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Principles of Peaceful Coexistence between Mining Titleholders and ASM Miners

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Introduction

Artisanal and Small-Scale Mining (hereinafter ASM) can be traced back to ancient history in regions where specific geological conditions made mining possible, which is why it has been traditionally carried out by rural communities as their main economic activity or as part of their diversified production systems.

Over the past two decades, the number of people engaged in ASM activities has significantly increased from 13 million miners in 1999 to the recent unprecedented levels of 40 million miners, a business in which more than 100 million people can find their livelihoods (PACT & ARM, 2018).

Given the increase in “users” of limited resources such as mineral deposits and titled areas, the principles of mining coexistence gain in importance to prevent, or at least minimize, conflicts caused by the use of resources and the potential exclusion of ASM miners.

Conflicts over access to resources are not exclusive to the ASM sector but are also present in other economic sectors and fields such as fishing problems, access to water resources and land rights related to agriculture and livestock. In this regard, there is extensive academic literature on conflicts and forms of collective cooperation on Common-Pool Resources (CPR), which is based on innovative concepts, theories and case studies developed by Elinor Ostrom et al. (2011), who was awarded the 2009 Nobel Prize in Economic Sciences.

Meanwhile, the ASM sector has been experiencing high competition for resources as mining is an economic activity generally developed in informal economies with high levels of informal trade and employment, often in countries that do not recognize ASM existence and tradition. Thus, it is not surprising to find out that ASM is not significantly different from other economic sectors.

The prevailing informality can be explained, beyond each country’s context, by the lack of distinctive policies and regulations that effectively recognize the ASM sector realities, which in turn has created barriers to formalization such as extensive requirements for environmental licensing (Echavarría et al., 2014). Authorities have also failed to provide comprehensive support for men and women miners, who are usually unaware of cumbersome administrative procedures, laws and decrees, have neither access to financing for required studies and licenses **nor organizational and business capacity nor technical assistance** to comply with mining regulations to legally carry out their mining activities.

Over the last 20 years, many countries have granted mining concessions to medium- or large-scale mining companies, individuals or junior prospectors (usually foreigners) without considering the presence of traditional ASM in these areas. This situation has led to serious conflicts and competition for mining resources in some territories as most contractual rights of legal companies are often opposed to the customary rights of rural communities and ASM’s economic and social rights (e.g. right to work) for carrying out artisanal



mining activities in traditional territories that are now “in dispute”. In other contexts, such as in Peru, the development of large-scale mining brought a technological change to open pit, which causes the abandonment of underground mines where usually the ASM miners are extensively involved.

As a result, given the significant increase in the use of mining coexistence agreements and the actual possibility of developing ASM under conditions of “regularization”¹ in titled areas, it is necessary to identify these practices and learn the lessons from their implementation to mitigate the aforementioned conflicts between mining titleholders and ASM miners (mainly from formal and informal mining) in order to propose **a set of basic principles and guidelines that may guide the relationship between the above parties** based on generating collective territorial benefits. Such guidelines may serve as a reference framework to implement fair and inclusive agreements based on sustainable development principles and are based on the position of the Alliance for Responsible Mining resulting from the experience of working directly with ASM miners in countries such as Colombia, Peru, Honduras and Burkina Faso, as well as from literature review.

Actions for transforming conflicts between industrial mining titleholders and legitimate ASM

Scenarios where informal and formal mining activities coexist in the same mining area have led to the development of different interactions and strategies by both ASM and industrial mining companies in collaboration with public, and sometimes private, institutions (often NGOs). The main objective for title-holder companies is to reduce conflict with miners and communities by preventing partial or total blockades of mining operations; for the community, it is to mitigate any negative impact on the environment; for ASM miners, it is to have their right to work and continue to live on their traditional territories, and for institutions, it is to prevent human rights violations, promote sector development and maintain public order.

In 1990, the Venezuelan government granted mineral exploration and exploitation rights for the Las Cristinas gold deposit to the Canadian company Placer Dome. To make way for the new mine, the company had to resettle about 2,800 small-scale miners, but did not compensate them by offering other mining areas or economic activities. So, when the government left, miners returned and resumed operations, leading to tensions among the different stakeholders. Facing the prospect of social unrest, the company initially followed a path of “**passive accommodation**”, allowing the miners **free access to certain areas**. Then, it moved to a “**constructive engagement**” phase by offering technical assistance. The miners organized themselves with a **representative committee** and began to introduce **better mining methods** and to **reduce the use of mercury**. Ultimately, harmonious relations were established, not only with miners, but also with the surrounding communities, who were able to serve as a stabilizing force that prevented new small-scale miners from working the concession (Instituto Internacional para el Medio Ambiente y el Desarrollo, 2007).

¹ The term irregular mining rather than illegal or informal mining will be used in this positioning to refer to men and women miners who do not hold any type of permission to exploit a mine site. This is because the term ‘illegal mining’ can be seen as pejorative for this type of mining. The term ‘informal mining’ addresses more than mining law, including aspects related to compliance with economic, occupational safety and health, and environmental issues, among others.



I. Policies that encourage ASM miners to stop working in areas granted to large-scale mining projects

The first step is usually to assess the capacity of the titleholder company to absorb the ASM miners within their workforce, either through employment contracts or as their future operators. If this action is ruled out, resettlement or compensation practices are implemented aimed either at resettling miners in free areas, maintaining their mining activities, or in areas where they can develop other economic activities. Although resettlement involves compensation actions, sometimes a common action to relocate men and women miners from titled areas is to make payments in cash or in kind, which has proven to be ineffective in the long term as these payments are not a stable source of income. Therefore, this strategy tends to become less frequently used, as it also encourages non-local miners to seek the benefits, aggravating the social situation in the territories.

II. Policies aimed at evicting and excluding ASM miners from titled areas

As a result of these practices, miners have been moved away from their working areas without any possibility of continuing their activities in another area, compensation or alternative employment arrangements.

These eviction cases may occur in various scenarios: a- with the consent of the State and the participation of public and private forces; b- through the action of illegal armed groups. These practices, which do not consider the legitimacy of “irregular” mining, encourage violence in territories leading to cases in which there is even loss of human life (Saade, 2013). The dimensions of such conflicts are often difficult to measure, due to the absence of a census that identifies men and women miners who had previously occupied these territories.

The South African Abooso Goldfields Limited company wanted to avoid conflicts with ASM miners in Ghana, so the company developed an approach to solving problems and finding compromise solutions. This was achieved thanks to the creation of a **committee** comprising company representatives, ASM representatives, local leaders and other key stakeholders, to agree on the areas where miners could actually work. The company issued **ID cards** to miners as a way of controlling and preventing other miners from entering the titled area from outside. The company also provided miners with **tools and training** to extract gold more easily, in safer conditions and without using mercury (Aubynn, 2009). Some of the miners were even directly hired. Others joined forces to create **enterprises** and provide specific services to the main company. Despite all these positive aspects, as gold prices increased, the company became more interested in areas with residual ore deposits, which is why it was decided to move ASM miners away from these areas, almost similar to an eviction model (Aubynn, 2009).

III. Practices aimed at promoting coexistence between titleholders and ASM miners in which both parties benefit

These initiatives should be carefully analyzed since, as it occurs in the practices described in previous points, given the limited negotiating capacity of ASM miners, they may face abusive work conditions, related to exclusive trading rights granted to the titleholder, who determines both the price to be paid and the quality of the ore being purchased. Often, there may also be provisions regarding the times of the month the miners



can exploit, the areas delimited for this purpose and the liabilities that each party will assume in this agreement.

However, despite the difficulties, these actions have shown to be most successful in terms of mining coexistence, providing lessons for more equal, fair and legitimate models in the future. The above will depend on strengthening the negotiating capacity of ASM miners and the commitment of the titleholder to fund, communicate and support the mining regulation and formalization process.

In this regard, the Alliance for Responsible Mining promotes, first and foremost, **equitable access to mining titles** for ASM miners, according to their financial and technical capacities. However, when this is not possible due to the dynamics of mining ownership or regularization in the territories, the **coexistence** between titleholders and ASM miners in the same territory is deemed favorable for both parties, as it is an opportunity to transform a conflictive relationship into one of peaceful collaboration between neighbors. ARM promotes mutually beneficial business models that combine capital and technical knowledge with workers' qualifications and decent job creation. This requires building trust through dialogue and transparency among the parties, as will be discussed below.

In 1997, after a mine owned by AngloGold and IAMGold began operations in Mali, some mining companies launched a project to compensate local communities with several objectives such as assisting ASM miners, promoting community development and diversifying local economies. Activities began with a **public consultation with traditional groups and local NGOs** to identify target groups and potential partners. Regarding mining, the project led to the creation of the **Sadiola Gold-Washers Cooperative** and a **technical assistance** program for miners. At the community level, a **community development fund** was created through which a school, a healthcare center and an adult education center were supported. Environmental work included **improving mining sites** by planting fruit trees. The project also supported **small businesses**, especially **women-owned businesses** (Instituto Internacional para el Medio Ambiente y el Desarrollo, 2007).

Therefore, to determine the suitability of one or another agreement for conflict transformation over the use of subsoil, it is necessary to analyze whether the agreement actually offers appropriate guarantees for the parties involved. The above entails generating jointly developed agreements and contracts with clear rules and unbiased supervisors during the process. It is also important to question whether these agreements are compatible with the traditional values and ways of life of miners, whether new employment opportunities are indeed sustainable over time and whether the needs of families are satisfied. Finally, it is necessary to define how support will be provided to adapt different types of miners according to the agreement reached with the titleholder and the responsible party for its provision. Some useful points will be given below to answer these questions in the case of mining coexistence agreements.

Examples of coexistence regulations

Existing regulations related to the coexistence between artisanal and small-scale mining and medium- and large-scale mining worldwide are very diverse, with no uniform but similar variables. These regulations reflect each country's mining traditions and regulations. The following are examples taken from some Latin



American and African countries, noting that these regulations have often occurred after companies and ASM have been forced to coexist in practice.

GHANA

Regarding the coexistence between ASM and large-scale mining, Ghanaian law used to prohibit registering an ASM miner in a large-scale mining concession since the government's agenda for the mining sector was to eradicate ASM and promote the expansion of large-scale mining, mainly encouraged by Chinese companies. A few years later, small-scale mining was completely banned (Aubynn, 2009), which ensured that no mechanisms were legally established for the coexistence with a then illegal ASM activity in the country. This situation arose because the state sought to attract foreign investment, giving preference to large companies on the concession of "free" areas and granting absolute rights to the titleholder over land and subsoil (WRM, 2015).

This prohibition was lifted in December 2018, given the high level of conflict involved, since it was a ban on access to a traditional activity practiced by around 200,000 people who were directly or indirectly dependent on ASM activities.

Miners who held a concession before the ban were allowed to return to work in specific areas, but faced the challenge that free areas were scarce and those areas they previously occupied had already been granted to other companies. Since then, the Government of Ghana has therefore opted for a model that promotes coexistence, based on provisions that facilitate the transfer of mining rights to small-scale mining, as well as tax benefits to large-scale mining companies that hire or support ASM miners (McQuileken & Hilson, 2016). The Government of Ghana has gradually recognized ASM as an important activity, given its social and economic contribution to the development of local communities and the national economy, and instead of excluding ASM, it has taken a progressive and nationalistic approach in favor of ASM legalization and formalization. Thus, the legislation establishes that licenses for small-scale mining will only be granted to Ghanaian citizens over the age of 18 (McQuilken & Hilson, 2016).

However, despite the changes made, challenges remain evidencing insufficient improvements for the sector. The main barrier to formalization is the lack of access to mining lands and titles for ASM miners. Now that the government seeks to promote mechanisms for the regularization and coexistence of small-scale mining, there is much distrust on the part of ASM sector towards government intentions. In this regard, and given the willingness of the different stakeholders, there is a need to build participatory dialogue processes in which ASM is included in future sector planning and regulation, integrating existing initiatives from the World Bank, the United Nations Environment Programme, Solidaridad, ARM, IIED, among others, that have reclaimed the historical legitimacy of ASM in Ghana (McQuileken & Hilson, 2016).

BURKINA FASO

There is little information on mining laws in Burkina Faso regarding the coexistence between ASM and large-scale mining. Firstly, the Mining Code was not adopted until 1997, and it focused on providing economic openness to the private sector by giving preferential rights to large-scale mining. Although ASM was then in Burkina Faso mostly a traditional and seasonal activity that would employ more than 150,000 people per year, the Mining Code did not have any policy actions to protect and prioritize viable regularization and



formalization processes (Jaques, Zida, Billa, Greffié, & Thomassin, 2006). At present, the active mining population exceeds one million people (Effigys, 2018).

The 1997 Mining Code was modified in 2003 and 2015 to bring a greater state regulation for industrial enterprises. This code provides for labor obligations, such as the preference of skilled local labor, which makes it obligatory for titleholders to provide professional training to local ASM leaders (Dorin, 2015).

If a part of the artisanal and small-scale mining is performed at the community level, many miners would migrate from one mining site to another depending on the site production volumes and spread of rumors in the sector. ASM practices and values are part of a community's traditions and knowledge inherited from their parents and grandparents, constituted as traditional livelihoods rooted in their culture, in which more recent techniques, such as the use of mercury and cyanide are implemented to expand this activity to new types of deposits and a significant increase in revenue. Under these circumstances, the definition of skilled labor does not recognize the traditional context in which these activities take place, ignoring traditional knowledge of the women and men miners, who despite being skilled miners, are often undervalued as they do not have any recognized technical training or certification.

This legislation does not regulate specific forms of mining coexistence, except for the provision of employability that could be used for this purpose. One of the main changes in the Mining Code is the newly created royalty comprised of 1% of the revenue of industrial mines, which would be entirely used for rural development in the area impacted by mining operations. These funds could be used for the development of legal ASM with good practices also in mining coexistence scenarios, although the decision to use these funds belongs to the local community.

By granting preferential rights to large companies, the Code also fails to resolve the situation where formal miners working in artisanal mining areas are likely to lose their mining permit, if a large mining company decides to apply in the miners' area, leaving ASM miners and their mining association in an even more vulnerable position, as they have to negotiate with that company for access to their mine.

These exclusive regulatory provisions for ASM are in line with global extractive models that focus the government's efforts on promoting foreign investment as an alternative to strengthen the national economy. Prioritizing the large-scale mining industry, to the detriment of traditional mining, prevents the emergence of inclusive, fair and viable coexistence models, because companies are free to make their own decisions and instead prefer to exclude ASM miners due to their perceived conflictive and the absence of an impartial third party for mediation.

NICARAGUA

In the case of Nicaragua, Decree 119 of 2001 on Mineral Exploration and Exploitation stated that artisanal men and women miners engaged in mining activities before granting any concession will have the right to exploit 1% of the areas upon their allocation, provided that there is a prior agreement with the titleholder and that this work authorization will not imply a preferential right in favor of artisanal miners. In addition, this decree establishes that once the concession ends, the area will be free and artisanal miners who had been working in that place will have preferential rights to apply for a new mining title. Similar to the Peruvian law, preference is initially given to ASM miners, as long as the area is clear.



Nicaragua also provides an important participatory mechanism to defend ASM interests and rights. Law 475 of 2003, also known as the Citizen Participation Act, determines the participation mechanisms available to communities, when public policies and administrative actions are drafted and implemented in a territory that involve changes in economic, social or political activities, as is the case of large-scale mining. In these cases, competent government entities at the national, autonomous and local levels are required to carry out consultations with citizens.

In this regard, Nicaraguan legislation poses both challenges and opportunities for ASM. Regulations fall short in stating that the exploitation of 1% of the concession area by artisanal miners requires agreement with titleholders. The lack of conditions for this agreement could lead to discretionary situations on the part of the titleholder, which would affect mineral exploitation by men and women miners. However, this legal provision represents a right for ASM that could be redeemed through other administrative or judicial actions. Furthermore, these rights are complementary to the right of preference over free areas and citizen participation, which, when fully interpreted, becomes a model for ensuring that expectations and needs of small-scale mining are properly understood and aligned within a territorial context on the arrival of large-scale mining companies.

ECUADOR

Ecuadorian mining law (Law 45 of 2009) addresses the coexistence between large- and small-scale mining in the following aspects:

Regarding citizen participation in mining concessions, citizens have the right to be consulted in a similar way as in Nicaragua. However, this can lead to a negative decision on mining operations, in which case the Ministry of Mines will be in charge of approving the project or not, based on objective reasons. In addition, Article 97 of the same law expressly prohibits “illegal extraction”, referring to the action of extracting minerals in a foreign concession without the holder's permission, so that, if necessary, the latter would be entitled to be paid the value of the minerals extracted. In addition, this law and the Special Regime Regulations on Small-Scale Mining provide that artisanal mining shall not affect the rights of a mining concession holder with a valid title. However, through contracts, it enables titleholders, operators or subcontractors to authorize the execution of artisanal mining activities. These contracts are regulated and approved by the Ministry of Mines.

In these contracts, social-environmental responsibility should be expressly established, as well as a set of factors referring to the state participation, labor, tax, mining safety, mediation and arbitration for conflict resolution at the contractual level, in accordance with the provisions of the law and those of the Ministry of Mines. Any conflict resulting from misuse or noncompliance for which no resolution mechanisms have been previously established, will be resolved by the Regulation and Control Agency, either on its own initiative or at the request of the interested party.

In this vein, the legislation has addressed cases of mining coexistence, determining contractual agreements and obligations for both parties, either titled small- or large-scale miners or artisanal miners, under the supervision of the corresponding entity, to prevent any possible breach of these contracts. However, these provisions may fall short to protect the rights of ASM miners, since contracts or agreements may remain



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solely at the will of the titleholders. Hence, it is important to ensure access to lands for exploitation and have a more active institutional role in mediating these agreements.

COLOMBIA

Some of the free areas in Colombia where ASM miners have traditionally worked were given to prospectors and large-scale mining companies. Given the numerous conflicts that mining has caused in the territories, the Colombian state has developed a number of regularization mechanisms that facilitate mining coexistence.

Firstly, **operating contracts** have been created under the Mining Code (Law 685 of 2001). In this type of contract, the mining titleholder takes responsibility for technical (Work and Project Plan –“PTO” and explosives license), legal, environmental, labor, health, mining and industrial health and safety compliance of miners who work under this type of contract, so that control and supervision by the mining authorities fall on the mining titleholder exclusively. This means that titleholders should play an important role in communicating, supporting and following up with mining contractors on the commitments made to mining authorities. Operating contracts have been widely used in Colombia by medium- and large-scale companies facing conflicts with ASM miners on their titled areas and by mining cooperatives to regulate the activities of their own members within the mining cooperative area (Echavarria, 2015).

Although operating contracts signed by titleholders are the fastest and cheapest route for informal miners in Colombia, these contracts are purely private and thus the power of negotiation is in practice on the titleholder's side as they define contract terms. As a result, when the contract is signed between operators with great differences in size, economic power and legal and business organization, this can produce unfavorable conditions for ASM miners. Such conditions are reflected in the quality of the deposit granted, commercial conditions, such as the obligation to sell gold ore to the titleholder under non-negotiable conditions and economic rent for exploiting part of the titled deposit.

This type of contract is very common in Latin America with very similar results to those in Colombia.



These contracts have been gradually changing their operational form. A well-known case in Colombia occurred in the municipalities of Segovia and Remedios, where there was a conflict involving small-scale miners who had been carrying out informal activities in the vicinity of the titled area of the Frontino Gold Mines company. Frontino initially offered ASM miners a type of contract known as an "endorsement", in which the miners were authorized to work in areas that the company was not using at that time, while they were committed to complying with all occupational safety and health regulations and to improving their technical exploitation conditions. In addition, miners were required to invest in technical improvements and allowed them to do their own ore processing, selling their product to the highest bidder (Echavarría, 2015). This initiative brought welfare to both men and women miners, who now found an entry point to formality and the motivation to do so: they now were able to legally work under fair conditions.

In 2010 Frontino Gold Mines was sold to Gran Colombia Gold (GCG), a Canadian company that complied with these contracts until their completion. Subsequently, through the Small-Scale Mining Supply Chain Initiative, GCG made new contracts containing its own conditions, in which men and women miners had to enter into specific trade agreements so that their extracted ore then had to be processed and ultimately sold to this company. Depending on the amount of gold, profits are then split with about 50% paid to miners and the rest used to pay taxes, royalties, processing costs, among others. In addition, GCG is committed to being accountable for legal, social, environmental, tax and safety issues related to men and women miners (Gran Colombia Gold, 2018)*. This situation caused some concerns with the miners about the lack of transparency in determining the quality and quantity of the ore supplied, which were determined by the company itself and which, when compared to the guarantees under which the miners had been working, have not been considered as satisfactory.

By 2018, GCG had already entered into 41 new operating contracts. However, these strategies have not managed to eradicate conflicts in the territory, since many men and women miners have failed to make their way into the formal sector and others are not satisfied with contractual terms.

*Information from the Gran Colombia Gold company's official website:
<http://grancolombiagold.com.co/iniciativas-y-proyectos-muestra/>

Other examples of mining coexistence are **formalization subcontracts**, which were created by Law 1658 of 2013 to prohibit the use and commercialization of mercury in the country. This concept establishes that mining titleholders are free to legalize small-scale mining in their territories through subcontracts, which have the following characteristics:

- Independent technical and environmental responsibilities between ASM and titleholders. Such separation of responsibilities is perceived as positive, as it should imply a differentiated inspections according to the respective capacities and impacts of small and large-scale mining. As a barrier to this requirement, these technical and environmental instruments still often exceed ASM's financial capacity.
- The subcontract term cannot be less than 4 years, renewable for equal periods. That is another barrier for ASM miners, since there is no reason to invest in the above regularization instruments



when the exploitation period is relatively short and when the authorities are likely to take a long time to grant the corresponding authorizations.

- Subcontracts must be approved by the mining authority and then registered in the National Mining Registry. In this regard, getting subcontract approval from the mining authority means that the possibilities of imposing arbitrary terms are reduced. In addition, registering provides small-scale miners with a "guarantee of effectiveness", that is, the rights acquired through a subcontract can be enforced against all parties, as these are included in a public registry.
- Compensation can be set in favor of the titleholder for using mineral resources, but limits are not set.

Formalization subcontracts have been widely used by companies such as Continental Gold (acquired in 2020 by Zijin Mining), that as part of the Buriticá, Antioquia project, has been a pioneer in entering into several subcontracts with at least five mining associations that have benefited around 583 families since 2014, as confirmed by the company in a 2014 official statement (Continental Gold, 2014).

However, here it is important to mention that, although men and women miners were initially free to process and trade their ore, the municipality's Land Use Planning banned processing plants in areas where miners were located, which gradually forced them to sell their ore to Continental Gold for processing. In this regard, combining these supply chains appears to have led to some nonconformities among men and women miners, as also seen in other reference cases. In 2018, Continental Gold was forced to cancel some of these subcontracts after finding several irregularities in an inspection carried out in collaboration with mining authorities (El Mundo, 2018). However, the company states in its 2019 Sustainability Report to have a high commitment to formalize small-scale mining.

In 2019, AngloGold Ashanti also adopted these strategies, entering into seven formalization subcontracts with traditional and artisanal miners in the Gramalote Colombia Limited project's area of influence in San Roque, Antioquia. These subcontracts will have an initial duration of 7 years, 3 years longer than the minimum period established by law. ASM miners will be free and independent to process and trade their ore, while the company will assume the cost of any independent technical tools required by traditional miners to formalize their activity, and to provide support through National University of Colombia, SENA educational institution, Somos Tesoro project and other allies, so that the miners are able to implement the permits approved by the mining and environmental authorities. In addition, AngloGold, in partnership with the departmental administration, has agreed to build a community gold processing plant as part of its commitment to mining formalization, community development and clean supply chains (Semana Sostenible, 2019).

These subcontracts have the advantage of providing greater equity in the relationship between ASM and large-scale operations, since liabilities are shared and the State watches over the process. Neither in operating contracts nor formalization subcontracts, there exists a title transfer of its division, which means that the titleholder should supervise that the subcontract terms are properly fulfilled.

However, in order to promote efficient regularization and formalization processes, a differential approach is required to meet the particular context and capacity needs for ASM. In Colombia, these are addressed by



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Law 1955 of 2019 - National Development Plan 2018 - 2022 - which provides for two important features: a temporary environmental license for mining formalization, with differential terms of reference for developing environmental impact studies, and differential requirements for granting concession contracts for small-scale mining and ethnic communities.

PERU

In the case of Peru, the General Mining Law, enacted in 1992, did not recognize the existence of artisanal and small-scale mining. In 2001, Law 27651, known as the Law of Formalization and Promotion of Small-Scale and Artisanal Mining (Alianza por la Minería Responsable, 2009), came into effect, giving way to the formalization process and classifying mining into large-scale, medium-scale, small-scale and artisanal mining, based on their production capacity as a differentiating criterion. In addition, this Law establishes a detailed procedure for the formalization process, which includes support from the State through the Regional Directorates of Mining as well as mediation between artisanal miners and holders of mining rights in the event that both parties are involved in the same area.

Moreover, regarding the coexistence between ASM and large-scale mining, Article 16 of Law 27651 states that:

"In mining areas duly titled in favor of formal miners, the Ministry of Energy and Mines will assume an intermediary role to facilitate and promote the adoption of relevant legal mechanisms in order to reach an exploitation agreement, containing acceptable conditions for both parties (Ley 27651, 2002)".

This is in accordance with Ministerial Resolution 343 of 2002 that establishes that artisanal men and women miners will have preferential rights over areas that they have previously occupied in a public and peaceful manner, but restrictions are imposed on those areas with mining rights that have already been granted.

Another point of view is that, based on the analysis of Legislative Decree 1336, one of the main problems for formalization that affects the coexistence between ASM and large and medium-scale mining is that around 93% of Peruvian miners who work in artisanal mining do not work in their own concessions, that is, they operate on third-party concessions, for which holders are not required to sign any mining or exploitation contracts with those miners that are on their way to formalization. In addition, sometimes holders decide to make operating contracts, but including abusive clauses for ASM miners and demanding excessive royalties before signing any contract with them.

As a result, medium- and large-scale mining companies choose not to sign contracts with artisanal miners since they have the perception that doing so would encourage this practice, which would make other miners move to the vicinity of their titled areas and demand the same benefits that have already given to other miners. In this regard, medium and large-scale mining companies prefer to pay penalties² for having "idle" concessions rather than entering into Mining Assignment or Exploitation contracts, given that Article 59 of

² Article 40 of Peru's General Mining Law imposes sanctions (known as penalties) for failure to work on granted mining concessions.



the Single Revised Text of the General Mining Law, mining concessions may expire for non-payment of fees or penalties for 2 consecutive years.

However, the barrier has been already set up: one of the formalization requirements for miners is that they must be the concession holder or have a contract signed with the holder. In the event that the titleholder does not agree to sign any type of contract with a miner, he or she will not be able to become a formal miner. Once this formalization process has been concluded (ending in 2020) and in case of failure to comply with all the formalization steps established in Legislative Decree 1336, the non-formalized miner will become an illegal miner. It is worth mentioning that incentives for mining titles have been promoted with the signing of these contracts between miners and mining companies. In addition, the Ministry of Energy and Mines, acting through the General Direction of Mining Formalization, has tried to mediate between men and women miners and titleholders to facilitate negotiations, but all these efforts seem pointless. For true mining coexistence, there should be legal guarantees that address both fears from large-scale mining holders on having such coexistence as well as from ASM miners on continuing their activities.

In Peru, and more specifically in La Rinconada and Cerro Lunar region, there have been mining conflicts for more than 20 years over mineral exploitation by informal artisanal miners and cooperatives in the area belonging to Corporación Minera de Ananea S.A., for which no agreement had been reached so far.

In 2004, as part of the GAMA Project, a bilateral cooperation initiative between Switzerland and Peru, it was possible to establish a negotiating table between the company and the cooperatives, which resulted in a transfer of shares and rights to these miners and mining cooperatives in 2007, thus providing a definitive solution to this conflict. Some of the success factors outlined in this process are the mediation of an impartial intervening third-party, negotiation based on respect and conciliation, and the participation of diverse stakeholders in this process such as institutions, social organizations, the community, the company and ASM miners (García Larralde, Medina, & Priester, 2008).

HONDURAS

Honduran legislation on mining coexistence was almost non-existent, so in practice, correlation models were created and adapted by companies or conflictive relations between informal miners and the titleholder were still in place. Transferring mining rights was considered the most practical way to facilitate mining coexistence, but there was no clarity about how this transfer could be actually made as it did not only involve a transfer of rights, but also a transfer of obligations that most ASMs were unable to assume due to their lack of sufficient technical and financial capacity.

In 2019, the Special Regulations for Artisanal and Small-Scale Mining were adopted to provide guarantees and special provisions for the mining activity. Besides addressing the granting of differential licenses and permits, the regulations include a separate section on the contractual relations between large and small-scale mining. This regulation establishes that firstly, the ASM shall be entitled to enter into contracts for either the assignment or transfer of rights with large-scale mining companies, subject to the authorization issued by the corresponding mining authority; secondly, operating contracts for large-scale mining shall be possible with ASM, provided that the mining authority is notified and provisions on environmental, labor, tax, safety and other obligations are expressly established and that the titleholder is liable for ASM activities; and thirdly, in the same mining area, rights can be granted to both ASM and large-scale mining companies.



However, these regulations remain quite loose and, despite having prior approval from the mining authority, there are no limits set to protect small-scale mining from abusive clauses or unfair trade agreements. As the authority has no oversight or mediation roles, these actions are at the discretion of large-scale mining companies.

In 2017, Geomaque company shut down its mining operations in the municipality of Macuelizo, located in the region of Santa Barbara, Honduras. Following the shutdown of industrial mining exploitation in Santa Barbara, and given the lack of economic opportunities, **about 200 miners** from 7 to 9 surrounding communities in Macuelizo resumed artisanal mining activities in the veins of this mining site. In view of the **interest of the communities** in continuing their artisanal gold mining activities, Geomaque carried out an analysis on transferring the concession to the communities through a **possible legal mechanism to be agreed** upon with the communities, so that artisanal extraction at the mining site is carried out in a socially and environmentally responsible way in compliance with the requirements of Honduran mining legislation.

At the request of the Lundin Foundation, the Alliance for Responsible Mining visited the Macuelizo mining site in May 2017 and carried out various socio-economic and risk assessment studies to diagnose the viability of formalization of artisanal miners and establishing a small-scale mine from scratch within the association formed by the community. Miners learned about the benefits of community-based artisanal mining, as well as the successful cases of Fairmined certification in Latin America, in order to encourage community representatives to adopt good mining practices in favor of local sustainable development.

A roadmap was developed, which was implemented during 2018 and 2019 and resulted in mining rights assigned to the community-based company Minas y Cuevas, and a subsequent gold export to Germany using the CRAFT Code as guidance. This case, while successfully completed, reflected various legislative gaps in assigning rights to small-scale mining, as no provisions were in place for liabilities such as environmental obligations to be transferred or enforced prior to the change in mining title holder, with a risk of ASM miners assuming the liabilities of large-scale mining companies.

Positions on Mining Coexistence

International standards for responsible mining such as the IRMA Standard for Responsible Mining³ and the Responsible Gold Mining Principles produced by the World Gold Council recommend encouraging the coexistence of industrial mining and ASM through different mechanisms such as building trust, supporting the road to formalization, connecting ASM to legal markets and conducting due diligence procedures.

3 Initiative for Responsible Mining Assurance www.responsiblemining.net



This is in line with the findings of the International Council on Mining and Metals (ICMM) that suggest that artisanal and small-scale miners are key players in large-scale mining, for which articulation strategies should be promoted to improve conditions for both parties.

In this regard, ICMM recommends several mechanisms to facilitate mining coexistence such as advocating for ASM formalization and regularization, employing miners from artisanal and small-scale mining, creating technical assistance programs, using planning methods for community development and developing conflict resolution strategies and programs based on the prevention of potential causes that could give rise to mining conflicts. These strategies can make the relationship between ASM and large-scale mining stronger and more robust, which ultimately translates into improvements in the quality of life, economic returns and social prospects among the parties involved (International Council on Mining and Metals, 2010).

In addition, in the paper "Property Rights Theory and the Reform of Artisanal and Small-Scale Mining in Developing Countries" (Clausen, 2011), Fabian Clausen, María Laura Barreto and Amir Attaran argue that for artisanal and small-scale mining to become a profitable and sustainable sector, it is essential to develop appropriate systems of property rights that enable territorial distribution agreements between large-scale mining companies and small-scale mining operators that ultimately lead to a harmonious coexistence and effective sharing of resources.

ARM recommends

Based on the analysis made, some lessons learned can be drawn, which in turn will help to identify possible guiding principles to achieve equitable and fair models of mining coexistence as a precondition for lasting and fruitful mining relationships.

- 1. Regulatory frameworks that provide guarantees to both companies and miners and that recognize ASM legitimacy.** States should grant special protection to artisanal and traditional mining by providing the necessary tools to recognize its historical legitimacy and thus ensure the legal existence of mining activities in the areas that miners have traditionally or ancestrally occupied before granting titles to other companies. Preferential rights are a good practice through which States grant some kind of privilege to ASM in their own legislation, for example, by considering them as their first option when mining companies are hiring. In cases where the mining areas have been already titled, it is necessary to establish regulatory frameworks that promote fair relations among the parties, i.e. the minimum term of the agreement should be based on real cost-benefit assessments on the commitments made by men and women miners and the time of return on these investments. There should also be a clear division of environmental, social and technical obligations, in which each party assumes the operating conditions according to its technical and financial capacity. In addition, these regulatory frameworks should define minimum standards for trade agreements between industrial mining and ASM, ensuring fair and transparent negotiation opportunities.
- 2. Dialogue and consultation should take place prior to the exploration phase performed by the mining company.** At this stage, other stakeholders should be involved, not only ASM and the mining company, but also the community, social organizations and institutions, so that everyone receives clear and transparent information about the purpose of the project, its potential impacts and expected actions to prevent, mitigate, reduce or compensate for risks, and based on that, provide



their vision and knowledge about the territory. In addition, this exercise gives the company a better understanding of social expectations for adapting to the territory, which in turn facilitates the inclusion of ASM needs in the company's strategies.

3. **Objective criteria to determine coexistence viability.** Occasionally, geological conditions in authorized mining areas are risky for artisanal miners or mining activities may not be economically viable due to the low amount of gold being extracted or difficulties in gold extraction and processing. As a result, it is necessary for mining authorities to evaluate these criteria, so that after the company completes all geological studies, viability can be successfully concluded. Furthermore, after determining the conditions and agreements for coexistence with ASM miners, it is necessary to establish the need for companies to share geological information on the actual territory that they will mine so that resource optimization is ultimately promoted.
4. **The State as an overseer of coexistence relationships.** In regularization processes based on coexistence mechanisms, the State cannot take a passive stance (by letting things happen as the parties wish) or a coercive or reactive attitude (by using force to allow the legitimate exercise of rights). The State should assume an active and impartial role, acting as an overseer in negotiations and contracts and facilitating relationship models, rather than prescribing them. It also plays a fundamental role in building trust between the parties through local institutions, which clearly promotes dialogue processes. The decision to regulate mining coexistence in previously titled territories should not be completely at the discretion of the companies, but the state should give guarantees, criteria, benefits and options, so that formality becomes the only option for both ASM miners and titleholders.
5. **Impartial third parties mediate and accompany the process.** Mining mediation and negotiation processes are more effective when third parties are involved and such processes are carried out on the premise of clear and concrete legal frameworks, or when the institutional framework becomes stronger and at the same time, a higher level of stakeholders' legitimacy is also achieved. In this context, members of civil society or local or international NGOs may be also asked to accompany the process.
6. **These processes require both sensitivity and patience.** Companies should strive to understand the needs of men and women miners, knowing that when harmonious relationships are consolidated, these become a win-win relationship for ASM as miners can operate in accordance to their realities and the company can prevent conflicts or eventually consider the ASM sector as a natural ally of its business and operations.
7. **Fair and equitable agreements between large-scale mining and ASM miners** should consider the following conditions: its duration in proportion to the investment in money, resources and sustainability to be made by ASM; flexibility in mineral processing and trading with assistance to achieve a transparent supply chain; technical advice and support; inspections to reduce any risks that may arise; clear and specific division of environmental, social, labor and tax responsibilities.
8. **Using CRAFT and Fairmined sustainability standards as a roadmap.** The standards that ARM has developed in consultation with key ASM stakeholders provide a framework for progressive improvement tailored to small-scale mining, which strengthens the legitimacy of the process and



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provides ASM with access to value-added markets. Using the CRAFT Code (www.craftmines.org) ensures compliance with the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, as well as the Fairmined Best Practice Standard (www.fairmined.org) provides the opportunity for those ASMs that decide to become certified to join an elite group of global industry leaders and sell their gold with a premium of up to 4,000 USD per gold kg.

- 9. Incentives for ASM during coexistence.** Formality itself is the main incentive, and it opens the gates to other benefits related to better income, decent work, better conditions for families, reduction in child labor at mines, among others. Another major incentive of mutual interest is the improvement of professional qualifications for men and women miners working in ASM.
- 10. Incentives for large-scale mining companies during coexistence.** In the context of large-scale mining, there is an inherent benefit to coexistence based on the projection of corporate social responsibility when integrating with the host community. In addition, it widens the possibilities of reducing conflict in the area of company's interest. States can also offer tax incentives to these companies, so that ASM miners work under fair conditions for both parties. The companies hiring ASM miners are also relying on a workforce that, although still empirical, is valuable for its knowledge of the mining area.

These principles consolidate ARM's position on ASM-LSM relationship and provide an inclusive and equitable approach to strengthening the relationship between artisanal and small-scale mining and large-scale mining, addressing the needs and expectations of both parties. However, it is essential that these relationships pay attention to the protection of traditional practices by ASM miners, as a way of preserving the diversity of practices and showcasing the important role that mining plays in the family economy in many territories. Such protection is the principle of a fair relationship, on the basis of recognizing ASM as a key player by public and corporate entities.



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