THROUGH THE LOOKING GLASS

Corruption risk in mining licensing and permitting in the pandemic era
Purpose
This report examines the current and future impacts of the COVID-19 pandemic on corruption risks in the licensing and permitting of large-scale mining projects.

Acknowledgements
The report was written as part of Transparency International’s Accountable Mining Programme, which is funded by the BHP Foundation and the Australian Government through the Department of Foreign Affairs and Trade. The study was conducted by Square Circle Global Development and this report was written by Dr Tim Grice.

The author would like to acknowledge Ermy Ardhyanti, Laura Treviño Lozano, Rob Stevens and Trevor Hambayi for their contribution to the case studies that were carried out for this report, including conducting interviews, distributing surveys and providing written inputs. Dr Michael Spann from Square Circle also assisted with research and written inputs for the report. Acknowledgement and thanks also goes to Nicole Bieske, Lisa Caripis and Michael Erdiaw from the Transparency International Accountable Mining Programme team, all of whom provided invaluable comments on earlier versions of this report. Finally, a warm thank you to Sefton Darby who provided an erudite peer-review of this report.

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The research, language, views, conclusions and strategies outlined in this document have been created by Transparency International Australia and are not necessarily endorsed by the BHP Foundation or the Australian Government. Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of March 2021. Nevertheless, Transparency International Australia cannot accept responsibility for the consequences of its use for other purposes or in other contexts.

ISBN: 978-3-96076-175-4

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ACRONYMS

CSOs  Civil Society Organisations
DPR   House of Representatives of the Republic of Indonesia
EITI  Extractive Industries Transparency Initiative
EPBC  Environment Protection and Biodiversity Conservation Act
ESG   Environmental, Social and Governance
ESIA  Environmental and Social Impact Assessment
EU    European Union
FDI   Foreign Direct Investment
FPIC  Free Prior and Informed Consent
IAIA  International Association for Impact Assessment
ICMM  International Council on Mining and Metals
IGF   Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development
IMF   International Monetary Fund
ITE   Electronic Information and Transactions
M&A   Mergers and Acquisitions
MCM   Mopani Copper Mines
MSGs  Multi-Stakeholder Groups
ODA   Official Development Assistance
OHS   Occupational Health and Safety
PPPs  Public Private Partnerships
SOEs  State-Owned Enterprises
USMCA United States, Mexico and Canada Trade Agreement
In the immediate wake of the COVID-19 pandemic, a simultaneous contraction in supply and demand threatened mining jobs, mining capital and mineral rents. Host governments, mining companies and minerals markets rallied. Governments enacted policy settings for continued mining operations under pandemic conditions, classifying mining as an ‘essential industry’ in many jurisdictions. Mining companies kept their operations afloat, minimising disruptions to mineral value chains that connect raw materials to capital, labour, production and distribution networks. Metals and minerals markets proved resilient, with most commodity prices experiencing a ‘V-shaped’ contraction and recovery. The majors followed suit, with the stocks of most large mining companies rebounding to higher-than-pre-pandemic levels.

Yet commodity markets have never been a good proxy for the wealth and wellbeing of governments and citizens in resource-rich countries. The disruptive impacts of the COVID-19 pandemic continue to challenge stability, prosperity and resilience globally, with the potential of prolonged and deep recessions in many countries. Upwards of 150 million people may be pushed into extreme poverty, while many developing economies and emerging markets could take years to return to their pre-pandemic trajectories. Like in past crisis junctures, it seems unlikely that the rising tide of the economic recovery will lift all boats.

Taken together, the intertwined yet potentially divergent trajectories of mining companies and the countries in which they operate raise important questions for mineral resource governance and anti-corruption efforts. As governments look to make mining deals to kickstart flagging economies, pandemic conditions impacting polities and peoples may exacerbate governance and corruption risks in the mining value chain.

This report examines the current and future impacts of the COVID-19 pandemic on corruption risks in the licensing and permitting of large-scale mining projects.

We outline seven intersecting themes that characterise the changed landscape for corruption risk in the mining licensing and permitting process. We also consider the broader implications of the themes for environmental, social and governance (ESG) performance in the sector.

Our analysis draws on over eighty semi-structured stakeholder interviews, a desktop review of news articles and primary information sources, and case studies in Mexico, Indonesia, Zambia and Canada.
SEVEN PANDEMIC-ERA CORRUPTION RISKS IN MINING LICENSING AND PERMITTING

1. Reconfiguring mining capital and mineral supply chains: The ‘good guys’ or the ‘race to the bottom’?

Mining capital and mineral supply chains are reconfiguring during the COVID-19 pandemic.

Operational disruptions to mining operations are causing a rethink in global and local supply chains. Mining deals including mergers and acquisitions (M&As) have slowed, but will likely spring back during pandemic recovery efforts. The potential for rising resource nationalism could also lead to increased state participation and changing fiscal regimes as governments look to promote mineral investment while securing a ‘fair take’. And the ongoing energy transition may be attenuated or augmented by economic recovery plans.

While the familiar tropes of ‘the good guys’, ‘the bad guys’ and ‘the race to the bottom’ loom large, governments would do well to focus on due diligence in the licensing and permitting process as markets and supply chains reconfigure.

2. Border closures and restricted travel: Mediating and dislocating social relations

With many international borders closed and travel limited, global-local and national-local relations have been mediated and, in some cases, disconnected.

At the core of this trend is a shift in social relations that could have escalating implications for corruption risk in mining licensing and permitting the longer that pandemic conditions continue. These shifts in relationships, networks, information-exchange, reciprocity, trust and collaboration have been felt by mining companies, civil society organisations (CSOs) and governments alike.

3. Cutting ‘red and green’ tape: Fast-tracking the economic recovery

As the ongoing financial contagion from COVID-19 continues to disrupt economies, governments in some minerals-rich countries are ‘fast-tracking’ approvals of new mining projects and the expansions of existing operations.

Mining developments bring large capital investments that generate revenues to the state, provide local supply chain opportunities, and create direct and indirect jobs—particularly in the construction phases of projects. Yet mining creates long-term social and environmental legacies for peoples and ecologies. There is a fine line between efficiency and effectiveness in the assessment and approval of mining developments.
4. Opening Up

Licensing Conditions

Another government response to the pandemic in some countries has been to make structural changes to minerals policy settings governing access to land, licensing requirements, revenues to the state and ownership of projects.

Going a step further than fast-tracking assessment and approvals processes, these changes reshape the conditions that govern who gets the right to mine, who benefits from mining approvals decisions, and what terms govern mining developments.

5. Stretched oversight: Regulator capacity and pandemic distraction

Pandemic-induced capacity challenges are impacting the day-to-day realities of mining regulators. Responding to the pandemic has also created its own type of ‘pandemic distraction’, at times an inertia, in governance and legislative reform work in some countries.

Looking ahead, the ongoing economic crises impacting many governments may also drive austerity measures that significantly impact the capacity of already-strained regulators.

6. Giving and receiving: Corporate philanthropy and lobbying in pandemic times

Amidst the crisis, the mining industry's social investment and philanthropy programs have pivoted to support the pandemic response in the countries and communities in which they operate.

In many cases, these donations and in-kind support have made a significant difference in COVID-19 response efforts at local and national levels. From a corruption risk perspective, vigilance in business integrity systems will help to avoid the real or perceived risk of corruption in the form of misappropriation of pandemic funds, state capture or trading in influence.

7. Shrinking civic space, digital engagement contested

Finally, the mining sector’s COVID-19 transformations have taken place at a time when civic space has been shrinking in many countries. Public health measures to limit social gatherings and movement, even when proportionate, have further restricted freedom of assembly and the right to protest in many mining jurisdictions. The extent to which digital and remote consultation can foster meaningful engagement in mining licensing and permitting processes is also contested.

When coupled with fast-tracking practices and the prioritisation of mining activities, the shrinking of civic space and the increase of digital and remote consultation methods is resulting in a ‘double impact’ in some countries. A new kind of mining exceptionalism may be emerging, where mining companies are given priority access to government regulators while community access is restricted by lockdowns and restrictions in the pandemic.

Shrinking civic space, digital engagement contested is a ‘threat multiplier’ to other pandemic-times corruption risks in the licensing and permitting of large-scale mining projects.
MINERAL GOVERNANCE & CORRUPTION RISK IN THE PANDEMIC ERA

The drivers of zoonotic diseases—ecosystem conversion, urbanisation, increased meat consumption, and connectivity among cities and countries—show no signs of abatement.² There is a very real possibility of a new ‘Pandemic Era’ punctuated by ongoing spillover events that further disrupt vulnerable societies.³

Understanding how pandemics create governance and corruption vulnerabilities in society’s institutions is an important task in the project to build more resilient governments, companies and communities.

This report offers seven intersecting themes that characterise the changed landscape for corruption risks in the licensing and permitting of large-scale mining projects.

Yet there is no one-size-fits all approach to understanding the drivers of corruption in a crisis. The ongoing and transformative disruptions of the COVID-19 pandemic present as a complex and interdependent system that is intrinsically difficult to model. Different stakeholders, with different perspectives, and different interests, see different futures for corruption risk in the sector. Just as the pandemic has unfolded in familiar yet contrasting ways around the globe, so too are governance and corruption risks in the mining sector evolving differently in mining regions, countries and communities throughout the COVID-19 response, management and recovery efforts.

Peering ‘through the looking glass’ to understand how pandemics create governance and corruption risks in mining jurisdictions is therefore the new job of governments, mining companies and civil society in mineral rich countries.

To advance this work, we outline five pandemic-times strategies for governments, companies and CSOs to mitigate and manage corruption in mining licensing and permitting. These strategies also support more resilient ESG performance under pandemic conditions.

STRATEGIES FOR MINERAL GOVERNANCE UNDER PANDEMIC CONDITIONS

A. Invest in relationships and networks for minerals stewardship.

B. Develop pandemic-sensitive governance and ESG standards and practice.

C. Adapt and strengthen transparency and accountability practices to suit pandemic work practices.

D. Foster meaningful participation and socially inclusive practices for pandemic conditions.

E. Strengthen capacity for mineral governance during pandemic times.
INTRODUCTION: THE PANDEMIC, THE MINING SECTOR AND CORRUPTION RISK IN MINING LICENSING AND PERMITTING
THE PANDEMIC

The COVID-19 pandemic has emerged as a challenge to stability, prosperity and resilience globally.

Public health systems have come under extreme and arguably unprecedented pressure responding to the global health crisis. Once-in-a-generation economic shocks have disrupted markets through a breakdown in supply and demand, and a forced disconnection between capital and labour. Geopolitical tensions have been stirred, fissures and fault lines have emerged in national and local politics, and civic space has narrowed in the wake of restrictions to movement, public gatherings and in some countries civil and political rights. Social relations have been strained amidst the turmoil, with old and new inclusions and exclusions coming to the fore. At the same time, governments, industry and the general public have rallied, innovated and adapted in an attempt to respond to the humanitarian and economic crises, and build more resilient institutions, businesses and communities.

THE MINING SECTOR

The making of mining as an essential industry

As governments grappled with the initial disruptions of the COVID-19 pandemic, the focus of the response turned to the key sectors required for providing essential services, maintaining employment, and generating revenues to fund the public health, social welfare and economic responses. With its remote operations and ability to generate fiscal revenues in mineral-rich countries, mining has figured prominently in pandemic response efforts around the globe.

One of the first public policy questions impacting the sector in many countries was to decide whether the extraction of minerals is an ‘essential industry’. This vexed decision was influenced by public health, social and economic considerations, with governments weighing the potential impacts of job loss and reduced resource rents against the public health imperative to limit the spread of COVID-19. For some, the ‘essentialisation of mining’ was problematic when juxtaposed against restrictions in public gatherings and the lockdown protocols impacting other sectors. Other observers pointed to the risk of mine sites becoming key vectors in the spread of the virus. This concern was all-the-more relevant for low- and middle-income resource-rich countries, who have had lower COVID-19 testing rates compared to their non-resource-rich counterparts.

Despite these concerns, governments in most mining countries enacted sector-specific exemptions to allow mining projects to maintain business continuity amidst broader lockdowns and restrictions. With its focus on occupational...
health and safety (OHS), the mining sector was relatively well-placed to respond to these public and occupational health requirements.13

Overcoming a simultaneous shock to supply and demand

At the same time, the mining sector also faced a dramatic, historic and simultaneous contraction in both supply and demand. Consisting of a globalised network of capital, equipment, critical supplies, employees and contractors,14 mining’s supply chain came under significant stress in the early stages of the pandemic, with disruptions to transportation and logistics networks. Faced with these challenges, global supply chains proved mostly resilient: mining companies found ways to move people, equipment and supplies amidst the changing restrictions.15

Mining’s supply-side shock was compounded by demand-side disruptions. Lockdowns and closed borders impacted consumer demand, commercial activity and trade. Industrial production and construction was halted or slowed in many countries.16 This global contraction in the demand for raw materials depressed commodity prices across a wide range of metals and minerals.17

The rallying of metals and minerals markets

However, the widespread destruction to minerals and metals demand that was feared by some did not materialise. Metals and minerals markets rallied.15 Aluminium experienced a V-shaped recovery where initial falls in the immediate wake of the pandemic have been regained.15 Other metals and minerals saw the same sudden crash followed by a recovery that has seen share prices exceed pre-pandemic levels. Iron ore, copper, nickel, silver, tin and gold have followed this pattern, where the stock recovery has exceeded the stock fall.

Contrary to some early forecasts,20 the spring-back in commodity prices drove commensurate recoveries in the share prices of many mining companies. After an initial drop in earnings in the second quarter of 2020, 18 of the top 25 mining companies beat analysts’ expectations for earnings in the third quarter, including the 12 largest mining and metals companies.21 Like the commodities in which they are invested, most of the majors, including BHP, Rio Tinto, Vale and Anglo-American, experienced an initial drop in share price followed by a rebound to higher-than-pre-pandemic levels.22

Other factors influencing the recovery include the rebound of Chinese demand for metals in the second half of 2020; and growing investor confidence in the minerals and metals required for the energy transition.23

COVID-19’S LONGER-TERM IMPACTS ON METALS AND MINERALS MARKETS

The longer-term implications of the pandemic’s impacts on metals and minerals markets are less clear. Gold and silver have thus far retained their status as safe havens in the pandemic, China’s economic rebound has kept demand for iron ore high, and demand for copper and battery minerals is being driven by telecoms and renewables.24 However, long-term predictions about commodity markets remain problematic as the full impact of COVID-19 and future path of the global recession remains unclear. Currency, credit and insurance risks also remain high on the list of miner’s concerns.25
**Does a divergence of fates produce a perfect storm?**

Yet commodity markets have never been a good proxy for the wealth and wellbeing of governments and citizens in resource-rich countries. The disruptive impacts of the COVID-19 pandemic continue to challenge health, economic, political and social systems globally, with the potential of prolonged and deep recessions in many countries. Upwards of 150 million people may be pushed into extreme poverty, while developing economies and emerging markets could take years to return to their pre-pandemic trajectories.

The intertwined yet potentially divergent trajectories of mining companies and the countries in which they operate raise important questions for mineral resource governance and anti-corruption efforts—amounting to what some commentators have called a perfect storm of challenges.

One stage of the mining value chain that may be particularly susceptible to governance and corruption vulnerabilities under pandemic conditions is the mining licensing and permitting process, when decisions are made about whether, where, and under what circumstances mining can take place.

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**Corruption risk in mining sector licensing and permitting during pandemic times**

**Mining sector licensing and permitting during non-pandemic times**

Even in non-pandemic times, the awarding of mining sector licences, permits and contracts can be complex, contested and vulnerable to corruption.

The complexity of mining approvals arises from the structure of the sector itself, which brings together multinational networks of mining companies and investors with state actors, impacted communities, citizens, and local and international civil society organisations (CSOs). In the awarding of mining sector licences, permits and contracts, these diverse actors engage in public debate and decision-making processes to evaluate the technical, financial and ecological impacts of extraction. These impacts are often highly technical and rely on forecasts of possible impacts, both positive and negative. Decisions about if, when, and how to extract are weighed up within a complex system that spans geographies and jurisdictions, connects public and private spheres of governance, and intertwines global capital, local communities and sovereign governments.

The contested nature of mining approvals arises from the high-stakes of the decisions being weighed within the social relations and political economies that enmesh the sector. Mining companies, investors, governments, impacted communities, citizens and civil society actors typically assign very different values to the costs and benefits of extraction. This is because the financial, environmental and social impacts of mining projects affect different stakeholders, in different ways, at different times. The awarding of mining sector licences, permits...
and contracts is the stage in the mining value chain where these costs and benefits are valued, apportioned and ultimately transacted between the state on behalf of its citizens, in some jurisdictions Indigenous groups or landowners, and the developer on behalf of its investors. As a result, mining approvals are the subject of much debate and contestation, occupying the agenda at community meetings, company boardrooms, government cabinets and international fora.

The corruption risks in the mining licensing and permitting process arise from the ways in which these complexities and contestations interact with other characteristics of the sector. Mining projects typically require large capital expenditures, and the licensing and permitting process often involves a high level of interaction with public officials and at times third-party agents. For many mining projects, these public-private encounters take place in jurisdictions that are either lightly regulated, have significant ministerial and bureaucratic discretion, or lack the legal framework, institutional capacity or political will for transparent and accountable governance. This confluence of corruption risks has resulted in the mining sector accounting for some of the highest numbers of bribery and corruption enforcement actions of any sector.

What is corruption?

This study uses Transparency International’s definition of corruption: the abuse of entrusted power for private gain. Drawing from political geographical theorisations of sovereignty, we also conceptualise corruption as emerging from the social relations, political economies, legal structures, capital and colonial legacies that connect state and non-state actors in the global mining sector. With its network of domestic and international actors, this interdependent system shapes access to and control over sovereign mineral resources, establishing the ‘rules of the game’ for the sector.

Mining sector licensing and permitting during pandemic-times

Complex, contested and susceptible to corruption vulnerabilities in non-pandemic times, mining sector licensing and permitting is now taking place under modified conditions during pandemic-times.

Governance practices, political priorities, economic realities and social relations have all shifted throughout the COVID-19 response, management and recovery efforts. This shifting landscape raises important questions for minerals resource governance and anti-corruption efforts.

For instance, as pandemic conditions continue to impact mineral governance and anti-corruption efforts in the sector, are the pathways of corruption changing? As governments turn to the mining industry to kickstart the economic recovery, will environmental, social and governance (ESG) standards remain a priority, including those for transparency and accountability? With governments looking to progress mining developments amidst restrictions to public gatherings, are pandemic conditions elevating the risk of corruption in mining licensing and permitting?

These questions are made all the more pressing by the very real possibility of a new ‘Pandemic Era’ punctuated by ongoing zoonotic spillover events that further disrupt vulnerable societies. Understanding how pandemics create governance and corruption vulnerabilities in society’s institutions is an important task in the project to build more resilient governments, companies and communities.
The deleterious impacts of corruption in the minerals sector reads like a laundry list. Corruption erodes public confidence and trust in government,\(^{36}\) diverts public resources away from essential services,\(^{37}\) exacerbates environmental degradation,\(^{38}\) and may lead to a self-fulfilling cycle of corruption that contributes to the deterioration of the public sector institutions that govern resource wealth.\(^{39}\) These impacts may disproportionately harm vulnerable communities,\(^{40}\) and are viewed as major impediments to economic, social and political development.\(^{41}\) One study estimates that if the wealth of natural resource-dependent nations were used to pursue anti-poverty goals rather than be mismanaged or lost to corruption, more than half a billion people would be lifted out of poverty by 2030.\(^{42}\) Yet in many cases, the mineral wealth that could be used for inclusive, equitable and sustainable growth is siphoned off or eroded to plunder, bribery and short-term wealth creation in kleptocratic regimes.\(^{43}\) To make matters worse, recent evidence suggests that control of corruption has been decreasing in resource rich countries.\(^{44}\)
HOW COVID-19 IS CHANGING CORRUPTION RISK IN MINING LICENSING AND PERMITTING
1. RECONFIGURING MINING CAPITAL AND MINERAL SUPPLY CHAINS: THE ‘GOOD GUYS’ OR THE ‘RACE TO THE BOTTOM’?
Mining capital and mineral supply chains are reconfiguring during the COVID-19 pandemic.

Operational disruptions to mining operations are causing a rethink in global and local supply chains. Mining deals including mergers and acquisitions (M&As) have slowed, but will likely spring back during pandemic recovery efforts. The potential for rising resource nationalism could also lead to increased state participation and changing fiscal regimes as governments look to promote mineral investment while securing a ‘fair take’. And the ongoing energy transition may be attenuated or augmented by economic recovery plans.

While the familiar tropes of ‘the good guys’, ‘the bad guys’ and ‘the race to the bottom’ loom large, governments would do well to focus on due diligence in the licensing and permitting process as markets and supply chains reconfigure.

Operational disruptions are causing a rethink in global and local supply chains

The recovery of the metals and minerals market should not mask the way in which mining operations have been disrupted during the pandemic. S&P Global has tracked more than 275 disrupted mining operations across the globe, estimating a total revenue at risk of USD 8.83bn due to COVID-19 related disruptions as at June 2020. A McKinsey study conducted in August 2020 found that 75% of mining executives said that their operations had experienced at least moderate disruptions, with 65% indicating that they expect to make fundamental changes to their operating models.

One way in which mining companies are responding to these disruptions is by assessing the resilience of their critical supply chains. The susceptibility of mining's supply chain and transient workforce has led to a rethink in some quarters about the need for greater global diversification on the one hand (to manage single-country dependence in supply chains), and greater localisation on the other (to provide business continuity when international movements are restricted). Such a shift may yield greater local content contributions through increased local employment and participation in contracting opportunities. At the same time, greater global diversification and localisation would require new deals and new contracts with a wide range of state and private entities, potentially increasing corruption risks as new actors enter the fray.

Mining deals have slowed during the pandemic which could lead to a run of mining transactions and M&A activity

The value of global mining deals in the first half of 2020 was USD 46.6bn, a drop of USD 18bn compared to the first half of 2019. M&A activity fell by 51.6% over the same period. This fall in mining transactions appears to be a direct impact of the economic uncertainty resulting from the COVID-19 pandemic coupled with travel restrictions that have constrained due diligence processes.

As travel restrictions ease and economic conditions stabilise, a potential backlog of mining deals and M&A activity may take place as the majors and juniors alike look to shore up their project pipeline by investing in new mining and exploration projects.
With access to capital and liquidity also becoming more challenging, small-to-mid-sized companies that have not weathered the volatility during the pandemic may look to consolidate, or could be the subject of a takeover. As one mining executive remarked in an online meeting, “I think it is going to be the survival of the fittest post-COVID-19. And who is going to be the fittest? It is those that are well-funded, with deep pockets, with less debt and with very strong management. I therefore see an increase in M&A activities post COVID-19, where the big players with a lot of cash and experience will be shopping around for opportunities that have lost a lot of value and have become affordable.”

Rising resource nationalism could lead to increased state participation and changing fiscal regimes

As mineral rich countries attempt to revitalise their economies, there is also the potential for rising resource nationalism—particularly if notions of what is a ‘fair take’ from mineral resources changes as the economic crisis deepens. Supporting this sentiment, the results of a September 2020 survey of mining sector representatives by EY showed that 58% of respondents are expecting governments to increase royalties and taxes after COVID-19. While this ‘revenue maximisation approach’ may play out in some countries, other countries may feel the pressure to pursue an ‘investment maximisation approach’ where royalty and tax exemptions are offered to incentivise mining investments as part of pandemic-recovery plans.

In a recent market report, Norton Rose Fulbright observed that mining companies may need to accommodate greater levels of public private partnerships (PPPs) and state participation in future deals. With state-owned enterprises (SOEs) in the oil, gas and mining sector having some of the highest levels of corruption and irregular practices, increased participation of SOEs in mining transactions may present as a corruption risk to mining licensing and permitting.

The ongoing energy transition may be attenuated or augmented

Another way in which mining capital and mineral supply chains are reconfiguring during the pandemic is through the ongoing energy transition. For instance, it is possible that closure of thermal coal mines will be brought forward as thermal coal is typically the first to suffer when power-demand is down. At the same time, demand for copper and battery minerals is being driven by telecoms and renewables. Other transition minerals such as lithium, cobalt, and nickel may also be in favour as mining capital reconfigures around future growth minerals.

Whether the pandemic itself has hastened or put the brakes on the energy transition is up for debate, with recent analysis from BCG suggesting that economic stimulus packages in Europe may continue to drive in a green direction. In contrast, the economic impacts of the pandemic in some countries in Latin America, South Asia and Africa may constrain their ability to promote energy transitions.

Regardless of how the COVID-19 pandemic attenuates or augments the energy transition in different countries, the transition itself is an important space to watch for those interested in mineral governance and anti-corruption. This is because of...
the increasingly multi-scalar nature of energy politics that consists of a growing number of actors at global, national and sub-national scales, all of which are driving recalibrations of energy governance landscapes.  

Connected to this growing number of actors and governance structures is the capital and supply chain deals involved in the transition, which are creating new markets for energy minerals. Maintaining transparency and publishing the terms of these deals will be critical in reducing corruption risks in the sector, both at the global and national levels.

The potential for corruption in the energy transition has been recognised by the European Union’s (EU) ‘Green Deal’ pandemic recovery plan, which is intended to fight climate change while supporting the economic recovery. For instance, the proposed EU Battery Regulation Law intends to ensure that supply chains for the batteries used in energy transition products are free of corruption. Such moves are timely as reserves of minerals vital to energy transitions are often found in mining sector jurisdictions where ESG performance falls short. Compounding the risk for corruption is that the majority of critical minerals do not, at present, have the same levels of transparency in supply chain governance mechanisms compared to some other minerals such as gold, tin and diamonds.

With China a major player in rare earth and transition minerals, some stakeholders in this study expressed concern that Chinese mining companies will increase their market share as mineral-rich developing countries seek to stimulate their post-pandemic economic recovery efforts. For some, an increase in the footprint of Chinese mining companies was synonymous with increased corruption risk and lower ESG standards.
THE GOOD GUYS AND THE RACE TO THE BOTTOM

As mining capital reconfigures, a prevailing narrative in the sector, also echoed in the interviews conducted for this study, involves “the good guys”, “the bad guys” and “the race to the bottom”. The good guys are mining companies with comparatively favourable ESG records. They may occasionally participate in corrupt acts; however the good guys take business integrity systems seriously and actively participate in global good governance platforms and initiatives.

The good guys are more likely to be large rather than small. It is likely that they come from countries with more developed governance regimes and histories of mining, although not always. The good guys provide sovereign governments and host communities with a viable source of foreign direct investment (FDI) and a steady hand in the minerals exploitation process. They are more likely to be publicly listed on a major stock exchange rather than privately held. The good guys also help host countries avoid “the bad guys”. The bad guys have all of the same characteristics as the good guys except in reverse. They are also leading “the race to the bottom” in ESG and anti-corruption standards.

Some stakeholders who participated in this study were concerned that countries who face difficult economic conditions during the pandemic and also have weak governance capacity may “do deals with the bad guys”. In such circumstances, corruption risk in licensing and permitting was seen to be particularly high.

The problem with the good guys and the bad guys narrative is that it moralises governance and anti-corruption to present a false dichotomy of good and bad mining operators. It is vital that due diligence processes in mining licensing and permitting assess the ESG performance of mining companies rather than relying on tropes that may or may not reflect corporate history and capability. Governments would also do well to focus on regulatory reform for good governance as markets and supply chains reconfigure.
QUOTES FROM STUDY INTERVIEWS

“"My concern is that the countries who need mining investment the most have the lowest and weakest governance regimes. Regulatory agencies won’t have the capacity to scrutinise licenses and permits or they will want to encourage economic development. The risk is that they will not dot all of the I’s or cross all of the T’s.

“In a lot of mining countries there could be a race to the bottom involving a flurry of new deals approved quickly.

“"You can also look at who has the cash to spend and it is probably going to come from China. There will be a tendency to skip the normal protocols to encourage economic development.

“"It will be interesting to see how the pandemic layers onto the energy transition. What does the pandemic mean for the balance of power in decision making on how and whether mining goes ahead? When you add the impacts of COVID-19 on top of the needs for materials for electric cars... where does this put communities on the ground when making decisions about mining approvals? As the dual pressures of COVID-19 and the energy transition increase, it is really worrying from a safeguarding perspective.”
Economic stimulus packages driving a green recovery?

The range of pandemic economic stimulus measures announced by governments around the world may also impact mineral supply chains. By June 2020, these economic stimulus packages had reached approximately USD 12tn but less than 0.2% of these measures directly supported climate priorities. One reason for the lack of climate funding may be that, broadly speaking, sectors reliant on fossil fuels have felt the effects of the pandemic more than technologies reliant on energy transition. Another reason for the lack of climate investment in the economic recovery may be the desire to protect incumbent industries—a privileging of the ‘business as usual’ approach, as has happened in key crisis juncture points in the past.

In a telling example of post-pandemic energy policy, China approved 48GW of coal fired plants in the first six months of 2020. These approvals followed the easing of restrictions on investment in coal-fired power projects, possibly to counter the expected economic slowdown due to the pandemic. Research demonstrates a link between coal mining and local corruption in China, finding that “rents generated by mines are easily grabbed by local officials.”

This coal-corruption nexus is especially prevalent at the prefecture level of leadership, which is connected to the licencing of coal mines and other mine related benefits.

Meanwhile, Colombia is proposing to spend more than COP16tn (USD4.1bn) on 27 renewable energy and transmission projects with the goal of creating over 55,000 jobs. These plans to invest in renewables are part of a broader roadmap for the economic and social ‘reactivation’ of Colombia as part of pandemic recovery efforts. The projects include nine wind, five solar, three geothermal and one hydrogen generation projects. Key questions for policy makers and regulators include how investments in renewable energies will map onto existing political, economic and social conditions in Colombia, and whether new actors and supply chains will exacerbate or dampen existing corruption risks.
NATIONALISING MEXICO’S LITHIUM INDUSTRY IN THE ELECTION YEAR

In Mexico, plans to nationalise the lithium industry have seemingly intensified during the pandemic. Mexico is the world’s fourth-largest recipient of FDI in the mining sector, with the majority of mining capital directed to gold, copper, zinc and uranium.72 As a mineral that is central to the energy transition, lithium is an emerging industry with an estimated national reserve of 243 million tonnes in Mexico. While concessions for lithium exploration were in place prior to the pandemic, in November 2020, the government introduced a draft bill that calls for lithium to be declared as the country’s exclusive property, with production managed and controlled by the state.73 The Head of the Senate’s finance commission is also proposing the creation of a new state-owned entity, LitioMex, to regulate lithium mining. In an online session of the parliament, a government spokesman said that “It is not about closing the door to investment”, but that, “There needs to be regulation. We are currently giving away our lithium to Chinese, Americans and Canadians. We shouldn’t be a paradise for exploitation. That’s called looting.”74

While the bill to nationalise the lithium industry was introduced during the pandemic, broader geopolitical and political factors are at play. In July 2020, the United States, Mexico and Canada Trade Agreement (USMCA) entered into force. The free trade agreement has a range of provisions that impact the trade of minerals and supply chains in North America, particularly lithium in the automotive industry.

USMCA provides that vehicles assembled in the US, Mexico or Canada that utilise 75% or greater regional supply chains are duty free. With lithium one of the key components used in batteries for electric vehicles, interest in the development of lithium supply chains in North America seems likely to increase.

2021 is also an election year in Mexico. Multiple seats in federal and local congresses and municipalities are up for election, including the seats held by almost half of the country’s governors.75 Amongst these are 157 local congress, 249 municipal presidents, and 5 governor seats from mining states. Elections present as a potential corruption risk that may have been compounded by the economic impacts of the pandemic. Austerity policies and the COVID-19 economic crisis have hit hard in many municipalities, impacting the resources available to political candidates to fund election campaigns. With some mining licences and permits issued at the local and municipal level,76 several interviewees raised elections as a concern for mining approvals processes. As explained by one CSO representative, “there is a high risk of using private resources to promote certain candidates that could be more like-minded to mining projects advancement...opening the doors for other private resources to finance election campaigns this year.” Concern was also expressed that an industry-state quid pro quo would be secured with the approval of mining licenses and permits to follow after the election.
In November 2020, Zambia became the African continent’s first COVID-19 sovereign defaulter after it failed to pay a $42.5 million Eurobond coupon payment. Although Zambia’s debt was considered unsustainable before the pandemic, failure to meet the coupon payment tipped the country into debt default. Outside of Eurobonds, almost 50% of Zambia’s sovereign debt is derived from China.

Zambia has seen a gradual decline in economic growth in recent years, with GDP dropping from 4.6% in 2015 to 1.9% at the end of 2019, prior to the COVID-19 pandemic.77 The World Bank estimated that the Zambian economy would further shrink by more than 4% from the impact of the COVID-19 pandemic combined with the deteriorating fiscal position of the country.78 This estimate has been revised to a projected contraction of 2.7% of GDP, which is lower than the region average post COVID-19 estimated to be a contraction of 1.9% of GDP.79 These macroeconomic pressures are translating into a rise in the cost of living from K7,404 in December 2020 to K8,934 in January 2021 for a family of five.80

In December 2020, the Zambian president Edgar Lungu unveiled a 2020-2023 economic recovery plan in attempts to reverse the ongoing macro-economic decline that has been compounded by the economic impacts of the COVID-19 pandemic.81 A key part of the plan is to take a major stake in some of Zambia’s large copper mines.

Mopani Copper Mines (MCM) consists of four underground copper and cobalt mines, a concentrator and a cobalt plant in the town of Mufulira in Zambia’s Copperbelt Province. Providing direct and indirect employment to around 20,000 people, MCM was majority owned by Glencore with other stakes held by Canadian mining company First Quantum and by the Zambian government, which held 10% ownership in the company.

In April 2020, Glencore declared force majeure announcing that it intended to suspend operations within three months.82 This move followed a strategic review in March 2020 that was aimed at cutting spending in the context of lower copper prices and “uncertainty caused by the coronavirus”.83 MCM pointed to critical disruptions to international mobility, transportation and supply chains as pandemic-related impacts that were compromising the financial viability of the company. The move also followed Glencore’s separation of its African copper business from its wider operations in 2020.84 Mopani stated that it could no longer continue its mining operations and would transition those mining operations to care and maintenance with effect from April 2020.

The Zambian government reacted swiftly to the move with its Mines Minister Richard Musukwa threatening to have MCM’s mining licence revoked, saying that “The Ministry is not aware of any event that has happened that is beyond the reasonable control of MCM and which makes mining impossible.”85 Shortly after the announcement, Mopani Mine’s Australian General Manager was stopped by police when attempting to fly out of Zambia and driven back to the Mopani mine site, with a police watch said to be set up outside his home.86

In January 2021, the Zambian government and Glencore signed a contract for Zambia’s state-owned mining company, Zambia Consolidated Copper Mines Ltd Investments Holdings Plc (ZCCM-IH), to acquire the remaining 90% shareholding of MCM. This transaction agreement gave ZCCM-IH 100% ownership and control of Mopani.87 The deal is priced at USD 1.5bn which will be funded by a loan that is to be repaid over a period of 10-17 years. Some participants in the study expressed concern that this transaction will complicate debt servicing and refinancing talks with the International...
Monetary Fund (IMF). One participant also explained that “Investors have no faith in the government because it’s not transparent enough with the debt owed especially to China.” Other participants viewed the sale as “The takeover of giant mining firms with no proper roadmap with how these firms will be managed has put a lot of uncertainties on the future of mining in the country.”

The Mopani example illustrates the potential for disputes over the continuation of mining projects between sovereign governments and mining companies to arise during, and be compounded by, pandemic conditions. For Zambia, the MCM sale is taking place within a broader context of unprecedented sovereign debt and challenging macroeconomic conditions that have been compounded by COVID-19.

Zambia is not the only African country under fiscal strain during COVID-19 due to high levels of sovereign debt: Angola, Chad and Kenya also face significant debt-servicing challenges.

QUESTIONS FOR CORRUPTION RISKS IN MINING LICENSING AND PERMITTING

+ Do more localised supply chains increase or decrease the risk of corruption in the licensing and permitting process?

+ As the economic crisis continues and deepens in some countries, will notions of a ‘fair take’ for governments change, and will levels of resource nationalism rise? And will changing nationalistic sentiments or policy settings for mining investment increase the risk of corruption in the sector?

+ Is the pandemic creating conditions where governments will do deals with mining companies who do not have adequate business integrity systems or cultures (‘the bad guys’), and will these deals create an increase in corruption risks in mining licensing and permitting?

+ Are there specific corruption risks in the assessment and approvals processes of mining projects for energy transition minerals, due to either a relative lack of supply chain transparency, the countries in which they are located, or the companies involved in mining them?

+ What kinds of contract transparency measures are needed to ensure appropriate scrutiny of mining deals during COVID-19?
QUESTIONS FOR ESG

+ How can the potential move towards more localised supply chains be encouraged and connected into the existing work of industry groups such as the International Council on Mining & Metals (ICMM) and intergovernmental groups such as the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF)?

+ Will pandemic conditions impact the ability of governments to ensure that the obligations and liabilities contained within existing licenses, permits and contracts are fully understood and accounted for in the transition to new ownership structures?

+ Is the pandemic creating conditions where governments are more open to partnerships with companies that have poor ESG performance records? What will be the long-term impacts for communities and the environment?

STRATEGIES AND MITIGATION MEASURES

Government

+ Assess mineral governance and anti-corruption measures for a potential global diversification and localisation of supply chains.

+ Develop strong processes for company due diligence including beneficial ownership and historical ESG performance. Maintain these due diligence standards during the pandemic.

+ Ensure that the obligations and liabilities contained within existing licenses, permits and contracts are fully understood and accounted for in the transition to new ownership structures.

+ Develop or maintain adequate, timely and fit-for-purpose contract transparency measures to support public scrutiny of mining deals under pandemic conditions.

+ Develop business partner induction and training material on governance and business integrity systems that can be delivered to global and local suppliers during pandemic conditions.

Mining Companies

+ Develop and maintain business integrity standards including those that cover dealings with government and financial transactions during mining deals and M&A activities.

CSOs

+ Advocate for disclosure of mining contracts and review the details of deals struck during the pandemic.
2. BORDER CLOSURES AND RESTRICTED TRAVEL: MEDIATING AND DISLOCATING GLOBAL-LOCAL RELATIONS
TREND OVERVIEW

With many international borders closed and travel limited during the COVID-19 pandemic, *global-local* and *national-local* relations have been mediated and, in some cases, disconnected.

At the core of this trend is a shift in social relations that could have escalating implications for corruption risk in mining licensing and permitting the longer that pandemic conditions continue. These shifts in relationships, networks, information exchange, reciprocity, trust and collaboration have been felt by mining companies, CSOs and governments alike.

**Mining company remote working arrangements and challenges with reduced face-to-face corporate oversight**

Even before the pandemic, the global mining industry has been moving towards remote operations through digital technologies and automation as a strategy to reduce costs, drive productivity and enhance resilience. Mining company representatives who participated in this study said that pandemic conditions are accelerating this trend, with executives and professional staff leading and managing global operations from head and home offices. This changing nature of work presents challenges for business integrity systems.

In non-pandemic conditions, business integrity systems such as anti-corruption policies, conflict of interest procedures, whistle-blower protocols and external procedures for stakeholders to report alleged corruption, typically rely on corporate management teams supporting their in-country operations through visits to sites and country offices.

According to study participants, these visits are critical in communicating to site management the importance of business integrity standards and procedures; in sending the message that corporate management “has their back” in cases where reporting corruption risks might compromise projects; to “touch and feel the site integrity and assurance processes”; in building trust and relationships with government and community stakeholders; and in finding out information on what is “happening on the ground”. As one participant explained, “I reflect on what it took to get risks managed properly before COVID. We had situations where we would demobilise projects over requests for $50,000 and that took so much effort and hand-holding. I am worried that someone is going to cave in and take what might seem like an easier road.”

In non-pandemic conditions, country office and site visits would happen on a monthly or quarterly basis. Under COVID-19 conditions, in many cases corporate executives have not visited sites for more than 12 months, let alone business integrity specialists. A related concern raised by mining companies was increased “interaction risk” with the roles of some staff expanding such that they now deal with a greater number of government agencies and officials.
There is a real sense from mining executives that remote working and the breakdown in face-to-face corporate oversight presents as the most significant corruption risk to mining licensing and permitting over the medium- to long-term. Punctuating this point, one mining company representative interviewed for this study reported a “steady increase” in issues being raised through whistle-blower mechanisms, which include allegations of unethical behaviours which may include corruption. A related challenge is the difficulties involved in creating a strong organisational culture that supports ethical business dealings at a time when remote working arrangements are common, making prevention of fraud and corruption increasingly difficult. For all of these reasons, remote work and reduced in-person corporate oversight has the potential to heighten corruption risk in the mining licensing and permitting process.

CSOs moving to digital but access for all and advocacy efforts challenging

Many CSO representatives interviewed for this study reported a similar breakdown in global-local relations. The cessation of physical conferences and fora and the inability to visit countries to meet with members and partner organisations were both raised as significant barriers to advancing mineral governance and anti-corruption work in the sector.

Some CSOs said that they have effectively worked with members through WhatsApp and other digital communications, in some cases suggesting that the experience has “made them stronger” and “strengthened their reporting systems”. However, the same CSOs also said that not all members were able to access these technologies, and that the ability to gain new members under remote working conditions is significantly limited.

In particular, members in rural areas with poor access to the internet are now less connected to international CSO networks. Indeed, when interviewing international CSOs for this study, what was not said about country and local context was as revealing as what was said. In many cases, there was a distinct lack of knowledge about on-the-ground conditions affecting mine-impacted communities and in-country mining governance efforts. This disconnection between global, national and local networks of CSOs could lead to reduced levels of third-party scrutiny and monitoring in the mining licensing and permitting process.

Governments less connected to global and regional sector reform efforts

Although government representatives who participated in this study appeared to be less affected by the lack of international travel, some public officials mentioned that the inability to attend international conferences such as those held by the Extractive Industries Transparency Initiative (EITI) and the meetings of the IGF were a “blow” to governance reform efforts. A related concern that was shared by governments and CSOs alike was the medium-to long-term impact of the pandemic on multilateral and bilateral funding for minerals sector reform and anti-corruption initiatives. With official development assistance (ODA) aligning behind the pandemic response, a concern was raised that funding for existing and new sector reform initiatives may be at risk. Any decline in participation in global initiatives or setbacks to sector reform efforts could lead to reduced standards for transparency, accountability and participation in the sector, including in the mining licensing and permitting process.
QUOTES FROM STUDY INTERVIEWS

“Sites used to know that people are turning up and asking forensic questions.”

“Managing corruption risks in the industry is really hard work. It takes people to put livelihoods on the line. You need a project level director to put his [sic] back on the line and not be known as the guy who held up the project.”

“We are an advocacy organisation. Your DNA is to influence policy and practice in the field, and it is harder for us to know what is going on now. A lot of what our members did was capacity building, going out in these regions. But this really isn’t happening so we don’t have access to what is happening on the ground.”

“It is mostly city-based members who are able to partake in events at the moment, because members in rural areas have poor access to internet.”

“It is impossible to effectively influence from your bedroom through a Zoom call. We have huge questions about how to ensure, in a time of high social restrictions on movements, how we can continue to be effective influencing our targets.”

“The types of things that we used to do to manage the frontline risks are unthinkable today. We had an issue in [Country x] where we expected that the police posts down the river would be asking for facilitation payments – so we got a letter from the minister instructing all police posts that they can only request payments that are mandated in law. The community relations team took the letter and went down the river to stop at each post. It worked. Ultimately, we ended up with a smooth line. But that type of engagement we could not do now.”
The Extractive Industries Transparency Initiative adjusting to pandemic conditions

The EITI is the “global standard to promote the open and accountable management of oil, gas and mineral resources.” Implemented through a tripartite model of governments, companies and civil society, the EITI Standard outlines the requirements for implementing countries and progress towards meeting these requirements is typically assessed on an annual basis.

Responding in March 2020 to the challenges posed by the emerging COVID-19 pandemic, Helen Clark, the Chair of the EITI Board, said: “It is inevitable that in some countries there will be short-term delays in EITI implementation as governments and stakeholders realign their time to more pressing priorities. Over the longer term, there may be delays to technical assistance, capacity development, communication, and dissemination activities.”

A well-resourced global initiative, the EITI has implemented a range of measures to support flexible EITI implementation during the pandemic. These include the global board and international secretariat working virtually, flexible reporting guidelines including extensions to reporting deadlines, and the creation of resources to support implementing countries during the pandemic. Collectively, these measures are designed to ensure that EITI implementation supports commitments to transparency, accountability and multi-stakeholder dialogue during the pandemic.

In some EITI-implementing countries, Multi-Stakeholder Groups (MSGs) have been able to convene through virtual meetings and have maintained reasonable progress implementing annual workplans. In other EITI-implementing countries, virtual meetings have been ineffective, annual workplans have been impacted, and extensions for reporting deadlines have been granted. For instance, extensions to reporting deadlines have been granted in Ukraine, Togo, Suriname, São Tomé and Principe, Peru, the Netherlands, Iraq, Guyane, Ethiopia, the Democratic Republic of Congo, Cameroon, Afghanistan, Kyrgyz Republic, Indonesia, Guatemala, Albania, Trinidad and Tobago, Dominican Republic, Argentina. Progress on amending laws relating to the EITI has also stalled in some implementing countries during the COVID-19 crisis. Other delays have been experienced in the collection of data for annual reporting and the activities of ‘Independent Administrators’ who in some cases are unable to travel to implementing countries.

The longer-term implications of the pandemic on global and domestic funding for EITI implementation presents as a medium- to long-term risk. As one mining company executive explained, “For those countries or companies who think that EITI is some kind of a luxury, they're not going to have the finances or personnel necessarily.” Anticipating this challenge, the EITI International Secretariat is reviewing options to directly support EITI implementation in countries that are severely affected.
QUESTIONS FOR CORRUPTION RISKS IN MINING LICENSING AND PERMITTING

+ What implications do remote working practices have for corruption risk in mining licensing and permitting, particularly with senior management and business integrity teams not able to visit countries of operations?

+ How can mining executives support site-based management in the maintenance of strong business integrity systems during pandemic conditions?

+ With limits on international travel and site-based restrictions, are the roles of some mining staff expanding such that they now deal with a greater number of government agencies and officials, and is this expansion creating an increased corruption risk?

+ What can be learnt from mining companies, CSOs and governments who have adapted business integrity, mineral governance advocacy and reform efforts to pandemic conditions?

+ Will reduced connections between global, national and local networks of CSOs lead to reduced levels of third-party scrutiny and monitoring in the mining licensing and permitting process?

QUESTIONS FOR ESG PERFORMANCE

+ Will the lack of in-person meetings in the sector result in less social capital?

+ Will CSOs working in the areas of mineral governance and anti-corruption be less effective during the pandemic, and what is the consequence of this for transparency and accountability in mineral-rich countries?

+ Will restrictions to international travel lead to a decline in national governments participating in global initiatives?

+ Will the medium- to long-term impact of the pandemic lead to a decline in multilateral and bilateral funding for minerals sector reform and anti-corruption initiatives as existing ODA aligns behind the pandemic response?
## Strategies and Mitigation Measures

### Government
- Maintain connections with global governance platforms and networks including attending virtual conferences and seminars where useful.
- Support initiatives that build in-country networks in the mining sector, including in ESG professions.
- Continue to mobilise funding for sector reform initiatives that strengthen mineral governance and capacity as part of the economic recovery.
- Consider options for digital engagement to better understand the needs of mine-impacted communities and stakeholders during the pandemic.
- Develop a post-pandemic listening project with in-person meetings and focus groups when social distancing measures allow.

### Mining Companies
- Invest in in-country business integrity and government liaison capability.
- Where travel restrictions and quarantining protocols allow senior executives to safely visit mining sites and country teams, develop reduced visitation schedules for pandemic conditions.
- Invest in appropriate internet and virtual meeting capabilities for site and country teams, and where appropriate support key stakeholders to do the same.
- Seek opportunities to strengthen existing and build new relationships with mine-impacted communities and stakeholders under pandemic conditions.
- Support mine-impacted communities and CSOs with digital communication technologies and skills to maintain active participation in project and sector engagement activities.

### CSOs
- Support local CSOs and mine-impacted communities with digital communication technologies and skills to maintain active participation in local, national and global networks.
- Organise and actively participate in digital and socially-distanced sector engagement opportunities as a way to build and strengthen relationships during the pandemic response and recovery.
- Support local CSOs through remotely delivered training for mineral governance.
- Continue to strengthen local-global networks for CSO learning and knowledge sharing on mineral governance.
- Continue to provide third-party scrutiny and monitoring in the mining licensing and permitting process and more broadly the social and environmental impacts of mining during the pandemic.
3. CUTTING ‘RED AND GREEN’ TAPE: FAST-TRACKING THE ECONOMIC RECOVERY
TREND OVERVIEW

As the ongoing financial contagion from COVID-19 continues to disrupt economies, governments in some minerals-rich countries are ‘fast-tracking’ approvals of new mining projects and the expansions of existing operations.

Mining developments bring large capital investments that generate revenues to the state, provide local supply chain opportunities, and create direct and indirect jobs—particularly in the construction phases of projects. Yet mining creates long-term social and environmental legacies for peoples and ecologies. There is a fine line between efficiency and effectiveness in the assessment and approval of mining developments.

From Australia to Chile, Indonesia to South Africa, Canada to Peru, the proposition of ‘bringing forward’ and ‘prioritising’ mining’s economic flows as part of pandemic recovery plans has garnered proponents from government and industry alike.

This study finds that efforts to fast-track mining projects in the pandemic are taking place through a combination of policy settings, legislative amendments and political pressure to expedite the approval of mining licenses and permits. In the promotion of this fast-tracking agenda, two key rhetorical devices have been prominent: cutting ‘red tape’ (bureaucratic approval procedures that are thought to unnecessarily delay projects) and ‘green tape’ (environmental safeguarding measures that are viewed to unduly restrict or delay mining expansions).

One area where governments and the mining industry have sought to cut both kinds of tape is in the requirements for environmental assessments and approvals. Of course, the desire to streamline environmental approvals did not arrive with COVID-19. Even before the pandemic, many in the mining sector held the view that reducing bureaucracy and timelines for environmental and social approvals is required to encourage private sector investment and promote economic growth. Indeed, effectiveness and efficiency in public sector assessment processes is in the public’s interest. It is also important to acknowledge that governments have been faced with the immense task of protecting and stimulating the economy during the COVID-19 crisis.

However, one risk of the trend to fast-track mining developments is that the pandemic provides overzealous elements of governments, mining companies and other actors the bandwidth to secure minerals sector deregulation that is pro-industry, while eroding existing protections for peoples and the environment (which themselves may not be sufficient).

Civil society groups interviewed for this study expressed the concern that fast-tracking of mining projects would lead to worsening social and environmental standards in mining licensing and permitting. Finding themselves within a regulatory system under pressure to expedite approvals, some public officials were also...
concerned that the strong desire to “accelerate” assessment and approvals processes in response to COVID-19’s economic and social impacts is resulting in “corners being cut”, with the risk that “some aspects of proposed projects may not be scrutinised so closely”.

The counterview was expressed by other government officials, for whom regulatory “business as usual” is merely being compressed within a shorter timeframe. Major mining companies pointed to their global ESG standards, suggesting that ESG performance will be upheld regardless of compressed timeframes or any relaxations of regulatory standards in attempts to expedite mining developments. Indeed, some mining companies may have the internal corporate standards, leadership, corporate culture, organisational capacity and liquidity to generally uphold ESG performance standards at a level that meets or exceeds legal requirements in host countries. Nonetheless, relying on industry standards and practice to set the ESG low-water mark creates significant social and environmental risks, pandemic or otherwise.

Another fast-tracking risk is that a political and bureaucratic climate expectant of faster approvals may lead to less emphasis on due diligence in the licensing and permitting processes, particularly in countries with already weak governance standards and practices. For instance, due diligence on mining proponents in areas such as beneficial ownership and ESG performance—which are key to minimising corruption risk in the licensing and permitting process107—may not take on the same levels of importance under the fast-tracking orthodoxy.

Seemingly acknowledging the fine line between efficiency and effectiveness in the assessment and approval of mining developments, some sector stakeholders prefer not to use the term fast-tracking, believing that it has unwarranted connotations of taking short-cuts and lowering standards. Faster approvals is instead preferred.
QUOTES FROM STUDY INTERVIEWS

"Pressure on staff to complete assessments in ever-diminishing timeframes means that some aspects of proposed projects may not be scrutinised so closely.

"Even if the government reduced environmental standards, we have global standards.

"Regarding future risks of corruption in mining approvals, I see the mining sector deepening their privilege. I think they will give the mining industry more benefits, more fast-tracking for concessions, and everything it needs to start minerals extraction.

"Environmental and social safeguards are seen as an obstacle to development. There is now more pressure to steam ahead, and more pressure means that the trends that we have observed are going to get worse.

"Even in the most functioning jurisdictions, people are horrified by the amount of time it takes to get a license.

"Time is the enemy for someone applying for a permit. If the paperwork is off, there is an opportunity for corruption risk.

"There is a risk that the urgency to stimulate investments and economic recovery could mean that permits and concessions are issued by relaxing EIA regulation so that authorisations are expedited. There will be a big need for investments and an important gap will be opened for the industry with the excuse of contributing with jobs and economic recovery."
**FAST-TRACKING EXAMPLES**

“Running the Cattle” in Brazil

In Brazil, the government published 195 ordinances, normative instructions, decrees and other measures between March and May 2020. CSOs have argued that these measures reveal the goal of dismantling the country’s environmental laws and bypassing Congress. Comments by Brazil’s Environment Minister in April 2020 suggested that his administration “run the cattle”, a euphemism for utilising the COVID-19 crisis as smokescreen to distract the public from the administration’s environmental deregulation.

Reducing Consultation Timeframes and Requirements in Peru

In Peru, the Ministry of Energy and Mines has put in place plans to reduce the current consultation period during the exploration phase of minerals extraction from the 12 months it currently takes to 6 months as part of a broader effort to expedite existing projects and promote exploration and investment. The Minister of Energy and Mines has also signalled his intent to introduce a draft law to replace the requirement of “Prior Consultation” with a new concept of “Prior Agreement” in the exploration phase of mining.

Australia’s ‘Bi-lateral’ Fast-tracking

In Australia, the Prime Minister announced that 15 infrastructure projects worth a total of AUD 72bn “are on the fast-track for approval” at a press-conference in June 2020. Backed by public and private investment, the projects include a proposed extension of the Olympic Dam copper, gold, silver and uranium mine in South Australia and iron ore projects in Western Australia. Collectively, the projects were expected to support more than 66,000 direct and indirect jobs. Speaking at the National Summit of the Committee for Economic Development of Australia, the Prime Minister has said the key to building the pipeline of future projects is for government to “get out of the way”, while bringing “...the same common sense and cooperation we showed fighting COVID-19 to unlocking infrastructure investment in the recovery” with state and national governments challenged to “...make deregulation a focus of Australia’s economic recovery.”

Under the plan, a ‘bilateral’ model of assessment between the Commonwealth and state and territory governments is envisioned to deliver a 50% reduction in Commonwealth assessment and approval times for major projects, from an average of 3.5 years to 21 months. At the same time, the ongoing review of the Environment Protection and Biodiversity Conservation Act (EPBC) 1999 is also driving a more ‘streamlined’ federal environmental approval process to meet the infrastructure pipeline ‘post-COVID’. At the end of 2019, the final stage of approval decisions took 90 days on average; in June 2020, they took 40 days; the government set a target to reduce the timeframe to 30 days for major projects by the end of 2020. Concerns have been raised that the moves to cut ‘green tape’ are code for environmental deregulation and that a more “even-handed” assessment is vital to properly quantify and assess the impacts of the
proposed projects and put in place appropriate safeguards.” These calls for caution are particularly poignant in the wake of Rio Tinto’s destruction of the 46,000 year old Juukan Gorge cave in the Hammersley Ranges, Western Australia, one of the most infamous destructions of a cultural and sacred site that the sector has witnessed.

In a post-script to the Prime Minister’s June 2020 announcement, BHP, the owner and operator of the proposed Olympic Dam expansion, later decided that the expansion did not make economic sense—illustrating that fast-tracking announcements of mining projects may even run ahead of commercial interests.

Fast-tracking measures are also afoot at the state level in Australia, with Western Australia’s Department of Mines, Industry, Regulation and Safety bringing in changes which allow mining companies to begin construction in a staged manner along infrastructure corridors while access licences are still pending. As Western Australia’s Mines and Petroleum Minister observed, “The McGowan Government has listened to industry and investigated ways to cut red tape. These new arrangements are already being utilised by industry and are resulting in significant savings in construction schedules.”

In Ontario, Canada, the Provincial Government of Ontario implemented a regulation on April 1 2020 that exempted “all proposals for policies, acts, regulations and instruments from posting requirements under the Environmental Bill of Rights until 30 days after the declared emergency is terminated”. The government justified the temporary exemption by stating “This allowed the government to respond to the time-sensitive needs of regulated businesses that were experiencing impacts due to COVID-19, so they could continue operations and ensure goods and services could be delivered.”

While Ontario’s state of emergency continued until July 24 2020, the regulation was revoked on June 1 2020 when the government indicated that “it now has a better understanding of the COVID-19 impact and can better manage its effect on the regulated community to ensure continuity of operations.” This move followed an application to review the regulation from the environmental group Ecojustice.

A review of the environmental registry of Ontario indicates that several permits for mineral exploration activities were issued during the exemption period, however the Ministry of Northern Development and Mines posted these permit applications and accepted comments during the posting period even though this was not required.

On 21 July 2020, the omnibus COVID-19 Economic Recovery Act (Bill 197) was passed through the Legislative Assembly of the Province of Ontario. The Act introduced significant changes to ‘modernise’ Ontario’s Environmental Assessment Act, including streamlining environmental assessment processes for a list of major projects to be designated by Cabinet. A previous mechanism enabling the public to request a full project review was also removed.
The Act was criticised by some First Nations and environmental groups who argued that the changes reduced the scope and rigour of the Environmental Assessment Act and placed limits on consultation with First Nations peoples. First Nations leaders have also said that the legislative changes violate constitutionally protected Aboriginal and treaty rights, and that the measures will not withstand a constitutional challenge. The amendments also appear to be in conflict with Canada’s commitments under the United Nations Declaration on the Rights of Indigenous People.

While the COVID-19 Economic Recovery Act (Bill 197) could impact public infrastructure that supports mining developments, mining projects themselves are not subject to the Environmental Assessment Act. In fact, only eight out of the 32 mining operations and related projects that are currently being planned or are in production have undergone a provincial environmental assessment. Civil society groups have called on the government to include all mining projects on the list of high-risk projects that are subject to an environmental assessment under the COVID-19 Economic Recovery Act (Bill 197).

Still in Canada, Bill 61, An Act to restart Québec’s economy and to mitigate the consequences of the public health emergency declared on 13 March 2020 because of the COVID-19 pandemic, would have granted leeway for non-compliance with environmental laws, effectively allowing the government to expedite environmental reviews for 202 projects and nullify certain provisions of the Environmental Quality Act. The Bill was introduced in June 2020 only to be ‘put on pause’ in August following substantial backlash, including critique from the opposition party who said that the proposed legislative changes would leave the province vulnerable to corruption and collusion.

Presenting to a parliamentary committee reviewing the Bill, a panel of academics advised that “Bill 61 creates conditions extremely favourable to the emergence of corruption, collusion and embezzlement,” while the Assembly of First Nations’ regional chief for Quebec and Labrador told the committee the Bill was prepared without any consultation with First Nations peoples. The Coalition Avenir Québec government advised that rather than making long list of amendments to the proposed Bill 61, they would instead draft a new proposed law to progress the objectives of the legislation while addressing the concerns raised by stakeholders.

With mineral exploration and mining activities primarily regulated by Provincial and Territorial governments under the Canadian Constitution, these noteworthy examples do not necessarily reflect the broader trend of how Canadian governments may be balancing the need to stimulate economic growth while maintaining protections for the environment and communities. Many stakeholders interviewed for this study did not expect to see reductions in environmental or social requirements for mining approvals during the pandemic. While several other provinces and territories are also discussing ways of streamlining the timelines for exploration and mine permitting, the sense from many stakeholders interviewed in this study was that streamlining in these jurisdictions would occur through administrative efficiencies. It was also suggested that rather than reducing oversight and social and environmental requirements, it is more likely that governments will offer financial incentives or enhanced tax credits to support industry.

Nevertheless, the examples in Ontario and Québec suggest that vigilance will be needed to ensure that economic recovery measures are introduced in a way that maintains or strengthens consultation, engagement, transparency, and social and environmental requirements in mining approvals.
QUESTIONS FOR CORRUPTION RISKS IN MINING LICENSING AND PERMITTING

+ What transparency and disclosure protocols are in place for the deals that are being made under fast-tracking measures?
+ Does political pressure to fast-track projects directly or indirectly contribute to the risk of bribery or other types of corruption in licensing and permitting?
+ Is the quality of integrity and ESG due diligence that governments are able to carry out on new mining developers compromised when projects are being fast-tracked?
+ Does a fast-tracked mining assessment and approvals process increase the likelihood that private interests are able to get favourable treatment?

QUESTIONS FOR ESG PERFORMANCE

+ Who has participated in the consultation process for fast-tracking legislation during the pandemic? Have pandemic conditions created a situation where corporate interests have been more prominent than civil society and community interests?
+ Who has participated in the consultation process for fast-tracked projects during the pandemic? Have pandemic conditions increased the likelihood of social exclusions and elite capture?
+ Will the deals that are captured in mining contracts of fast-tracked projects unduly favour mining companies in an attempt to incentivise fast-tracked investment?
+ Are companies maintaining ESG performance in the licensing and permitting process during the pandemic?
+ Will the long-term ESG performance of fast-tracked mining developments be impacted, either directly (through measures that 'lower the bar') or indirectly (through measures that expedite the assessment process)?
+ With the manifest need to stimulate the economy, protect livelihoods and maintain global supply chains, what types of modifications to ESIA assessment and approval processes are required during pandemic times?
+ Will legislative rollbacks and fast-tracking measures become a permanent feature of the legislative landscape?
STRATEGIES AND MITIGATION MEASURES

Government

+ Find pandemic-appropriate ways to enhance participation in the public consultation process for any fast-tracking legislation and fast-tracked projects (see Risk 7: Shrinking Civic Space, Public Participation and Democratic Accountability).

+ Seek bureaucratic efficiency in assessment and approvals processes while maintaining standards for environmental and social safeguards.

+ Consider how assessment and approval standards for mining licensing and permitting can be maintained and enhanced to respond to pandemic conditions.

+ Develop standards for ESIs during pandemics that do not compromise the assessment process or long-term ESG performance of mining operations, with minimum requirements for participation, data collection and verification.

+ Disclose fast-tracked mining deals and where needed enhance disclosure through digital platforms.

+ Consider and address any social exclusions that may be created by fast-tracking legislation and fast-tracked projects, including for Indigenous peoples, and disadvantaged, vulnerable and/or marginalised groups.

Mining Companies

+ Develop standards and procedures for licensing and permitting that are ‘pandemic-resilient’.

+ Build the capacity and organisational culture required to implement ESG standards under pandemic conditions.

+ Work with regulators to develop ESIA methodologies suitable for pandemic conditions, including minimum requirements for participation, data collection and verification.

CSOs

+ Advocate for transparency and participation in any process to amend policies or legislation to fast-track mining projects.

+ Focus on supporting the short-term response and recovery while balancing the long-term impacts of the mining sector in dialogue and advocacy efforts.

+ Support mine-impacted communities in the licensing and permitting process for fast-tracked projects, taking a Gender Equality, Disability and Social Inclusion (GEDSI) lens to including groups who may be excluded or marginalised through fast-tracked assessment and approvals processes.

+ Create public awareness of the terms of proposed fast-tracked mining projects (see Theme 4: Opening Up Land and Licensing).
4. OPENING UP LAND AND RELAXING LICENSING CONDITIONS
TREND OVERVIEW

Another government response to the pandemic in some countries has been to make structural changes to minerals policy settings governing access to land, licensing requirements, revenues to the state and ownership of projects.

Going a step further than fast-tracking assessment and approvals processes, these changes reshape the conditions that govern who gets the right to mine, who benefits from mining approvals decisions, and what terms govern mining developments.

Regardless of the exact modalities or policy settings, the measures that make land available to mining interests, reduce barriers for licensing requirements, and provide discounts or dispensations on revenues to the state, all have the potential to impact the fundamental balance of resource justice within a country—the deal that current and future communities, citizens and host governments receive from mineral resource wealth.

The most common examples of legislative changes affecting land and licensing terms identified in this study were amendments to the conditions of existing permits (e.g. extensions of the terms for permits), the relaxing of licensing requirements (e.g. allowing mining companies to hold a greater number of leases in a jurisdiction), the opening up of new land for exploration (e.g. through auctions and public sales), and dispensations or discounts to state revenues (e.g. royalties, taxes and levies).

Of course, neither the practice of governments opening up land and licensing terms for mineral exploitation, or the vested interests that can engulf this process, are advents of the COVID-19 era. Yet shrinking civic space during the pandemic (see Theme 7), coupled with the speed at which many of these policy and legislative changes have been brought into effect (see Theme 3), is creating a very specific set of conditions that significantly elevates corruption risks in the mining licensing and permitting process in some countries.

Like all of the seven intersecting themes in this report, the opening up of land and licensing conditions is playing out differently in mining jurisdictions across the globe, ranging from no or relatively minor changes to legislative settings, through to significant changes that have long-term impacts on mineral governance and resource justice landscapes.

Stakeholder views about the impacts of these changes on corruption in the mining licensing and permitting process are equally diverse, both within and between countries. For some, particularly in countries where changes have been minimal or non-existent, there is no increased risk of corruption: the status quo is being perpetuated, for better or for worse. Others see vested interests employing lobbying and privileged access to capture the state, to secure access to land, and to usher in weaker licensing requirements that increase the chances that individual or industry preferences will be given precedence over the public interest.

Many CSOs interviewed for this study expressed the concern that reduced public participation and compressed timeframes are effectively excluding civil society, Indigenous peoples, and disadvantaged, vulnerable and/or marginalised groups from the consultation process for these legislative changes, reducing opportunities for third-party input and oversight.
QUOTES FROM STUDY INTERVIEWS

“Mining legislation is very generous to mining companies and the creation of private profit. For instance, the law provides for mining concessions with terms of more than 100 years, the ability to expropriate land and tax benefits. And mining companies are not obliged to disclose their data and production. The less regulation moves, the better for mining companies.

“The changes to mining legislation that have been brought in during the pandemic bypass public participation and create an absence of parliamentary oversight that might lead to corruption.

“Mining companies have always captured the state. Mining companies are so powerful that they don’t need to encourage these governance changes, because they have always operated with complete impunity.”
OPENING UP EXAMPLES

Privatising the Coal Industry and Auctioning Land in India

In June, for the first time, India announced plans to auction 40 new coal licenses to non-state-owned companies, effectively creating a privatised, commercial coal sector. Among the bidders are the Adani group who operate India's largest coal power plants and are reported to have close connections with the Prime Minister. The plan is part of the new “self-reliant India”, positioned as boosting the economy post-COVID-19 and reducing reliance on imports.

These moves to open up the coal sector to private interests are taking place in the context of wider geopolitical manoeuvring, with India opting out of the Regional Comprehensive Economic Partnership in order to correct its trade imbalance with China. Under the opening up plans, the state's participation in revenue shares are to be kept low in order to attract wary investors in a time of economic uncertainty, while also encouraging quick production.

Although the opening up of land for the auctioning of coal blocks has received the most publicity, there are also plans to auction 500 other mineral blocks, including land with bauxite and iron ore deposits. The government has said that auctioning these blocks to private interests will support attempts to make existing state-owned companies globally competitive.

The commercial mining auctions are also connected to measures to make doing business easier for commercial mining interests. In early 2021, it was announced that along with new tranches of commercial mining auctions, coal mining was to become part of a single window clearance system that will streamline approvals and clearances in order to operationalise mines in the spirit of minimum government and maximum governance. This system is to help the mining sector (and particularly coal) to be a major contributor to India becoming a USD 5 trillion economy by 2025.

Opposition to these moves has come from various source. Three coal bearing states (Jharkhand, Chhattisgarh, Maharashtra) claim that they were not consulted before starting the auction of blocks in their states, and that the Modi government was “completely encircled by a coterie of businessman[sic].” This dispute led to a Supreme Court Challenge. Opposition has also come from environmental groups and Indigenous peoples as some mining blocks are on tribal lands and in forests harbouring important flora and fauna.

‘Ensuring the Survival’ of the Mining Sector in Queensland, Australia

In Queensland, Australia, the state government introduced a range of relief and recovery measures to ‘ensure the survival’ of the mining and resources sector through the COVID-19 pandemic. These measures include rent waivers; the removal of application fees; capping of all other fees and charges at 2019–20 rates; and recognition that COVID-19 is an exceptional event that may require explorers to relinquishment conditions.

As part of the AUD13.8m “survival and revival” package, the government also brought forward the release of almost 7,000 square kilometres of land for coal and gas exploration to support exploration during the pandemic. Additional funding has also been announced through the ‘Collaborative Exploration Initiative’, an industry grant that encourages exploration in ‘frontier areas’. Queensland's Mine Minister said “People can look in the Country Life [publication] and you can go online and you can see that farms are being sold with the attractive addition of an income from resources.”

Local civil society groups have objected to the release of land, instead arguing that farmland and water reserves should be protected.
Sector Support Guidance for Governments

Anticipating that its members will receive requests from the mining industry for tax relief, the IGF has produced a guide on ‘Mining Taxation During and After COVID’. The Natural Resource Governance Institute has produced an analysis piece warning governments to “resist impulsive tax relief and subsidy measures”, noting the “serious risks associated with renegotiating mining contracts or changing tax regimes in a manner that fails to capture future profit increases”, and suggesting sliding royalties that provide temporary relief and rise when prices recover.

Supporting the Coal Industry in Indonesia

Indonesia is one of the world’s largest coal producers—one of the few minerals that has remained in decline through the pandemic. A recent analysis of the Indonesian coal industry suggested that depressed coal prices coupled with COVID-19 disruptions to domestic and international coal markets may lead to 6 of 11 coal companies analysed having a negative cash per tonne position, putting USD551m out of a total USD1.26bn in royalties at risk. One mining industry representative in this study called the situation facing the Indonesian coal industry in 2020 “survival mode”.

In June 2020, the House of Representatives of the Republic of Indonesia (DPR) approved revisions to the 2009 Coal and Mineral Mining Law (Mining Law No.4/2009) through the issuance of Law No.3/2020. The amendments provide existing tenement holders the right to extend their permits, bypassing the previous requirement for concession renewals to first be offered to state-owned companies. This amendment means that twenty-five coal mining companies whose permits are due to expire by 2025 now have the opportunity for two contract extensions for a period of ten years each (Article 169A).

Other changes allow mining companies to hold more than one mining permit in a single province for the same commodity as well as the removal of the current hectarage caps for a single permit. A simplified process to obtain permitting for small-scale mining activities, or ‘People’s Mining Area’ (Wilayah Pertambangan Rakyat), may also increase the likelihood of corruption in the licensing process, or that larger companies may use the permits to avoid social, environmental and financial obligations.

Another change was the removal of the authority of provincial governments to issue mining permits as stated in the Local Government Law No.23/2014. While issuance of mining permits is now solely under the authority of the central government (Article 35A), Article 35 (4) allows the central government to delegate this authority to regional governments. Article 9 in turn states that mining areas are determined by the Central Government “after being determined” by the Provincial Government. The exact implications of this sharing of permitting responsibilities for corruption risk are unclear, although some participants in this study wondered whether the centralisation of the responsibility for permitting may create a gap in the supervision of permitting activities.
In November 2020, the new Omnibus Law on Job Creation (Law No.11/2020) was introduced with the aim of attracting investment and improving the ease of doing business in Indonesia.\textsuperscript{167} For coal mining, the Omnibus Law on Job Creation provides coal producers that invest in downstream facilities such as coal-fired power stations a relaxation on royalty payments to zero percent from the current 13.5 percent.\textsuperscript{168} The omnibus law also provides for the relaxation of the ‘borrow-use permit’ requirements for mining activities carried out within forest areas by amending Law Number 41 of 1999 on Forestry (as amended by Law Number 19 of 2004). Under the revisions, a borrow-use permit previously approved through the Indonesian parliament is no longer required. Instead, mining companies are to have an “arrangement” with the central government.\textsuperscript{169}

CSOs have stated that the legislative process for the Omnibus Law on Job Creation was influenced by a conflict of interest, where “political and business oligarchic actors in the parliament have mixed up,” with “as much as 50 percent of the DPR members and leaders connected to the coal business”.\textsuperscript{170} The law was also introduced with little or no public consultation, leading to a number of national protests by a wide range of groups including students, Islamic organisations and trade unions,\textsuperscript{171} although restrictions to public gatherings and movement played a role in lessening the ability of protesters to physically demonstrate against both the Omnibus and the Mining bills.\textsuperscript{172}

These changes to mining legislation in Indonesia followed an emergency regulation passed in March 2020, Regulation in Lieu of Law No.1/2020 on State Financial Policy and Financial System Stability for Mitigation of Pandemic Corona Virus Disease 2019 (COVID-19) (Perppu 1/2020). The regulation includes a provision for making government officials immune from criminal prosecution for mismanagement of the pandemic, as long as they act “in good faith and according to the law.”\textsuperscript{173} CSOs interviewed for this study stated that these various legislative changes “violate the budget right of the Parliament and bypass public participation” and “create an absence of parliamentary oversight that might lead to corruption”.

This shift was seen as part of a broader government strategy of strengthening the executive government of the ruling party while securitising civic space by “creating order in the name of COVID-19”. Concerns were also raised about the potential for the lack of public participation in the legislative process, the lack of parliamentary oversight in new mining regulations, and the higher levels of government centralisation and discretion to lead to increased corruption in the sector.
QUESTIONS FOR ESG PERFORMANCE

+ Have the fundamental settings for resource justice that affect mineral exploitation been rebalanced in a way that favours mining capital or existing power structures?

+ Who is participating in the public consultation process for the legislative changes governing access to land, licensing requirements, revenues to the state and ownership of projects?

+ Are legislative changes to open up land and licensing requirements permanent features of the mineral governance landscape?

STRATEGIES AND MITIGATION MEASURES

**Government**

+ If mining industry financial incentives or taxation relief is in the public interest during the pandemic, develop sliding financial mechanisms that provide temporary relief and reset when prices or conditions recover.

+ Make any sector-financial supports conditional on social and environmental performance

+ Strengthen mineral governance and anti-corruption oversight mechanisms and bodies for pandemic conditions.

+ Encourage broad discussions on land-use and possible pathways for pandemic recovery that draw in a broad range of voices and perspectives.

**Mining Companies**

+ Strengthen business integrity systems and ensure that they are fit-for-purposes and fully operational during the pandemic.

+ Strengthen commitment to transparency and disclosure in mining licensing and permitting processes and report against obligations that derive from mining contracts.

+ Develop anti-bribery and whistleblowing policies and procedures suitable for pandemic conditions.

**CSOs**

+ Advocate for transparency and participation in any process to amend policies or legislation to open up land and change permitting requirements.

+ Create awareness about the impacts of proposed legislative changes in the sector, including how potential impacts may be experienced differently by different groups.

+ Focus on transparency, disclosure, participation and public awareness in specific licensing and permitting contracts.

+ Support citizens and communities who are impacted by legislative changes to have a voice in the legislative process, including groups who may be excluded.
5. STRETCHED OVERSIGHT: REGULATOR CAPACITY AND PANDEMIC DISTRACTION
Pandemic-induced capacity challenges are impacting the day-to-day reality of mining regulators. Responding to the pandemic has also created its own type of ‘pandemic distraction’, at times an inertia, in governance and legislative reform work in some countries.

Looking ahead, the ongoing economic crises impacting many governments may also drive austerity measures that significantly impact the capacity of already-strained regulators.

The mining industry may have rebounded, but with the ongoing economic impacts of the COVID-19 pandemic still playing out, many minerals-rich countries are running budget deficits to fund economic stimulus packages in the hope of averting a recession. It seems likely that regulatory funding and capacity may be at risk in some countries as the medium- to long-term economic impacts of the pandemic take hold.

The potential of future funding shortages notwithstanding, pandemic-induced capacity challenges in the regulation of the sector are already impacting the day-to-day reality of many regulators. Participants in our study, including government representatives themselves, painted a picture of already-stretched mining regulators and environmental authorities experiencing increased workloads and a general pressure brought about by the pandemic emergency-response situation. The capacity of regulators is also being stretched in the assessment and approvals process of fast-tracked mining projects (see Theme 3). Indeed, the assessment of mining licenses and permits is proving to be a challenge even in developed countries thought to have well-resourced regulatory regimes such as Canada174 and Australia,175 where public servants who evaluate mining approvals are being placed under significant pressure to complete complicated and highly technical assessments within shorter periods of time.

The risk of diminishing regulatory capacity is also of concern to public sector and multi-stakeholder anti-corruption efforts. Responding to the pandemic has created its own type of ‘pandemic distraction’ in governance and legislative reform work in some countries. One mining executive in our study imagined the predicament of governments who may find themselves with limited resources: “Look, we’d love to improve environmental standards, but we can’t put a new law in that requires government resources”.

Another challenge to the capacity of some mining regulators during the pandemic has been the lack of preparedness to work remotely, with paper-heavy processes and a shortage of off-site information and communications technology. Other mining regulators reported that existing electronic systems for sector management are working reasonably well under remote working arrangements during the pandemic. Some mining companies in our study said that they had supported mining regulators with the provision of ICT equipment for remote work.
With in-country restrictions in travel and movement, some stakeholders in our study reported that mining regulators and environmental bodies have also been restricted in their ability to visit mine sites to conduct regular inspections. The International Association for Impact Assessment (IAIA) has also noted that “reduced public consultations and field work are likely to affect the detail and comprehensiveness of impact assessments, given the key roles consultations and field work play in defining and validating assessment results.”

A number of mining companies who participated in this study said that they had provided targeted measures to support regulatory monitoring activities, including sponsoring site travel for government officers and supplying photographs and videos of site activities for monitoring purposes.

Nonetheless, stretched regulatory capacity and pandemic distraction presents as a compounding risk that can increase the likelihood and exacerbate the impacts of other risks in the changed landscape for corruption risk in mining licensing and permitting.
QUOTES FROM STUDY INTERVIEWS

“There is generally less oversight in the sector. Most of the resource rich governments, if not all, have been hurt by the crisis. There is an incentive for governments to get quick cash, and when you combine that with less oversight, you get corruption risk.

Mining operations continue whilst there are no inspections by the environmental regulator, which creates a severe risk of an environmental disaster for communities.

We haven’t noticed any difference in the way the regulator has continued monitoring the mining projects with mobility restrictions.

Regarding changes to how the mining regulator has continued to monitor mining projects there has been a downgrade. Less resources are directly linked with less capacity and poor auditing. I do think there is a risk of corruption, we have seen in other countries that when there is a downgrade in capacity there is more corruption. There is also a direct correlation between lowering salaries and corruption.

The pandemic has brought a digitalisation of interactions, which might in principle cut corruption risks. However, mining is an industry that requires in-person interactions with government and communities. In that sense, the already weak capacity of the regulator to monitor and scrutinise could have been exacerbated during the pandemic due to restrictions and limitations.
In Mexico, the COVID-19 pandemic has exacerbated the impacts of austerity policies. Key public sector institutions in charge of regulating mining approvals and conducting inspections have had their budgets decreased in the pandemic period, including the Ministry of Environment and Natural Resources, the Ministry of Labour and the National Commission for Natural Protected Areas. For a number of participants in this study, these budget cuts have resulted in a “retraction of inspection, monitoring and regulation in the mining sector by authorities.” Others stated that “budget cuts lead to the authority’s failure to fulfil its obligations”; “federal offices have less capacity to see people”; and “less resources are directly linked to less capacity and poor auditing.” A number of CSOs also pointed to the “direct correlation between lowering salaries and downgrading resources with more corruption.”

These challenges to regulatory funding have taken place amidst structural changes to how the sector is regulated. Between September and December 2020, the Ministers of Economy and Environment were replaced, the Mining Vice Ministry of Economy was downgraded to a department and the Mining Undersecretary position within the Ministry of Economy was eliminated. Many stakeholders who participated in this study viewed these changes as retrograde measures, with concerns that sector reform momentum will be lost. Others lamented the loss of “the right representation” at a high-level within the Federal Government. The moves have also been criticised by subnational governments due to the uncertainty that they create in an ongoing process to renegotiate the distribution of royalties within the country.

The combined effect of austerity policies, structural changes, declining budgets and mobility restrictions have hampered project-level monitoring and surveillance throughout the pandemic. Where project-level inspections have taken place, they have tended to be COVID-19 related. For instance, the Ministry of Economy reportedly visited around 40 mining operations after mining was considered an essential activity. However, only “strictly necessary” field inspections were undertaken for non-COVID-19 related matters, such as when fatalities or accidents occurred, or when specifically instructed by the judiciary. Not only was the regulator limited in its regulatory inspections but communities were also restricted in the extent to which they could monitor mining activities due to mobility restrictions.

Judicial appeals processes suspended or interrupted

Other governance and capacity challenges have centred around the judicial appeal process, with judiciary bodies suspending judicial processes from 18 March to 31 July 2020 except for “urgent matters.” While the Committee of the Federal Judiciary has since established several measures to re-establish the normal operations of jurisdictional bodies, stakeholders in this study pointed to ongoing delays in judicial proceedings that are impacting judicial appeals processes connected to mining permitting and licenses.

For example, the Samalayuca community challenged the EIA authorisation for mining activities in Ciudad Juarez in the state of Chihuahua through an ‘amparo’ lawsuit on the grounds that the mine operations affected the community’s right to access water and cultural rights because there are pre-colonial cave paintings in an area close to the mine. A provisional stay of the claimed act (the EIA...
authorisation) was requested through an ancillary proceeding of the amparo lawsuit, but it was denied at first instance. The denial to the provisional stay of the act was further appealed through a recourse called ‘complaint’ that according to the Law of Amparo should have been addressed in 48 hours. However, the judiciary delayed its resolution for 11 months and finally granted the stay. As a result, mining continued operations and excavations throughout the recourse process. Interviewees in this study also said that delays and deferrals of audiences by judicial authorities, fewer personnel to investigate cases and suspension of training also disrupted corruption investigation and prosecution activities.

Many local-level judicial mechanisms remained closed for significant periods during the pandemic, impacting access to justice for mining communities. For instance, during the COVID-19 pandemic, a community in Sonora has been in the process of appealing the land occupation contracts of a mining company. However, the appeal process has been significantly delayed due to the judiciary being closed for major periods throughout the COVID-19 pandemic. Compliance with judicial rulings has also been hindered during the pandemic due to social restrictions.

Criminal organisations and a mining police force

A further governance challenge in the mining sector during COVID-19 has been the activities of criminal organisations. The border with the United States is more surveyed than before the pandemic, and income from traditional drugs has dropped. The members of several criminal organisations have also suffered COVID-19 related deaths. While criminal organisations impacted mining operations before COVID-19, there is evidence to suggest that drug cartels have sought to replace lost income through increased stealing of precious metals from mines. Indeed, during the pandemic attacks by criminal organisations to mine sites to steal precious metals rose. For example there was an attack to steal gold and silver in the Mulatos mine in Sahuaripa municipality in Sonora. The mining industry asked the government to address this issue, and a mining police force, policía minera, was created to protect mining operations against banditry and cartels.

Digitisation of some regulatory activities

Despite these significant challenges to the regulation of the sector, a number of government and business representatives who participated in this study believe that mining governance has been strengthened during the pandemic due to the digitalisation of some regulatory activities that previously relied on paper processes. In January 2021, the Ministry of Economy introduced an electronic system for mining companies to fulfil obligations such as reporting on production. This electronic system is thought to be more efficient and agile, while limiting opportunities for corruption by controlling and keeping track of human intervention in the process. Or, as explained by one mining industry representative who participated in this study, the digital process is “more exposed to diverse eyes” compared with in-person meetings.

In contrast, some government representatives and CSO groups who participated in this study said that digitalisation and remote work is problematic because mining processes and operations require in-person interactions between stakeholders and “in situ verification” of the conditions set within mining permits, particularly environmental conditions. For these stakeholders, limitations on mobility weakened the regulator's capacity to monitor and scrutinise, because there is “a remote government in areas where proximity is required.” Indeed, an interviewee from the public sector said that the reduction of “physical presence in the pandemic scenario increases corruption risks in which the state becomes even more absent in terms of visits to assess how concessions [are operating] or the possible assessments it has to undertake to mitigate environmental impacts.”
Recommendations for improved governance in mining licenses and permitting

Amongst the measures CSOs recommended to improve governance in mining approvals during and after the pandemic were structural reforms of the legal framework to increase accountability, transparency, community engagement and a fair playing field for all stakeholders. Also high on the anti-corruption agenda of some participants was compliance with the National Anticorruption Policy approved in January 2020 by the Coordinating Committee of the National Anticorruption System, including compliance with measures on lobbying; public and private interactions in licencing; concessions and contracting; and a voluntary register of conflict of interest. Mining specific focus areas included disclosure of information related to mining operations, financial flows and beneficial ownership, as well as transparency on agreements deriving from the COVID-19 economic recovery working group.

QUESTIONS FOR CORRUPTION RISKS IN MINING LICENSING AND PERMITTING

+ Will reduced budgets impact the ability of mining regulators to effectively implement and administer the licensing and permitting process and detect non-compliance with conditions and legislative requirements?
+ Have the regulatory appeals processes for licensing and permitting (e.g., land courts, environmental appeal processes) been compromised during the pandemic?
+ With regulators under pressure to keep up with assessments and regulatory changes for mining licensing and permitting, is there an increased risk of state capture and other forms of corruption?
+ Will sector governance reform and anti-corruption work and bodies be de-prioritised as budgets are stretched?

QUESTIONS FOR ESG PERFORMANCE

+ What will be the medium- to long-term impacts of reduced budgets and increased workloads on the capacity of already-strained regulators?
+ Will reduced budgets impact the ability of mining regulators to maintain ESG standards?
STRATEGIES AND MITIGATION MEASURES

Government

+ Overall, pursue sector reforms that adopt a 'pandemic lens' to build more resilient regulatory systems.

+ Consider funding models that maintain base levels of funding for mining regulators to provide adequately resourced minerals sector regulation that supports the economic recovery.

+ Consider a regulatory fee structure where any fast-tracked applications processes incur an increased fee to resource greater scrutiny in a shorter space of time.

+ Digitalise mining sector processes and data for more efficient, transparent and robust disclosure and monitoring.

+ Support ongoing mineral governance training and development for public servants responsible for minerals sector regulation.

+ If needed, assign extra staff to support the assessment and approvals process for mining licensing and permitting during the pandemic.

+ Seek ongoing support from multilateral and bilateral donors for mineral governance and anti-corruption reform work during the pandemic response and recovery.

CSOs

+ Advocate for a functioning, adequately funded regulator that is digitalising data and processes for greater resilience, transparency and efficiency.

Mining Companies

+ Develop communications and processes for data provision that support the ability of regulators to monitor operations when travel to site is not possible.
6. GIVING AND RECEIVING: CORPORATE PHILANTHROPY AND LOBBYING IN PANDEMIC TIMES
TREND OVERVIEW

Amidst the crisis, the mining industry’s social investment and philanthropy programs have pivoted to support the pandemic response in the countries and communities in which they operate.

In many cases, these donations and in-kind support have made a significant difference in COVID-19 response efforts at local and national levels. From a corruption risk perspective, vigilance in business integrity systems is needed to avoid the real or perceived risk of corruption in the form of misappropriation of pandemic funds, state capture or trading in influence.

Mining company donations to support COVID-19 response efforts have been gratefully received by many national and sub-national governments, CSOs, local businesses and mine-impacted communities. These donations and in-kind measures, which have included direct supply of protective equipment and funds to support governments and communities in the pandemic response, have come from an industry that has been progressively taking much-needed steps to improve ESG standards. Noteworthy during the pandemic is ICMM’s recent guidance framework that seeks to “connect the immediate crisis response to the long-term sustainable development challenges of communities and nations, focusing on practical action, and opening up new collaborative opportunities within and beyond mining.”

Large mining companies who participated in this study did not tend to see material corruption risks associated with COVID-19 donations and support. Company representatives pointed to well-developed business integrity systems including anti-corruption policies and internal approval processes, whistle-blower protocols and external procedures for stakeholders to report alleged corruption. Some mining companies also reported having formed COVID-19 committees to oversee internal and external requests for pandemic support.

At the same time, not all mining companies have highly developed business integrity systems or the culture or capability to deploy them. There are also risks surrounding COVID-19 contributions from a well-funded industry with vested interests across the globe. One key concern expressed by some civil society representatives in this study was a lack of government and third-party scrutiny of these contributions, including the lack of financial acquittals from recipients. Such oversight is particularly relevant in the pandemic context, where restrictions to travel, movement and assembly are creating ‘new zones of invisibility’ around mining projects. The potential for these extra-ordinary COVID-19 donations to be co-opted by public or private interests was also raised.

Another concern mentioned by civil society participants in this study was the perception that social investments during the pandemic are being used as a smokescreen for less scrupulous mining companies to lobby governments for their commercial interests, including shoring up their chances of success with forthcoming licence and permit applications and negotiations. This study identified examples of mining companies
lobbying for ongoing operations as an essential industry; fast-tracked approvals of mining projects and expansions; and legislative changes to bring about relaxations, dispensations, waivers and permanent reductions to taxes, royalties and other levies.192 These examples of corporate lobbying were typically accompanied by ‘corporate virtue signalling’, where mining companies emphasised the contributions that they are making during the pandemic.193

Another concern raised by many civil society representatives in this study was that corporate giving during the pandemic may heighten the risk of state capture, trading in influence and other forms of corruption such as misappropriation of funds. The economic conditions induced by COVID-19 were also seen by some stakeholders as increasing the chances that mining companies would make contributions to fund the election campaigns of political candidates who are “sympathetic” to mining interests. A related concern was that corporate giving during the COVID-19 pandemic creates a quid pro quo expectation between mining companies and impacted communities that may impact future negotiations in mining licensing and permitting processes.

In many cases, the corporate giving of mining companies during COVID-19 reflects the asymmetries of power between some multinational corporations and some mining communities. The staff of mining companies and at times mine-impacted communities may have better access to COVID-19 testing and protective equipment than the mine-impacted population or even the state themselves. A potential contradiction also arises where mining companies have provided corporate donations to COVID-19 efforts while keeping mining operations open, potentially serving as a key vector in the spread of the virus.194 Whether this is a case of “corporate social (ir) responsibility”195 could only be answered with a nuanced understanding of local context. Nonetheless, it is harder to criticise a mining company in the act of doing good.196

Of course, these potential corruption risks and possible contradictions do not mean that mining companies should refrain from providing contributions to COVID-19 recovery efforts in line with national, local and community-based response and recovery plans. Nor of course does outlining these risks and concerns imply that mining companies should cease fulfilling social obligations in the countries and communities in which they operate. In fact, quite the contrary: understanding the corruption risks and power relations of COVID-19 giving can help mining companies, governments and CSOs put in place measures that minimise corruption risks as they seek to support the pandemic response.
**QUOTES FROM STUDY INTERVIEWS**

"Businesses have started propaganda with communities. They have distributed materials and supplies, which has given them leverage to obtain communities’ support for their operations. In many cases, mining companies divide communities to serve the project’s interests."

"The COVID-19 experience served to strengthen our relationship with our other stakeholders—communities, unions and workers. It became an opportunity to show solidarity with others."

"There has been willingness to show concern for their workers and communities, they have been open to providing support to communities."

"Regarding risks to communities, they have lost mobility and their livelihoods have been undermined which makes them more vulnerable to accept donations from mining companies to earn social licence to continue operations. It is hard for communities to monitor and follow accountability processes with mobility restrictions."

"There was heavy lobbying to pressure the regulator to declare mining as an essential industry. Businesses leveraged the pandemic to strengthen their relations with the government and obtain benefits in exchange, like legitimacy or facilitation of their activities."

"Local and municipal elections this year is a corruption risk that we foresee. Municipal presidents are the ones that authorise changes in land use so that mining companies can operate after obtaining federal licences. There is a high risk of using private resources to promote certain candidates that could be more like-minded to the advancement of mining projects. This risk is always present during elections and even more with the pandemic... opening the doors for other private resources to finance election campaigns this year."
EXAMPLES OF MINING COMPANY LOBBYING

Lobbying in India, Tunisia, South Africa, Australia and the US

In India, the Federation of Indian Chambers of Commerce and Industry put forward a set of recommendations to the government seeking deferment of royalty and contributions to District Mineral Funds and the National Mineral Exploration Trust for six months. The submission also recommended that all levies and taxes be subsumed into one payment.

In Tunisia, mining companies asked the government to reduce the amount required as a bank guarantee for exploration licenses, a request that has apparently been rejected.

In South Africa, gold miners successfully applied for tax relief under the Employment Tax Incentive programme.

In Australia a blog post on the Mineral Council of Australia’s website emphasises the economic contributions that the mining sector has made to the Australia economy during the pandemic, stating that “Mining has sustained the Australian economy as the 2020 pandemic hit and will be the bedrock for driving a recovery in investment, jobs and hope for Australia’s youth.” The blog ends with an appeal to “stay the course” on structural reform, including “…more competitive taxation, faster project approvals, more flexible workplace relations and industry-led skills and training.”

In the United States, a letter to the then-President Donald Trump from the National Mining Association requested that “coal companies have access to the necessary cash flow they need to continue operations.” The letter also requested that the President sign an executive order to keep coal-fired power plants running, asking Congress to “suspend or reduce” royalties and taxes. Another request was to cut fees the industry pays for social and environmental levies such as health assistance to victims of black lung disease and mine rehabilitation.
MINING SECTOR GIVING AND RECEIVING IN MEXICO

In Mexico, mining companies donated a range of healthcare goods and services to support local communities and the government during the pandemic. CSOs interviewed in this study expressed concerns that these donations are being used as a “leveraging strategy” to gain support among mining communities while advancing the interests of mining companies with the state. As mentioned by a civil society representative in this study, “They donated ventilators to the Mexican government. In exchange, government has facilitated their operations or broadcasted positive messages [about the industry].”

A poignant example of mining company lobbying occurred in the middle of 2020 when leaked audio documenting comments from the Secretary of the Ministry of Environment and Natural Resources entered the public domain. In the audio, the Secretary discusses a breakfast meeting with the Executive Director of Grupo Mexico where requests were made to facilitate the company’s operations. Grupo Mexico denied these reports.

Some CSOs and government interviewees who participated in this study said that the mining industry also “heavily lobbied” the government to declare mining as an essential industry. For instance, government and mining company interviewees said that mining was declared essential after “talks”, “convincing” and “dialogue”. One key justification given was the ability of mining companies to implement hygiene protocols to limit the spread of COVID-19. Another reason given by mining companies when requesting the classification was mining’s supply-chain contributions to essential products for the transport industry and health sectors. The introduction of the USMCA free trade agreement was also mentioned by some mining companies, with the suggestion that Mexico should follow the USA and Canada in declaring mining as an essential industry.

The mining sector’s formal participation in economic recovery discussions with the government did not occur until late February 2021, when the recently appointed Minister of Economy publicly announced the creation of a working group that invited mining companies to “find solutions” for the country’s economic recovery. CSOs who participated in this study said that they were not invited to participate in the working group and expressed concern that the process may “take place under opaque conditions and not disclose the type of agreements the working group reaches.”

For their part, mining companies said that they had “exchanged information about the ways in which the mining sector can boost the economic recovery” with mining being positioned as essential for the “regional and national reactivation.” In contrast, CSOs who participated in the study were concerned that a “relaxed” narrative about sustainable mining could be leveraged to obtain pro-industry mining deals. CSOs also expressed concern that mining companies are lobbying “on the front line in parliament” to appeal and block any initiative that intends to increase taxes or use mining income for collective benefits.
QUESTIONS FOR CORRUPTION RISKS IN MINING LICENSING AND PERMITTING

+ What influence did the mining sector have on the decision to classify the industry as essential early on in the pandemic, and was the process subject to state capture?

+ What business integrity standards and governance arrangements have been put in place to govern COVID-19 cash and in-kind contributions from mining companies? Have these cash and in-kind contributions created an increased risk of corruption?

+ Are recipients of COVID-19 cash and in-kind contributions from mining companies, including governments, companies and CSOs, disclosing and reporting on these contributions? Are mining companies disclosing their corresponding payments?

+ Has corporate giving during the pandemic provided increased access to the state and increased opportunities for lobbying?

+ Are COVID relief funds influencing mining licensing and permitting policies and laws?

+ Is corporate giving to communities and governments influencing mining assessment and approval processes for individual projects?

QUESTIONS FOR ESG PERFORMANCE

+ Are funds that are set aside for obligations under mining agreements or other social investment commitments being redirected to the COVID-19 response?

+ What have been the social impacts of mining company contributions to the COVID-19 response?

+ Are some members of communities being privileged while others are being left out of corporate contributions to COVID-19?

+ What can be learnt from how mining companies have successfully managed corruption risk in the management of pandemic funds?
## STRATEGIES AND MITIGATION MEASURES

<table>
<thead>
<tr>
<th><strong>Government</strong></th>
<th><strong>Mining Companies</strong></th>
<th><strong>CSOs</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>+ Report on COVID-19 pandemic response funds from mining companies, including funds received and acquitted. Reporting should be shared in a timely manner on a government website and through EITI reports where countries are members of EITI.</td>
<td>+ Report on COVID-19 pandemic response funds given at both the national and local levels where mining takes place. Reporting should be distributed in a timely fashion in a way that can be accessed by communities and citizens during the pandemic. Reporting should include funds or in-kind support given, recipient stakeholders and the purpose of the funds or support.</td>
<td>+ Advocate for transparency and accountability in COVID-19 pandemic response funds.</td>
</tr>
<tr>
<td>+ Report on government requests to mining companies for COVID-19 funds and disclose meetings held through a ‘lobbying register’.</td>
<td>+ Ensure that lobbying in pandemic times is consistent with business integrity standards.</td>
<td>+ Review government and mining company reporting of COVID-19 funds with a focus on payments, recipients, acquittals and impacts.</td>
</tr>
<tr>
<td>+ Disclose all political donations received from mining companies.</td>
<td>+ Disclose meetings with public officials and members of government as well as any political donations.</td>
<td></td>
</tr>
</tbody>
</table>
7. SHRINKING CIVIC SPACE, DIGITAL ENGAGEMENT CONTESTED
Finally, the mining sector’s COVID-19 transformations have taken place at a time when civic space has been shrinking in many countries. Public health measures to limit social gatherings and movement, even when proportionate, have further restricted freedom of assembly and the right to protest in many mining jurisdictions. The extent to which digital and remote consultation can foster meaningful engagement in mining licensing and permitting processes is also contested.

When coupled with fast-tracking practices and the prioritisation of mining activities, the shrinking of civil space and the increase of digital and remote consultation methods is resulting in a ‘double impact’ in some countries. A new kind of mining exceptionalism may be emerging, where mining companies are given priority access to government regulators while community access is restricted by lockdowns and restrictions in the pandemic.

Shrinking civic space, digital engagement contested is a ‘threat multiplier’ to other pandemic-times corruption risks in the licensing and permitting of large-scale mining projects.

Civic space was shrinking in many countries prior to COVID-19 and it has shrunk even further under pandemic conditions

Even prior to COVID-19, freedom of assembly, association and expression has been shrinking in many countries. Compounding this trend, the pandemic has ushered in a bevy of executive and emergency powers, border closures, restrictions on free movement and freedom of assembly, restrictions on civil and political rights, and in some cases limitations on freedom of the press.

While some authoritarian-minded governments may have used COVID-19 as an opportunistic smokescreen to repress public discourse and democratic accountability, in other cases, pandemic restrictions may have been a proportionate and necessary response to the public health crisis. Regardless of justification, the narrowing of civic space during the pandemic has important implications for the mining sector, including corruption risks in mining licensing and permitting.

Public participation and consultation processes under pandemic conditions

One consequence has been a fundamental change to the ways in which public consultation has taken place, at a time when the right to protest against legislative changes and approvals of specific mining projects has been limited.

In some instances, such as Indonesia’s revisions to the 2009 Coal and Mineral Mining Law and the Omnibus Law on Job Creation, public participation in the legislative process has been distinctly lacking and criticised heavily by CSOs. This is the case in other jurisdictions, such as Québec’s attempts to introduce Bill 61 in Canada. Indigenous groups criticised the lack of consultation under pandemic conditions, prompting additional public consultation prior to the introduction of a revised bill. Both of these examples are discussed in more detail in Theme 3 and 4 of this report.
Some governments have made genuine attempts to introduce modified public participation and consultation processes for mining licensing and permitting under difficult circumstances during the pandemic. These measures have included physical meetings with restricted attendance, extending consultation periods due to difficulties conducting face-to-face meetings, and virtual consultation processes using videoconferencing platforms or phone calls.

In many cases, these efforts reflect a genuine attempt at a ‘balanced approach’ that allows for ongoing consultation during the pandemic while still supporting the economic activities of the industry. Indeed, the public interest and/or the interest of mine-impacted communities may not be served by ‘just stopping’ mining permitting and licensing activities. However, the effectiveness of these adapted consultation measures was contested by some participations in this study.

The contested nature of digital and remote engagement

In particular, the utilisation of digital and virtual modalities for public consultation in the mining sector is seen as problematic by some. A principal scepticism was the ability of digital consultation to foster trust, culturally appropriate engagement, open dialogue and broad-based participation, let alone Free Prior and Informed Consent (FPIC).208 Another concern was the effective exclusion of groups who may not be able to access digital technologies, such as those who live in communities with poor internet connection, or people who cannot afford internet access. There are also very real questions about whether digital consultation is as accessible by women as it is men and by the elderly as it is the young.209 People living with disabilities may also face increased barriers when seeking to engage in digital consultation modalities.210

For all of these reasons, the extent to which digital consultation can produce meaningful, credible and legitimate engagement during pandemic conditions was questioned by many participants in this study.211 Questions were also raised regarding the cultural appropriateness of virtual engagement methods that may cut across or be in conflict with a community’s own systems of decision-making and social relations.

Yet another concern is how ESIs, which can be notoriously complex and voluminous, can be meaningfully shared with impacted communities through digital or remote engagement in a way that is accessible and allows for concerns to be raised and discussed.

The shift to digital engagement and smaller remote meetings taking place outside of community settings was also thought to heighten the risk of corruption through state and elite capture, and create a greater potential for bribery “away from the prying eyes of the community”. With pre-pandemic public consultation processes in many countries insufficient, some stakeholders in this study also warned that digital consultation coupled with the pressure to fast-track project approvals may create a ‘rubberstamping culture’.

For all of these reasons, there is a perception among many mining sector stakeholders interviewed in this study that the restrictions in civic space and shift to digital and remote engagement methods have constrained the ability of impacted communities, citizens and civil society actors to participate in mining sector dialogue and decision-making, including in the all-important mining licensing and permitting process.212 Shrinking civic space and public participation during the pandemic can limit third-party monitoring activities, reduce the ability of citizens to access information and to pass
judgement on the conduct of those with public responsibilities, and in so doing heightens the risk of power abuse and corruptive practices in the mining licensing and permitting process. This lack of meaningful public participation in mining licensing and permitting may also act as a ‘threat multiplier’ for other corruption risks and themes discussed in this report.

At the same time, a number of participants in this study also noted the advantages of digital consultation. As shown in Table 1 on Page 73, these include the ability to participate in consultation processes while still adhering to public health restrictions on travel and public gathering; savings in cost, time, and greenhouse gases and improvements in efficiency through a reduction in travel; the ability for people from multiple communities, locations and departments to participate in meetings at the same time; the suggestion that online public engagement forums are more transparent and allow the public to build a greater understanding of community concerns; and the potential for greater engagement of technologically savvy young people who are normally under-represented in community engagement sessions.

A new kind of mining company exceptionism?

For some civil society representatives who participated in this study, the impact of shrinking civil space and the increase of digital consultation methods coupled with fast-tracking practices and mining being classified as an essential industry is leading to a ‘double impact’. A new kind of mining exceptionalism may have emerged, where mining companies are given priority access to government regulators while community access is restricted by lockdowns and restrictions in the pandemic. This dynamic was seen to further privilege mining companies in access to the state, in a context where communities and civil society are restricted in assembly due to social distancing measures and at times a suspension of services for communities.
QUOTES FROM STUDY INTERVIEWS

“Digital communication with communities is not culturally appropriate... Virtual processes effectively revoke limited access to communities. Many don’t have internet or necessary technology.

“The wealthy are able to get in their car and drive to a mine site or meet in a hotel outside. Poor people are unlikely to get into a bus and go to a multi-stakeholder meeting during the pandemic, or dial in on Zoom.

“First Nation governments are still very involved in mineral exploration and development consultations despite COVID-19. However, great importance is placed by those governments on community meetings to solicit community member input, questions and concerns. Those meetings are not available due to the pandemic and First Nation governments must respond to mineral matters without having that important background on what their response is.

“There is no increased risk of corruption as a result of the pandemic, on the contrary, we are shifting to virtual situations to promote transparency like for example we record all our meetings. We are more exposed to diverse eyes by not having in-person meetings.

“Consultation has been taking place virtually which doesn’t secure effective participation. Sometimes consultation is with small groups of municipal presidents that sometimes don’t represent communities. Communities have been hindered in their traditional ways of association, participation and decision making. This provides more power to projects and mining companies to advance.

“Old exclusions have been exacerbated. Inequality is increasing in how affected communities are accessing and influencing governments.”
Unequal Access to the State in Mexico

In Mexico, prioritisation of mining as an essential industry during COVID-19 has created a situation where there is unequal access to the state, according to many civil society participants interviewed in this study. The perception is that government is “obliged” to have meetings with the mining industry and expedite industry requests at a time when mining communities and CSOs are experiencing reduced access to government. On the one hand, “doors are left opened for the mining industry” to continue operations as an essential activity. On the other, “doors are shut” for communities and CSOs to exercise their rights in the mining process.

As one participant explained, “Groups have been impacted differently. The government has decided on one side to leave doors open for mining, and on the other to shut doors and cut budgets for programmes for indigenous women.”

In one example put forward by a participant in this study, CSOs were initially denied information about the compliance of a mining company with hygiene protocols put in place during COVID-19. Only after appealing the decision before the National Institute of Transparency and Access to Public Information and Data Protection was access granted.

Other participants in this study described a transparency gap in what is able to be known about the industry, including the interactions that businesses are having with government. As one participant noted, “Accountability is hindered by the hygiene circumstances which have been leveraged to avoid transparency. It is a source of arrangements in the dark.”

Mobility restrictions have also hindered the ability of communities to gather for community assemblies, traditionally used for community dialogue and decision-making. As explained by one participant, “Large infrastructure projects and mining operations – and keeping investment in those projects – hasn’t stopped one day during the pandemic. At the same time, community assemblies and meetings are prohibited which effectively impedes the ability of communities to exercise their rights in the mining process.”

Some communities also lack access to power and internet, creating a ‘digital gap’ which has prevented local participation in remote engagement and weakened advocacy. This digital gap is being experienced in the mining approvals process, with some consultation processes for environmental approvals taking place virtually. CSOs also said that engaging with government, mining companies and communities has been more challenging during COVID-19, with engagement with mine-impacted communities in particular severely restricted by the pandemic.

Collectively, these challenges are contributing to a perception that the agency and voice of mining communities has been weakened during COVID-19 at a time when industry is receiving privileged access to the state.
Restricted Consultation in Greenland

In Greenland, a series of five town hall meetings on the approval of the proposed Kuannersuit mine commenced in February 2021. With the government advising that those who cannot attend in person can participate remotely, opponents of the controversial rare earths and uranium mine project have questioned the public engagement process, and called for a halt in the process until coronavirus restrictions are lifted. Grassroots group Uranium Naamik (“Uranium? No Thanks”) have raised concerns that limitations on public gatherings will limit protest while border closures will prevent foreign environmental experts giving testimony in person. Greenland’s Mining Minister announced that the government has received a bomb threat and a warning that “weapons would be used” if the meetings proceed.

Scrapped Plans for Online Consultation in Colombia

In Colombia, Forest Peoples Programme and partners penned an open letter to the Colombian government following a government circular authorising the use of online consultations for legislative and administrative measures in order to avoid the spread of COVID-19. The measures were later revoked following objections from Indigenous groups and from the Office of the Inspector General, which declared the measures unconstitutional and contrary to the jurisprudence of Colombia’s Constitutional Court. The letter put forward a range of concerns regarding the inappropriateness of online consultations for safeguarding Indigenous Peoples’ rights, and a perceived failure of the regulator to understand the relationship between consultations and FPIC.

Plans for Virtual Consultation in Peru

In Peru, Legislative Decree No 1500 passed in May 2020 made it possible to use electronic and virtual communication channels for the consultation required for the Citizen Participation Plans utilised in the environmental management process. The decree also exempts miners from presenting social and environmental mentoring reports based on fieldwork. Indigenous groups have opposed the move to allow consultation by virtual platforms, arguing that online consultation risks violating the rights of Indigenous Peoples. Civil society organisations have expressed concern that these and other measures lower the social and environmental performance standards that have been put in place to protect Indigenous peoples and their rights to make decisions on matters concerning their land.
Shrinking digital civic space in Indonesia

With the number of internet and social media users in Indonesia rapidly growing, digital activism is increasingly used to mobilise support for social and political movements, to question and critique the government, and to facilitate public debate and advocacy connected to governance and anti-corruption. The limitations on movements and restrictions to public gatherings during the COVID-19 pandemic have meant that Indonesia's digital civic space has been more important than ever before. For instance, digital activism was seen in the recent protests in opposition to Indonesia's Omnibus Law on Job Creation (Law No.11/2020), where hashtags such as #ReformasiDikorupsi (#ReformCorrupted) were used to mobilise public discourse and opposition to the reforms.

However, the increased use of social media for public debate and activism should not be thought of as a “widening of civic space”. Digital rights groups have documented what they say is an increase in the amount of civil society actors and activists being charged under the 2008 Electronic Information and Transactions (ITE) Law for offences such as inciting protests through social media and defamation, peaking in 2019 with 3,100 cases. Some commentators expect this trend to accelerate during COVID-19. There are also anecdotal reports that activists, journalists and academics critical of the government have fallen victim to cyber-attacks such as doxing, deactivating personal accounts, removing articles from news sites and hackers posting messages on personal social media accounts. Civil society representatives who participated in this study expressed their concerns that the Law on Information and Electronic Transaction/ITE restricts their ability to organise public dialogue. Another concern is that the law is being used to quell critical voices of both the state and corporate interests including those involved in mining.

For some civil society participants who took part in this study, the narrowing of Indonesia’s digital civic space during the pandemic has compounded other corruption risks in the mining sector such as a lack of participation in the legislative process, a lack of parliamentary oversight in new regulations affecting mining approvals, and greater levels of government centralisation and discretion in the assessment and approvals of mining licenses and permits (also see ‘Supporting the Coal Industry in Indonesia’).
Canada’s Community Consultation Under Pandemic Conditions

Most Indigenous communities in Canada are small and remote, with limited healthcare facilities capable of effectively responding to a COVID-19 outbreak. In the early days of the pandemic, the majority of Indigenous communities were in strict lockdown, with some continuing to limit access and movement in and out of the community. As a result, many Indigenous communities and their governments were not able to respond to requests to review mining permits or authorisations, or take part in consultation activities while in lockdown. Indigenous leaders also faced challenges engaging with their own people to hear community concerns and prepare informed responses to assessments and permit applications. Several Indigenous leaders requested suspensions to approval processes while they managed the health and safety of their communities.9

There was also concern by the federal, provincial, and territorial governments that their constitutional duty to consult with Indigenous people on impacts that may affect their rights could be difficult or compromised as a result of COVID-19. This was one reason why many government assessment and permitting bodies extended timelines for consultation, often to the full extent allowable within their regulations (and in some cases beyond). At the same time, there was a desire among many stakeholders to balance any extensions with timely reviews that allowed economic activity to continue.

In many cases community and stakeholder engagement methods were also adapted so that consultation could proceed under pandemic conditions. It was no longer viable to conduct in-person “open house” public consultation meetings, information sessions, and field assessments. These activities moved instead to remote and socially distanced methods that were for the most part carried out through online video conferencing platforms, with both positive and negative outcomes. Many people interviewed for this study identified a range of positive aspects of online engagement such as the ability to bring people together from different communities, departments, agencies, or locations to discuss a proposed project or legislative change. While online videoconferencing was possible before the pandemic, it was often considered logistically difficult or little-used. As one participant explained, “One upside to remote engagement is the ability to have large sessions with multiple communities together in virtual community meetings. In one case there were representatives from eight government departments together

Period for assessments has been extended to the maximum allowable time under the regulations. Provisions have also been made for further extensions in cases where a potentially affected First Nation indicates that it intends to submit comments, but requires more time than the rules permit.227 Another example is the proposed Ring of Fire developments in northern Ontario. The Ontario government extended consultation on two roads in the Ring of Fire region from the summer and fall of 2020 to January 2021 and then again to late February and March, 2021.228 The federal Impact Assessment Agency of Canada also extended engagement and consultation timelines for its Regional Assessment of the Ring of Fire area. At the time of writing, the agency had not provided a specific extension date saying they must first consult and understand the impacts to Indigenous nations in the area.229
with First Nation in the same meeting – this would never have happened before.”

On the other hand, poor bandwidth, lack of computer resources and difficulty in using technology were identified as challenges for some communities, and for some people. As explained by a CSO representative interviewed for this study, “Some people will be impacted more, such as elders or those without computers or the internet at home, but it is highly variable across the country. However, there is an opportunity for young people to help elders to engage with technology and build community rapport.” A concern raised by another participant was the ability of videoconferencing calls to foster meaningful consultation, although the breadth of engagement was also considered a positive: “It has created challenges with hearing from everyone. What you miss is the individual conversations with an expert that can be obtained in an in-person open house. But it has allowed more people to engage than in the past”.

The table below summarises some of the advantages and disadvantages identified by interviewees with remote engagement methods.

<table>
<thead>
<tr>
<th>Advantages</th>
<th>Disadvantages</th>
</tr>
</thead>
<tbody>
<tr>
<td>+ Ability to participate in consultation processes while still adhering to public health restrictions on travel and public gathering.</td>
<td>+ Bandwidth and technology is a challenge with some communities and for some people. It can leave community members behind and unable to effectively participate.</td>
</tr>
<tr>
<td>+ Savings in cost, time, and greenhouse gases and improvements in efficiency through a reduction in travel. This is considered by most to be a significant benefit.</td>
<td>+ Difficult to build new relationships or repair strained relationships.</td>
</tr>
<tr>
<td>+ Ability for people from multiple communities, locations and departments to participate in meetings at the same time.</td>
<td>+ Can be less personal, particularly in large group meetings and harder to obtain feedback on challenging topics.</td>
</tr>
<tr>
<td>+ Easier for some people to participate in public reviews (e.g. where family commitments make it difficult to attend in person).</td>
<td>+ Effective at delivering information, but not always as good at receiving feedback. Proponents and government may need to try several approaches and engage one-on-one.</td>
</tr>
<tr>
<td>+ Suggestion that online public engagement forums are more transparent and allow the public to build a greater understanding of community concerns.</td>
<td>+ Less use of tactile materials that are important for some such as maps, models and samples.</td>
</tr>
<tr>
<td>+ Potential for greater engagement of technologically savvy young people who are normally under-represented in community engagement sessions.</td>
<td></td>
</tr>
</tbody>
</table>
Changes in engagement and consultation processes have also impacted civil society, environmental groups, the public and the mining industry. Many of these groups noted that virtual engagement provides greater opportunities to participate in review processes and greater opportunity to hear community concerns and proponent responses. Yet others felt they had less ability to probe technical questions with the proponent's experts in the virtual environment.

It was also noted by interviewees that Indigenous nations and communities that had well established and resourced review processes before COVID-19 were able to adjust to remote processes reasonably well. Those Nations and communities that were struggling to resource and review permit applications and assessments before COVID-19, have had more difficulty adapting to new processes. Similarly, communities, proponents and governments that were known to each other and had good working relationships before COVID-19 were able to adapt to new processes more effectively than those without pre-existing relationships or where relationships were strained. As explained by one participant in this study, “If there were solid relationships between industry or government and Indigenous Nations before COVID-19, it was easier to find a pathway forward. This emphasises what Indigenous Nations have been saying — establish relationships early and build trust from the earliest exploration activities onward. Where there were no existing relationships, it was a challenge to establish new ones without the ability to engage face-to-face.”

There is general agreement that online engagement and consultation processes have a number of advantages. Most expect that virtual engagement will continue to be used post COVID-19 to a much greater extent than it was used before. A return to face-to-face community, proponent and government meetings will also be important to support comprehension of complex information, to build or rebuild relationships, and to ensure that all the voices in a community are heard.
QUESTIONS FOR CORRUPTION RISKS IN MINING LICENSING AND PERMITTING

+ Have the modified methods of public consultation that have taken place in some countries increased the risk of corruption in the mining licensing and permitting process, such as elite capture, bribery of officials and facilitation payments?

+ What exclusions are exacerbated or created when using digital consultation processes and 'out of town' engagement processes? What are the implications for corruption in the licensing and permitting process?

+ Are CSOs able to monitor government and company conduct and support local communities in their engagement in mining licensing and permitting processes during the pandemic?

+ What external monitoring of agreements and obligations arising from mining contracts is taking place during the pandemic, including from third-party accountability actors?

QUESTIONS FOR ESG PERFORMANCE

+ Have the restrictions to public gatherings and the right to protest that have impacted many mine-impacted communities been appropriate and proportionate?

+ Is meaningful, inclusive and representative consultation possible through digital platforms?

+ What are the implications of digital engagement for FPIC?

+ What strategies are required by governments, mining companies and CSOs to facilitate more effective civic participation through digital engagement processes?

+ Is social license to operate weakened and social risk elevated when the approvals process is conducted with modified engagement processes during a pandemic, and will projects be more conflict-prone?

+ How can governments and companies communicate complex ESIA information that is sometimes voluminous in an effective manner under pandemic conditions?
## STRATEGIES AND MITIGATION MEASURES

### Government
- Ensure that any restrictions to public gatherings and the right to protest in mine-impacted communities are appropriate, proportionate and time-bound.
- Develop minimum standards for consultation and engagement during pandemics that do not increase corruption risk or compromise ESG standards.
- Make spaces for CSOs and communities to meaningfully participate in consultation process for any legislative changes, including making reasonable adjustments to timeframes and consultation modalities.
- If licensing and permitting is taking place under pandemic conditions, consider what measures are appropriate to ensure meaningful participation and to avoid exclusions.

### Mining Companies
- Monitor and seek to understand the ways in which restrictions to civic space are being experienced by mine-impacted communities, including how the shift to remote and digital consultation may be impacting different stakeholders and groups.
- Develop standards and methods for community and stakeholder engagement that are suitable for pandemic conditions.
- Provide reasonable support and access to CSOs seeking to assist mine-impacted communities during COVID-19.

### CSOs
- Support impacted-communities and the general public in understanding the implications of proposed legislative changes during the pandemic.
- Advocate for digital communication equipment and access for CSOs and communities to meaningfully participate in any digital engagement processes, including specific support measures for groups who may find it difficult to access or participate through digital technologies.
- Develop and advocate for minimum standards for consultation under pandemic conditions.
MINERAL
GOVERNANCE
& CORRUPTION
RISK IN THE
PANDEMIC ERA
THE EXPERIMENT

A stakeholder who participated in this study recounted a hypothesised story that went something like this:

“Imagine if, a few years ago, the major mining companies got together and gave one of the Big 4 consulting companies USD 100 million to run an experiment. The purpose of the experiment was to simulate the impacts of COVID-19 on the mining sector. The first thing the consulting company might do is to send all mining executives from one mining company home. It would be like every day is a Sunday. Then they would cause interruptions to international travel. Then somehow put the countries in which the mining company operates into economic crisis. After that, they would muck around with the company’s share price and supply chains. Next, they would perform the experiment on the entire industry. You just couldn’t model the complexity involved.”
THE COVID-19—MINING SECTOR NEXUS IS A COMPLEX SYSTEM

Like any disruptive, interdependent and complex system, COVID-19 does not lend itself easily to predictive modelling. Exactly how the pandemic is unfolding to create changed landscapes for corruption risks in the licensing and permitting of large-scale mining projects is up for debate. Different stakeholders, with different perspectives, and different interests, see different futures for corruption risk in the sector.

If the pandemic has indeed ushered in a new wave of corruption risks in the minerals sector, there is no one-size-fits all approach to understanding the drivers of corruption in a crisis. Just as the pandemic has unfolded in similar yet different ways around the globe, so too are governance and corruption risks in the mining sector evolving differently in mining regions, countries and communities throughout the COVID-19 response, management and recovery efforts.

With the second year of the COVID-19 pandemic potentially more challenging than the first, there is very real possibility of a new ‘Pandemic Era’ punctuated by ongoing spillover events that further disrupt vulnerable societies. Understanding how pandemics create governance and corruption vulnerabilities in society’s institutions is an important task in the project to build more resilient governments, companies and communities.

Peering through the looking glass to understand how pandemics create governance and corruption risks in mining jurisdictions is the new job of governments, mining companies and civil society in mineral rich countries.

To advance this work, we outline a framework for pandemic-times strategies for governments, companies and CSOs to mitigate and manage corruption in mining licensing and permitting. These strategies also support more resilient ESG performance under pandemic conditions.
STRATEGIES FOR MINERAL GOVERNANCE UNDER PANDEMIC CONDITIONS

A. Invest in relationships and networks for minerals stewardship

**Governments**
1. Maintain connections with global governance platforms and networks including attending virtual conferences and seminars where useful. (Theme 2)
2. Support initiatives that build in-country networks in the mining sector, including in ESG professions. (Theme 2)
3. Consider options for digital engagement to better understand the needs of mine-impacted communities and stakeholders during the pandemic. (Theme 2)
4. Develop a post-pandemic listening project with in-person meetings and focus groups when social distancing measures allow. (Theme 2)

**Mining Companies**
5. Seek opportunities to strengthen existing and build new relationships with mine-impacted communities and stakeholders under pandemic conditions. (Theme 2)
6. Support mine-impacted communities and CSOs with digital communication technologies and skills to maintain active participation in project and sector engagement activities. (Theme 2)
7. Invest in appropriate internet and virtual meeting capabilities for site and country teams, and where appropriate support key stakeholders to do the same. (Theme 2)
8. Where travel restrictions and quarantining protocols allow senior executives to safely visit mining sites and country teams, develop reduced visitation schedules for pandemic conditions. (Theme 2)

**CSOs**
9. Support local CSOs and mine-impacted communities with digital communication technologies and skills to maintain active participation in local, national and global networks. (Theme 2)
10. Organise and actively participate in digital and socially-distanced sector engagement opportunities as a way to build and strengthen relationships during the pandemic response and recovery. (Theme 2)
## B. Develop pandemic-sensitive governance and ESG standards and practice

### Governments

1. Strengthen mineral governance and anti-corruption oversight mechanisms and bodies for pandemic conditions. (Theme 4)

2. Consider how assessment and approval standards for mining licensing and permitting can be maintained and enhanced to respond to pandemic conditions. (Theme 3)

3. Develop strong processes for company due diligence during the mining licensing and permitting process, including beneficial ownership and historical ESG performance. Maintain these due diligence standards during the pandemic. (Theme 1)

4. Consider a regulatory fee structure where any fast-tracked applications processes incur an increased fee to resource greater scrutiny in a shorter space of time. (Theme 5)

5. Make any sector-financial supports conditional on social and environmental performance. (Theme 4).

6. Develop minimum standards for consultation and engagement during pandemics that do not increase corruption risk or compromise ESG standards. (Theme 6)

7. Develop standards for ESIA during pandemics that do not compromise the assessment process or long-term ESG performance of mining operations, with minimum requirements for participation, data collection and verification. (Theme 3)

8. If mining industry financial incentives or taxation relief is in the public interest during the pandemic, develop sliding financial mechanisms that provide temporary relief and reset when prices or conditions recover. (Theme 4).

9. Assess mineral governance and anti-corruption measures for a potential global diversification and localisation of supply chains. (Theme 1)

10. Overall, pursue sector reforms that adopt a ‘pandemic lens’ to build more resilient regulatory systems. (Theme 5)

### Mining Companies

11. Strengthen business integrity systems and ensure that they are fit-for-purposes and fully operational during the pandemic. (Theme 4)

12. Develop business integrity standards for dealings with government and financial transactions during mining deals and M&A activities. (Theme 1)

13. Develop standards and procedures for licensing and permitting that are ‘pandemic-resilient’. (Theme 3).

14. Seek bureaucratic efficiency in assessment and approvals processes while maintaining standards for environmental and social safeguards. (Theme 3)

15. Work with regulators to develop ESIA methodologies suitable for pandemic conditions, including minimum requirements for participation, data collection and verification. (Theme 3).

16. Develop communications and processes for data provision that support the ability of regulators to monitor operations when travel to site is not possible. (Theme 5).

17. Ensure that lobbying in pandemic times is consistent with business integrity standards. (Theme 6)

18. Develop and advocate for minimum standards for consultation under pandemic conditions. (Theme 6)

19. Focus on supporting the short-term response and recovery while balancing the long-term impacts of the mining sector in dialogue and advocacy efforts. (Theme 3)

20. Create public awareness of the terms of proposed fast-tracked mining projects. (Theme 3)

21. Continue to provide third-party scrutiny and monitoring in the mining licensing and permitting process and more broadly the social and environmental impacts of mining during the pandemic. (Theme 2)

### CSOs

18. Develop and advocate for minimum standards for consultation under pandemic conditions. (Theme 6)
C. Adapt and strengthen transparency and accountability practices to suit pandemic work practices

**Governments**
1. Develop or maintain adequate, timely and fit-for-purpose contract transparency measures to support public scrutiny of mining deals under pandemic conditions. (Theme 1)
2. Ensure that the obligations and liabilities contained within existing licenses, permits and contracts are fully understood and accounted for in the transition to new ownership structures. (Theme 1)
3. Digitalise mining sector processes and data for more efficient, transparent and robust disclosure and monitoring. (Theme 5)
4. Report on COVID-19 pandemic response funds received from mining companies, including funds received and acquitted. Reporting should be shared in a timely manner on a government website and through EITI reports where countries are members of EITI. (Theme 6)
5. Report on government requests to mining companies for COVID-19 funds and disclose meetings held through a ‘lobbying register’. (Theme 6)

**Mining Companies**
6. Strengthen commitment to transparency and disclosure in mining licensing and permitting processes and report against obligations that derive from mining contracts. (Theme 4)
7. Disclose fast-tracked mining deals and where needed enhance disclosure through digital platforms. (Theme 3)
8. Develop anti-bribery and whistleblowing policies and procedures suitable for pandemic conditions. (Theme 4)
9. Report on COVID-19 pandemic response funds given at both the national and local levels where mining takes place. Reporting should be distributed in a timely fashion in a way that can be accessed by communities and citizens during the pandemic. Reporting should include funds or in-kind support given, recipient stakeholders and the purpose of the funds or support. (Theme 6)
10. Disclose meetings with public officials and members of government as well as any political donations. (Theme 6)

**CSOs**
11. Advocate for transparency and participation in any process to amend policies or legislation to fast-track mining projects, open up land or change permitting requirements. (Theme 3).
12. Advocate for disclosure of mining contracts and review the details of deals struck during the pandemic. (Theme 1)
13. Focus on transparency, disclosure, participation and public awareness in specific licensing and permitting contracts. (Theme 4)
15. Review government and mining company reporting of COVID-19 funds with a focus on payments, recipients, acquittals and impacts. (Theme 6)
### D. Foster meaningful participation and socially inclusive practices for pandemic conditions

**Governments**
1. Encourage broad discussions on land-use and possible pathways for pandemic recovery that draw in a broad range of voices and perspectives. (Theme 4).
2. Find pandemic-appropriate ways to enhance participation in the public consultation process for any fast-tracking legislation and fast-tracked projects. (Theme 3).
3. Consider and address any social exclusions that may be created by fast-tracking legislation and fast-tracked projects, including for Indigenous peoples, and disadvantaged, vulnerable and/or marginalised groups. (Theme 3).
4. If licensing and permitting is taking place under pandemic conditions, consider what measures are appropriate to ensure meaningful participation and to avoid exclusions. (Theme 6)
5. Ensure that any restrictions to public gatherings and the right to protest in mine-impacted communities are appropriate, proportionate, and time-bound. (Theme 6)
6. Make spaces for CSOs and communities to meaningfully participate in consultation process for any legislative changes, including making reasonable adjustments to timeframes and consultation modalities. (Theme 6)

**Mining Companies**
7. Monitor and seek to understand the ways in which restrictions to civic space are being experienced by mine-impacted communities, including how the shift to remote and digital consultation may be impacting different stakeholders and groups. (Theme 6)
8. Develop standards and methods for community and stakeholder engagement that are suitable for pandemic conditions. (Theme 6)
9. Provide reasonable support and access to CSOs seeking to assist mine-impacted communities during COVID-19. (Theme 6)

**CSOs**
10. Create awareness about the impacts of proposed legislative changes in the sector, including how potential impacts may be experienced differently by different groups. (Theme 4)
11. Support citizens and communities who are impacted by legislative changes to have a voice in the legislative process, including groups who may be excluded. (Theme 4)
12. Support mine-impacted communities in the licensing and permitting process for fast-tracked projects, taking a GEDSI lens to including groups who may be excluded or marginalised through fast-tracked assessment and approvals processes. (Theme 3)
13. Support impacted-communities and the general public in understanding the implications of proposed legislative changes during the pandemic. (Theme 6)
14. Advocate for digital communication equipment and access for CSOs and communities to meaningfully participate in any digital engagement processes, including specific support measures for groups who may find it difficult to access or participate through digital technologies. (Theme 6)
E. Strengthen capacity for mineral governance during pandemic times

**Governments**

1. Continue to mobilise funding for sector reform initiatives that strengthen mineral governance and capacity as part of the economic recovery. (Theme 2)

2. Consider funding models that maintain base levels of funding for mining regulators to provide adequately resourced minerals sector regulation that supports the economic recovery. (Theme 5)

3. Seek ongoing support from multilateral and bilateral donors for mineral governance and anti-corruption reform work during the pandemic response and recovery. (Theme 5)

4. If needed, assign extra staff to support the assessment and approvals process for mining licensing and permitting during the pandemic. (Theme 5)

5. Support ongoing mineral governance training and development for public servants responsible for minerals sector regulation (Theme 5).

**Mining Companies**

6. Build the capacity and organisational culture required to implement ESG standards under pandemic conditions. (Theme 3).

7. Invest in in-country business integrity and government liaison capability. (Theme 2)

8. Develop business partner induction and training material on governance and business integrity systems that can be delivered to global and local suppliers during pandemic conditions. (Theme 1)

**CSOs**

9. Advocate for a functioning, adequately funded regulator that is digitalising data and processes for greater resilience, transparency and efficiency. (Theme 5)

10. Support local CSOs through remotely delivered training for mineral governance (Theme 2)

11. Continue to strengthen local-global networks for CSO learning and knowledge sharing on mineral governance. (Theme 2)
ANNEXES
## ANNEX A: INTERVIEW GUIDE

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<th>TYPE</th>
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1. **Overview of study** - Begin interview by providing a brief overview of the study:
   a. The purpose of the global study (see information sheet) and the case study.
   b. The focus is on the mining approvals, including the awarding of mining permits, licences and contracts throughout the mining lifecycle, from exploration through to project development and closure.
   c. We are interested in how the pandemic is changing corruption risk in the sector (not just the risk of bribery, but other forms of corruption where corruption is ‘the abuse of entrusted power for private gain’).

2. **Confidential and Anonymous** - Inform interviewees that what they say will be kept confidential and anonymous. We will only report results at an aggregated level.

3. **More information and request to proceed** - Explain that if they have any questions, they can contact the interviewer, or the lead researcher (provide the study information sheet). Ask if they are happy to proceed.

4. **Questions / conversation**
   a. Start with first question in general overview section (‘A fairly broad question to being with: How has the pandemic impacted the mining sector?’)
   b. Then move onto specific stakeholder questions
   c. Finish with the rest of the general country questions as time allows
   d. The interviews are ‘semi-structured’, meaning that there is scope to explore key themes that the interviewee is best placed to talk to, rather than follow questions verbatim.
   e. Please take some notes on key themes during each interview, including quotes that ‘stand out’ (i.e., they illustrate a key theme or are particularly poignant).
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| Stakeholder-questions | NA       | Specific questions for governments                                   | + What has it been like trying to regulate the sector during the pandemic?  
+ What have been the challenges?  
+ What measures have you introduced to address these challenges?  
+ In your opinion, is there an increased risk of potential corruption [quick overview of definition] in the sector as a result of the COVID-19 pandemic or response? Why / why not? What about mining approvals / licensing specifically [give quick reminder of mining approvals]?  
+ Have any mining companies approached the regulator for initial discussions around leases or mining investments for the first time during COVID-19?  
+ Has there been a change in the number of applications or approvals of licenses (including exploration and expansion projects) during the pandemic? Is data publicly available or could we access?  
+ Are you reviewing any mining approval / license applications at the moment (i.e., for expansion or new projects)? What are the challenges reviewing these applications during COVID-19? What strategies have you put in place to maintain good governance throughout the process? What are some of the lessons you have learned?  
+ Has there been any changes to how you regulate the sector (and in particular assess applications for licenses) during COVID-19? Has there been any institutional changes within [the regulator]?  
+ Do you anticipate any future changes to the mining approvals / licensing process as part of the economic recovery in 2021?  
+ Thinking about all the changes in the mining sector during COVID-19, are different groups being impacted differently? Or are some groups being treated differently to others? What are the implications? (Has the pandemic created new inclusions and exclusions, or exacerbated old ones?)  
+ What strategies have you put in place to maintain good ESG performance? What are some of the lessons you have learned? What strategies could you put in place? |
| NA                   | Specific questions for industry | + What has it been like trying to operate a mine during the pandemic, particularly in terms of community and government relations?  
+ What have the good governance challenges been for you during the pandemic?  
+ Are you seeking any licenses / approvals at the moment, for instance around new exploration or production leases, expansions to existing leases, acquisitions of licenses held by other companies, or reviews of existing contracts? If so, how has the approvals process changed during COVID?  
+ In your opinion, is there an increased risk of potential corruption [quick overview of definition] in the sector as a result of the COVID-19 pandemic or response? Why / why not? What about mining approvals specifically?  
+ Thinking about all the changes in the mining sector during COVID-19, are different groups being impacted differently? Or are some groups being treated differently to others? What are the implications? (Has the pandemic created new inclusions and exclusions, or exacerbated old ones?)  
+ What strategies have you put in place to maintain good ESG performance? What are some of the lessons you have learned? What strategies could you put in place? |
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<th>RISK NO.</th>
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<tbody>
<tr>
<td>Country specific questions</td>
<td>2</td>
<td>Political and economic conditions during and post COVID-19</td>
<td>A fairly broad question to being with: How has the pandemic impacted the mining sector?</td>
</tr>
<tr>
<td></td>
<td>3</td>
<td>Regulatory capacity and funding</td>
<td>Has there been an impact (or could there be) on the operational funding of the mining regulator leading to current or possible future lack of capacity or resources?</td>
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<td>4</td>
<td>Legislative roll-back / fast tracking</td>
<td>Have legislative changes to ‘roll-back’ environmental or social regulations (including licencing requirements), or an overall ‘fast-tracking’ of project approvals, been discussed or introduced?</td>
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<tr>
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<td>5</td>
<td>Mining intertwined with economic recovery</td>
<td>Have any new or expanded mining projects been discussed as part of the economic recovery?</td>
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<td>6</td>
<td>Industry capture</td>
<td>Have mining industry executives or ex-executives been appointed to COVID-19 recovery taskforces/bodies?</td>
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<td>7</td>
<td>Community engagement</td>
<td>How has community consultation been undertaken since the pandemic started?</td>
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<td>8</td>
<td>Project-level monitoring</td>
<td>Are you aware of any changes to how the mining regulator has continued to monitor mining projects with any travel restrictions that have been in place (in particular around obligations and conditions that may have been imposed at the licensing stage)?</td>
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<td>9</td>
<td>Judiciary or regulatory appeal processes less effective</td>
<td>Has COVID-19 presented challenges for Judicial or regulatory appeals processes related to mining approvals? Has their effectiveness been hampered? (e.g., land courts, environmental appeal processes, corruption watch dogs / ICACs)</td>
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<td>10</td>
<td>New industry entrants and developers</td>
<td>Have new investors or developers entered the market during the pandemic?</td>
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<td>And have any mining companies withdrawn from the market during COVID-19?</td>
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<td>11</td>
<td>New or amplified inclusions and exclusions</td>
<td>Thinking about all the changes in the mining sector during COVID-19, are different groups being impacted differently? Or are some groups being treated differently to others? What are the implications? (Has the pandemic created new inclusions and exclusions, or exacerbated old ones?)</td>
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END NOTES


8. An ontological question that has not been asked by so many countries at the same time in recent memory, perhaps ever. Exceptions could be previous pandemics (although the prevailing political and economic conditions at the time of, for instance, the 1918 influenza pandemic, were very different to present times) or World War I and II (however in times of war the question about the ‘essential’ nature of the mining sector would have been asked in the context of funding and supplying war efforts).


10. Also see Voices from the Ground: How the Global Mining Industry is Profiting from the COVID-19 Pandemic. (2020). Report by Earthworks (USA), Institute for Policy Studies - Global Economy Program (USA), London Mining Network (UK), MiningWatch Canada, Terra Justa, War on Want (UK) and Yes to Life No to Mining. Accessed: 02/02/2021.


12. For instance, Brazil, Argentina, the United States, Australia, Kenya and Russia classified mineral extraction as an essential industry. In some countries, such as Mexico and Ecuador, the sector was effectively closed for a period of time before being reopened. See Herbert Smith Freehills. COVID-19: The Global Impact on the Mining Industry. Accessed: 29/01/2021. Commercial considerations such as metal prices and liquidity may have also motivated some closures, divestments and exits. See: Vivoda, V. (2020). Implications of COVID-19 on the global mining sector. Aspects in Mining and Mineral Science. Aspects in Mining & Mineral Science. 4(5). 546-547.

13. This is not to suggest that all mining companies followed public health requirements or that public health matters were entirely successful in preventing the spread of the virus at mining sites.


16. For instance, see industrial production indexes such as the Industrial Production Index (INDPRO). Accessed: 17/01/2021.


18. One notable exception was thermal coal, which as at February 2021, was still to recover to pre-pandemic prices.


24. Ibid.


30. For instance, protection for whistle-blowers, anti-corruption legislation and enforcement bodies, freedom of the press, and open civic space that encourages third-party accountability actors and public debate.


45. See Annex A for the semi-structured interview guide that was used for the interviews. Due to the nature of the research, there was a need to provide study participants with a degree of confidence that anonymity and confidentiality would be maintained. As a result, instead of making audio recordings of each interview, interviewers took notes during the interviews on key themes and quotes. These key themes and quotes were then aggregated across all interviews. Annex B contains a summary of interviews conducted by country and stakeholder group. Quotes from the interviews presented in this report have generally been unedited. Some quotes have been edited to improve comprehension.

46. Case studies included both interviews and desktop review methods.


50. Ibid.


63. Church and Crawford overlayed the Fund for Peace’s Fragile
States Index and TI’s Corruption Perceptions Index onto global reserves of critical minerals to a low carbon transition. They found that South America, sub-Saharan Africa and South East Asia had middle to high rankings of both fragility and corruption perceptions meaning potentially higher levels of vulnerability to conflict and corruption because of energy transition technologies. See: Church, C., & Crawford, A. (2018). Green Conflict Minerals: The fuels of conflict in the transition to a low-carbon economy, International Institute for Sustainable Development (IISD). Accessed: 20/02/21.

64. Ibid.


70. Ibid


102. For their part, impacted communities and the general public may also support the idea of fast-tracking approvals of mining projects, although typically views are diverse, with strong opposition also common.

103. As discussed in Section 4, the findings in this study are drawn from a series of 82 interviews with mining industry stakeholders and a desktop review of news articles, nascent academic literature and industry reports.

104. In a recent survey carried out by the International Association for Impact Assessment (IAIA), 45 percent of respondents indicated that impact assessment laws and regulations have been or are proposed to be relaxed as a result of COVID-19. See: Croal, P. *The world is pivoting due to COVID-19. Should IA as well? International Association for Impact Assessment.** Accessed: 08/01/2021.

105. This view that bureaucracy and timelines for environmental and social approvals should be reduced is arguably the predominant view held by the mining industry. It is also popular within many governments.

106. Also see *Voices from the Ground: How the Global Mining Industry is Profiting from the COVID-19 Pandemic.* (2020). Report by Earthworks (USA), Institute for Policy Studies - Global Economy Program (USA), London Mining Network (UK), MiningWatch Canada, Terra Justa, War on Want (UK) and Yes to Life No to Mining. Accessed: 02/02/2021.


109. Ibid.


114. The use of secondary data is to avoid the public health risks associated with primary data collection that requires field teams to mobilise in and around mine sites and mine-impacted communities.


130. Ibid.


136. Ibid.


139. Mining Watch Canada. Ontario must assess the impacts of mines and smelters before they are built! Accessed: 01/03/21.


152. Ibid.


163. According to interviews conducted for this study, April 2020 coal exports from Indonesia hit their lowest level since October 2010 amidst the COVID-19 crisis.


165. A maximum area of 25,000 hectares for metal mineral operations and 15,000 hectares for coal operations.


167. The Omnibus Law addresses 9 clusters: (1) business licensing; (2) investment ecosystem; (3) manpower; (4) micro, small and medium-sized enterprises and cooperatives; (5) research, innovation and ease of doing business; (6) taxation; (7) economic zones and land procurement; (8) government administration; and (9) government investment and facilitation to national strategic projects.


173. Regulation in Lieu of Law Number 1 of 2020 on State Financial Policy and Financial System Stability for Mitigation of


177. For example, the Ministry of Economy reduced its budget by more than 30% in 2020 compared to that given in 2019 and more than 75% of its IT equipment like computers were removed during the pandemic. Source: De La Rosa, E. (2019, September 8). *Prevén recorte de 30.92% a recursos de la Secretaría de Economía*. *Milenio*. Accessed: 12/01/21.


180. As reported by one sector stakeholder in our study.


182. For example, see *General Agreement 25/2020 of the Committee of the Federal Judiciary that reforms the 21/2020 agreement regarding reactivation of terms and progressive return of jurisdictional bodies before the contingency by virus COVID-19*.


186. Ibid.


192. See Theme 3 Cutting red and green tape: Fast-tracking the economic recovery and Theme 4: Opening up land and licensing conditions.

193. For a discussion on mining companies ascribing self-virtue during the pandemic, see Bainton et al. (2020).

194. Also see *Voices from the Ground: How the Global Mining Industry is Profiting from the COVID-19 Pandemic*. (2020). Report by Earthworks (USA), Institute for Policy Studies - Global Economy Program (USA), London Mining Network (UK), MiningWatch Canada, Terra Justa, War on Want (UK) and Yes


205. The term ‘civic space’ is used in this report to refer to the political, legal, institutional and normative conditions within a country or jurisdiction that allow non-governmental actors to access information, express themselves, associate, organise, and participate in public life. For instance, see CIVICUS Monitor, a research tool that provides close to real-time data on the state of civil society and civic freedoms in 196 countries. Accessed 25/03/2021. The shrinking of civic space in the pandemic contributes to a global trend that has been unfolding for some time: the increase of government restrictions that impact or target civil society actors and limit their freedoms of assembly, association, and expression. See for instance: Bethke, F., & Wolff, J. (2020).

206. See the Indonesia case study in Theme 4 of this report.


222. It should also be noted there were hashtags also in support of the Omnibus Law. See: Hamid and Hermawan, 2020.


226. A survey in October 2020 found that nearly 70% of Indonesians were concerned about expressing opinions online see Abruzzini, B., & Singh, J. (2021, March 1). Offline and Online Protests are Sweeping Across Asia. The Diplomat. Accessed: 10/02/2021.


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