



Incorporating the Human Rights-Based Approach into Resource Governance Projects in the Context of Technical Cooperation

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Foreword

The extractive industry is hugely important in the context of development policy and national human rights protection, and is likely to become even more so in the future. Over three and a half billion people live in some 50 countries where extractive resources are the key source of income. According to United Nations estimates, resource consumption worldwide will triple by 2050. At the same time, resource extraction causes numerous human rights violations and affects violent conflicts. So far, governments have made too little use of revenues from the extractive sector to improve the economic and social situation in their own countries and their resource-rich regions.

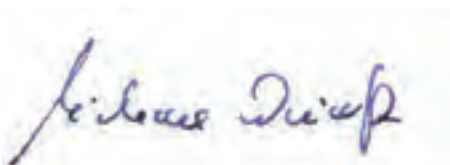
Human rights are a fundamental principle of German development policy, and provide key guidance when defining the objectives and designing the activities of development cooperation projects. The soon to be adopted National Action Plan for Business and Human Rights is a further step towards implementing the United Nations Guiding Principles on Business and Human Rights. It will also tackle human rights problems in the (resource) supply chains of German companies. In this sector in particular, governments and business enterprises alike face numerous human rights risks.

This is why human rights must also be respected and promoted when the implementing organisations of German development, such as GIZ, advise partner countries on the extractive sector. This includes for instance strengthening rights to education, food, health and water, as well as protection against displacement, and promoting the fulfilment of labour rights in mining. Development cooperation projects must also strengthen

and implement human rights principles such as popular participation – particularly for indigenous peoples, non-discrimination and accountability.

A coherent, whole-of-government approach is key to the success of development policy. The extractive sector has numerous links to Germany through transnational supply chains. According to the United Nations Sustainable Development Goals, all countries – not just developing countries – are obliged to take appropriate measures to promote sustainable development. This includes respecting and protecting human rights. It is therefore all the more important to implement the UN Guiding Principles on Business and Human Rights, including their core duties to protect and respect, at both ends of global supply chains, including those in the extractive sector.

The present paper aims to support systematic implementation of the human-rights based approach in resource governance projects involving German development cooperation. It reflects an awareness of the fact that resource governance also involves developing and implementing political structures that encourage and enable states to protect human rights, and corporations to respect them, as they are obliged to do. Based on this the paper develops approaches to advising state institutions, civil society organisations, national human rights institutions and business enterprises. By applying these approaches systematically and consistently, the implementing organisations of German development cooperation would strengthen human rights in the extractive sector considerably. They would also be discharging an important part of their human rights obligations.



Michael Windfuhr
Deputy Director, German Institute for Human Rights

1 Background and objectives

Mineral resources have substantial potential to drive development, reduce financial dependence on external donors and increase prosperity in developing and transition countries. And yet there are very few countries where the people are able to share in the benefits of resource wealth: today, some three quarters of the world's poor live in countries whose economies are dominated by extractive resources.

Besides this paradox of plenty, which GIZ's resource governance services seek to resolve,¹ **the specific issue of human rights in the resource sector has gained in importance in recent years**, largely as a result of global demand growth and the ensuing rise in the number of concessions being granted by resource-rich countries. In many countries, the extractive industry's geographical boundaries have widened to include territories and communities hitherto unaffected by mining operations. As a result, actual and potential violations or infringements of human rights are increasingly the focus of governance debates between local communities, companies, governments and international development partners.

In order to underline the key role of human rights, the German Government has adopted a Strategy on Human Rights in German Development Policy (BMZ-Strategiepapier 04/2011²). The Strategy describes the German Government's commitment to strengthening human rights as a priority area of German development cooperation. In pursuing this policy goal, Germany attaches great importance to the dual approach to **human rights promotion** in partner countries, which **combines specific human rights programmes and the mainstreaming of a human rights-based approach across all other sectors**.

With its Strategy Paper on Extractive Resources in German Development Cooperation (2011³), BMZ has provided a strategic framework for development cooperation in the resource sector. The paper identifies the mainstreaming of economic, environmental, and social sustainability principles in the extractive industries as a policy goal and defines six areas of activity in this context (see Section 2.2 below).

- ▶ These two documents mandate GIZ to pursue a human rights-based approach to development cooperation. This can take place in the following stages of the project cycle:
 1. Programme planning: human rights-specific areas of activity and/or outputs are integrated into the appraisal and design of technical cooperation measures in the extractive industries on a one-off basis.
 2. Mainstreaming of human rights in programme and project implementation: the human rights-based approach is recognised as a cross-cutting issue and a transversal governance challenge. Human rights and related principles are integrated into the relevant areas of activity and underpinned by appropriate inputs/activities.

This paper therefore outlines options for **mainstreaming human rights-related advisory services in GIZ's future resource governance projects and programmes**. As a second step, this creates scope to develop innovative approaches for the implementation of current projects and programmes and to devise new services, also on behalf of other commissioning parties.

¹ GIZ's resource governance pages: intranet.giz.de/cps/rde/xchg/giz_intranet/XSL/hs.xsl/-/HTML/104441.htm

² BMZ Strategy Paper 4/2011: https://www.bmz.de/en/publications/archiv/topics/human_rights/Strategiepapier305_04_2011.pdf

³ BMZ Strategy Paper 2011: https://www.bmz.de/en/publications/archiv/type_of_publication/strategies/StrategyPaper302_04_2010_en.pdf

2 Policy framework

2.1 The human rights-based approach in German development cooperation

BMZ's Strategy Paper 4/2011 establishes a stronger strategic framework for a human rights-based approach and makes it binding for all organisations involved in implementing bilateral German development cooperation. According to the Strategy, German development policy aims to contribute to poverty reduction and sustainable development by improving the fulfilment of human rights obligations. To that end, the implementing organisations (BGR, GIZ, KfW and PTB) must use human rights obligations, standards, interpretations and principles as a framework for their planning and implementation of development cooperation. Institutional partners responsible for ensuring respect for and the protection and observance of human rights ('duty-bearers') – usually the mining ministries – must be enabled to fulfil their human rights obligations in the context of resource governance (capacity development).

Rights holders, i.e. the communities which may be affected by the extractive industries (such as indigenous peoples, rural populations and workers), are to be empowered to assert their rights effectively. Measures such as the promotion of transparency initiatives in the extractive sector (e.g. EITI) involve both the governmental and non-governmental actors. Businesses, both multinationals and local enterprises are involved as a third stakeholder group in order to ensure that they are supported in fulfilling their obligations to respect human rights in accordance with the UN Guiding Principles on Business and Human Rights. In this context, BMZ defines the approaches and strategies as follows:

1. Mainstreaming the human rights-based approach, promotion of policy coherence: in other words, the human rights-based approach is to be integrated across the board in the extractive industries
2. Expansion of specific human rights programmes (e.g. promoting a country's extractive industry in a way which directly aims to improve its human rights situation)

3. Multi-level approach (e.g. stakeholder dialogue involving government institutions, affected communities and mining companies)
4. Promoting inclusive development (e.g. empowering indigenous communities to participate in national resource strategies and share in the benefits accruing from these resources)
5. Expanding the development toolbox (e.g. promoting or creating mechanisms of accountability that have an impact in the context of extractive sector programmes).

To ensure that Strategy Paper 4/2011 is implemented in a systematic manner and in accordance with its objectives, BMZ adopted Guidelines on incorporating human rights standards and principles, including gender, in programme proposals for bilateral German Technical and Financial Cooperation. The Guidelines introduce a mandatory requirement for prior assessment of the potential human rights risks and impacts of proposed extractive industry projects. This also helps to increase local communities' acceptance of these projects.

2.2 Strategy Paper on Extractive Resources in German Development Cooperation

In October 2010, the German Government adopted its Raw Materials Strategy, developed with the active participation of BMZ. It mapped out the strategic direction for the German Government's policies in the extractive sector, with a new emphasis on business and development. The aim is to create synergies between development, foreign, and economic policy interests. These synergies arise primarily from the approach mapped out by the Strategy, the aim being to support and stabilise conditions which foster development in partner countries by strengthening state institutions, thus empowering them to utilise their mineral wealth for sustainable development and to become well-performing suppliers in the international commodities markets.

This approach is further elaborated from a development policy perspective in BMZ's Strategy Paper on Extractive Resources in German Development Cooperation (ERES), which defines the management of the partner countries' extractive resources sector on the basis of economic, environmental and social sustainability principles as one of the goals of German development cooperation.

To that end, German development cooperation provides support so that partner countries can create a framework that guarantees compliance with internationally recognised minimum standards, thus preventing negative environmental and social impacts and helping to improve their human rights situation.

BMZ has defined the strengthening of good governance in the extractive sector as the main pathway for its intervention, based on the following goals and areas of activity:

1. Utilise the extractive sector to develop and strengthen local economic frameworks
2. Develop efficient and effective structures in the Extractive sector
3. Establish transparency
4. Establish environmental and social minimum standards
5. Make more efficient use of extractive resources
6. Address the nexus between resources and conflicts

The following areas of activity are particularly relevant from a human rights perspective: 1) Utilise the extractive sector to develop and strengthen local economic frameworks, 2) Develop efficient and effective structures in the extractive sector, 3) Establish transparency, 4) Establish environmental and social minimum standards, and 6) Resources and conflicts.



3 Resource governance in GIZ's work

By providing policy advice aimed at improving resource governance, GIZ supports governments and involves civil society and the private sector in developing and implementing political structures that create an environment conducive to managing mineral resources responsibly through a human rights-based approach. In this way, GIZ helps to promote sustainable development and political stability in partner countries with significant natural resource endowments.

The advisory services are provided along the entire value chain and are delivered to governmental institutions such as ministries of mining, energy, or economic and financial affairs, mining authorities, tax authorities and environmental agencies, civil society organisations and private companies. To strengthen

regional cooperation and harmonisation, GIZ also supports regional organisations, such as the Economic and Monetary Community of Central Africa (CEMAC).

When cooperating with governmental institutions, national human rights institutions and civil society, GIZ focuses on capacity development at an individual and organisational level and on technical and process management advice. Private companies are advised on compliance with international standards and sustainable activities in areas with extractive operations. These include human rights, social and environmental standards and the integration of the local economy. Further information on these topics is available via GIZ's resource governance product. GIZ's current resource governance projects are listed in Annex 7.3.

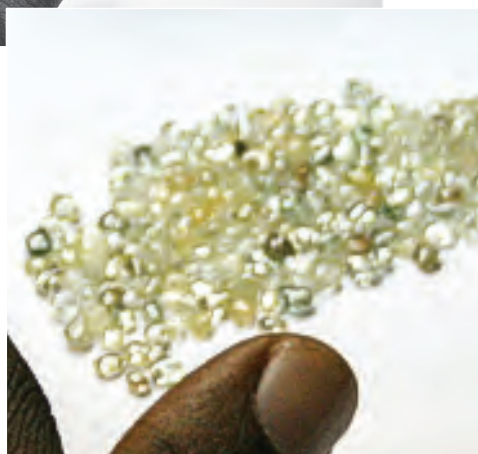


4 Human rights risks in the extractive sector

There are numerous points of contact between human rights and the extractive sector. Despite some improvements in people's living conditions, such as those resulting from social programmes funded by mine operators, the extraction of mineral resources can lead to major human rights abuses or infringements, which are categorised (albeit not exhaustively) in accordance with the Extractive Industries Value

Chain and listed below. In this instance, the classic extractive industries value chain is preceded by a policy planning phase, reflecting the fact that human rights risks can occur at an early stage when basic policy decisions are taken on resource extraction in specific areas of the country concerned. GIZ's human rights-based approach addresses the human rights risks listed in the right-hand column in the table.

The Extractive Industries Value Chain:



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Stages in the EI Value Chain	Human rights risks
Planning (adoption of basic policy decisions on resource extraction in specific areas of the country concerned)	<ul style="list-style-type: none"> ▶ Violation of affected communities' rights of participation, especially non-compliance with the obligation to consult indigenous communities and secure their free, prior and informed consent (FPIC) (ILO 169, UNDRIP) ▶ Non-compliance with nature conservation, water and environmental protection regulations (e.g. on nature reserves/protected water catchment areas)
Award of contracts and licences Production permits	<p>Award of licences</p> <ul style="list-style-type: none"> ▶ Discrimination resulting from a lack of transparency, unlawful award procedures, corruption, political influence, etc. ▶ Discrimination against specific social groups, e.g. exclusion of indigenous artisanal miners. Failure to respect communities' rights to participate, and especially those of indigenous peoples. ▶ Lack of accountability for the criteria applied in licence award procedures and for the lawfulness of these procedures ▶ Forced eviction and displacement in the course of land reform/issuing of land titles/concessions (illegal expropriation, failure to respect customary tenure, particularly of indigenous communities, non-existence of land titles, expulsion through coercion, destruction of natural resources, e.g. contamination of water resources) <p>Contractual arrangements</p> <ul style="list-style-type: none"> ▶ Discrimination due to corruption or political interests ▶ Lack of transparency in contractual arrangements, especially as regards expected revenue ▶ Failure to include human rights clauses which would oblige mine operators to comply with human rights standards <p>Production permits</p> <ul style="list-style-type: none"> ▶ Failure to make provision for measures to mitigate human rights impacts ▶ Failure to include provisions on working conditions and on environmental protection of relevance to the rights to health (Article 12) and water (Articles 11, 12 ICESCR) ▶ Lack of provisions on legal status and grievance mechanisms

Stages in the EI Value Chain	Human rights risks
<p>Regulation</p> <p>Monitoring of operations</p> <p>(Mining operations, including clean-up after operations have ceased)</p>	<ul style="list-style-type: none"> ▶ Infringement of labour, environmental and safety standards in resource extraction (non-compliance with core labour standards: child labour (ILO 182, Article 32 CRC), lower pay for women (Article 1; 11 CEDAW, ILO 100), working conditions associated with resource extraction (Article 7 ICESCR, ILO), discrimination (Article 3 ICESCR)) ▶ Emergence of conditions conducive to prostitution in mining areas ▶ Infringement of the right to form and join trade unions (Article 8 ICESCR, ILO 87, 98) ▶ Violation of the right to water (retrogression in access to water for human consumption and agriculture, e.g. resulting from the destruction of or damage to ecosystems of relevance to the (regional/supraregional) water balance or due to the unsustainable use of water resources in the extractive sector; generally heavy water use in this sector) ▶ Violation of the right to health ▶ Violation of the right to an adequate standard of living/right to earn a living (Article 11.1; 6 ICESCR) ▶ Infringement of indigenous rights (self-determination, cultural rights, non-eviction) ▶ Poor working conditions ▶ Child labour ▶ Discrimination against women ▶ Slavery (Article 8 ICCPR, ILO 29, 105) ▶ Violation of the right to life – attacks on human rights defenders (Article 6 ICCPR, Article 6 CRC) and security of person (Article 9 ICCPR), torture (Article 7 ICCPR) ▶ Conflict resources ▶ Forced eviction and displacement (ILO 169, UNDRIP) ▶ Lack of access to justice (Articles 14, 15, 16, 26 ICCPR)
Collection of taxes and royalties	<ul style="list-style-type: none"> ▶ Resource revenue is not channelled into the national budget; no opportunity to improve economic, social and cultural rights ▶ Risk of illegal payments (corruption) ▶ Exclusion of indigenous communities from benefit sharing ▶ Impunity for corruption
Revenue management and allocation	<ul style="list-style-type: none"> ▶ Discrimination in the allocation of resource revenue, based on regional, religious, ethnic and/or social bias or discrimination ▶ Exclusion of indigenous communities from benefit sharing
<p>Public investment</p> <p>Development projects</p>	<ul style="list-style-type: none"> ▶ Discrimination (regional, ethnic, religious) in decisions on investment and development programmes ▶ Lack of transparency and accountability in decision-making processes (including corruption). Failure to use of revenue to strengthen governance or respect for and promotion of political rights and freedoms ▶ Lack of public participation. Failure to use of revenue to strengthen rights of political participation (e.g. elections, trade union rights) ▶ Exclusion of local communities from access to and revenue from resources (no regional or social allocation of concession revenue to programmes which promote development or social and cultural rights such as health and education, no access to energy supply)

5 Strengthening human rights in the extractive sector

5.1 Approaches

5.1.1 Human rights impact assessments

The standard structure outlined in Annexes 7.1 and 7.2 can be used to identify country-specific risks in the extractive sector in more detail and to devise ways of integrating appropriate measures into projects and programmes.

5.1.2 Advisory services for human rights institutions

Governmental institutions

Right to participate: conduct consultation processes (EIAs, FPIC, etc.); promote inclusive and representative dialogue forums (public-private dialogue) on economic and social policy challenges, e.g. ensuring human rights-based benefit sharing for indigenous communities, improving delivery of basic public services.

Consultation processes must comply with human rights standards:

- ▶ Participants' legitimacy, i.e. their right to represent their community, must be ensured.
- ▶ The processes must be non-discriminatory (choice of venue, timing, language).
- ▶ It must be genuinely possible for stakeholders to participate (e.g. transport issues must be addressed).
- ▶ Decisions adopted must not conflict with existing legislation or infringe human rights (which are non-negotiable).
- ▶ As far as possible, there should be minimal waiving of rights to bring legal action.
- ▶ Transparency must be established on the extent to which decisions are legally binding, also with a view to preventing subsequent outbreaks of violence.⁴

Successful public consultation in mining areas: the *Investissement Durable au Katanga* dialogue platform in the Democratic Republic of the Congo

Stakeholders from the private sector, government, traditional authorities, and civil society play an active role in the dialogue platform, which is partly funded by the mining companies. Communities affected by mining operations, including mine workers, and a children's assembly voice their concerns and complaints to the government and business. Issues raised to date include the impacts of mining on the environment and on the rights to health and water, children's rights, women's rights, and occupational health and safety.

The corporate responsibility to respect human rights in the context of resettlements, for example, and companies' contribution to the implementation of local development plans and local wealth creation have also been addressed. The ongoing challenge for the future is to establish a mechanism to monitor implementation of the dialogue platform's recommendations in order to enhance their impact. Nonetheless, from a project perspective, it is clear that: 'In this politicised, conflict-prone sector, respect for affected communities' rights of participation is major progress in itself!'

Support for efforts to ensure that concession agreements include provisions of relevance to human rights, compliance with ILO core labour standards, and other environmental and human rights standards (e.g. rights of children, women, indigenous peoples), effective regulation and supervision of extractive sector companies, with due regard for core human rights, compliance with human rights standards in any resettlement measures and use of security staff.

⁴ GIZ has compiled examples of good practice in successful FPIC consultations with indigenous communities in Bolivia, Colombia and Mexico (GIZ: Das Recht auf vorherige Konsultation – the right to prior consultation, in German) and provide useful guidance on FPIC methodologies.

- ▶ Promote rule-of-law principles and institutions, e.g. by improving (non-)judicial accountability mechanisms, including access to compensation should companies infringe human rights.

Promote the establishment of accountability mechanisms to deal with complaints relating to mining; foster transparency; support anti-corruption measures.

- ▶ Promote participation in transparency initiatives (e.g. EITI)
- ▶ Support economic legislation and regulations that comply with and protect human rights, and strengthen the state's capacities to monitor compliance and enforce these regulations vis-à-vis private enterprises (promote national action plans to implement the UN Guiding Principles on Business and Human Rights).
- ▶ Support the establishment of accountability mechanisms to deal with complaints relating to mining. Develop measures to end child labour, forced labour and hazardous working conditions in the extractive sector.
- ▶ Whistleblowing: strengthen the capacities of civil society organisations to exercise scrutiny.

Strengthening resource governance in West Africa's fragile states

Making their voices heard, defending their interests. An example from GIZ's work

Local development plans are increasingly being agreed between extractive sector companies and communities directly affected by mining operations. However, marginalised groups such as young people and women are often excluded from the negotiations, further entrenching discrimination against them. With GIZ's support, the National Minerals Agency in Sierra Leone is working to empower women and young people to assert their rights to participate.

In 2012, the Ministry of Mines and Mineral Resources, with GIZ's support, set up a working group comprising representatives from various ministries, civil society and the private sector in order to devise a format for negotiating development plans in accordance with human rights standards. The format that has been agreed requires all stakeholder groups to be involved in developing the plans from now on.

In 2015, two development contracts were signed between mining companies Sierra Rutile, and Sierra Minerals and stakeholder communities. A roadmap for the process is now being prepared. For the first time, young people and women have a genuine right to make their voices heard in defence of their interests.

The private sector/extractive industry companies

Cooperate with the private sector on developing procedures and methods to meet human rights responsibilities; help achieve enhanced voluntary commitments by private companies and promote corporate social responsibility.

- ▶ Disseminate the UN Guiding Principles on Business and Human Rights and promote their implementation.
- ▶ Support environmentally sound, human rights-compliant production and marketing processes.
- ▶ Involve and strengthen civil society organisations and, where applicable, national human rights organisations in the monitoring of public finance in the extractive sector.
- ▶ Strengthen the negotiating skills of affected communities in conflicts over resource use.
- ▶ Establish effective and accessible grievance mechanisms for individuals/groups/organisations affected by resource extraction.
- ▶ Promote a partnership between workers and employers (e.g. arbitration units to resolve wage disputes, promotion of a dialogue within companies and suppliers); support bodies that represent the interests of the workforce.

Civil society, national human rights institutions, etc.

Raise awareness of mining and mineral resource extraction with a view to building the capacities of civil society and human rights institutions to strengthen human rights in this sector.

- ▶ Support capacity building for local legal aid organisations (*procuradores, paralegals*) or campaigns to raise awareness of rights in the extractive sector.
- ▶ Develop accessible non-judicial grievance mechanisms and prevention, early warning and conflict resolution systems in the extractive sector at national, international and corporate level.
- ▶ Civil society: build civil society's capacities to make use of existing grievance mechanisms.
- ▶ Strengthen national and regional human rights institutions in the extractive sector (e.g. Inter-American Court of Human Rights, African Court on Human and Peoples' Rights, ECOWAS), which in some cases offer the opportunity for individuals to lodge complaints and for civil society to participate in legal proceedings relating to human rights violations in the extractive sector.
- ▶ Strengthen the National Contact Points for the OECD Guidelines for Multinational Enterprises.

5.2 Examples from GIZ's work

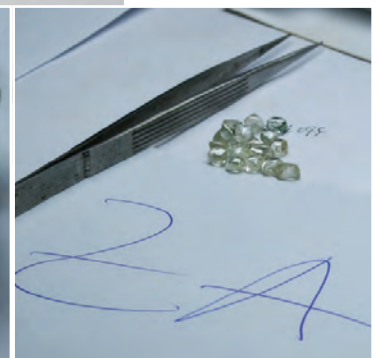
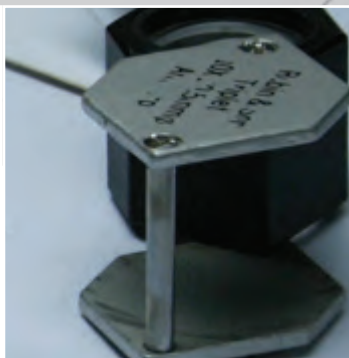
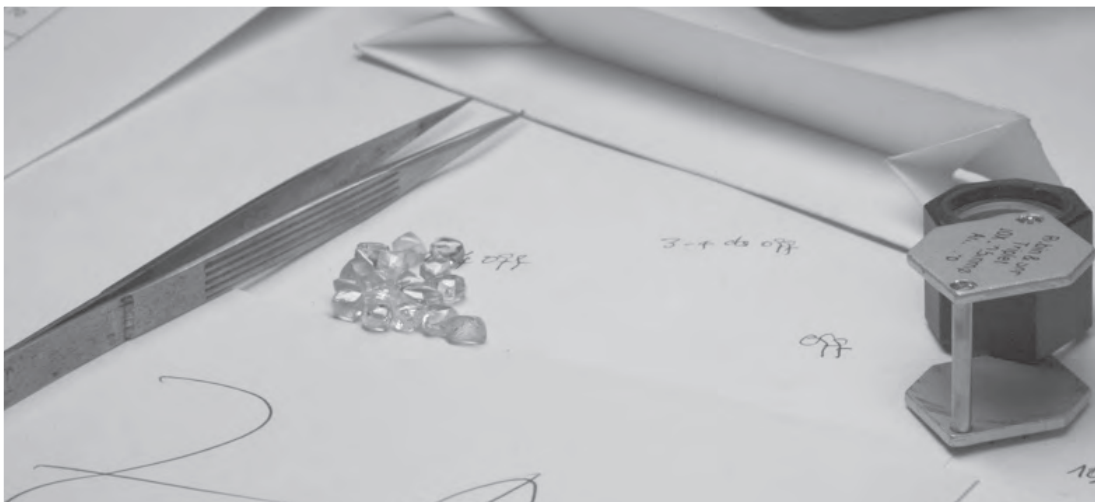
Human rights risks in the EI Value Chain	Ways of avoiding human rights risks and seizing opportunities
Planning (adoption of basic policy decisions on resource extraction in specific areas of the country concerned)	<ul style="list-style-type: none"> ▶ Develop sector-specific legislation to safeguard local communities' rights of participation, with due consideration for the environment and nature conservation in the planning of extractive sector projects (mining legislation, environmental and nature conservation laws, including environmental impact assessments and FPIC) ▶ Human rights capacity building for national planning institutions
Award of contracts and licences	<ul style="list-style-type: none"> ▶ Ensure local communities are fully informed and involved at an early stage ▶ Support the development of guidelines for licence award and transparent procedures
Production permits	<ul style="list-style-type: none"> ▶ Develop sector-specific legislation (mining legislation, environmental and nature conservation laws, including environmental impact assessments and FPIC), e.g. for the award of licences ▶ Strengthen national human rights institutions ▶ Respect indigenous communities' traditional land and water use rights and land tenure under customary law ▶ Explore and fully exploit alternatives to resettlement ▶ Strengthen transparency initiatives; if appropriate, apply PCA and the 'do no harm' principle if illegal mining is the main problem.
Regulation	<ul style="list-style-type: none"> ▶ Human rights-based water resources management: compliance with minimum standards for drinking water supply
Monitoring of operations (Mining operations, including clean-up after operations have ceased)	<ul style="list-style-type: none"> ▶ Strengthen monitoring capacities/mining supervision ▶ Involve civil society in monitoring ▶ Involve indigenous communities in monitoring ▶ Promote compliance with ILO core labour standards, combined with awareness-raising of workers's rights ▶ Strengthen risk management ▶ Provide compensation for resettlement ▶ Promote certification of mineral resources ▶ Strengthen the rule of law ▶ Identify alternative conflict resolution mechanisms ▶ Strengthen sectoral capacities of national human rights institutions ▶ Avoid establishing waste storage facilities near settlements, develop appropriate safeguards
Collection of taxes and royalties	<ul style="list-style-type: none"> ▶ Strengthen EITI and other transparency initiatives, also to prevent the trading of extractive resources from illicit mines and the funding of armed conflict ▶ Publish the national budget, including revenue ▶ Strengthen the tax administration ▶ Strengthen participation by civil society ▶ Strengthen national human rights institution
Revenue management and allocation	<ul style="list-style-type: none"> ▶ Citizen budgeting/gender budgeting ▶ Promote transparency and accountability ▶ Advise on the socially oriented redistribution of revenue/poverty reduction ▶ Promote long-term financial planning ▶ Strengthen the national human rights institutions
Public investment/development projects	<ul style="list-style-type: none"> ▶ Strengthen civil society organisations working on this issue ▶ Strengthen the national human rights institutions

6 Outlook

A nuanced approach to human rights impact assessment in the extractive sector can bring a measure of objectivity to the sometimes oversimplified and politicised debate about resource extraction in the partner countries. Applying the human rights-based approach to GIZ's resource governance projects helps to protect them from human rights-related risks, thereby placing them on a firmer footing and facilitating the implementation of resource governance projects in complex settings.

The task now is to apply the human rights-based approach consistently and systematically in order to gain experience, learn lessons and identify best practice in the resource governance sector.

We hope that this document will provide helpful guidance which can be used to good effect.



7 Annexes

7.1 Standard ToRs for human rights impact assessments

Relevant questions for a human rights analysis prior to or during a project appraisal

During a project appraisal, a human rights analysis should focus primarily on the following:

- ▶ **General conditions:** the analysis should identify structures which are conducive to or obstruct development in the priority area/sector, focusing on the relevant human rights and their realisation.
- ▶ **Results and risks of the project:** here, the analysis should identify what human rights results and risks the project entails.

The following questions are especially relevant when preparing the appraisal⁵:

1. General overview: the national human rights situation

- What are the country's obligations under international human rights conventions?
- What are the major human rights challenges?
- Which groups are particularly affected by human rights infringements, such as limited access to resources and services? Where are there barriers to access (distance, affordability, language, stigmatisation, legal discrimination)? What opportunities are there for public participation, and to what extent do marginalised groups have a voice?

2. Sector-specific analysis

- Which specific international human rights standards are most relevant to the sector?
- To what extent are these standards formally established (e.g. in the constitution or legislation) and how are they enforced?
- Which governmental institutions are of relevance, and who are the stakeholders in the sector?
- What is the project partners' stance on human rights standards and principles?
 - To what extent do the employees of partner organisations or other relevant institutions have expertise in the field of human rights?
 - How much ownership of human rights obligations exists on the part of project partners or other governmental institutions?
 - To what extent is there a need for human rights capacity building in partner organisations or relevant institutions?

3. Mainstreaming human rights in development programmes

- To what extent has the project been aligned to human rights standards and principles (e.g. in planning, implementation and monitoring)?
- What human rights results, i.e. progress towards the realisation of human rights, can already be identified? How can these project results be amplified in future?
- Does the project pose any human rights risks, i.e. is it likely to have unintended negative effects on individuals' or communities' human rights? If so, which measures can be taken to mitigate or avoid these risks?

⁵ The Max Planck Foundation's study Human Rights Risks in Mining – A Baseline Study, 2016, commissioned by BGR, provides useful guidance on typical areas of conflict related to human rights.
 • www.bmz.de/rue
 • www.bgr.bund.de/DE/Themen/Zusammenarbeit/TechnZusammenarbeit/Downloads/human_rights_risks_in_mining.pdf?__blob=publicationFile&v=2

7.2 Standard structure for human rights risk assessments in the mining sector

Content of risk assessments:

1. Mining in the partner country: main types and activities, brief historical overview of mining and its socio-economic context (if required)
2. Identify **key stakeholders** (all the various tiers of government, national human rights institutions, NGOs and other civil society representatives, human rights activists, industry, relevant associations, academia)
3. Review the **human rights situation** in the partner country: legal framework, institutions and reality (with main emphasis on the extractive sector) based on the following questions:
 - a. Which international and regional human rights conventions of relevance to the sector has the country signed and ratified?
 - b. Are the relevant rights enshrined in the constitution as legally enforceable basic rights or duties of the state?
 - c. To what extent are human rights standards and principles enshrined in national legislation applicable to this sector? Where do loopholes and contradictory provisions still exist?
 - d. Are the laws applied and the rights enforced? Are there any gaps in implementation?
 - e. Has the country adopted a national human rights strategy? If so, does the strategy make any reference to this sector/priority area?
 - f. To what extent do local communities (including indigenous peoples) have a voice and opportunities to be involved in decision-making in this sector?
 - g. Which sector-specific grievance and oversight mechanisms are available to the general public at national, regional and local level?
 - h. How are consultation and complaint mechanisms used in practice?
 - i. Which marginalised social groups are of particular relevance to the development project?
 - j. Are these groups aware of their rights? What is their view of these rights, and how do they interpret them?
 - k. Are these groups of people organised in any way? Are they able to assert their rights and/or make use of grievance mechanisms?
 - l. Are there any civil society organisations representing the rights of disadvantaged groups?
 - m. How do other stakeholders (e.g. private companies, religious institutions) interpret and, if relevant, promote human rights standards and principles?
 - n. To what extent is there agreement/conflict between international human rights standards and the norms and values espoused by other stakeholders?
4. **Assess human rights risks** in the partner country's mining sector/description of the problem areas in which human rights are infringed by the extractive sector, with a brief outline of the causes and context

As a minimum, the following human rights aspects should be considered and an assessment provided for each of the following areas: industrial, artisanal and (if applicable) illegal mining:

 - a. General and specific (indigenous) rights of participation
 - b. Protection from forced displacement/eviction
 - c. Right to physical integrity, health
 - d. Environmental and social standards (ILO core standards)
 - e. Occupational health and safety/accident risk management
 - f. Access to water
 - g. Child labour

Depending on project needs, the human rights assessment can be case-specific or, alternatively, be based on the steps of mining operations.

Option 1
(illustrated with reference to Colombia)⁶

4.1 Large-scale industrial mining, Cesar Department

- a. Production, business structure, stakeholders
- b. Mining operations and affected rights
 - General risks associated with mining operations (e.g. FPIC, resettlement, compensation issues)
 - Local situation: customary approach (if identifiable), examples of human rights violations (possibly with reference to obligations to respect, protect and observe human rights)
- c. Existing legal remedies and grievance or protection mechanisms (vis-à-vis the state: opportunities to initiate legal proceedings; compensation issues; vis-à-vis the private sector: FPIC)
- d. Current rights protection initiatives
- e. Comparison of formal legal framework (chapter 2) with status quo; analysis of key barriers to implementation

4.2 Artisanal coal mining in the Boyacá Department
Structure as shown in 4.1

4.3 Gold mining in Chocó Department
Structure as shown in 4.1

4.4 Nickel Cerro Tomaso,
Structure as shown in 4.1

4.5 Contaminated sites in former mining areas
Human rights risks

5. Conclusions and recommendations

Option 2

Here, the entry points are the human rights risks listed in chapter 4.

If necessary, a distinction can be made if necessary between industrial, artisanal/informal and illegal/criminal mining. The analysis should be based on the risks mentioned above.

Resource:	Gold			Nickel			Etc.
	Human rights risks	Institutions Stakeholders	Recommendations	Human rights risks	Institutions Stakeholders	Recommendations	
1 Exploration							
2 Planning/ preparation							
3 Mining, extraction, processing, transport							
4 Closure, contaminated sites							

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⁶ Example by BGR

7.3 GIZ's extractive sector projects: an overview

Region	Country	Project
Africa	Burundi	Strengthening governance in the resource sector
	Democratic Republic of the Congo	Strengthening of transparency and control in the mining sector of the DR Congo
	Liberia, Sierra Leone, Guinea, Côte d'Ivoire	Regional resource governance in the extractive sector in the fragile states of West Africa
	Ghana	Good financial governance (GFG)
	Madagascar	Conservation and sustainable use of natural resources
	Mali	Improving resource governance in the extractive sector
	Mauritania	Support to resource governance
	Mozambique	Good governance in the extractive sector in Mozambique
	CEMAC	Strengthening governance in Central Africa's extractive sector
	International Conference on the Great Lakes Region (ICGLR)	Support for the International Conference on the Great Lakes Region
	Tanzania	Strengthening resource governance in the gas sector
Central Asia	Mongolia	Integrated Mineral Resources Initiative
	Mongolia	Cooperative Vocational Training in the Mineral Resource Sector
	Afghanistan	Promotion of mineral governance in Afghanistan
	Kazakhstan, Kyrgyzstan, Tajikistan	Managing mineral reserves for sustainability in Central Asia
Latin America	Economic Commission for Latin America and the Caribbean (CEPAL)	Regional cooperation for the sustainable management of mining
	Peru	Dialogue formats in the mining sector

7.4 Potential human rights risks in conjunction with development cooperation measures

Risks	How to avoid the risks
<p>Forced eviction and displacement in the course of land reform/issuing of land titles/concessions</p> <p>Illegal expropriation</p> <ul style="list-style-type: none"> ▶ Illegal expropriation ▶ Failure to respect customary tenure (particularly of indigenous communities) ▶ Non-existence of land titles ▶ Expulsion through coercion ▶ Destruction of natural resources, e.g. contamination of water resources 	<ul style="list-style-type: none"> ▶ Examine and exhaust all alternatives to resettlement (e.g. through EIAs, stakeholder dialogue); where resettlement proves to be unavoidable, apply: <ul style="list-style-type: none"> • UN Basic Principles and Guidelines on Development-based Evictions and Displacement • UN Principles on Housing and Property Restitution for Refugees and Displaced Persons ▶ Develop and fine-tune documentation and legitimation procedures for informal land rights
<p>Health-damaging pollution of air, water and ecosystems caused by industrial projects or local investment</p>	<ul style="list-style-type: none"> ▶ Conduct environmental and climate impact assessments ▶ Support measures designed to prevent as far as possible or at least reduce pollutant emissions
<p>Retrogression in access to water for human consumption or agriculture:</p> <ul style="list-style-type: none"> ▶ e.g. as a result of the destruction of or damage to ecosystems of relevance to the (regional/supraregional) water balance ▶ as a result of the unsustainable use of water resources in the extractive sector ▶ generally heavy water use in this sector 	<ul style="list-style-type: none"> ▶ Within the scope of water resources management, resolve conflicts over the use of water by reconciling interests fairly and by ensuring respect for the rights and needs of vulnerable groups (e.g. subsistence farmers, internally displaced persons) who are particularly dependent on water ▶ Comply with minimum drinking water standards, ensure compensatory measures to protect the drinking water supply of vulnerable groups
<p>Violation of indigenous peoples' codetermination rights in conjunction with extractive sector projects on indigenous lands</p>	<p>Apply the principle of free, prior and informed consent in development cooperation measures that affect the rights of indigenous peoples</p> <ul style="list-style-type: none"> ▶ IFC Performance Standard 2012 No. 7 & Guidance Note 7
<p>Disadvantage to marginalised groups (e.g. women, minorities, pastoralists, young people, members of indigenous communities)</p> <ul style="list-style-type: none"> ▶ failure to consider these groups in the course of the issuing of land titles and usage rights ▶ in relation to concession agreements in the extractive sector ▶ corruption in the award of concessions 	<ul style="list-style-type: none"> ▶ Involve local communities as early as possible in planning and negotiations ▶ Support equal access to land and water and strengthen legal certainty ▶ Depending on the context, award concessions to indigenous peoples

Risks	How to avoid the risks
Health hazards for local communities caused by disposal of waste from resource extraction	<ul style="list-style-type: none"> ▶ Avoid establishing disposal facilities close to settlements ▶ Comply with international standards applicable to waste disposal/waste facilities in order to protect human health and the environment ▶ Support appropriate protective measures to prevent unauthorised access to disposal facilities if risks exist ▶ Support public information campaigns
<p>Exclusion of local communities from benefits accruing from resource extraction:</p> <ul style="list-style-type: none"> ▶ No (regional or social) redistribution of revenue from concessions ▶ Corruption ▶ No access to energy supply ▶ Etc. 	<ul style="list-style-type: none"> ▶ Good Financial Governance ▶ EITI ▶ Etc.
<p>Non-compliance with labour, environmental and occupational health and safety standards in the extractive sector</p> <ul style="list-style-type: none"> ▶ Non-compliance with core labour standards: child labour, lower pay for women ▶ Working conditions in and around resource extraction ▶ Discrimination 	<ul style="list-style-type: none"> ▶ Specifically promote compliance with ILO core labour standards, also when supporting measures aimed at making businesses more competitive (measures to ensure occupational health and safety, support for bodies that represent the interests of the workforce) <ul style="list-style-type: none"> • IFC Performance Standard 2012 No. 2 & Guidance Note 2 ▶ Support awareness-raising on workers' rights, especially for disadvantaged groups
<p>Influence on or cause of armed conflicts</p> <ul style="list-style-type: none"> ▶ Funding of armed groups, resulting in violence/fragility ▶ Expulsions ▶ Forced recruitment 	<ul style="list-style-type: none"> ▶ 'Do no harm' ▶ Peace and conflict analysis ▶ Transparency initiatives (e.g. Kimberley Process, fingerprints, EITI)

Ways to strengthen human rights (a selection)

Advisory services for partner governments:

Engage in participatory processes (e.g. EIAs, FPIC.)

- ▶ Promote inclusive and representative dialogue forums (public-private dialogue) on economic and social policy challenges, e.g. ensuring fair, human rights-based benefit sharing for indigenous communities, improving the state's delivery of basic public services
- ▶ Support efforts to ensure that concession agreements contain appropriate provisions of relevance to human rights and to compliance with ILO core labour standards and other environmental and human rights standards (e.g. rights of children, women, indigenous peoples.) and promote effective regulation and supervision of extractive sector companies, with due regard for core human rights, compliance with human rights standards in any resettlement measures, use of security staff
- ▶ Support transparency and anti-corruption measures Promote participation in transparency initiatives (EITI)
- ▶ Support economic legislation and regulations that comply with and protect human rights, and strengthen the state's capacities to monitor compliance and enforce these regulations vis-à-vis private enterprises
- ▶ Support measures to end child labour, forced labour and hazardous working conditions in the extractive sector
- ▶ Promote rule-of-law principles and institutions, e.g. by improving (non-)judicial accountability mechanisms, including access to compensation should companies infringe human rights

Advisory services for extractive industry companies:

- ▶ Help achieve enhanced voluntary commitments by private companies and promote corporate social responsibility; cooperate with the private sector in developing procedures and methods to meet human rights responsibilities
- ▶ Disseminate the UN Guiding Principles on Business and Human Rights and promote their implementation
- ▶ Support environmentally sound, human rights-compliant production and marketing processes

Advisory services for civil society:

- ▶ Involve and strengthen civil society organisations and, where applicable, national human rights organisations in the monitoring of public finance in the extractive sector
- ▶ Strengthen the negotiating skills of affected communities in conflicts over resource use
- ▶ Establish effective and accessible grievance mechanisms for individuals/groups/organisations affected by resource extraction
- ▶ Promote a partnership between workers and employers (e.g. arbitration units to resolve wage disputes, promotion of a dialogue within companies and suppliers); support bodies that represent the interests of the workforce

7.5 Core human rights conventions

Universal Declaration of Human Rights (UDHR)

www.un.org/en/universal-declaration-human-rights/

Convention on the Rights of the Child (CRC)

www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx

ILO Convention No. 182: Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour

www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182

ILO Convention No. 100: Equal Remuneration Convention

www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C100

ILO Convention No. 169: Convention concerning Indigenous and Tribal Peoples in Independent Countries

www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169

ILO Convention No. 105: Abolition of Forced Labour Convention

www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C105

ILO Convention No. 29: Convention concerning Forced or Compulsory Labour

www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029

ILO Convention No. 107: Convention concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries

www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C107

United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

International Covenant on Civil and Political Rights (ICCPR)

www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx

International Covenant on Economic, Social and Cultural Rights (ICESCR)

www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx

UN Guiding Principles on Business and Human Rights (UNGPs)

www.ohchr.org/Documents/Publications/Guiding-PrinciplesBusinessHR_EN.pdf

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

www.un.org/womenwatch/daw/cedaw/text/econvention.htm

Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT)

www.fao.org/3/a-mj610e.pdf

Background information from the German Institute for Human Rights (DIMR)(in German):

www.institut-fuer-menschenrechte.de/file-admin/user_upload/PDF-Dateien/Factsheets/hintergrundinfo_ein_wichtiges_instrument_die_freiwilligen_leitlinien_zur_verantwortungsvollen_verwaltung_von_boden_und_landnutzung_srechten_05_2012.pdf

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