

Promising Practices

Achieving more sustainability in the Andean mining sector by strengthening National Human Rights Institutions

Background

Latin America and the Caribbean (LAC) are abundant with natural resources and biodiversity. Among other resources, the region holds 40% of the world's total copper reserves, 32% of silver and 61% of lithium. In the Andean countries, extractive industries have contributed considerably to the subregion's GDP and development. While there are differences between countries, mining has overall been an important factor in reducing poverty and inequality.

However, mining activities have also resulted in human rights violations and infringements, socio-environmental conflicts and environmental pollution. Mining related human rights infringements occurring in the region include displacements and resettlements, violations of indigenous peoples' right to free, prior and informed consent (FPIC) and human casualties caused by accidents due to mud, landslides and tailings dam failures.

Such cases underscore states' obligation to protect against human rights abuses by business enterprises within their territory. They highlight the necessity for all mining companies to assume their corporate responsibility to respect human rights and to implement policies and processes of human rights due diligence.

To promote such changes in the Andean countries, the German Federal Ministry for Economic Cooperation and Development (BMZ) commissioned GIZ and the Federal Institute for Geosciences and Natural Resources (BGR) to implement the Regional Cooperation for the sustainable management of mineral resources in the Andean countries Programme (MinSus) from 2014 until 2022.

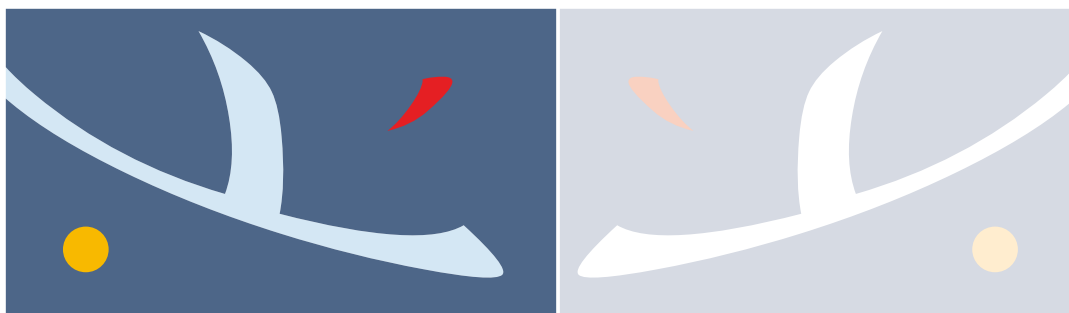
The programme aims at supporting Andean countries in designing and implementing sustainable mining practices, as well as promoting transparency along mineral supply and value chains. It is divided into three activity areas: (i) Policies and Strategies (GIZ), (ii) Stakeholder Governance (GIZ), and (iii) Technology Transfer and Innovation (BGR).

Towards a human rights-based approach

Promoting human rights and gender equality are core elements of the MinSus programme. In line with the human rights-based approach in German development cooperation (HRBA), the programme started a partnership with the Ibero-American Federation of Ombudsmen (FIO). FIO brings together more than 100 National Human Rights Institutions (NHRIs), human rights ombudspersons, procurers, suppliers and commissioners from Latin America and Europe.

The goal of the MinSus programme is to strengthen NHRIs in the region as guardians of human rights protection and promotion in their respective countries. NHRIs advise their governments and parliaments on human rights issues and help to raise public awareness. As such, they play a crucial role in promoting sustainable and respectful mining activities. NHRIs have analysed, who is negatively affected by mining activities in the respective regions. They have identified women, indigenous people, ethnic minorities as well as children and the elderly as being most vulnerable to negative impacts of mining.

Throughout the project, NHRIs exchanged and deepened their knowledge on the human rights impact of mining. They strengthened their ability to systematise and process the large number



XXIV FIO Congress opening panel,
November 2019.



of human rights complaints related to extractive industries by developing selection criteria based on the human rights-based approach. Regional NHRIs in Latin America and the Caribbean developed new capacities and strengthened collaboration and institutional ties. Regional and institutional best practices were systematised and published, for example in [recommendations](#) for incorporating a human rights-based approach in environmental impact assessments.

One specific focus of the project was the interlinkage of human rights and environmental issues. Several human rights are directly related to the environment, such as the rights to water, food, health and information. Extractives industries can have negative

impacts on these rights and can also endanger a clean environment and access to energy. Thereby, they can jeopardise communities' livelihoods and cultural survival. This is especially relevant in the Andean region, where many communities and indigenous populations align their cosmovision with the protection of and respect for the environment (known by many populations as Pachamama or Sumak kawsay, among other concepts).

Highly valuable for exploring the interlinkage between human rights and environmental issues was the programme's regional counterpart, the United Nations Economic Commission for Latin America and the Caribbean (ECLAC). In the region, ECLAC is well-known for conducting multi-stakeholder dialogues on natural resource governance and for providing technical assistance on issues such as environmental liabilities, mining closures and sustainable and responsible management of natural resources. Moreover, ECLAC has been a key partner, as it functions as the technical secretariat for the Escazú Agreement, which guarantees the rights to access to information and participation in decision-making processes as well as to access to justice in environmental matters.

Due to the nature of mining activities and their immense environmental and social impact, it is crucial that NHRIs monitor adequate conduct and implementation of Environmental Impact Assessments (EIA) and other management mechanisms. This way, NHRIs can contribute to human rights promotion and protection, for example by reporting on human rights violations and infringements. Ombudspersons within NHRIs can mediate in social conflicts and exert influence on political actors by making recommendations, for example by suggesting improvements for existing EIA systems.

NHRIs called for the permanent communication between enterprises and potentially affected population groups through a variety of mechanisms, such as public hearings or dialogue roundtables, investigations and complaints handling. Other activities included disseminating and following-up on declarations, decisions, recommendations, standards, conclusions and proposals of international human rights bodies.

Human Rights Framework and Resource Governance

The state duty to protect human rights in the mining sector derives from the nine core international human rights treaties as well as the eight core labour conventions of the International Labour Organization (ILO). The right to free, prior and informed consent of indigenous peoples (FPIC) is enshrined in ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples.

The UN Guiding Principles on Business and Human Rights (UNGPs) stipulate the responsibility of businesses to respect human rights. They must avoid infringing on human rights and should address adverse human rights impacts in their business activities. To this end, businesses should adopt human rights due diligence measures, such as:

- A policy commitment to human rights;
- Identifying, preventing and mitigating negative human rights impacts;
- Regular reporting on how they address their human rights impacts;
- Set up processes to enable the remediation of any adverse human rights impacts.

In addition to the responsibility of businesses, states have the legal duty to protect individuals from business-related human rights infringements and violations. Globally, states implement the UNGPs by adopting national action plans on business and human rights, which should include a 'smart mix' of mandatory and voluntary measures. Moreover, the OECD Guidelines for Multinational Enterprises comprise recommendations for responsible business conduct. A Due Diligence Guidance for Responsible Mineral Supply Chains provides detailed recommendations to help companies respect human rights and avoid contributing to conflict through their mineral purchasing decisions and practices.

NHRIs workshop,
September 2019.

Achievements and impact

The programme contributed to the establishment of a FIO working group on human rights and mining. This was made possible with the support of the GIZ programme “Building institutional capacity at the Ibero-American Federation of Ombudsmen” (PROFIO), which concluded in December 2018.

The FIO working group allowed its member NHRIs to exchange and discuss the multiple challenges in the mining sector. They developed new tools for protecting and promoting human rights and for raising awareness on human rights violations and infringements in mining contexts. For example, the [Observatory on Principle 10](#) in the LAC region provides information on legislation, policies, jurisprudence and treaties on the rights to access to information, public participation and justice in environmental matters. These rights are enshrined in [Principle 10](#) of the Rio Declaration.

Another outcome of the process was the interaction between ECLAC and the region’s NHRIs on mining. This cooperation resulted in ECLAC being a permanent member in FIO’s thematic group. Through regular digital communication as well as face-to-face workshops they improved regional and south-south cooperation in a multi-stakeholder setting. A community of practice was established within ECLAC’s Observatory on Principle 10, which serves as a virtual space for information exchange and discussion. This enabled mutual learning, for example when other countries in the thematic group learned about Peru’s recent development of guidelines for the promotion of women’s participation in the environmental certification process. Such exchange was highly valuable, which is why the group is likely to continue its work beyond the duration of the MinSus programme.

Following a 2017 regional FIO workshop, the thematic group started working on recommendations on incorporating a human rights and gender-based approach into environmental impact assessments, both for states and businesses. One recommendation, which was has been the result of the prior consultation process, highlights the need for states to follow-up, monitor and report on agreements and measures. Moreover, FIO and selected NHRIs, with GIZ’s and ECLAC’s technical assistance, developed a survey, which was distributed among the ten institutions that are part of the thematic group. The survey allowed FIO and the NHRIs to analyse and compare the

countries’ different EIA systems and related legislation. Among other issues, it revealed the absence of a gender perspective in the EIA of the ten member countries of the thematic group.

Based on the information gathered in the survey, recommendations for states and businesses were developed in three areas: (i) access to information, (ii) access to public participation and (iii) free, prior, and informed consultation processes.

With GIZ’s and ECLAC’s input, international frameworks such as the UN Guiding Principles on Business and Human Rights and the 2030 Agenda have been promoted among countries and population groups as rights holders. By promoting multi-stakeholder platforms such as MinSus itself, the programme strengthened the link between 2030 Agenda and the human rights agenda.

In its third phase (2019 – 2022), the MinSus programme is building on the lessons learned and is aiming at mainstreaming human rights further, both internally and externally. The human rights component focuses on strengthening citizens’ access to grievance mechanisms in mining contexts, with a two-fold aim: On the one hand, by enabling duty bearers (mainly mining and environmental authorities) in mining contexts to fulfil their responsibilities. On the other hand, by empowering rights holders (communities affected by mining and civil society as a whole) to assert their

Panel on gender equality in
XXIV FIO Congress, Brazil 2019.



NHRIs presenting in the IV Regional Consultation on Businesses and Human Rights.

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rights effectively, which also strengthens conflict prevention mechanisms. In such activities, the programme will maintain close links with civil society actors as well as with NHRI. For example, the programme will continue the cooperation with the NGO CREER and the Colombian NHRI on the development of grievance mechanisms. Thereby they will support the sustainability of a current pilot project of the cross sectoral programme ‘Realising Human Rights in Development Cooperation’.

Challenges

Mining activities are not gender-neutral. Women have traditionally been discriminated when it comes to decision-making and to profiting from mining activities overall. Incorporating a gender dimension in the EIAs remains a crucial challenge for NHRIs as gender issues face considerable resistance by key stakeholders in the region. Businesses in the extractive sector are often more willing to incorporate human rights rather than gender issues in their operations, monitoring, reporting and overall due diligence.

Another challenge is promoting an adequate understanding of the HRBA. Both NHRIs and other stakeholders need to receive in-depth training and agree on common language. Here, MinSus can learn from existing GIZ activities. For example, the GIZ Sector Programme on Human Rights currently supports training on the HRBA in the Colombian National Human Rights Institution.

Moreover, the lack of financial and human resources within NHRIs was identified as an ongoing challenge. NHRIs are overwhelmed with the vast amount of complaints they receive regarding human rights violations. Therefore, supporting and contributing to strengthening NHRIs internally is key.

A further challenge is the lack of implementation of NHRIs’ recommendations within governments, sectoral ministries and the private sector. It is crucial to move beyond recommendations and to action. Greater focus needs to be put on monitoring and developing early warning systems. It remains a challenge to deal with structural problems such as institutional weakness and socio-environmental conflicts. This goes beyond the programme’s objectives, resources and timeframe, which is why it is important to involve more stakeholders in the region.

Lessons learned

Multi-stakeholder partnerships play a key role in achieving relevant human rights impacts within mining contexts. Here it is essential to involve as many stakeholders as early on as possible in the process. This includes consulting with NHRIs outside the region, such as the Danish Institute for Human Rights. Other important allies were UN organisations and other GIZ programmes, which were able to multiply synergies, resources and impact, to finance the participation of NHRIs outside the Andean region and to maximise synergies and expertise within the LAC region.

A second lesson learned is that it needs a significant amount of effort and time upfront to map out NHRIs and to coordinate all relevant stakeholders. When planning, both regarding resources and indicators, it is essential to develop realistic timeframes and outputs and to manage the expectations of NHRIs. It is key to identify strong and particularly willing NHRIs to help coordinate the work and serve as levers for the rest of the group. In the case of MinSus, Colombia’s NHRI, which currently holds the presidency of the NHRIs’ international umbrella organisation ([GANHRI](#)), has been a key driver behind the thematic group’s development and leadership.

Published by

Deutsche Gesellschaft für
Internationale Zusammenarbeit (GIZ) GmbH

Registered offices Bonn and Eschborn, Germany

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As at

August 2020

Layout

kipconcept gmbh, Bonn

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On behalf of

Federal Ministry for Economic
Cooperation and Development (BMZ)
Division 412 – Human rights; gender equality;
inclusion of persons with disabilities, Bonn, Germany

In cooperation with

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