-leaching or percolating waste dumps, tailing storage areas and leach pads, should be developed and implemented.</li> <li>Environmental Impact Assessments do not require consideration of transboundary impacts.</li> <li>Environmental assessments and company reports are not readily accessible to the public.</li> <li>There are no requirements for ongoing consultation and cooperation with local governments, local communities and other stakeholders in relation to emergency-preparedness programs or other aspects of mining projects.</li> <li>Ad hoc terms of reference for each mining project lead to a lack of consistency in the permitting process.</li> <li>The Constitutional Court has confirmed a court decision to suspend the execution of a mining project due to their negative environmental impacts.</li> </ul>
Post-mining Transition	MEDIUM	<ul style="list-style-type: none"> <li>Companies are required to provide financial assurance for closure and post-closure expenses.</li> <li>Mine closure plans include considerations for biodiversity and reforestation of mining areas.</li> <li>Law No. 64-00 requires progressive rehabilitation, as well as ongoing reporting and revision of mine closure plans.</li> <li>Law No. 64-00 requires some level of community consultation regarding the mine closure plan during the Environmental Assessment process.</li> </ul>	<ul style="list-style-type: none"> <li>The framework for mine closure planning does not sufficiently encourage reduction of negative economic and social impacts of mine closure.</li> <li>Institutional capacity to monitor and enforce mine closure plans is weak.</li> <li>The government does not always require use of external experts for validation of risk assessments or studies and activities associated with high risk elements such as tailings, waste dumps and acid rock drainage.</li> <li>Mining companies are not required to follow internationally accepted guidelines and best practices, such as the International Finance Corporation (IFC) Performance Standards on Social &amp; Environmental Sustainability.</li> </ul>
Artisanal and Small Scale Mining	LOW	<ul style="list-style-type: none"> <li>The government has helped create mining cooperatives, providing an organizational framework for small-scale miners.</li> <li>The extraction of alluvial gold using rudimentary techniques has been regulated.</li> <li>The environmental assessment and permitting framework, through its system of categorization of environmental impacts, facilitates inclusion of small-scale mining activities.</li> <li>There is widespread awareness within the Mining General Directorate regarding the challenges and opportunities related to small-scale mining.</li> </ul>	<ul style="list-style-type: none"> <li>Almost all ASM activities are informal.</li> <li>Lack of a coordinated government strategy regarding ASM.</li> <li>Limited human resources and technical capacity within the government regarding health, safety and environmental considerations linked to ASM activity.</li> <li>Regular reports of unsafe conditions and child labour in small-scale mines.</li> </ul>

## 1.0 Introduction

With support from the Canadian Department of Foreign Affairs, Trade and Development (DFATD), the International Institute for Sustainable Development (IISD) is working with selected member states of the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF) to help them operationalize practices consistent with the IGF's Mining Policy Framework (MPF). As a first step, IISD has conducted assessments of national law, policy and administrative frameworks for mining and minerals development and management in three IGF member States (Dominican Republic, Uganda and Madagascar) relative to the six themes of the MPF. These assessments measure the readiness of the member states to implement the MPF through existing government measures, with a view to helping governments target their efforts in implementing the MPF, informing capacity building efforts, and allowing for monitoring of progress over time.

The MPF is the starting point for the assessment process. It is important to note that the MPF is a general document with very broad coverage. Specific elements of the MPF may not be applicable in every context. The assessment team did not review any specific elements of the MPF to determine whether they should apply in the specific context of the Dominican Republic, only to determine if they were being applied. Hence this review does not imply any independent review, or approval or disapproval, of any part of the MPF by IISD, nor does it constitute legal advice.

This document presents the findings of the assessment process conducted in the Dominican Republic between January and April 2014. It is structured as follows: the next section describes the methodology used to conduct the assessment; Section Three gives an overview of the mining sector in the Dominican Republic and the policy context; Section Four presents the main results of the assessment along with the six dimensions of the MPF; Section Five discusses these results with a view to identifying key strengths and weaknesses; and Section Six presents some initial recommendations regarding implementation gaps that require particular attention from the host country government.

### Relationship Between Mining and Sustainable Development

The growing demand for non-renewable mineral resources is one of the greatest sustainability challenges—and opportunities—of our time. While grappling with the important question of how to meet a growing population's need for limited natural resources in a way that takes into consideration the needs of future generations, it is all too easy to overlook opportunities to capture the benefits that mining can contribute, particularly to a nation's long-term social and economic development. Among these benefits are employment and skill development, education, infrastructure development, and revenue, which can be maximized in countries where the legal and policy framework promotes development benefits while upholding strong environmental and social standards. The Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development is working to advance such policies and good governance practices through its Mining Policy Framework.

### Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development

At the World Summit on Sustainable Development, held in Johannesburg, South Africa in 2002, the challenges and opportunities related to mining and sustainable development were recognized and highlighted in Section 46 of the Johannesburg Plan of Implementation (United Nations, 2002). Out of this process, a number of member states came together to establish the Intergovernmental Forum on Mining, Minerals and Sustainable Development (IGF). The IGF is a voluntary initiative that provides opportunities for national governments with an interest in mining to work collectively to advance priorities identified in the Johannesburg Plan of Implementation. The IGF is the only global policy forum for the mining and metals sector with the overarching objective of enhancing capacities for good governance in the sector.

The major goals of the IGF are to enhance and promote the contribution of the mining, minerals and metals sector to sustainable development, and to provide governments with a framework in which to discuss the opportunities and challenges of the sector. At present, there are 48 IGF member countries, with Canada acting as Forum Secretariat.

## 2.0 Methodology

This assessment was completed through the following phases and timeframes:

- **Desk-based research:** The assessment team conducted a document and literature review gathered through web-based and independent sources, and initial information gathering from the Mining General Directorate. Documents included: (i) general mining laws and regulations, (ii) environmental laws and regulations, (iii) other administrative laws, (iv) the national constitution, (v) international treaties, (vi) applicable labour, health and security regulations, (vii) applicable fiscal laws, (viii) access to public information laws, (ix) foreign direct investment legislation, (x) available mine development contracts, (xi) social and economic reports, (xii) international indexes, and (xiii) general information regarding the mining sector and the political context. The desk-based research took place from January to March 2014.
- **Field visit and stakeholder consultations:** The assessment team consulted several stakeholder groups in the Dominican Republic, including government agencies, mining companies and representatives from civil society. The visit to the country took place from March 10-19, 2014 and included one day of site visits to key mining regions.
- **Making the assessment:** Upon conclusion of the stakeholder consultations and before the validation meeting, the assessment team “scored” the level of implementation for the MPF (low, medium or high). This was largely a qualitative evaluation based on the full scope of the desk research and the government and stakeholder meetings.
- **Validation meeting with government representatives:** The last day of the field visit, on March 19, 2014, was reserved for a validation meeting in which the team presented its preliminary findings regarding the level of implementation of the MPF. The aims of the meeting were to ensure that key information had been collected and key stakeholders consulted by the team, and to verify preliminary findings.
- **The assessment report:** After the field visit, the assessment team received additional stakeholder feedback and drafted this report. This process took place from the end of March to the end of May 2014.

## 3.0 National Context

### 3.1 Overview of the Mining Sector in the Dominican Republic

#### Major Mining Operations in the Dominican Republic

Until the early 2000s, foreign investment in mining in the Dominican Republic was insignificant. Falconbridge (Falcondo), a Canadian company acquired by the Swiss company Xstrata in 2006, is the only large foreign company to have been working in the Dominican Republic since the 1950s, when it started exploration activities. Falconbridge mined nickel deposits, primarily in the Bonao region. Due to low nickel prices, Falconbridge suspended operations in the 1990s, only to resume operations when nickel prices recovered in 2004 (UNCTAD, 2009).

Pueblo Viejo, a gold and silver mining project in Sanchez Ramirez province, has a long history in the Dominican Republic and is the largest mining project to be undertaken in the country. Rosario Dominicana, a state-owned mining company, carried out Pueblo Viejo's open pit mining project from 1975 to 1999, when it closed due to low prices and other factors. The project produced 5.5 million ounces of gold and 25.2 million ounces of silver, but also resulted in environmental liabilities that impacted surface water and groundwater in the project area (InfoMine, 2011). In 2002, Placer Dome of Canada won a tender to reopen the abandoned mine, which included remediation of the site. Operations continued when Barrick Gold (also a Canadian company) acquired Placer Dome in 2006 (Mining Facts.org, 2012).

The Rosario Dominicana operation left behind high-grade gold-silver refractory tailings at a nearby site called Las Lagunas. EnviroGold, a PanTerra Gold (Australia) subsidiary, signed a special contract with the Dominican Republic in 2004 granting it the right to reprocess these tailings. Under this special contract, EnviroGold is exempted from income tax in the Dominican Republic, but will share 25 per cent of its operating profit with the Government from 2016, after the Company has recovered approximately US\$70 million of direct investment for process plant construction (Panterra Gold, 2014).

Corporación Minera Dominicana (CORMIDOM) is representative of medium-scale mining in the Dominican Republic. A subsidiary of the Australian company Perilya Limited, CORMIDOM started surface mining operations in 2008, employing approximately 400 people in Monseñor Nohuel province. CORMIDOM also has exploration projects in the province.

Cement production and the extraction of limestone, clay, silica, gypsum, and other manufacturing materials are also significant in the Dominican Republic. Companies like CEMEX Cementos Cibao, Cementos Panan Dominicana and Cementos Santo Domingo are among the companies involved in this activity in the country. Qualities and deposit reserves of bauxite, particularly from the Pedernales region, are currently being evaluated.

Exploration activities in the Dominican Republic are also focused on gold, copper and zinc; two Canadian companies, Goldquest Mining Corp. and Unigold Inc. are leading much of the exploration activity for these minerals.

#### Economic Importance of the Mining Sector

The mining sector is increasingly important to the Dominican Republic's economy, contributing almost 50 per cent to the growth of the country's GDP per capita from 2000 to 2011 (the figure for Latin America and the Caribbean region as a whole was 26 per cent) (Central Bank, 2014).

According to the Dominican Republic's Central Bank, the mining sector (based on the aggregate value of mining activity) grew by 42 per cent in 2012 and 157 per cent in 2013, while the entire economy grew by 3.9 per cent and 4.1 per cent in those years. The driver of growth in the mining sector has been rising production of gold and—to a lesser extent—silver, the values of which increased in 2013 by 682 per cent and 246 per cent, respectively. Nickel production, on the other hand, has decreased (Central Bank, 2014). Minerals are an increasingly significant source of export earnings for the Dominican Republic: in 2013, gold exports increased by 582 per cent, and silver exports by 135 per cent. Combined exports of gold, silver and nickel amounted to US\$1.4 billion in 2013, or nearly 15 per cent of GDP, up from 5 per cent in 2012. The positive export growth in 2013 was due to the increase in gold exports (Central Bank, 2014).

Since 2000, mining has been one of the most attractive activities for foreign direct investment (FDI) in the Dominican Republic. In the period from 2000 to June 2013, total investment in this sector was US\$4 billion, representing 18.4 per cent of total FDI. By 2012, it constituted a major flow of investment, at US\$1.17 billion (The Business Year, 2014). FDI in mining decreased by US\$93 million from 2012 to 2013. GDP, export and FDI numbers are dominated by the Pueblo Viejo mine, which began producing in 2013.

## Key Stakeholders

The Assessment Team identified the following key stakeholders in the Dominican Republic mining sector:

### Government Agencies

- Mining General Directorate
- Ministry of Environment
- Ministry of Commerce and Industry (to be replaced by the Ministry of Energy and Mines in every aspect related to mining under Mining Law No. 146 and its regulations)
- Internal Taxes General Directorate
- National Institute of Hydraulic Resources (INDRHI)
- Ministry of Economy, Planning and Development (MEPyD)

### Companies

- Pueblo Viejo – Barrick Gold
- Falcondo – XtrataNickel
- Las Lagunas – PanTerra Gold Limited
- Corporación Minera Dominicana (CORMIDOM)

### Civil Society

- *Programa de las Naciones Unidas para el Desarrollo* (United Nations Development Programme)
- *Participación Ciudadana*
- *Fundación Sur Futuro*
- *Fundación Justicia y Transparencia* (recently won an appeal for legal protection of the Loma Miranda mining site to be explored and mined by Falcondo)

## 3.2 Legal and Policy Framework

The Dominican Republic legal framework for this assessment consists of the following key laws and regulations:

### Domestic Law & Policy

- **The 2010 Constitution of the Dominican Republic** provides a general framework for mining legislation by declaring that “the mineral and hydrocarbon deposits and, in general, the non-renewable natural resources, can only be explored or exploited by individuals, under sustainable environmental criteria, by virtue of concessions, contracts, licenses, permits or quotas, in accordance with the conditions that the law determines.” (Constituteproject.org, 2014)
- **Mining Law No. 146 (1971)** and **Resolution No. 207-98 (1998)** apply to all mining activities in the country with the exception of sand, gravel and other materials covered in **Law No. 123**, as well as petroleum and derivatives.

- **Environmental Law No. 64-00** was enacted in 2000 and plays an important role in the Dominican Republic mining sector today. It is a comprehensive law for the protection, conservation and improvement of the Dominican environment, and ensures the sustainable use of natural resources. It requires that mining companies prevent, control and mitigate environmental risks. The development, exploitation and processing of metallic and non-metallic minerals require an environmental license.
- **Foreign Direct Investment (FDI)** legislation changed in 1995 with **Law No. 16-95**, which opened up most sectors of the Dominican economy to foreign investment and increased the flows of FDI to the country. It removed the requirement of pre-approval of investments by the Central Bank. Investment and export promotion were then merged in Act No. 98-03 (UNCTAD, 2009).
- **Free Access to Public Information Law No. 200-04** guarantees the right of citizens to access public information of every governmental office in a complete, open and timely manner and requires the offices to move toward direct access (e.g., online) information platforms.
- **Fiscal Code Law No. 11-92** and amendments establish the internal national tax system and related legal relations.
- **Labour Code No. 16-92** is the general law passed in 1992 for regulating all private labour relations in the Dominican Republic, including the mining sector.
- **Regulation No. 22 (2013)** is the Compendium of Environmental Authorizations, Regulations and Procedures containing regulations regarding the environmental impact assessment process.
- **Law No. 123 (1971)** governs the extraction of materials from the earth crust including sand, gravel and chippings, and provides for a separate permitting system through the Ministry of Environment.
- **Labour Security and Health Regulation No. 522-06** is the regulation of labour security and health applicable to the activities of the private sector in the country.
- **Environmental Standards for Non-metallic Mining Operations** are the environmental regulations applicable to any non-metallic mining operation in the country.
- **Law No. 487 (1969)** on the Control of Exploitation and Conservation of Groundwater Waters.
- **Law No. 5852 (1962) on Subsurface Water and Distribution of Public Water** regulates the distribution of surface waters and the process for obtaining water titles.
- **Law No. 50 (2010) creating the National Geology Service.**

## International Law & Policy

The Dominican Republic's International commitments include (but are not limited to) the following:

- The Dominican Republic ratified the **Kyoto Protocol** in February 2002 and has announced that it will cut its greenhouse gas emissions by 25 per cent from 2010 levels by 2030, making it the first developing country to commit to an absolute reduction. The country also signed the **United Nations Framework Convention on Climate Change (UNFCCC)** on June 12, 1992, adopted on October 7, 1998.
- The country endorsed the **Extractive Industries Transparency Initiative (EITI)** on March 2012 and is now working towards EITI Candidacy.
- The Dominican Republic committed to adhering to the **Universal Declaration of Human Rights** and submits reports on its progress and domestic achievements in human rights.
- The Dominican Republic accepted the **International Covenant on Economic Social and Cultural Rights** on January 4, 1978 and reports on its compliance with the Covenant.
- The country joined the **International Convention on the Elimination of All Forms of Discrimination against Women** on July 17, 1980 and reports on its progress.

- The country has also ratified several **International Labour Organization (ILO) Conventions** (not including ILO 169).
- The Dominican Republic adopted the **Convention on the Rights of the Child** on August 8, 1990 and reports on its progress.
- The Dominican Republic is also a signatory to international agreements relating to the handling of hazardous chemicals: the **Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal** (adopted on March 22, 1989), the **Stockholm Convention on Persistent Organic Pollutants** (signed in May 2001) and the **Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade** (adopted in September 1998).

The links to the reports of each of the commitments can be found in the References section.

### 3.3 Sustainable Development Issues

While the Dominican Republic is one of the fastest growing economies in Latin America, it is a nation of great inequality: over one third of the country's population lives in poverty and over 12 per cent live in extreme poverty (United Nations Development Programme–United Nations Environment Programme [UNDP-UNEP], 2014). Social expenditures rank among the lowest in Latin America, with the Dominican Republic reported to be among the very lowest in taking advantage of economic growth to improve health and society (Oxfam, 2014).

Exacerbating the problem of inequality is the perception of corruption in the country. Transparency International, on their Corruption Perceptions Index, in which 0 is “highly corrupt” and 100 is “very clean,” gives the Dominican Republic a low score of 29 and a ranking of 123 out of the 177 countries in the Index (Transparency International, 2013).

The Human Development Index (HDI) measures long-term progress in three dimensions of human development: (1) “a long and healthy life” (measured by life expectancy), (2) “access to knowledge” (mean and expected years of schooling), and (3) “a decent standard of living” (Gross National Income [GNI] per capita). The Dominican Republic's HDI for 2012 was 0.702, an increase of 34 per cent from 1980, placing the country in the “medium human development” category, at 96 out of 187 countries and territories (UNDP, 2013).

Table 2 below shows the human development trends from 1980 – 2012 in greater detail:

**TABLE 2. HUMAN DEVELOPMENT TRENDS IN THE DOMINICAN REPUBLIC 1980–2012**

	LIFE EXPECTANCY AT BIRTH	EXPECTED YEARS OF SCHOOLING	MEAN YEARS OF SCHOOLING	GNI PER CAPITA (2005 PPP\$)	HDI VALUE
1980	62.9	9.5	3.9	3,644	0.525
1985	65.1	11	4.4	3,475	0.556
1990	67.6	11.4	5	3,669	0.584
1995	69.5	11.4	5.6	4,290	0.612
2000	70.8	11.4	6.1	5,535	0.641
2005	72	12.3	6.7	6,020	0.669
2010	73.2	12.3	7.2	8,100	0.697
2011	73.4	12.3	7.2	8,323	0.700
2012	73.6	12.3	7.2	8,506	0.702

Source: UNDP (Human Development Report 2013): Dominican Republic

The Dominican Republic places a very high value on environmental protection and biodiversity, as evidenced by its many protected areas (covering approximately 16 per cent of the nation's total land area), its commitments to reduce

greenhouse gas emissions, and the stated objectives of its Environmental Law, which aims to further the nation's commitment to protect the environment and biodiversity and to ensure sustainable development that benefits future generations.

However, the country faces many environmental challenges, particularly extreme weather events, which disproportionately affect the poor. The main environmental concerns in the country also include deforestation, land degradation and water availability, all of which have negative impacts on low income and other vulnerable groups (UNDP-UNEP, 2014).

Gender inequality is also very important to consider. The UNDP's Gender Equality Index (GII) measures gender-based inequalities based on reproductive health (maternal mortality and adolescent fertility rates), empowerment (share of parliamentary seats and attainment at secondary and higher education) and economic activity (labour market participation rate). The Dominican Republic has a GII value of 0.508, ranking it 109 out of 148 countries in the 2012 index, noting the following country statistics: 19.1 per cent of parliamentary seats are held by women, 43.3 per cent of adult women have attained secondary or higher levels of education (compared to 41.7 per cent of adult men); for every 100,000 live births, 150 women die from pregnancy related causes; and 51 per cent of women participate in the labour market compared to 78.6 per cent for men. A ranking of 109 on the GII index is low for the region; by comparison, Jamaica and El Salvador rank 87 and 82, respectively (UNDP, 2013).

While stakeholders interviewed by the Assessment Team confirmed that the Dominican Republic does not recognize any current indigenous populations, the country does have an important indigenous history that includes the Taino peoples. The Taino were the original inhabitants of the island of Hispaniola, which the Dominican Republic shares with Haiti (World Directory of Minorities and Indigenous Peoples [WDMIP], 2014). An estimated 1 million Taino inhabited the island when the Spanish arrived. The Taino were believed to have participated in some early mining efforts on the island, and the Spanish unsuccessfully attempted to enslave to Taino and force them to mine gold. Most of the Taino were killed. Those remaining became increasingly mixed with the African and European populations on the island and ceased to exist as a distinct group (WDMIP, 2014).

The Dominican Republic is a democratic republic with three branches: legislative, executive and judicial. The president (Danilo Medina since 2012) is the head of the executive branch. The country has a distinct and complex political and social history that cannot be overlooked when considering the country's future. However, recent economic and social progress coupled with a widespread commitment to sustainable development, particularly among government and civil society, are great signs of progress for the country's future.

## 4.0 Status of Implementation of the Mining Policy Framework

The MPF represents a collection of best practices required for good environmental, social and economic governance of the mining sector and the generation and equitable sharing of benefits in a manner that will contribute to sustainable development. It has universal application and represents the commitment of the IGF members to ensuring that mining activities within their jurisdictions are compatible with the objectives of sustainable development and poverty reduction (IGF, 2010).

This assessment seeks to measure the readiness of the Dominican Republic government to implement the MPF through existing government measures, with a view to helping the country target its efforts in implementing the MPF, inform capacity building efforts and allow for monitoring of progress over time.

The assessment is accordingly divided into the six themes of the MPF: legal and policy framework, financial benefit optimization, socioeconomic optimization, environmental management, post-mining transition, and artisanal and small mining. In the following subsections, we summarize each theme, the key legislation and policies applicable to the theme, and the strengths (i.e., where implementation is advanced) and weaknesses (i.e., where implementation needs more progress) within each theme. The assessment concludes with some general recommendations.

### 4.1 Legal and Policy Environment

The first pillar of the Mining Policy Framework is focused on the general law and policy framework regulating the permitting processes and encourages a mature modern legislative system with clear lines of responsibility and accountability. This combination of regulations serves as a basis for good governance and sustainable development. The MPF recommendations under this pillar fall into the following categories:

- The ongoing generation of and equal access to geological information.
- The periodic revision and updating of mining legislation and policies.
- A permitting process that requires:
  - » Consultation with communities in the planning and development stages.
  - » Submission of integrated assessments (social, economic and environmental).
  - » Identification of sustainable development opportunities.
  - » A plan and financial assurance for mine closure.
  - » Addressing indigenous people, cultural heritage, resettlement and community safety and security issues.
  - » A timely, transparent, unambiguous and consistent process.

#### Key Laws and Norms

The key laws and regulations relating to this permitting process are the Mining Law No. 146-71 and its regulation No. 207-98; Environmental Law No. 64-00 along with the various norms and procedures (e.g. Regulation No. 22); the Access to Public Information Law No. 200-04; and Law No. 123-71, which regulates the extraction of materials from the earth's crust, including sand, gravel and chippings.

#### *The Permitting System*

The permitting process for mining is governed by Mining Law No. 146. The authority is the executive branch of the government through the Mining General Directorate and the Ministry of Environment.

Mining Law No. 146 recognizes two types of concessions to perform activities in the mining sites: concessions for exploration of mining materials and concessions for the exploitation of those materials. Article 143 to 176 and resolution 207-98 involve the process of granting a mining exploitation concession. If the company fulfills the conditions, the Mining

Directorate reviews the presentation and publishes the request to call for objections. The Directorate refers its decision to the Ministry of Industry and Commerce, together with any objections. The latter evaluates the decision, corrects or cancels the application in case of objections and, when satisfied, refers it to the Executive Power. If it is not satisfied, it can require more studies from the applicant. When authorized by the Ministry of Industry and Commerce, it instructs the Mining General Directorate to verify the land, and the concessionaire must pay the fee. With the fulfillment of all of these requirements, the Ministry enacts the resolution to grant the concession for mining exploitation. Exploration concessions have a simplified and more streamlined process.

The granting of title is subject to the registration of mining rights. Any person affected by the registration of these mining rights has the right to challenge it in local courts.

Article 17 allows the executive branch to grant exploitation rights in areas declared as *reserva fiscal*. The *reservas fiscales* are mining areas of interest to the government that may be destined to cadaster, exploration and evaluation of mineral deposits or the establishment of exploitation through special contracts. Under Article 19, the mining exploitation rights in fiscal reserves are granted through a process of public bidding. The law allows the executive branch to negotiate special agreements with investors, allowing conditions that vary from Law No. 146. In the law, the use of the fiscal reserves and special contracts is treated as the exception to the rule of granting mining concessions under Law No. 146. In practice, there are several mining projects that utilize special contracts. Congressional approval is necessary only if the special contract includes tax incentives.

Article 40 of Law No. 64-00 requires that mining activities, among others, be subject to an environmental authorization from the Ministry of Environment before activity begins. The procurement of a license follows a separate process. Article 38 of Law No. 64-00 lists the documentation to be presented to the Ministry of Environment for evaluation.

## Strengths

The permitting system has a number of strengths, including:

### **The National Constitution subjects mineral exploration and exploitation to environmental and sustainability criteria.**

The national constitution declares that “the mineral and hydrocarbon deposits and, in general, the non-renewable natural resources, can only be explored or exploited by individuals, under sustainable environmental criteria, by virtue of concessions, contracts, licenses, permits or quotas, in accordance with the conditions that the law determines.” (Constituteproject.org, 2014). This declaration prioritizes the environment and raises the importance of sustainable development.

**Companies are required to submit environmental impact assessments and programs for environmental management and adaptation.** Companies are required to produce environmental impact assessments and programs for environmental management and adaptation to the Ministry of Environment. The Ministry of Environment also requires that companies present an assessment of impacts and proposed mitigation of mining activity, including mitigation measures, in addition to semiannual and annual reports on conformance to environmental plans.

**Comprehensive geological information is provided at the national level and is available to the general public.** The mining sector must rely upon accurate geological information. The Dominican government has made an effort to develop this information in a comprehensive and highly technical way through the creation of the National Geology Service.

**Implementation of the Free Access to Public Information law.** Government agencies and departments explicitly implement the Free Access to Public Information law, providing citizens and other stakeholders with access to a wide variety of information regarding the mining sector.

**The system of environmental permits is divided into categories according to level of environmental impact.** The categorization by law of different activities according to the level of environmental impact allows the Ministry of Environment to concentrate its resources and efforts on the most harmful activities, requiring a high level of detail in company reporting in this area.

**Companies are required to submit semiannual and annual economic and technical reports.** Companies are required to submit semiannual and annual information to the government regarding exploration and exploitation activities, costs, methods, extracted materials, and financial benefits, among others.

## Weaknesses

Several weaknesses in the permitting process need to be addressed:

**Mining Law No. 146 has not been updated since 1971 and needs to be revised.** Several bills have been submitted to Congress in past years to amend Mining Law No. 146. The amendments in most cases included extending the exploration period to a more realistic duration for exploration projects, creating a permit system that includes permits under Law No. 123 and updating the value of fees for exploitation permits. However, a number of other amendments need to be considered to allow the government to adapt to the changes and new technologies in the mining sector and to provide a more efficient and transparent permitting process for investors. Special contracts have been utilized, in part, to compensate for the weaknesses of Law No. 146, and the mining permitting system has become one in which the law generally applies to the smaller mining projects and while special contracts are used for large projects.

**Coordination among ministries regarding policy formulation and land-use planning is inadequate.** Law No. 123 gives the Ministry of Environment the power to grant permits for the extraction of materials from the earth's crust, including the extraction of sand, gravel and chippings. One group of stakeholders representing mining companies informed the Assessment Team that there are instances where activities authorized by the Ministry of Environment under Law No. 123 overlap with the same area granted by the Mining General Directorate through permits under Mining Law No. 146. These cases demonstrate lack of coordination between the Ministry of Environment and the Mining General Directorate and the need for a consistent policy formulation on land-use planning. However, Law No. 1-12 on the National Strategy for Development 2030, provides some direction for a national land-use plan to administer land public policy, regulate the use of land, and incentivize the sustainable use of its resources to be authorized and applied by 2015.

**Detailed geological data is lacking.** Despite the broad geographical coverage of government-generated geological information, companies must provide more detailed information (on a scale less than 1:50,000) during the permitting process. The lack of detail provided by government deters comprehensive land-use planning and the organization of successful and competitive bids.

**Detailed requirements for ongoing consultations with mine-affected communities are lacking.** The Dominican regulations do not reflect a requirement for ongoing consultations between the company and communities throughout the life of the mining project. The Ministry of Environment has developed a draft regulation to guide consultations that will aid companies and communities. However, ongoing consultations are not required. Moreover, although public consultations are required as part of impact assessments, there is no requirement for these or other consultations to result in any type of company/community agreement that may be monitored and enforced by law.

**Integration of environmental, social and economic assessments is insufficient.** The economic and technical assessment is submitted to the Mining General Directorate and the environmental assessment to the Ministry of Environment. The social considerations are included in the environmental and technical assessment, but they are very minimal.

Article 7 of Environmental Law No. 64-00 stipulates that environmental programs must be integrated with economic and social programs. Article 44 of Resolution 207-98 prescribes that the Mining General Directorate has to evaluate the national interest in the project, considering the environmental impact assessment, revenues, foreign exchange generation, import substitution, the impacts of the project in the region and on local communities, as well as benefits via direct and indirect employment. However, consideration of documented facts on these points is not required in any contract or resolution when granting the mining concession. There is little coordination in the permitting processes between these two authorities, and a very low level of assessment and capacity to assess the short- and long-term social impacts of mining operations.

**Legislation does not adequately address resettlement of communities due to mining activities.** Any required procedures related to resettlement are only covered by discretionary terms of reference issued to the mining company by the Ministry of Environment. Some multinational mining companies have voluntarily followed international guidelines and World Bank standards for the resettlement of individuals and communities.

The Assessment Team was informed that there is a community in the Sanchez Ramírez province that will need to be relocated because of mine-related noise, pollution and water contamination. Although the responsibilities are not clear, Barrick Gold was for some time distributing drinking water to the community, but this activity is now undertaken by the province.

**The use of special contracts leads to a lack of transparency and inconsistency in the permitting process.** There are minimum general requirements for all permits (including special contracts), but there are also significant differences among the special contracts, particularly related to tax administration and environmental compliance, that complicate monitoring and enforcement.

The semi-standard form contracts that formalize concessions under Mining Law No. 146 include only basic considerations and obligations, while special contracts are much more complex and detailed, and are more difficult—if not impossible—for the general public to access.

**The concession application process is inefficient.** The permitting process is littered with applications that purposefully contain erroneous or incomplete information, for the sole purpose of causing delays and placing a “reservation” on the mine area, deterring serious applicants. The Mining General Directorate has expressed its concern and plans to “clean up” the current list of applicants so that serious applications can be considered and the application process be completed within a period of no longer than four months.

**Leadership in mining contract negotiations does not consistently include the Mining General Directorate.** The planning of negotiations and renegotiations of special contracts are not necessarily conducted nor led by the Mining General Directorate, the administrative body in charge of the implementation of the Mining Law No. 146, the regulation and control of mining activities, and the planning of the mining sector. The last renegotiation of the special contract with PVDC (Barrick Gold) was led by a team of the presidency office, along with the Internal Taxes General Directorate, the Ministry of Economy and other economic advisors. The Mining General Directorate participated in preliminary meetings only in a consultative role.

## 4.2 Financial Benefit Optimization

The second pillar of the Mining Policy Framework covers the financial optimization of mining activities through taxes and royalties and reflects the value of mineral resources to society. The other major subtopic of this section is revenue transparency, on municipal and national levels. The policy recommendations under this section fall into the following categories:

- The implementation of a revenue generation framework that optimizes returns from mining activities and allows some minimum level of financial return during low price periods.
- Integration of planning for the mining sector with that of other economic sectors.
- Providing a policy that optimizes revenues while offering an adequate rate of return to investors, that uses income tax based on net profits, and that applies such taxes in a manner similar to non-mining activities.
- The need for a high level of human and intellectual resources, particularly to administer and audit the country’s tax system and obtain maximum benefit from its tax regime.
- The integration of fiscal instruments and policy objectives.
- Increasing revenue transparency and knowledge regarding the distribution of benefits from mining.

## Key Laws and Norms

The key laws and regulations relating to this section are the Mining Law No. 146-71, the Fiscal Code Law No. 11-92, the Environmental Law No. 64-00 and the Free Access to Public Information Law No. 200-04.

## The Tax System

Concessionaires pay mining-specific royalties and a variety of taxes to the Dominican government, as well as general corporate taxes. Payments include:

- Annual 25 per cent income tax.
- Concession fee (*patente*) calculated on a per-hectare basis
- 5 per cent royalty for exportation, calculated free on board for the value of the minerals exported for exploitation and processing plant operations. This payment can be credited against the payment of the income tax of the same year.
- Annual asset tax of 1 per cent of the value of assets.
- Tax withholding obligations over salaries paid to employees and distributed dividends.
- 5 per cent contribution of the generated net profits of mining activities to the municipalities where the mine is located.

Regarding concession permits under the Law No. 123, concessionaires must pay the Ministry of Environment a contribution equal to 4.10 pesos (approximately US\$0.009) per cubic meter of extracted, removed or excavated minerals. Other general taxes may also apply to mining activities such as import duties and value added tax (Pellerano & Herrera, 2008).

## Strengths

The most important strengths in the area of optimization of financial benefits are:

**Income tax is based on net profit and transfer prices are considered.** Following the trend in the global tax agenda, the Dominican Republic relies on profit-based income taxes. Therefore, the tax system is partly based on the idea that the company shares the profits of the project with the country in which it is investing.

**Mining entities are required by Law No. 64-00 to transfer 5 per cent of their net profits to municipal governments.** Companies transfer 5 per cent of their net profits to the municipalities of the area where the mine is located. With Law No. 64-00, the Dominican government has designed a mining resource revenue-sharing mechanism that, although in a small proportion, creates a more equitable distribution of benefits between the national and subnational levels. There is lack of transparency and clarity, however, regarding the collection of these benefits.

**High level of capacity to negotiate special contracts.** Stakeholders commented that the government has a high level of capacity to negotiate and renegotiate special contracts, involving international experts as needed for technical support.

## Weaknesses

The weaknesses of the tax system overshadow its strengths:

**The wide variance in taxes required by current contracts complicates tax administration.** The tax authorities commented that it is difficult to administer the wide range of tax systems imposed on mining companies, including both the taxes established in special contracts and the tax systems governed by Law No. 146. One mining company governed by Law No. 146 reported that administrators are so accustomed to working under special contracts that it was difficult to find someone who understood the standard system provided by Law No. 146.

**The tax system does not allow sufficient flexibility to balance government revenues and an adequate rate of return for mining companies.** Stakeholders expressed concern regarding the capacity of the government to anticipate price

fluctuations. At present, the flexibility of the profit-sharing system is based on special contracts and their renegotiation, particularly due to the inability to utilize the outdated Mining Law to manage large-scale modern mines.

A recent example is the contract with Barrick Gold, which was renegotiated for a second time in 2013. The objective of the renegotiation was to amend the contract, which the government found did not provide a fair level of taxes, particularly in light of increasing commodity prices. The government sought to maximize and secure the revenue of the project, as well as receive the revenues sooner than agreed to in the previous agreement. Although both parties agreed to the renegotiation, it raises concerns that the government did not adequately anticipate a long-term financial strategy for the mining sector or take fluctuations in the global commodities market into consideration.

**The fiscal policy in the law and the special contracts is not clearly linked to public policy objectives.** Government spending of mining revenues is subject to the government's budget and policy strategies. Law 1-12 on the 2030 National Development Strategy sets a number of national goals, including improving education, health and social security; equal rights and opportunities; territorial coordination; housing; national identity and culture; and better physical fitness, all to be achieved before 2030. Revenues from mining activities, however, are not linked in any clear way to these policy objectives. Negotiations on special contracts and the standard form contracts do not take into consideration national policy objectives or how these agreements and permits can support them. The government's request to Congress for a second amendment of the contract with Barrick Gold changed the profit-sharing system, improving the distribution of benefits for the government. However, it does not mention the how those revenues will be distributed or prioritized.

**Information regarding distribution of benefits from mining is limited and is not readily accessible to the public.** Although the Free Access to Public Information Law No. 200-04 requires public entities to disclose information, stakeholders commented that it is currently impossible to access information regarding the distribution of revenue from mining companies. Other than the 5 per cent payments to municipalities, mining company taxes are paid to the central government. There is no public information regarding how those taxes are earmarked, nor how their expenditure aligns with national, regional and municipal priorities.

**The administrative and financial management capacity of some municipal governments is weak.** There are no regulatory guidelines regarding the municipal government's use of the 5 per cent benefits paid to them. With the exception of the fund created in the Sanchez Ramírez province (FOMISAR), the use of municipal funds from mining has not followed a transparent and participatory model.

**There is a lack of integration with other sectors to optimize the benefits of mining.** While the Dominican Republic does have national development plans and strategies, provincial and municipal level development plans often do not exist at all or are very weak, and all fail to adequately integrate the mining sector and its social and economic impacts. It is notable, however, that Mining Law No. 146 allows for company tax deductions for construction of infrastructure or housing, allowing an inference that these are government priorities.

### 4.3 Socioeconomic Benefit Optimization

The third pillar of the Mining Policy Framework aims to promote the conversion of extracted natural capital into human capital by encouraging policies that optimize the socioeconomic benefits of mining to local, regional and national stakeholders. The policy recommendations under this theme fall into the following categories:

- Integration of mining into community, regional and national fabrics and strategies, for example, by making socioeconomic planning a part of the permitting process and by ensuring consultations with affected stakeholders take place at various stages of the mining cycle.
- Ensuring that mining activities consider and support education and community health services, working collaboratively with governments.
- Ensuring high standards of occupational health and safety through appropriate standards.
- Optimizing employment and business opportunities at the mine and outside with an objective of ensuring economic growth beyond the life of the mine.

- Addressing potential security issues.
- Considering the respect of human rights, indigenous people and cultural heritage through norms that are aligned with international laws and standards.

## Key Laws and Norms

Key laws and norms related to this theme include the Mining Law No. 146-71 and regulation No. 207-98, the labour code (16-92) and its norms on health and safety (522-06), and the Environmental Law No. (64-00).

## Strengths

The most important strengths of the laws and policies in place include the following:

**Regulation 207-98 allows mining authorities to take into consideration socioeconomic benefits.** Although socioeconomic planning is not a compulsory part of the documentation required for obtaining a mining concession, regulation 207-98 Art. 44 stipulates that the mining authorities can take into account socioeconomic benefits such as direct and indirect local employment.

**Law No. 64-00 requires mining companies to pay 5 per cent of their net benefits to the municipal government of the area where the mine is located.** This allows for concrete investments in key services such as education and health in the areas that are directly affected by the mine. One municipal government, Sanchez Ramirez, invests its 5 per cent share into a fund (*Fondo Minero Sanchez Ramirez*, or FOMISAR) under Law 91-05. FOMISAR is jointly managed with company and community stakeholders, and has produced, through broad stakeholder meetings, an integrated development plan for Sanchez Ramirez. FOMISAR funds from 2008-2013 will be used on programs related to health, education, culture, infrastructure, and environment, as well as to provide low-interest loans for microbusiness and to fund new university courses.

**The labour code (16-92) requires that Dominican nationals make up 80 per cent of employees and 80 per cent of the total salary mass of any company active in the country.** This ensures a high level of participation of Dominicans, not only in overall employment but also in jobs that require a higher level of skills and higher wages. Although no documentation was provided to verify levels of local employment, stakeholders consistently reported compliance with this requirement.

**Health and safety standards are compulsory.** Mining companies are required to have health and safety standards. Additionally, a set of detailed norms for the mining industry has been developed and awaits ministerial approval. It is notable, however, that the public health law (42-01) has no specific requirements regarding mining, and community health is not considered in mining permit requirements.

**Many voluntary company-funded social programs are underway in the Dominican Republic.** These programs support local schools, health clinics and other services that are funded by mining companies in the context of their Corporate Social Responsibility (CSR) strategies.

## Weaknesses

The most important weaknesses identified include:

**The explicit requirement for socioeconomic plans is not part of the permitting process.** In spite of the aforementioned possibility to consider some socioeconomic benefits in the approval of concession requests, and even though environmental norms do require some consideration of social and economic impacts in environmental impact assessments, there is no explicit requirement to provide socioeconomic plans in order to obtain or maintain a mining concession or environmental authorization.

**There is little integration of mining activities into the national development strategy.** At both national and subnational levels, few development strategies exist, thus the proceeds from mining activity (e.g., the 5 per cent tax on net benefits) are not integrated into longer-term development plans.

**Lack of clear guidelines and transparency regarding use of monies paid to municipal governments.** While companies are required to contribute 5 per cent of net benefits to municipalities, company and other stakeholders remarked that no information is provided to them or to the general public regarding how these funds have been or plan to be spent. The exception to this trend was FOMISAR, noted above, where expenditure planning and reports are available to the public. Some stakeholders noted their concern that the funds paid to municipalities had been misused for corrupt purposes.

**Low levels of education reduce access to mining jobs and other employment opportunities generated by mining.** Although education is a growing priority, less than a third of children in the Dominican Republic complete basic education and only 18 per cent complete mid-level education (UNDP, 2013). Stakeholders also noted a lack of mining-specific curricula at universities, although there appears to be some progress in this area. These conditions reduce the likelihood of local populations obtaining high-skills jobs in mines.

**Enforcement of health and safety norms appears to be weak.** This is linked to a relatively limited capacity for monitoring and enforcement through the labour ministry.

**Perceptions of mining in communities and civil society are negative.** Communities are suspicious of mining activities and feel uninformed. Civil society stakeholders expressed a concern for the environmental impacts of mining, and related impacts on communities and community health. A small number of nongovernmental organizations are active on mine-related issues in the Dominican Republic, focusing on procedural transparency and revenue transparency; protection of the environment; and biodiversity. One local non-governmental organization brought a case regarding the operations in a mine in an area called Loma Miranda. In this case, the Administrative Superior Court and Constitutional Tribunal ratified a decision to suspend company operations due to possible damage to the environment. UNDP has conducted at least two studies on environmental impacts of mining projects, one of which supported the findings that the proposed Loma Miranda project would have a negative impact on water resources, among others.

The Mining General Directorate is making efforts to respond to negative public perceptions of mining by providing greater access to mining information, for example through the endorsement of the Extractive Industries Transparency Initiative (EITI), and efforts towards implementing the EITI in the Dominican Republic.

## 4.4 Environmental Management

This section of the Mining Policy Framework recognizes the importance of ecosystem management to any society seeking to become more sustainable.

The themes of this section include:

- Management of water resources, surface and groundwater, guaranteeing the quality and quantity of mining effluents discharged to the environment.
- Avoiding and minimizing potential adverse effects to biodiversity through different actions and measures.
- Managing mine wastes by creating facilities, commissioning reviews by experts and preparing reports to submit to the government.
- The development and implementation of an emergency preparedness program prior to the commencement of operations and updating this program during the life of the mine to meet best practice standards.

### Key Laws and Norms

The legal framework for environmental management primarily consists of the following:

- The General Law on Environment and Natural Resources (No. 64-00)
- Environmental Standards for Nonmetallic Mining Operations
- Law No. 487 on Exploitation and Conservation of Groundwater and Subsurface Waters

- Law No. 5852 on Subsurface Water and Distribution of Public Water
- Regulation No. 207-98 for the Application of Mining Law No. 146
- The National Constitution
- Law No. 123 (1971) governing the extraction of materials from the earth's crust including sand, gravel and chippings

The Mining Law, special contracts and standard-form contracts refer to compliance with the environmental law.

## Strengths

Major strengths of the legal framework for environmental management include:

**Law No. 64-00 provides a comprehensive environmental management framework.** Stakeholder comments were consistently favorable regarding this law, which is considered by many as the best in the region.

**Law No. 64-00 requires a consultation process, involving communities in the evaluation of environmental impacts and in consideration of alternatives.** While the law does not require ongoing consultation, it does require initial consultations as part of the environmental impact assessment. These must take place and be documented before mining activity begins.

**Law No. 64-00 requires mining companies to submit detailed semiannual reports to the Ministry of Environment.** Mining companies are required to submit detailed reports on the progress of their environmental management plans, and corresponding updates to the plan, to the Ministry of Environment on an annual and semiannual basis.

**Law No. 64-00 emphasizes effects of mining on sustainable development and biodiversity.** The law declares biodiversity a "high national interest" (Art. 136) and is based on the consideration that "natural resources and biological diversity are the basis for the livelihoods of present and future generations." Also, among the Fundamental Principles presented in Chapter 1 of Law No. 64-00 is Art. 1 "to establish standards for the conservation, protection, improvement and restoration of the environment and natural resources, ensuring their sustainable use."

Companies are required to provide emergency programs. While there is a lack of coordination between company and government emergency-preparedness programs (e.g., those of the Emergency Operations Center [COE]), the government does require companies to have emergency programs for their mine site. Mining company stakeholders agreed that such programs are a priority for their operations due both to their internal company policies and to the requirements of the Dominican Republic. Some stakeholders, however, reported that company emergency programs are not developed to respond to unique local characteristics (e.g., severe weather events), but appear to be standard company programs.

## Weaknesses

Weaknesses in the Dominican Republic's environmental management framework include:

**The use of surface and groundwater is not strictly monitored, nor are appropriate penalties applied.** While surface and groundwater are covered in Environmental Law (64-00), Mining Law (146) and its implementing regulations, and more specifically in Law 487 on Exploitation and Conservation of Groundwater and Subsurface Waters, and Law 5852 on Subsurface Water and Distribution of Public Water, company stakeholders reported that, while they conduct internal monitoring processes to ensure compliance with company policy and Dominican Republic law, surface and groundwater are not strictly monitored by the government.

**The sanctions in Law No. 64-00 should be clarified and applied in a consistent manner.** Law No. 64-00 (Art. 167, et seq.) outlines sanctions that can be applied related to violations of the environmental law. Both government and company stakeholders reported that sanctions as presented in Law No. 64-00 need to be clarified and that they do not appear to be applied nor enforced in a consistent manner. Stakeholders did note, however, satisfaction that any person or

association of citizens have a legal right under Law No. 64-00 Art. 178 to bring an action related to any act or omission that results in environmental harm.

**While standards regarding quality and quantity of mining effluent exist, there is a lack of consistency in monitoring and implementing these standards.** Similar to the two points directly above, standards exist, but stakeholders reported a failure to monitor and implement the standards. This is due in part to the lack of permanent technical staff based in major mining areas.

**Protection specifically for water-leaching or percolating waste dumps, tailings storage areas and leach pads should be developed and implemented.** Waste dumps, tailings storage areas and leach pads are high-risk areas that warrant a high level of environmental protection and monitoring. Procedures, requirements and reporting that are specific to these areas should be developed and implemented.

**Environmental Impact Assessments do not require consideration of transboundary impacts.** The MPF states that governments should require that “mining entities have in place practices and plans that minimize the likelihood of impacts beyond the mining site, particularly potential trans-boundary impacts.” At present, although the Dominican Republic has signed the Basel, Rotterdam and Stockholm Conventions for the management of hazardous chemical waste, the country’s environmental law and environmental impact assessment process do not require consideration of potential transboundary impacts. This is highly relevant given that the Dominican Republic shares a limited land mass with neighbouring Haiti.

**Environmental assessments and company reports are not readily accessible to the public.** Law No. 64-00, Chapter 1, Art. 6, states that:

*the State shall ensure the participation of communities and the country's inhabitants in the conservation, management and sustainable use of natural resources and the environment, and access to timely information on the status and state of the same.*

Law No. 64-00 Art. 48 also requires the Secretariat of Environmental and Natural Resources to make public all granted environmental permits and licenses. However, while citizens may request access to environmental impact assessments and other company reports related to environmental and social impacts of mining projects through the Free Access to Public Information Law No. 200-04, stakeholders report that this is a very long process that requires travel to Santo Domingo.

**There are no requirements for ongoing consultation and cooperation with local governments, local communities and other stakeholders in relation to emergency preparedness programs or other aspects of mining projects.** Requirements for consultation are limited to the environmental permitting process, and there are no requirements for ongoing consultation with communities, even on important topics like emergency preparedness. Furthermore, while the Emergency Operations Center (COE) integrated the internationally recognized United Nations Environmental Programme’s “Awareness and Preparedness for Emergencies at Local Level (APELL)” process into its national emergency response manual, there remains a disconnect between national-level emergency planning and the emergency plans of mining companies. The involvement of the Ministry of Environment in COE, however, is a positive opportunity for improved planning, particularly as the Ministry has local staff in some mining regions.

**Ad hoc terms of reference for each mining project lead to lack of consistency in the permitting process.** Regulation No. 22, Art. 25 explains that the Ministry of Environment will issue ad hoc terms of reference for each project regarding the environmental studies to be prepared by the company. These terms of reference are discretionary and are not made available to the public. Furthermore, the lack of any uniform terms of reference leads to inconsistency in the permitting process.

**A number of NGOs questioned the validity of the environmental impact assessment and permitting process, specifically regarding the mine in Loma Miranda.** A local non-governmental organization brought forward a case regarding operations at a mine in Loma Miranda, in which the Administrative Superior Court and Constitutional tribunal ratified the decision to suspend the operations due to the possible damage to the environment. The courts questioned

the environmental studies conducted by the company under the ad hoc terms of reference. Additionally, UNDP has conducted at least two studies on environmental impacts of mining projects, one of which supported the findings that the proposed Loma Miranda project would have a negative impact on water resources, among others.

## 4.5 Post-Mining Transition

This section of the Mining Policy Framework is predicated on the fact that, to be consistent with sustainable development, a mining operation must take closure planning into consideration throughout the life of the mine.

The themes of this section of the MPF include:

- Ensuring that closure plans prepared by mining companies are of a high standard and are updated on a regular basis
- Developing financial assurance mechanisms for mine closure
- Taking a leading role in exploring options for orphaned and abandoned mines within the State's jurisdiction

### Key Laws and Norms

Key laws on this topic include:

- General Law on Environmental and Natural Resources (No. 64-00)
- Regulation No. 207-98 for the Implementation of Mining Law No. 146
- Regulation No. 22
- Mine closure is also covered in special contracts (e.g., Barrick Gold)

### Strengths

**Companies are required to provide financial assurance for closure and post-closure expenses.** Mine closure is required by Law No. 64-00 and also in special contracts, which require financial assurance for closure and post-closure expenses. Law No. 64-00 Art. 47 requires a performance bond equal to 10 per cent of the total cost of “physical works and investments” needed to carry out the environmental management plan.

**Mine closure plans include considerations for biodiversity and reforestation of mining areas** Regulation No. 207-98 Art. 39 outlines company responsibilities for damage to the environment, which remain up to three years after mine closure. The three primary responsibilities are measures that ensure ground stability, measures to prevent water pollution, and “reforestation of mined areas, considering the biodiversity of the environment.”

**Law No. 64-00 requires progressive rehabilitation, as well as ongoing reporting and revision of mine closure plans.** The law envisions that mine closure is an ongoing process that is conducted throughout the life of the mine, as provided in the company's environmental management plans.

**Law No. 64-00 requires some level of community consultation regarding the mine closure plan during Environmental Assessment.** Law No. 64-00 Art. 38 requires Public Consultation within its framework for Environmental Assessment. This consultation is comprehensive, including environmental plans and mine closure plans. Stakeholders commented, however, that the period for this consultation was too short and should be extended.

### Weaknesses

Weaknesses in the policy framework regarding post-mining transition include:

**The mine closure planning framework does not sufficiently encourage reduction of economic and social impacts.** The MPF (p. 39) envisions:

*Putting in place a framework to encourage progressive rehabilitation in mining areas as soon as the disturbed area is no longer needed for mining. This would reduce future closure liabilities and reverse or minimize future environmental, economic and social impacts.*

Mining Law No. 146 only vaguely addresses mine closure, and attempts to introduce a regulation on mine closure in the last decade were not successful. However, mine closure is more adequately addressed through the environmental permitting process. Progressive environmental rehabilitation, including reforestation, is required, as well as semiannual reporting on progress against environmental management plans, including reporting on mine closure plans. The framework for mine closure does not, however, require any planning or action to reduce economic and social impacts.

**Institutional capacity to monitor and enforce mine closure plans is weak.** Stakeholders commented that institutional capacity to monitor environmental management plans, including mine closure, is weak. This is in part due to limited staffing, particularly limited staff in areas where mines are located.

**The government does not always require the use of external experts for validation of risk assessments, studies, and activities associated with high-risk elements such as tailings dams, waste dumps and acid rock drainage.** The MPF (p. 14) contemplates:

*Requiring the use of external experts by entities to contribute to the development of closure plans and to validate the risk assessments, studies and activities associated with high risk elements such as tailings dams, waste dumps and acid rock drainage.*

The *Instituto Nacional de Recursos Hidráulico* (INDRHI) and the government team involved in negotiations regarding environmental liabilities of Rosario Dominicana reported using external experts. However, this is not always a requirement when working in the high-risk areas listed above.

**Mining companies are not required to follow internationally accepted guidelines and best practices, such as the International Finance Corporation (IFC) Performance Standards on Social & Environmental Sustainability.** While companies may of their own accord use internationally accepted guidelines and best practices, (for example, Barrick Gold and Falcondo utilized World Bank standards on relocation), these are generally not required. Law No. 64-00 does, however, encourage companies to implement environmental management systems within the principles of the ISO-14000.

## 4.6 Artisanal and Small-Scale Mining (ASM)

In relation to artisanal and small-scale mining (ASM), the MPF aims to enhance the quality of life of miners working outside the legal framework and to enhance the contribution of ASM to sustainable development. The policy recommendations under this theme fall into the following categories:

- Integration of ASM into the legal system through appropriate legal frameworks, technical support and formalization strategies.
- Integration of ASM into the formal economic system through the promotion of savings and investment, appropriate and transparent revenue policies, certification programs and collaboration with larger mines.
- Reduction of social and environmental impacts through the provision of technical training, minimal health and safety standards, programs against child labour, promotion of the role and security of women in ASM, and rural development and job creation policies to promote alternative livelihoods.

### **ASM in the Dominican Republic**

ASM activities in the Dominican Republic are primarily found around semi-precious larimar, amber and gold deposits. Lack of technical knowledge, equipment, organization and financing makes the activity dangerous for workers and inefficient both for the miners and the government. There is potential in this subsector, especially considering the

increasing popularity of technical training on ASM and awareness raised by specialized jewelry stores and certification schemes.

Data regarding this mining subsector is virtually nonexistent. Stakeholders reported the existence of between 20 to 50 small-scale mining sites, but these estimates cannot be confirmed. Geological studies have taken place, but the knowledge of the current levels of production, conditions, environmental impacts, and labour considerations, among others, is very low. Stakeholders reported that in recent years there have been at least 17 fatal accidents related to ASM activities, often in shaft mine accidents, and that child labour is a concern in some areas.

## Key Laws and Norms

Several of the laws mentioned in the above sections are also relevant here in terms of their content, but are rarely applied and enforced in the context of ASM activities. There is no law specifically governing ASM activities.

## Strengths

**The government has helped create mining cooperatives, providing an organizational framework for small-scale miners.** The Dominican government, through the national Institute for Cooperative Development and Credit (IDECOOP), helped create mining cooperatives in some areas of the country, increasing the organization of miners. It has also engaged the European Union in a project called “SYSMIN” to help small and medium-sized mining enterprises as well as artisanal cooperatives. The project SYSMIN I, initiated in 1996, treated deposits of limestone, gypsum, ornamental rocks, and raw material for cement. It also helped organize a mining fund. SYSMIN II aimed to work with cooperatives through planning small-scale operations and working collaboratively with processing and prospecting companies.

**The extraction of alluvial gold using rudimentary techniques has been regulated.** Mining Law No. 146-71 and Regulation No. 207-98 legalize the extraction of alluvial gold with rudimentary techniques, and clarify that key environmental norms can be applied to such activities.

**The environmental impact assessment and permitting framework, through its system of categorization of environmental impacts, facilitates inclusion of small-scale mining activities.** The environmental authorizations are differentiated by categories regarding size and potential impacts of mining activities, which facilitates the evaluation of small-scale mining activities under the current environmental framework. ASM may benefit from this system, which could validate their environmental management systems and, to some extent, their social management systems.

**There is widespread awareness within the Mining General Directorate regarding the challenges and opportunities related to small-scale mining.** There appears to be a good level of political awareness among government sectors, particularly within the Mining General Directorate, regarding the challenges of small-scale mining. The President of the Dominican Republic is prioritizing the promotion of small and medium-sized enterprises (SMEs) in general and has also spoken about the importance of ASM. The Mining Directorate has declared 2014 “the year of small-scale mining” and has a sub-directorate appointed to work in this area. Among other things, they are collecting data regarding the location of small-scale mines, developing geological maps and assessing the level of employment created by this sector.

## Weaknesses

**Almost all ASM activity is informal.** Three in every four jobs created in the Dominican Republic between 2004 and 2011 were in the informal sector (World Bank, 2014). Informality is a generally a characteristic of ASM both globally and in the Dominican Republic; this is partly due to the lack of specific norms to deal with the unique problems of the sector. The majority of job creation, instead, has occurred in low-skill, low-productivity sectors, which suggests that many of the jobs created are of low quality.

**There is no coordinated government strategy regarding ASM.** Although ASM is a source of wealth for small entrepreneurs, and it could be a source of tax revenue for the government, its informality and the absence of any coordinated government strategy to promote change stifle the sector’s potential. Medium-scale informal mines further complicate ASM problems: some informal mine sites have reached a size that can no longer be considered “small.”

While various government agencies in the Dominican are working on ASM, there are no signs of plans to integrate ASM into subnational and national development plans. The legislation does not consider ASM specifically, and there is a lack of control and monitoring over the environmental, social and economic impacts of small-scale mining activity.

**There are limited human resources and technical capacities within the government regarding health, safety, and environmental considerations linked to ASM.** There is a lack of technical capacity within the government to effectively deal with ASM. The Ministry of Labour has shown interest in working on issues related to ASM activities, but this Ministry and others lack an organized plan and national strategy. Technical capacity building activities with relevant government ministries on issues such as health and safety, environment, and economic opportunities appear to be very limited. However, through the SYSMIN projects conducted some time ago, the mining cooperatives have received training on security, environment, socioeconomic assessments, and the legal recognition of the extraction area, among others.

**Regular reports of unsafe conditions and child labour in small-scale mines.** Addressing the complex social, economic and environmental issues of the ASM sector is very difficult. The working conditions in most of the mines are precarious and dangerous. There are regular reports of asphyxia, trauma, serious injuries and even deaths among small-scale mines, primarily due to the lack of appropriate safety gear, security, technology and, in general, awareness. There are also reports of child labour, with children working in very dangerous conditions.

## 5.0 Analysis of Strengths and Weaknesses

The willingness of the Government of the Dominican Republic to volunteer to undergo the assessment presented here speaks volumes for its desire to understand and address weaknesses, while building upon and maintaining its strengths. The Assessment Team recognizes that the Mining Policy Framework is a very comprehensive and demanding framework, and the agreement to undergo the level of document sharing, candid dialogue, and transparent reporting that is required by this assessment is a bold statement of the Government's commitment to maximizing the benefits of its mining sector for the social and economic well-being of the country, while protecting the unique biodiversity and beauty for which the country is internationally recognized.

The Assessment Team found that the Dominican Republic has a medium level of preparedness with respect to the Mining Policy Framework on the themes of *law and policy*, *financial benefit optimization*, *environmental management and post-mining transition*, and a low level of preparedness with the MPF on the themes of *socioeconomic benefit optimization and artisanal and small scale mining*.

Environmental law in the Dominican Republic is quite strong, while mining law is quite weak and outdated. Environmental management plans include mine closure planning and ongoing environmental remediation, yet there is no evidence of efforts by the government or companies to help develop realistic strategies with workers and their communities for viable economic alternatives they and future generations may pursue after the mine is closed.

The Mining General Directorate has proclaimed 2014 as "the Year of Artisanal and Small-Scale Mining" and has assigned very capable professionals to lead the effort, yet the Directorate has not produced any evidence of a work plan or strategy for assessing and better managing ASM challenges and opportunities.

Law No. 64-00 requires companies to transfer a commendable 5 per cent of their net benefits from mining to municipalities, yet in most municipalities there remains a complete lack of transparency regarding how these funds and other revenues from mining are spent. Likewise, companies are required to consult with communities prior to mine development, but the mandatory requirements for consultation end there, with no company/community agreement to help guide and manage this important relationship or the benefits that it can offer to both parties.

While the juxtaposition of these strengths and weaknesses remains, the strengths already build a firm base from which to address points of weakness. The Mining General Directorate has a very professional, capable and energetic staff to lead this process in a collaborative and transparent way going forward. The capacity-building workshop envisioned as the next phase of this assessment process is an additional step to help support this effort.

## 6.0 Recommendations

The Dominican Republic has widespread commitment to environmental protection and sustainable development, a political will that could be harnessed to achieve broader economic and social benefits, and improved integration of the mining sector into long-term social and economic development planning and land-use planning on municipal, provincial and national levels.

Given the outcomes of this assessment, capacity building efforts should focus on the themes of socioeconomic benefit optimization, and artisanal and small-scale mining. Specifically, we recommend capacity-building efforts focus on the following:

### **PRIORITY AREA 1: Socioeconomic Benefit Optimization**

There are several areas in which the Dominican Republic needs to advance in order to maximize the social and economic benefits of mining. In particular, the integration of social and economic considerations into planning, permitting, monitoring and reporting requirements should be strengthened. Key topics include:

- Making socioeconomic planning a formal part of the permitting process
- Integrating the impacts and benefits of mine development into national, regional and local development planning
- Consulting with communities throughout the mining cycle
- Maximizing sustainable social and economic benefits

### **PRIORITY AREA 2: Artisanal & Small-Scale Mining**

The Dominican Republic has designated 2014 as “The Year of Small-Scale Mining.” As such, building capacity in this area among relevant ministries will be necessary. Key topics include:

- Law and policy frameworks to facilitate the organization of ASM
- Financing and responsible investment in ASM
- Incorporating international standards and certification programmes
- Promoting environmental health and worker safety

### **PRIORITY AREA 3: Mining Law & Policy**

Mining law in the Dominican Republic is seriously out of date and in need of major revision. While revising the mining law, it will be important to integrate the standards presented in the Mining Policy Framework and to ensure that the Dominican Republic remains attractive to investors. Key topics include:

- Best practice in mining codes, standards and standard-form mining contracts
- Integrated social, economic and environmental risk assessments
- Creating sustainable benefits over the life of the mine
- Managing the process in a consistent, transparent and timely manner

## References

- The Business Year. (2014, February). VIP Interview. Dr. Jean Alain Rodríguez. Retrieved from [http://www.thebusinessyear.com/vip\\_interview/3090/dr\\_-jean-alain-rodr%C3%ADguez](http://www.thebusinessyear.com/vip_interview/3090/dr_-jean-alain-rodr%C3%ADguez)
- Central Bank of the Dominican Republic. (2014). Resultados Preliminares de la Economía Dominicana Enero-Diciembre 2013. Retrieved from [http://www.bancentral.gov.do/publicaciones\\_economicas/infeco\\_preliminar/infeco\\_preliminar2013-12.pdf](http://www.bancentral.gov.do/publicaciones_economicas/infeco_preliminar/infeco_preliminar2013-12.pdf)
- Constituteproject.org (2014, July). Dominican Republic's Constitution 2010. Retrieved from: [https://www.constituteproject.org/constitution/Dominican\\_Republic\\_2010.pdf](https://www.constituteproject.org/constitution/Dominican_Republic_2010.pdf)
- InfoMine. (2011). *Pueblo Viejo*. Retrieved from <http://www.infomine.com/minesite/minesite.asp?site=puebloviejo>
- Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development. (2012). Mining Policy Framework. Retrieved from <http://www.globaldialogue.info/framework.htm>
- Mining Facts.org: A Resource for Canadian Mining Information. (2012). Case Study: Pueblo Viejo, Cotuí, Sanchez Ramirez, Dominican Republic. Retrieved from <http://www.miningfacts.org/Environment/What-are-abandoned-mines/>
- Oxfam International. (2014). Development: Dominican Republic. Retrieved from <http://www.oxfam.org/en/dominican-republic>
- Panterra Gold Limited. (2014). Projects: Las Lagunas, Dominican Republic. Retrieved from [http://www.panterragold.com/site/ourprojects\\_lagunas.php](http://www.panterragold.com/site/ourprojects_lagunas.php)
- Pellerano & Herrera. (2008, January). Mining – Getting the Deal Through. Retrieved from <http://www.phlaw.com/en/publicacion/183/mining-getting-deal-through-2008>
- Transparency International Corruption Perceptions Index. (2013). Retrieved from <http://cpi.transparency.org/cpi2013/results/>
- United Nations. (2002). Plan of Implementation of the World Summit on Sustainable Development Retrieved from [http://www.un.org/esa/sustdev/documents/WSSD\\_POI\\_PD/English/WSSD\\_PlanImpl.pdf](http://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/WSSD_PlanImpl.pdf)
- United Nations Conference on Trade and Development (UNCTAD). (2009). Investment Policy Review. Dominican Republic. Retrieved from [http://unctad.org/en/docs/iteipc20079\\_en.pdf](http://unctad.org/en/docs/iteipc20079_en.pdf)
- United Nations Development Programme (UNDP). (2013). Mapa de Desarrollo Humano de la República Dominicana.
- UNDP. (2013). *Human Development Report*. Retrieved from <http://hdr.undp.org/sites/default/files/Country-Profiles/DOM.pdf>
- United Nations Development Programme – United Nations Environmental Programme (UNDP-UNEP) Poverty-Environment Initiative (2014). Dominican Republic. Retrieved from <http://www.unpei.org/what-we-do/pei-countries/dominican-republic>.
- Vitelli, A. (2012). Dominican Republic sets 25% emission reduction goal by 2030. Retrieved from <http://www.bloomberg.com/news/2012-12-07/dominican-republic-sets-25-emission-reduction-goal-by-2030.html>
- World Bank. (2014). When prosperity is not shared: Weak links between growth and equity in the Dominican Republic. Retrieved from [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2014/03/06/000442464\\_20140306133751/Rendered/PDF/857600v20WPOP10sment0complete00web0.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2014/03/06/000442464_20140306133751/Rendered/PDF/857600v20WPOP10sment0complete00web0.pdf)
- World Directory of Minorities and Indigenous Peoples (2014). Dominican Republic Overview. Retrieved from <http://www.minorityrights.org/?lid=2565>.

## Additional Resources: International treaties and conventions

Universal Declaration of Human Rights. Retrieved from <http://www.un.org/en/documents/udhr/> and <http://www.ohchr.org/EN/countries/LACRegion/Pages/DOIndex.aspx>

International Covenant on Economic Social and Cultural Rights. Retrieved from [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=DOM&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=DOM&Lang=EN)

International Convention on the Elimination of All Forms of Discrimination against Women. Retrieved from [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=DOM&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=DOM&Lang=EN)

International Labour Organization (ILO) Conventions: Ratifications for Dominican Republic. Retrieved from [http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_ID:102930](http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102930)

Convention on the Rights of the Child: Dominican Republic. Retrieved from [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=DOM&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=DOM&Lang=EN).

Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. Retrieved from <http://www.basel.int/Countries/StatusofRatifications/PartiesSignatories/tabid/1290/Default.aspx>

Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade. Retrieved from <http://www.pic.int/Countries/Statusofratifications/tabid/1072/language/en-US/Default.aspx>

Stockholm Convention on Persistent Organic Pollutants. Retrieved from <http://chm.pops.int/Countries/StatusofRatifications/PartiesandSignatories/tabid/252/Default.aspx>

# Annex I: Consulted Governmental and Non-governmental Agencies

## Governmental Agencies

1. Viceministerio de Suelos y Agua
2. Viceministerio de Gestión Ambiental
3. Autoridad Portuaria Dominicana (APORDOM)
4. Ministerio de Trabajo
5. Dirección General de Impuestos Internos (DGII)
6. Dirección General de Aduanas (DGA)
7. Ministerio de Salud Pública
8. Servicio Geológico Nacional (SGN)
9. Banco Central de la República Dominicana
10. Centro de Operaciones de Emergencias (COE)
11. Ministerio de Economía, Planificación Y Desarrollo (MEPyD)
12. Ministerio de Educación
13. Instituto Nacional de Recursos Hidráulico (INDRHI)
14. Gobernador Provincia Monseñor Nouel
15. Gobernadora Provincia Sánchez Ramírez

## Companies

16. Corporación Minera Dominicana (CORMIDON)
17. Pueblo Viejo Dominicana Corporation – Barrick Gold (PVDC)
18. Falcondo
19. Cemex Dominicana
20. Cementos Cibao
21. Cámara Minera Petrolera de la República Dominicana

## Civil Society and Non-governmental Agencies

22. Programa de las Naciones Unidas para el Desarrollo - United Nations Development Program
23. Participación Ciudadana
24. Fundación Sur Futuro
25. Fundación Justicia y Transparencia

## Annex II: List of Laws and Policies Reviewed

- The Constitution of the Dominican Republic
- Mining Law No. 146 and Resolution No. 207-98
- Environmental Law No. 64-00
- Foreign Direct Investment (FDI) Law No. 16-95,
- Free Access to Public Information Law No. 200-04
- Fiscal Code Law No. 11-92
- Labour Code No. 16-92
- Regulation No. 22
- Law prohibiting the extraction of earth crust No. 123-71
- Labour Security and Health Regulation No. 522-06
- Environmental Standards for Non-metallic Mining Operations
- Law No. 487 on Exploitation and Conservation of Groundwater and Subsurface Waters.
- Law No. 5852 on Subsurface Water and Distribution of Public Water
- Environmental Norms No. 1 on Quality of Air and Emissions Control
- Environmental Norms No. 3 on Quality of Superficial and Coastal Water
- Environmental Norms No. 9 on Forest Management Techniques
- Law No. 50-10 creating the National Geology Service.
- Law 1-12 on the National Development Strategy 2020
- Decree No 571-09 creating protected areas.
- Public Sector Budget Law No. 423-06
- Social Security Law No. 87-01
- Law creating the Ministry of Energy and Mines
- Law for the Regime of Customs No. 3489
- Regulation on Hazardous Chemical Substances and Waste Management
- Environmental Norm for the Control of Superficial Water Discharge
- Environmental Norm on Superficial and Coastal Water Quality

## Annex III: Table From Country Assessment

MINING POLICY FRAMEWORK RECOMMENDATION	LEVEL OF PROGRESS	IMPLEMENTATION	MAJOR OBSERVATIONS
<b>1. Legal and Policy Environment</b>			
The ongoing generation of and access to geological information.			
The generation of baseline geological, topographical and other information for national land-use planning, and making that information available to individuals, communities and other civil society actors with equal access to ensure that consultations between different parties can take place on an equal footing.	MEDIUM	Initial basic information (1:5000) covers 100% of the national territory. Companies provide the detailed information (on a scale of 1:50,000). Information is available by request.	There are efforts to improve the system with ongoing work on detailed provincial maps. Programs are offered to students studying geology at the local university.
The revision and periodic updating of mining codes and standards			
Mining codes and standards revised and updated to reflect changing knowledge and best practice. They should deal with all aspects of mining from exploration to closure and post-closure management. The data and reporting requirements by entities should be made explicit in exploration and operating licences so that authorities can make informed decisions.	MEDIUM	Mining Law No. 146 has not been updated. Mining Law No. 146 covers from exploration to closure and post-closure management. Technical, economic and other information requirements are provided in Art. 72 of the Mining Law; Art. 53 of the Environment Law and Art. 42 of Regulation No. 22 require companies to present a semi-annual environmental compliance reports (known as ICA), that follow the environmental management plan (known as PMMA), to the Ministry of Environment.	There have not been updates of the Mining Law since 1971. Two bills were prepared but were not considered by the Congress. Changing knowledge and best practices are included in special contracts.  Closure and post-closure management are superficially covered by Mining Law and more developed in the Environmental Law.
A permitting process that requires:			
Mining entities, in preparing their applications for a mining permit, to consult with communities and other stakeholders at all stages of the assessment and planning process and to document the nature and results of their engagement programme in the permit application.	MEDIUM	Environment Law No. 64-00 art 38 and Regulation No. 22, Title IV includes public consultation in the stage of environmental studies.  Discretionary terms of reference of the Ministry of Environment may include requirements of public consultation.	Regulation No. 22-13 Although the results are not required to be documented, the comments and observations raised in the public consultation process inform the decision of Ministry of Environment for the environmental authorization (Article No. 40). There is a case in the Constitutional Court regarding the permit to operate in an area called Loma Miranda. The case was brought by a local NGO and the tribunal has ratified the decision to suspend the company Falcondo's operations due to possible damage to the environment in the surrounding area.
The submission of integrated social, economic and environmental assessments. In addition to a baseline description of current conditions, permit submissions should describe possible risks and impacts of the mining activities together with proposed mitigation or management measures.	LOW	Discretionary terms of reference issued by the Ministry of Environment for each project may require integrated social and environmental impact assessments. Social assessment is generally focused on employment opportunities. The economic assessment is presented to the Mining General Directorate.  The environmental impact assessment includes description of risks and impacts. The environmental management plan proposes mitigations. Special contracts also require the submission of these studies.	Although companies must submit economic and environmental assessments for every mining project, their integration is questionable.  There is lack of standardization of the requirement for plans and assessments.
The permit submissions to identify and quantify opportunities and propose programs that lead to the creation of sustainable benefits over the life of the project.	LOW	Only voluntary.	Most of the companies carry out activities, infrastructure projects and voluntarily help the communities.

MINING POLICY FRAMEWORK RECOMMENDATION	LEVEL OF PROGRESS	IMPLEMENTATION	MAJOR OBSERVATIONS
The permit application to be considered complete only when it includes acceptable plans for the eventual closure of the mine and the provision of adequate financial assurance to cover the costs of closure and any ongoing monitoring.	MEDIUM	Law No. 64-00 Art. 47 requires a financial assurance of 10% of the costs to carry out the environmental management program. Art. 162 requires a closure plan and financial assurance. Regulation No. 22 Art. 48 also requires the payment of a financial guarantee that can be executed if the environmental management plan is breached. Special contracts also include these requirements, for example, creating a special reserve fund to cover the costs of the closure plan.	The mining concession is conditional until the environmental requirements are fulfilled.
The permit applications, when applicable, to address indigenous peoples, cultural heritage, resettlement, and community safety and security issues.	MEDIUM	The Dominican Republic does not currently recognize any indigenous populations. Cultural heritage is covered by Decree 571-09 on the creation of protected areas and is also considered in Law No. 64-00, Art. 160 which declares the nation's caves to be natural heritage sites and prohibits their alteration.  Chapter III of Law No. 64-00 indirectly treats resettlement of communities. Discretionary terms of reference of the Ministry of Environment may require considerations of resettlement of communities.  The Environmental Norms for Non-Metallic Mining require archaeological studies of the area.  Safety and security certifications are not conditions to start operations.	Resettlement of communities is a critical issue. There are communities in the Cotuf area alleging to be suffering from the environmental impacts of mining operations and there is a struggle of responsibilities between the local government and the company.
Mining entities to have a process of consultation that provides affected communities with an opportunity to express their views on project risks and impacts, and be consulted on the development of mitigation measures.	MEDIUM	No requirement. Only voluntary.	The participation of the community is required during the permitting process. There is no requirement for ongoing consultations during other stages of the project.
Completion of the process in a timely, transparent, unambiguous and consistent manner.	LOW	Special contracts do not follow the procedures of the Mining Law.	The lack of time limits makes the permitting process lengthy. Both the Mining Law and the Environment Law provide time limits but in practice they are not implemented. There are efforts to limit the permitting process of the Mining General Directorate to four months.
<b>2. Financial Benefits Optimization</b>			
The implementation of a revenue-generation (taxation and royalties) scheme that:			
Optimizes the return from the mining activity and the taxation agreements achieved with foreign and domestic investors in a manner that reflects the different realities they face.	MEDIUM	Mining Law No. 146 Arts.119 and 123 establish a fixed percentage for royalties and income tax (later modified by the Tax Code). Certain incentives are provided.  Special contracts are authorized by the Mining Law Art. 9 and create a special legal framework by which different tax schemes can be negotiate.	-

MINING POLICY FRAMEWORK RECOMMENDATION	LEVEL OF PROGRESS	IMPLEMENTATION	MAJOR OBSERVATIONS
Optimizes the resource levy revenues to society during times of high prices, while minimizing the need for entities to reduce or end production during times of low prices, and supporting a variety of sustainable development objectives.	MEDIUM	There is no general scheme in the law. Special contracts authorized by the Mining Law Art. 9 create a special legal framework and may negotiate different tax schemes.	The second renegotiation of the contract with PVDC (Barrick Gold) established a windfall tax tied to the price of gold.  Although not necessarily due to the tax system of the agreement, the company Falcondo had to close after low prices of nickel.
Seeks to integrate the mineral sector with other sectors of the economy so as to optimize the contributions of the mineral sector.	LOW	There is no plan or strategy for integration with other sectors.	Mining Law No. 146 provides for certain deductions. Special contracts and special arrangements may establish other deductions and exemptions.
A mining policy that:			
Maintains sufficient flexibility to ensure that a balance is achieved between optimizing revenue from mining activities while permitting the mine developers and operators an adequate rate of return on their investment.	MEDIUM	Mining Law No. 146 is rigid but has a competitive profit-sharing system. Special contracts authorized by the Mining Law Art. 9 create a special legal framework permitting the negotiation of different tax schemes.	Special contracts have been renegotiated to review the profit-sharing system due to the rise of gold prices.
Uses national corporate income taxes based on net profits as the common element for large and small-scale commercial mining.	HIGH	Mining Law No. 146, Art. 123 establishes an income tax based on net profits applicable to all of the authorized mining companies.	The percentage of income tax has been lowered from 40% to 27% through Fiscal Code amendment to incentivize investment in the sector.
Applies such taxes in the same manner as to non-mining entities within a jurisdiction but with the potential for allowances specific to mining for defined expenditures and/or accelerated deductions to achieve specific public policy aims.	MEDIUM	Mining Law No. 146 Art. 125 grants deductions for annual depreciations in equipment, infrastructure, housing, among others. Art.127 allows the Executive Power to grant accelerated depreciations for investments to promote the mining-metallurgic development. Special contracts provide for grace periods and special deductions.	
The need for human and intellectual resources to manage the sector such that:			
There is adequate governmental capacity to negotiate the financial terms and conditions of mineral development agreements, to administer the tax system and the agreements, to deal with transfer and other pricing issues, and to audit the results.	MEDIUM	A special committee was formed for the last negotiations on financial and tax issues in special contracts.  Internal Taxes General Directorate (DGII) has knowledgeable intellectual capacity to administer special contracts taxing systems. There is cooperation from the United States and Canada on these issues. There is difficulty in administering the general taxing systems under the Mining Law (authorized by resolution).  The special contract with PVDC (Barrick Gold) includes an obligation to follow OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrators.	The human resources to negotiate financial terms did not include the Mining General Directorate.  DGII works following the OECD Transfer Pricing Guidelines.
There is knowledge of how mineral development agreements are developed in other jurisdictions and the degree to which they are serving national objectives. Domestic competence in these matters should be considered a priority and, as necessary, be supplemented with independent third-party expertise.	MEDIUM	The DGII counts on independent third-party expertise for negotiation of large-scale contracts.  Priority of domestic competence in these matters and the degree of knowledge of how mineral development agreements serve national objectives is not clear.	

MINING POLICY FRAMEWORK RECOMMENDATION	LEVEL OF PROGRESS	IMPLEMENTATION	MAJOR OBSERVATIONS
The integration of fiscal instruments and policy objectives such that:			
All negotiations on mineral development agreements and licenses should take into consideration national policy objectives and how the agreements can support them.	LOW	There is reference in neither the special contracts nor in the Mining Law No. 146 to national policy objectives.  Law 1-12 on the National Development Strategy 2030 sets the development goals and the general strategy to support national development objectives.	The mining revenues are centralized in the national pool and the benefits are distributed according to the national budget.
Addressing the issue of the distribution of benefits by:			
Providing open and transparent data on tax and royalty flows and how the benefits have been distributed at the local, regional and national levels. Governments may wish to consider how to benefit from initiatives such as the Extractive Industries Transparency Initiative (EITI).	LOW	No national mechanism to provide open and transparent data on revenue flows.  Law No. 64-00, Art. 117 established that municipalities where mining operations are located will receive 5% of the net benefits generated by the company.  The government has not applied to the EITI.	The mining revenues flow to the national accounts and are distributed according to the national development strategy and budget.  The Mining General Directorate has expressed his interest in implementing EITI standards.
Using different mechanisms to maximize the transparency, understanding and acceptance of how the direct financial flows from mining operations are apportioned in ways that are appropriate to their political and legal systems.	MEDIUM	No national mechanism.  Law No. 91-05 establishes a fund for the administration of mining flows in the province of Sanchez Ramirez (FOMISAR) corresponding to the distributions of 5% benefit to be paid by PVDC (Barrick Gold).	FOMISAR is the only effort to maximize transparency but is only applicable to the province of Sanchez Ramirez. There is no national general principle.
<b>3. Socioeconomic Benefit Optimization</b>			
The need to integrate community, regional and national issues by:			
Integrating mines and mining into the local, regional and national fabrics.	MEDIUM	Labour law No. 16-92, Art. 135 requires that 80% of any company's employees are Dominicans; there are some examples of local development funds, such as FOMISAR, that integrate government, civil society and enterprises to decide on spending local mining tax revenues. Environmental Law requires mining companies other a 5% share of mining benefits for local municipalities.	University with geology career in Cotuí.  Fund for community development in the province of Sanchez Ramirez (FOMISAR).  In practice there is integration but it is carried out voluntarily by the companies.
Making socioeconomic planning a formal part of the permitting process.	MEDIUM	Only the Environmental Norms for Non-Metallic Mining require consideration of socioeconomic impacts and an explanation of its contribution to sustainable development of the region.	Only very limited consideration of socioeconomic issues as part of the environmental and technical permitting process.
Addressing mining operation effects, interactions or local, regional and national dependencies, in initial documentation and in regular reporting.	MEDIUM	Consultations with the communities at the environmental studies stage include consideration of impacts of the operations.	Limited consideration in environmental permits through terms of reference.
Making consultation with affected stakeholders a requirement of the permitting process and at every stage of the mining cycle.	MEDIUM	No legal requirement for consultations during the mining cycle apart from the environmental studies stage.	Only at the beginning, as part of the environmental permit; there is a new regulation for these consultations.
Making planning subject to review and approval for the original permit.	MEDIUM	Resolution 207-98 Art. 44: the permitting process includes the consideration of national interest in the project which includes considering, among others, the impact in the region, community aspects and the benefits via direct and indirect employment.	Some level of planning required for the environmental permit, including consultations and considerations of how communities are affected, but no specific socioeconomic considerations.  The consideration of national interest is not justified in the resolution to grant the concession nor in the contract.

MINING POLICY FRAMEWORK RECOMMENDATION	LEVEL OF PROGRESS	IMPLEMENTATION	MAJOR OBSERVATIONS
Making the original permit subject to regular review and periodic revision to reflect new goals and changing conditions.	MEDIUM	Regulation 22-11, Art. 8: Environmental authorizations will be effective for a maximum of five years and can be cancelled depending on compliance.	Environmental permits need to be reviewed every five years to reflect changing conditions. Studies, measures, etc. May be requested by the Ministry for Environment (Reg.123)
Making education a national priority by:			
In a manner consistent with local and national needs, targeting every level of education from primary to post-graduate levels.	MEDIUM	No specific strategy.	High coverage, but low culmination rates (only 30% finish basic education, 18.4% for medium education); education in mining areas is average/below average (see UNDP Human Development Map). University in Cotuí offers a geology career path.
Ensuring that both the physical infrastructure and the human resources to staff and service educational facilities are put in place and upgraded over time through the efforts of all stakeholders, including the permit holder.	MEDIUM	Voluntary.	Larger mining companies contribute to education facilities in several places, but this is not integrated with local, regional or national development plans.
Ensuring that, with government leadership, stakeholders other than the permit holder assume greater responsibility over time so that when closure of the mine approaches the physical and human educational infrastructure can make the post-closure transition with a minimum of disruption.	LOW	No strategies found.	
Addressing community health by:			
Including health considerations in the baseline socioeconomic assessment required by mining entities during the permitting process.	LOW	No requirement.	
Working with mining entities as well as with communities in the planning and priority setting for health services that the entities may have undertaken to provide.	LOW	No requirement.	Very limited direct engagement of governments with mining entities in this issue.
Leading with other stakeholders to gradually assume responsibility for this activity from mining entities so that when closure of the mine approaches the physical and human public health infrastructure can make the post-closure transition with a minimum of disruption.	LOW	No strategies found.	
Ensuring high standards for occupational health and safety by:			
Ensuring that each company within its jurisdiction accepts corporate responsibility for occupational health and safety through an appropriate set of legal requirements, as well as through governmental monitoring, inspection and enforcement activities.	MEDIUM	Article 68 of the Mining Law requires concessionaires to take responsibility for the health and safety of the employees.	Standards exist and more specific regulations for mining are nearly finalized; Although sites are monitored (weakly), enforcement mechanisms are weak. Only a voluntary certification of health and safety standards is offered to the companies.
Ensuring that failures in occupational safety and health performance are effectively dealt with to prevent reoccurrence and are supported by a system of penalties up to and including the revocation of operating permits.	LOW	No solid sanction system, no revocation of permit possible. In implementing the law, the breach of health and safety obligations needs a long process to be sanctioned.	
Requiring entities to provide education, training, equipment, and an adequate system that will reduce hazards and minimize the risk of accidents, injury, and disease and create a safety-conscious environment.	LOW	No specific requirements currently.	

MINING POLICY FRAMEWORK RECOMMENDATION	LEVEL OF PROGRESS	IMPLEMENTATION	MAJOR OBSERVATIONS
Optimizing employment opportunities at the mine by:			
<p>Requiring that socioeconomic plans be part of the permitting process and seeking to optimize the employment of host nationals, particularly those from the vicinity of the mine. Depending on national circumstances, educational and other elements will have increased national presence in the operation of the mine, including increasing levels of managerial responsibility, as an objective.</p>	MEDIUM	<p>Labour law (16-92, Art. 135) requires that 80% of any company's employees are Dominicans.</p> <p>In Cotui, the university offers a career path in geology.</p> <p>No socioeconomic plans required.</p> <p>Special contract with PVDC (Barrick Gold) Art. 6.12(iv): "if it is practical, hire people from the area (...)".</p>	
Creating business development opportunities by:			
<p>Putting in place a supportive legal and fiscal environment so that the socioeconomic plan developed by the permit holder and approved by the government includes the promotion of opportunities for local, regional and national supply of goods and services to the mine, the community and the region.</p>	LOW	<p>No socioeconomic plan required by law.</p> <p>Resolution 207-98 Art. 44: the permitting process includes the consideration of benefits via indirect employment.</p> <p>Special contract with PVDC (Barrick Gold) Art. 6.12(iv) establishes that if it is practical, the company will consider supply from the community and will carry out the socioeconomic development initiatives of the company/community.</p>	
<p>Promoting new non-mine related industrial and service business opportunities made possible by infrastructure put in place for the mine.</p>	LOW	<p>No formal planning.</p>	<p>No specific thinking about how to use the infrastructure legacy beyond the life of the mine; provincial and municipal development plans exist or are in development, but there is a lack of long-term planning.</p>
Addressing potential security issues by:			
<p>Working with entities to address issues that may give rise to security concerns before issuing permits or commencing operations. Governments and entities should consider using the tools and programs of the socioeconomic plan to resolve or reduce the potential for disputes and be guided in their actions by international norms such as those represented by the International Finance Corporation Performance Standards on Social and Environmental Sustainability and the Voluntary Principles on Security and Human Rights.</p>	LOW	<p>No standard or requirement by law.</p>	<p>No specific mention of potential security issues in laws.</p>
<p>Not issuing permits when a deposit to be mined is in an area of active armed conflict. When there is already active development or an operating mine when conflict breaks out, governments and operating entities should act to protect human rights and ensure the safety of miners, their families and communities in accordance with the OECD guidelines. If this does not prove possible, governments may consider removing the mine operation from the dynamics of the conflict by any means possible, including by revoking the mine permit and shutting the mine down.</p>	LOW	<p>No standard or requirement by law.</p>	
The importance of respecting human rights, indigenous peoples, and cultural heritage by:			
<p>Ensuring that domestic policies and laws are (at a minimum) consistent with international law and norms. With regard to indigenous peoples, governments and mining entities should respect the spirit and intent of current and future international normative language such as is found in the International Finance Corporation Performance Standards on Social and Environmental Sustainability</p>	N/A	<p>No indigenous groups are recognized in the Dominican Republic. The government has adhered to several international treaties on human rights. Laws related to mining do not make reference to them.</p>	

MINING POLICY FRAMEWORK RECOMMENDATION	LEVEL OF PROGRESS	IMPLEMENTATION	MAJOR OBSERVATIONS
Ensuring that high standards of conduct are observed by mining operations in their countries and requiring that mining entities, in their permit applications and day-to-day operations, are knowledgeable of and act in ways consistent with national laws and international laws and norms.	MEDIUM	The bi-annual reports review compliance with laws and agreements.	
<b>4. Environmental Management</b>			
Management of water by:			
Having appropriate environmental management standards in place for the use of surface and groundwater. These standards would be strictly monitored and enforced through appropriate penalties	MEDIUM	<p>The applicable regulations are: (i) Law No. 64-00 Chapter III on water use protection and management, (ii) Law No. 487 on Exploitation and Conservation of Groundwater and Subsurface Waters, (iii) Standards on Quality of Groundwater and Discharges to Subsoil, (vi) Law No. 5852 on Subsurface Water and Distribution of Public Water. The latter establishes that no one can pollute water in rivers, streams, canals or other sources of public waters destined to the use authorized by law. Article 42 prescribes that if industrial activities contaminate water, the Water resources department can suspend the activities until remediation. Article 43 prescribes that the concession of water use can be resolved if the water is polluted.</p> <p>However, special contracts can have a special water management framework.</p> <p>Environmental law also penalizes any breach to the law, including in water management.</p> <p>Terms of reference issued by the Ministry of Environment usually include a requirement to comply with the water laws.</p>	Water authorities have expressed the need to update these laws, although they have managed well with the present legal framework.
Requiring mining entities to ensure that quality and quantity of mine effluent streams discharged to the environment, including storm water, leach pad drainage, process effluents, and mine works drainage, are managed and treated to meet established effluent discharge guideline values.	MEDIUM	<p>Applicable regulations are: (i) Environmental Norm for the control of Superficial Water Discharge, (ii) Environmental Norm on Superficial and Coastal Water Quality. This required that the generator of discharges of superficial water must carry out studies to determine the maximum charges.</p> <p>Resolution 207-08 requires concessionaries to maintain programs to control and monitor effluents, among others.</p> <p>Terms of reference issued by the Ministry of Environment usually include requirements on mine effluent streams.</p>	The quality of effluents is monitored but in an unsystematic way.
Requiring that mining entities ensure that water-leaching or percolating waste dumps, tailings storage areas and leach pads have equivalent protection.	MEDIUM	Terms of reference issued by the Ministry of Environment may include this requirements.	
Requiring that mining entities have in place practices and plans that minimize the likelihood of impacts beyond the mining site, particularly potential transboundary impacts.	MEDIUM	Terms of reference set a radius of a certain number of kilometers linked to company requirements to carry out impact studies.	There is a case in the Constitutional Court regarding the permit to operate in an area called Loma Miranda. The case was brought by a local NGO and the tribunal has ratified the decision to suspend Falcondo´s operations due to possible damage to the environment in the surroundings.

MINING POLICY FRAMEWORK RECOMMENDATION	LEVEL OF PROGRESS	IMPLEMENTATION	MAJOR OBSERVATIONS
Avoiding and minimizing potential adverse effects to biodiversity by:			
Requiring that mining entities submit environmental management programs and updates for approval, during the permitting process and whenever there are significant process or operational changes during the operating life of the mine	MEDIUM	Resolution 207-08 requires concessionaries to maintain programs to control and monitor effluents, liquid waste, gas emissions and noise.	The terms of reference usually require an environmental management plan that includes biodiversity requirements.
Identifying, monitoring and addressing potential and actual risks and impacts to biodiversity throughout the mining cycle	MEDIUM	Resolution 207-08 requires that the environmental impact assessment address impacts including a closure plan.	The environmental management plans are periodically monitored through the environmental compliance report.
Require that mining entities conduct monitoring on a continuous basis based on national standards and the conditions of the operating permit, compile and submit performance assessments to government and publish regular reports that are readily accessible to the public	MEDIUM	Law No. 64-00 requires periodic environmental compliance reports that are submitted to the Ministry of Environment. Publication is not required.	The environmental compliance reports are not published but, according to the Free Access Public Information Law, could be requested by any citizen. The person must present the request in the central Ministry of Environment offices in Santo Domingo.
Managing mining wastes by:			
Ensuring that structures such as waste dumps and tailing storage facilities are planned, designed, and operated such that geotechnical risks and environmental impacts are appropriately assessed and managed throughout the entire mine cycle and after mine closure	MEDIUM	Law No. 64-00 requires the Ministry of Environment to regulate waste management and establishes the responsibility of entities creating environmental risk.  Regulation on Hazardous Chemical Substances and Waste Management.  Article 162 requires the concessionaire to eliminate waste materials in accordance with the operational plan.	
Requiring that mining entities design, operate and maintain mine waste structures according to internationally recognized standards	MEDIUM	The terms of reference usually require an environmental management plan that includes requirements to design, operate and maintain mine waste structures.	
Requiring that mining entities commission independent expert reviews and report to governments prior to development approval, when changes in design are proposed, and at regular intervals during operating phase	LOW	No requirement has been found.	In practice, independent experts may be commissioned.
The development and implementation of an emergency preparedness program by:			
Requiring all mining operations have an emergency preparedness and response program prior to commencing operations and ensure that the program be reviewed, tested and updated regularly.	MEDIUM	Resolution No. 207-08 requires concessionaries to prepare emergency preparedness programs.  The Environmental Norms for Non-Metallic Operations, Art. 6.2 d) requires that the Environmental Management Program includes a subprogram of contingencies (including prevention and response to emergencies).  Title VII Chapter III of Regulation on Hazardous Chemical Substances and Waste Management also treats emergency-preparedness programs.	INDRHI calls for a committee to prepare for emergencies.
Basing all elements of the emergency-preparedness program on ongoing consultation and cooperation with local and other stakeholders and government	LOW	No requirement or practice found.	
Ensuring that monitoring of the effectiveness and responsiveness of the emergency preparedness program is conducted by companies in cooperation with communities and all levels of government.	LOW	No requirement or practice found.	

MINING POLICY FRAMEWORK RECOMMENDATION	LEVEL OF PROGRESS	IMPLEMENTATION	MAJOR OBSERVATIONS
Ensuring that mine emergency plans are comprehensive and meet current best practice standards, specifically by: i) requiring the development of emergency preparedness programs as part of an environmental impact assessment for any new operation; ii) requiring regular review and updating of such programs; iii) requiring consultation and cooperation with local, regional, national and, as appropriate, transboundary stakeholders in the development and maintenance of emergency preparedness programs; iv) endorsing and promoting best international practices, such as the APELL process, at national and regional levels to better coordinate emergency preparedness between mining entities, local authorities and local populations; and v) ensuring that appropriate government departments and agencies at the national, regional and local levels are aware of and prepared to cooperate with mining company response actions.	MEDIUM	<p>Article 42 of Resolution No. 207-08 requires concessionaries to prepare emergency preparedness programs. They are part of the environmental impact assessments.</p> <p>Neither reviews of the programs, consultations other stakeholders or endorsing best international practices are required by law.</p> <p>The COE has prepared a protocol with support of USAID. COE is well prepared to respond to emergencies and works together with the Ministry of Environment, INDRHI, weather specialists and civil and armed forces.</p>	Although plans are required and COE responds efficiently, there is lack of coordination with the mining companies for emergencies and preparing for such emergencies.
<b>5. Post-mining Transition</b>			
Ensuring that closure plans prepared by mining entities are of a high standard and updated on a regular basis by:			
Providing legal and regulatory frameworks for closure	MEDIUM	<p>Article 39 of Mining Law No. 146 requires concessionaires to present a closure plan with (i) measures to guarantee the stability of the area, (ii) reforestation of mining areas, considering biodiversity, (iii) measures to prevent deforestation.</p> <p>Article 42 requires that the Environmental Impact Assessment includes a closure plan.</p> <p>Article 162 of Law No. 64-00 requires to follow the closure plan and to rehabilitate degraded areas.</p>	The closure plans required by law do not cover social aspects.
Having institutional capacity to monitor and enforce its provisions	MEDIUM	Institutional capacity to monitor and enforce mine closure plans is weak.	
Requiring that stakeholders be consulted in the development of closure objectives and plans	MEDIUM	Regulation 22 prescribes that a panel that includes a community member will approve the environmental impact assessment (which includes the closure plan).	
Requiring that a comprehensive closure report and adequate financial assurance be provided before approval of requisite development and mining permits for a new mine.	MEDIUM	<p>Law No. 64-00 requires consultation with the community regarding mine closure.</p> <p>Article 11.11 of the special contract with PVDC (Barrick Gold) agreed to the creation of a Post-Closure Fund.</p>	
Requiring the use of external experts by entities to contribute to the development of closure plans and to validate the risk assessments, studies and activities associated with high-risk elements such as tailings dams, waste dumps and acid rock drainage	LOW	No requirement found.	
Requiring that internationally accepted guidelines and best practices (such as IFC Performance Standards on Social & Environmental Sustainability) be followed.	MEDIUM	No requirement found. Only voluntary by companies.	
Requiring the periodic reassessment and independent auditing of closure plans: more frequently for mines with an expected short operating life, less frequently for large operations with economic life expectancies measured in decades.	MEDIUM	<p>Closure plans are reviewed for every periodic environmental compliance report.</p> <p>Special contract with PVDC (Barrick Gold) Art. 12.4 (b) requires a revision of the plan to reflect changes.</p>	

MINING POLICY FRAMEWORK RECOMMENDATION	LEVEL OF PROGRESS	IMPLEMENTATION	MAJOR OBSERVATIONS
Putting in place a framework to encourage progressive rehabilitation in mining areas as soon as the disturbed area is no longer needed for mining. This would reduce future closure liabilities and reverse or minimize future environmental, economic and social impacts	MEDIUM	Special contract with PVDC (Barrick Gold) Art. 9.5 provides that the government audit the costs incurred for the ongoing remediation of the sites.	While the framework for mine closure planning promotes progressive environmental rehabilitation, it does not sufficiently encourage reduction of economic and social impacts.
The development of financial assurance mechanism for mine closure by:			
Ensuring that financial assurance for closure and post-closure expenses is present and adequate to the task by adopting legislation, regulations and guidelines for financial assurance. These would: i) require an adequate level of financial assurance based on realistic estimates to cover the cost of all outstanding work programs at any time, including premature closure and the conduct of closure programs by third-party contractors in the event that the mine operator is unable or unavailable to complete the work; ii) require that each closure plan and its cost estimates be validated or approved by the responsible authorities; iii) establish appropriate forms of financial security (bonds, insurance, etc.), including their specific details and conditions; iv) require that the financial securities be issued or held only by qualified and approved financial institutions; v) give governments, based on their sole discretion, the right to gain immediate and unencumbered access to the full amount of the financial assurance securities; and vi) allow the draw-down or release of security instruments only as each work program or other requirement is satisfied.	MEDIUM	Article 162 of Law No. 64-00 requires a financial assurance for closure expenses. The details of the assurance are set in the terms of reference and revised periodically through the environmental compliance report.	
Accept a leadership role for orphaned and abandoned mines in their jurisdiction by:			
Working with entities that collectively constitute the mining industry to explore options for developing technological solutions (including the reprocessing of mining wastes) or contributing expertise or other resources to help resolve the legacy issue of orphaned or abandoned mines.	MEDIUM	The special contract with Envirogold involves new technological solutions to process tailings from the Pueblo Viejo operations.	
Working with countries whose economies benefitted from the flow of low-cost industrial inputs that came at least in part from mines that are now orphaned or abandoned that contribute to the resolution or management of abandoned mines.	LOW	No information found.	
Using targeted fiscal arrangements to encourage the reactivation of those mines to create economic activity, fund remediation, and provide for post-closure management in cases where such a mine or its wastes have economic potential.	MEDIUM	Pueblo Viejo abandoned mine was reopened by PVDC (Barrick Gold) under a special arrangement.  Bauxita mines were also reopened after decades.	
Seeking recognition by multilateral agencies and organizations that the historical and legal situation of such mines, particularly in developing countries, requires their leadership in managerial, advisory, hortatory and financial forms.	LOW	No information found.	
<b>6. Artisanal and small scale mining (ASM)</b>			
Ways of integrating informal ASM activities into the legal system by:			
Creating clear legal frameworks and regulatory mechanisms to facilitate the organization of ASM, access to property rights and ensuing obligations for ASM.	LOW	No specific legal framework.	Mining Law No. 146-71 and Regulation No. 207-98 legalize the extraction of alluvial gold with rudimentary techniques, and clarify that key environmental norms can be applied to such activities.

MINING POLICY FRAMEWORK RECOMMENDATION	LEVEL OF PROGRESS	IMPLEMENTATION	MAJOR OBSERVATIONS
Providing technical support to build the capacity of government or other bodies tasked with regulating and supporting the sector.	LOW	Dominican government has helped create mining cooperatives, increasing the organizational capacity of miners.  The Mining General Directorate has created a special unit on ASM.	There are scattered efforts to support ASM. Also engaged the European Union in a project called SYSMIN to help small and medium-sized mining enterprises as well as artisanal cooperatives.
Developing and replicating formalization strategies on the basis of lessons learned.	LOW	No specific development.	
Ways of integrating ASM activities into the formal economic system by:			
Improving savings in the artisanal mining community, establishing more acceptable forms of financing and encouraging responsible investment;	LOW	Nothing found.	
Strengthening the appropriateness, viability and transparency of policies and systems for collection, management and reinvestment of ASM revenue;	LOW	No information found.	
Encouraging initiatives for standards and certification of ASM "fair trade" conflict free minerals to harmonize and grow in scale	LOW	No information found.	
Encouraging, through the permitting process or at other times, entities to explore ways to collaborate with ASM when ASM is present or can reasonably be anticipated to follow the development of a mine	LOW	No information found.	
Reducing the social and environmental impacts of ASM by:			
Providing technical training to improve productivity and to safeguard the environment, and developing, disseminating and enforcing regulations with a particular emphasis on safeguarding water sources, reducing deforestation, ending or reducing the use of mercury, and improving the management of mercury and other toxic substances when it is not possible to eliminate them, including safe working conditions, access to health care, etc.	LOW	No plans for ASM found.	
Having national programs that provide minimal standards of health and education to ASM workers and their families.	LOW	There are efforts of the Labour Ministry but the human resources are not enough.	
Making a significant and verifiable reduction in the number of children employed in artisanal mining and improvements in the nature and scheduling of their work so as to accommodate educational needs.	LOW	No strategy found.	There is also reporting of child labour, with children working in dangerous conditions.
Strengthening, monitoring and enforcing laws on child labour in artisanal and small-scale mining areas.	LOW	No strategy found.	
Strengthening the role and security of women in ASM.	LOW	No strategy found.	
Promoting the inclusion of ASM in rural development and job creation policies such that, where desired and realistic, alternative livelihoods are promoted.	MEDIUM	Good level of political awareness. Creation of a special ASM unit inside the Mining General Directorate.	

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