

Case Study

Peru's Environmental and Social Management in the Gold Mining Sector in the Midst of the COVID-19 Pandemic¹



Co-Authored by Kristi Disney Bruckner, Ashley Smith-Roberts, Verónica Morelli Bellido, Hugo Frías Ossandón, Meera Nyak, Nicole Smith, and Linda Jaramillo Urrego

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I. Introduction

Peru is a leading source of gold in the world and is the top producer of gold in Latin America.²

The country's legal framework for environmental and social management of the mining sector, including both the large-scale mining sector and the artisanal and small-scale mining (ASM) sector, is often presented as good practice. However, implementation of the legal framework has been challenging due to lack of resources, complexity of the framework, lack of alignment across national frameworks, lack of ongoing collaboration across ministries, remoteness of mining areas, and other factors.

Environmental and social management, including efforts to formalize ASM, has become even more challenging due to the COVID-19 pandemic. The pandemic is so widespread across the country and with such severe economic implications that Peru's former President Martín Vizcarra called it the "most serious crisis in our history."³ The impacts of the pandemic span all mining sectors in Peru, but are particularly hard-hitting in artisanal and small-scale gold mining (ASGM) regions. Peru's response to

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² A total of 130 metric tons of gold was produced in Peru in 2019. Statista, *Distribution of Gold Mine Production in Peru 2019, By Region*, August 19, 2020. Retrieved from <https://www.statista.com/statistics/1030921/peru-gold-mine-production-region/>. Last visited October 13, 2020.

³ Marco Aquino, *Update 1-Peru Posts Worst-Ever Drop in GDP as Mine Output Falls Sharply*, Reuters, June 15, 2020. Retrieved from <https://www.reuters.com/article/peru-economy-gdp/update-1-peru-posts-worst-ever-drop-in-gdp-as-mine-output-falls-sharply-idU5L1N2DS1IG>. Last visited October 26, 2020.

COVID-19 has been further complicated by ongoing political turmoil in the country, exemplified by the country swearing in its third President in the span of just over a week in November 2020.⁴

This case study looks at a wide range of impacts of COVID-19 on Peru's gold mining sector and presents the Government of Peru's responses to the pandemic related to large-scale gold mining, ASGM, and informal and illegal gold mining. The case study will focus primarily on the ASGM sector and related supply chains. It will present impacts on the various gold mining sectors and communities impacted by changes in the sector through the pandemic, including Indigenous communities in Peru. The case study will then present examples of approaches taken in other countries to manage environmental and social impacts during the COVID-19 pandemic and will conclude with recommendations for the ongoing pandemic and future public emergencies.

II. Impacts of COVID-19 in Peru and Disruption of Peru's Major Economic Driver: Gold

A. Importance of Gold Mining to the Peruvian Economy

Approximately five percent of the world's gold reserves are in Peru.⁵ Peru is the largest gold producer in Latin America and the sixth largest producer of gold in the world.⁶ Global demand for Peruvian gold comes in part from demand for bullion—the gold bars or coins that have become an increasingly popular store of value during the COVID-19 pandemic.⁷ In addition to bullion, Peruvian gold is in high demand for jewelry and smartphone components.⁸

Demand for gold from Peru has come from refineries such as Swiss-based Metalor; United States (U.S.)-based Elemental, which has provided gold to companies such as Apple and Tiffany & Co.;⁹ and U.S.-based Republic, which has “sold gold to 24 Fortune 500 giants, including General Motors, HP, IBM and Lockheed Martin.”¹⁰

Gold mining in Peru is conducted by large-scale mines; medium-scale mines; artisanal and small-scale miners; informal miners operating within a permitted area under Legislative Decree 1336; and illegal

⁴ Franklin Briceño and Christine Armario, *Peruvians Get 3rd President in a Week Amid Cautious Hopes*, Associate Press, November 17, 2020. Retrieved from <https://apnews.com/article/latin-america-south-america-lima-peru-8dbb732f157236917c4929c234e122d8>. Last visited November 19, 2020.

⁵ Marcial García, *Peru's Mining & Metals Investment Guide 2019/2020*, Ernst & Young. Retrieved from https://www.ey.com/es_pe/mining-metals/ey-mining-metal-investment-guide-2019-2020. Last visited October 26, 2020.

⁶ planetGOLD, *Peru*, <https://www.planetgold.org/peru>. Last visited October 24, 2020.

⁷ Peter Velt and Patricia Quijano Vallejos, *COVID-19, Rising Gold Prices and Illegal Mining Threaten Indigenous Lands in the Amazon*, World Resources Institute, September 8, 2020. Retrieved from <https://www.wri.org/blog/2020/09/covid-19-rising-gold-prices-and-illegal-mining-threaten-indigenous-lands-amazon>. Last visited October 13, 2020. Shawn Blore, Marieke Kroll, and Kevin Telmer, *Artisanal Gold Communities as Prime COVID-19 Intervention Targets: Supply Chain Reform, Health In Gold Out*, Artisanal Gold Council, May 14, 2020. Retrieved from <https://www.artisanalgold.org/2020/05/artisanal-gold-communities-covid-19-intervention/>. Last visited October 13, 2020.

⁸ Jim Wyss, *How U.S. Demand for Gold Jewelry and Bullion is Poisoning Children in the Amazon*, Miami Herald, January 26, 2018. Retrieved from: <https://www.miamiherald.com/news/nation-world/world/americas/article196933579.html>. Last visited November 17, 2020.

⁹ Nicholas Nehamas, *'Blood Gold' in your Jewelry is Poisoning Workers and the Rainforest. Here's How to Stop It*, WLRN, January 26, 2018. Retrieved from: <https://www.wlrn.org/post/blood-gold-your-jewelry-poisoning-workers-and-rainforest-here-s-how-stop-it#stream/0>. Last visited November 30, 2020. Breanna Hughes Neghaiwi, *Special Report-Sleeping Beauty: How Suspect Gold Reached Top Brands*, Reuters, March 6, 2020. Retrieved from: <https://www.reuters.com/article/gold-peru-swiss/special-report-sleeping-beauty-how-suspect-gold-reached-top-brands-idUSL4N2AY2Q7>. Last visited November 30, 2020.

¹⁰ Jay Weaver and Nicholas Nehamas, *Federal Prosecutors Investigating 'Blood Gold' Won't Bring Charges Against Miami Refinery*, Miami Herald, April 17, 2019. Retrieved from: <https://www.miamiherald.com/news/local/crime/article229361954.html>. Last visited November 30, 2020.

miners whose activities are prohibited by law. Peru's large-scale mining sector directly employs approximately 68,000 to 70,000 people, about a third of Peru's mining sector workforce, with the other two-thirds of the formal mining sector made up of medium-scale miners, small-scale miners, and artisanal miners.¹¹ Large-scale mining is responsible for approximately 40 percent of the country's gold production, but the remaining 60 percent comes from medium-scale mining and ASM.¹²

Peru has an estimated 200,000 to 500,000 artisanal and small-scale miners who produce up to 20 percent of the country's gold.¹³ The World Bank estimates that approximately 80 percent of ASM operations in Peru are informal¹⁴ or illegal. While ASM provides revenue, the Government of Peru and other stakeholders are working to mitigate negative impacts of illegal mining in the country, including mitigation of deforestation and environmental degradation of the Amazon; management of mercury pollution; and formalization of the sector, particularly in Madre de Dios where much of the illegal mining activity in Peru is concentrated.¹⁵

Despite its pivotal role in the Peruvian economy, the formal mining sector employs a limited number of women, approximately 6.9 percent of the formal industry workforce.¹⁶ However, an estimated 15,000 women are engaged in the ASM sector in Peru.¹⁷

The mining sector makes up approximately 10 percent of Peru's Gross Domestic Product (GDP) and about 60 percent of Peru's total exports.¹⁸ Mining has contributed substantially to Peru's rapid economic growth over the last two decades and the country's rise to upper middle income classification.¹⁹ However, the COVID-19 pandemic has had devastating impacts across the Peruvian economy, including the mining sector. Peru's large-scale mining sector suffered an estimated U.S. \$5 billion in lost production as a result of COVID-19 restrictions.²⁰

¹¹ Bnamericas, *Peru's Large-Scale Mining to Return to Normal Production Levels in July*, June 22, 2020. Retrieved from <https://www.bnamericas.com/en/interviews/perus-large-scale-mining-to-return-to-normal-production-levels-in-july>. Last visited November 10, 2020.

¹² *Id.*

¹³ Patrick Wieland, *Hernando de Soto, The Lone Prospector and the Formalization of Artisanal and Small-Scale Mining: A Case Study from La Rinconada, Peru*, *Environ: Environmental Law and Policy Journal* 43(1), 1-66, 2020. Retrieved from <https://environs.law.ucdavis.edu/volumes/43/1/Articles/Wieland.pdf>. Last visited November 11, 2020.

¹⁴ World Bank, *2019 State of the Artisanal and Small-Scale Mining Sector*, 2019. Retrieved from <https://www.plataformaintegraldemineria.org/sites/default/files/2019-04/Delve-2019-State-of-the-Artisanal-and-Small-Scale-Mining-Sector.pdf>. Last visited November 11, 2020.

¹⁵ *Id.*

¹⁶ Karolien van Teijlingen and Barbara Hogenboom, *COVID-19 Impact on the Value Chain in Latin America*, Centre for Latin American Research and Documentation (CEDLA), July 2020. Retrieved from https://www.clingendael.org/sites/default/files/2020-07/Policy_Brief_COVID-19_impact_value_chain_Latin_America_July_2020.pdf. Last visited November 28, 2020.

¹⁷ World Bank, *2019 State of the Artisanal and Small-Scale Mining Sector*, 2019. Retrieved from <https://www.plataformaintegraldemineria.org/sites/default/files/2019-04/Delve-2019-State-of-the-Artisanal-and-Small-Scale-Mining-Sector.pdf>. Last visited November 11, 2020.

¹⁸ Marcial García, *Peru's Mining & Metals Investment Guide 2019/2020*, Ernst & Young. Retrieved from https://www.ey.com/es_pe/mining-metals/ey-mining-metal-investment-guide-2019-2020. Last visited October 26, 2020.

¹⁹ United Nations, *World Population Review: Peru Population 2020*, 2020. Retrieved from <https://worldpopulationreview.com/countries/peru-population/>. Last visited November 12, 2020. Inter-American Development Bank, *Peru 2012-2016: Country Program Evaluation*, March 2016. Retrieved from <https://publications.iadb.org/publications/english/document/Approach-Paper-Country-Program-Evaluation-Peru-2012-2016.pdf>. Last visited November 12, 2020. See also OECD, *Multi-Dimensional Review of Peru: Volume 2. From Analysis to Action* at Chapter 1: Peru's Path to a High-Income Economy with Better Well-Being for All Citizens, 2019, noting that while Peru has experienced economic growth the country must now focus on inclusive development and well-being across all socioeconomic groups. Retrieved from <https://www.oecd-ilibrary.org/sites/d9afddddd-en/index.html?itemId=/content/component/d9afddddd-en>. Last visited November 30, 2020.

²⁰ Bnamericas, *Peru's Large-Scale Mining to Return to Normal Production Levels in July*, June 22, 2020. Retrieved from <https://www.bnamericas.com/en/interviews/perus-large-scale-mining-to-return-to-normal-production-levels-in-july>. Last visited November 10, 2020.

The large-scale mining sector is the primary contributor to Peru's Fiscal Stabilization Fund.²¹ Thus revenue from the large-scale mining sector is linked to Peru's recovery from COVID-19²² and the country's long-term economic stability. The Fiscal Stabilization Fund was created in 1999 to accumulate resources in times of economic boom for use in times of recession and other contingencies, like natural disasters²³ and now a global pandemic. The economic impact of the mining sector had already declined by 42.29 percent in April 2020 compared to April 2019.²⁴ This contributed to one of the most dramatic downturns in economic activity experienced in Peru, a decline of 40.49 percent overall compared to the prior year, with job losses exceeding 2.3 million in Lima alone²⁵ and eventually freezing upwards of 55 percent of Peru's GDP.²⁶

B. Prevalence of COVID-19 in Peru and General Government Responses to the Pandemic

By November 20, 2020 Peru had 943,917 confirmed COVID-19 cases and 35,446 related deaths,²⁷ ranking the country as 12th in the world in number of COVID-19 cases and 11th in the world in number of COVID-19 related deaths.²⁸

Peru was one of the first countries in Latin America to require lockdown measures to stop the spread of COVID-19.²⁹ The country's first 15-day quarantine began on March 16, 2020 when there were only 71 reported cases of COVID-19 in a country with a total population of 32 million.³⁰ The quarantine was extended to last over 100 days after it first went into effect.³¹ However, the quarantine measures did not stop the spread of COVID-19 across Peru. Public health experts attribute the ineffectiveness of Peru's measures to inequalities in Peru's health system, high levels of informal economic activity, and corruption.³²

²¹ Peter Volt and Patricia Quijano Vallejos, *COVID-19, Rising Gold Prices and Illegal Mining Threatens Indigenous Lands in the Amazon*, World Resources Institute, September 8, 2020. Retrieved from <https://www.wri.org/blog/2020/09/covid-19-rising-gold-prices-and-illegal-mining-threaten-indigenous-lands-amazon>. Last visited November 30, 2020.

²² See Bnamericas, *Mining Projects Could Offset Peru's COVID-19 Costs*, July 21, 2020. Retrieved from <https://www.bnamericas.com/en/interviews/mining-projects-could-offset-perus-covid-19-costs>. Last visited November 28, 2020.

²³ Raúl Salas, Diego Camacho, y Miguel Alzamora, *El Fondo de Estabilización Fiscal en el Perú*, Moneda, June 2018. Retrieved from <https://www.bcrp.gob.pe/docs/Publicaciones/Revista-Moneda/moneda-174/moneda-174-07.pdf>. Last visited November 20, 2020.

²⁴ Marco Aquino, *Update1-Peru Posts Worst-Ever Drop in GDO as Mine Output Falls Sharply*, Reuters, June 15, 2020. Retrieved from <https://www.reuters.com/article/peru-economy-gdp/update-1-peru-posts-worst-ever-drop-in-gdp-as-mine-output-falls-sharply-idUSL1N2DS1IG>. Last visited October 26, 2020.

²⁵ *Id.*

²⁶ Gisselle Vila Benites and Anthony Bebbington, *Political Settlements and the Governance of COVID-19: Mining, Risk, and Territorial Control in Peru*, *Journal of Latin American Geography*, May 27, 2020. Retrieved from <https://muse.jhu.edu/article/760941>. Last visited August 11, 2020. The second quarter of 2020 alone saw GDP fall 30 percent. El Comercio, *Economía Peruana Cierra Segundo Trimestre con Caída de 30,2%, Tras el Golpe de la Pandemia*, August 20, 2020. Retrieved from <https://elcomercio.pe/economia/peru/economia-peruana-cierra-segundo-trimestre-con-caida-de-302-tras-el-golpe-de-la-pandemia-pbi-nndc-noticia/>. Last visited November 9, 2020.

²⁷ Gobierno del Perú Ministerio de Salud - MINSa, *Sala Situacional: COVID-19 Perú*, November 19, 2020. Retrieved from https://covid19.minsa.gob.pe/sala_situacional.asp. Last visited November 20, 2020.

²⁸ Worldometer, *Countries Where COVID-19 has Spread*, <https://www.worldometers.info/coronavirus/countries-where-coronavirus-has-spread/>. Last visited November 20, 2020.

²⁹ Marco Aquino, *Update1-Peru Posts Worst-Ever Drop in GDO as Mine Output Falls Sharply*, Reuters, June 15, 2020. Retrieved from <https://www.reuters.com/article/peru-economy-gdp/update-1-peru-posts-worst-ever-drop-in-gdp-as-mine-output-falls-sharply-idUSL1N2DS1IG>. Last visited October 26, 2020.

³⁰ Teresa Welsh, *Inequality and Corruption: Why Peru is Losing Its COVID-19 Battle*, Devex, July 1, 2020. Retrieved from <https://www.devex.com/news/inequality-and-corruption-why-peru-is-losing-its-covid-19-battle-97604>. Last visited October 27, 2020.

³¹ *Id.*

³² *Id.*

The Peruvian government also implemented an initial U.S. \$28 billion emergency package, equivalent to 12 percent of Peru's gross domestic product (GDP).³³ These payments were made to people living in poverty, but many miners in the ASM sector were not eligible for the support.³⁴

In response to the COVID-19 pandemic, Peru's Ministry of Economy and Finance put in place measures to support micro, small, and medium-sized enterprises during the pandemic, including formalized ASGM operations.³⁵ The Ministry also authorized withdrawal of up to 2,000 soles (U.S. \$580) from pension funds for contributing workers, and a bonus of 380 soles (U.S. \$110) for vulnerable populations.³⁶ However, miners in Peru's informal ASM sector were not eligible for these COVID-19 related benefits.

It is important for governments and other stakeholders to track transparent collection, use, and distribution of emergency funds in any country's response to crisis. Peru developed a National Open Data Portal³⁷ through which the State Procurement Supervisory Body (OCSE) releases information related to contracts with public entities aimed to stop the spread of COVID-19.³⁸ This data portal offers free public access to raw data that can be analyzed by academics, civil society organizations, journalists, and others. While as of April 27, 2020 Peru's Ministry of Economy and Finance reported that investments to combat COVID-19 added up to more than 5 billion soles (approximately U.S. \$1.4 billion), the contracts in the portal covered only 0.75 percent of this amount. However, this portal is an innovative tool that can be used to enhance transparency and access to information, especially as more contracts are added to the portal.

³³ See Gisselle Vila Benites and Anthony Bebbington, *Political Settlements and the Governance of COVID-19: Mining, Risk, and Territorial Control in Peru*, Journal of Latin American Geography, May 27, 2020. Retrieved from <https://muse.jhu.edu/article/760941>. Last visited August 11, 2020.

³⁴ See Isabelle Ramdoo, *The Impact of COVID-19 on Employment in Mining*, Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development, June 2020. Retrieved from <https://www.iisd.org/sites/default/files/publications/covid-19-employment-mining-en.pdf>. Last visited October 13, 2020. See also Tina Blazquez-Lopez, *The Effect of Covid-19 on Women in Artisanal Mining*, Bryan Cave Leighton Paisner LLP, June 8, 2020. Retrieved from <https://www.lexology.com/library/detail.aspx?g=708720a4-eeb7-4c00-b487-b84ea179c5a6>. Last visited September 28, 2020.

³⁵ Franco Arista, *ASGM in the Time of COVID-19: How to Reactivate Artisanal and Small-Scale Mining in Peru?* planetGOLD, April 27, 2020. Retrieved from https://www.planetgold.org/sites/default/files/2020-04/ASGM%20in%20the%20time%20of%20COVID-19_planetGOLD_EN.pdf. Last visited October 13, 2020. Tina Blazquez-Lopez, *The Effect of Covid-19 on Women in Artisanal Mining*, Bryan Cave Leighton Paisner LLP, June 8, 2020. Retrieved from <https://www.lexology.com/library/detail.aspx?g=708720a4-eeb7-4c00-b487-b84ea179c5a6>. Last visited September 28, 2020.

³⁶ The 380 soles bonus is one of the "bonos," or monetary subsidies from the Peruvian government. See Franco Arista, *ASGM in the Time of COVID-19: How to Reactivate Artisanal and Small-Scale Mining in Peru?*, planetGOLD, April 27, 2020. Retrieved from: https://www.planetgold.org/sites/default/files/2020-04/ASGM%20in%20the%20time%20of%20COVID-19_planetGOLD_EN.pdf. Last visited October 13, 2020; Tina Blazquez-Lopez, *The Effect of Covid-19 on Women in Artisanal Mining*, Bryan Cave Leighton Paisner LLP, June 8, 2020. Retrieved from: <https://www.lexology.com/library/detail.aspx?g=708720a4-eeb7-4c00-b487-b84ea179c5a6>. Last visited September 28, 2020.

³⁷ See Government of Peru, *Plataforma Nacional de Datos Abiertos*. Retrieved from <https://www.datosabiertos.gob.pe/dataset/contrataciones-ante-la-emergencia-sanitaria-por-la-existencia-del-coronavirus-organismo>. Last visited October 27, 2020.

³⁸ Proetica, *Análisis de los Datos Abiertos Sobre Contrataciones Públicas en el Marco de la Emergencia Sanitaria Contra el COVID-19*. Retrieved from <https://www.proetica.org.pe/contenido/analisis-de-los-datos-abiertos-sobre-contrataciones-publicas-en-el-marco-de-la-emergencia-sanitaria-contra-el-covid-19/>. Last visited October 27, 2020.

The Peruvian government implemented a framework to re-open the economy in four phases:³⁹

Phases	Implementing Legislation
Phase 1	Supreme Decree 080-2020-PCM (May 3, 2020) approved the reactivation of economic activities in four phases. It approved the beginning of Phase 1 and listed activities, including large-scale mining activities.
Phase 2	Supreme Decree 101-2020-PCM (June 4, 2020), amended by Supreme Decree 110-2020-PCM approved the beginning of Phase 2, which included mineral exploration for large-scale mining, ⁴⁰ small-scale mining, and formalized artisanal mining.
Phase 3	Supreme Decree 117-2020-PCM (June 30, 2020) approved the beginning of Phase 3, which included all energy and mining sector activities not considered in Phase 1 and 2. Activities of informal artisanal and small-scale miners who had begun the formalization process were included in this phase.
Phase 4	Supreme Decree 157-2020-PCM (October 1, 2020): Phase 4 included other economic activities and was delayed, due to the increase in COVID-19 cases in the country.

The importance of these phases to Peru’s gold mining sectors are further discussed in Section III below.

Companies must register an approved “Plan for Surveillance, Prevention and Control of COVID-19 at Work” with the Peruvian Ministry of Health’s Integrated System for COVID-19 (SICOVID Empresas), before resuming activity.⁴¹ SICOVID Empresas is an online portal for management of health information related to the pandemic, such as company recordings of rapid tests conducted on workers, notification of confirmed cases, and clinical follow up with workers who have tested positive for COVID-19.⁴²

C. Heightened Demand and Increased Disruption of Gold Supply Chains

Lockdowns around the world to prevent the spread of COVID-19 resulted in the disruption of supply chains on many levels. Although the price of many minerals declined during the pandemic, the price of gold surged as much as 35 percent, hitting a record high in August 2020 at just over U.S. \$2,000 per ounce⁴³ as investors in search of greater security stockpiled gold bullion.⁴⁴ While gold prices in international markets increased, local prices for gold in Peru dropped, placing increased stress on miners in the ASGM sector.⁴⁵ This trend intensified as government stimulus packages to address the pandemic

³⁹ KPMG, *Peru: Government and Institution Measures in Response to COVID-19*, August 12, 2020. Retrieved from <https://home.kpmg/xx/en/home/insights/2020/04/peru-government-and-institution-measures-in-response-to-covid.print.html>. Last visited October 11, 2020. See also US Embassy in Peru, *COVID-19 Information*, November 5, 2020. Retrieved from <https://pe.usembassy.gov/covid-19-information/>. Last visited November 9, 2020.

⁴⁰ Bnamericas, *Regulus to Resume Drilling at Peru Project after COVID-19 Halt*, August 29, 2020. Retrieved from <https://www.bnamericas.com/en/news/regulus-to-resume-drilling-at-peru-project-after-covid-19-halt>. Last visited November 28, 2020.

⁴¹ Government of Peru, Platform Digital Única del Estado Peruano, *Registrar tu Empresa en el Sistema Integrado para COVID-19 (SICOVID Empresas) para Reiniciar Sus Actividades*. Retrieved from <https://www.gob.pe/9088-registrar-tu-empresa-en-el-sistema-integrado-para-covid-19-siscovid-empresas-para-reiniciar-sus-actividades>. Last visited December 8, 2020.

⁴² *Id.*

⁴³ Peter Velt and Patricia Quijano Vallejos, *COVID-19, Rising Gold Prices and Illegal Mining Threaten Indigenous Lands in the Amazon*, World Resources Institute, September 8, 2020. Retrieved from <https://www.wri.org/blog/2020/09/covid-19-rising-gold-prices-and-illegal-mining-threaten-indigenous-lands-amazon>. Last visited November 22, 2020.

⁴⁴ Shawn Blore, Marieke Kroll, and Kevin Telmer, *Artisanal Gold Communities as Prime COVID-19 Intervention Targets: Supply Chain Reform, Health In Gold Out*, Artisanal Gold Council, May 14, 2020. Retrieved from <https://www.artisanalgold.org/2020/05/artisanal-gold-communities-covid-19-intervention/>. Last visited October 13, 2020.

⁴⁵ OECD Watch, *Emergency Action Needed for Vulnerable Artisanal & Small-Scale Mining Communities & Supply Chains*, May 12, 2020. Retrieved from <https://www.oecdwatch.org/2020/05/12/emergency-action-needed-for-vulnerable-artisanal-and-small-scale-mining-communities-and-supply-chains/>. Last visited October 13, 2020.

drove down borrowing rates, drove up fears about inflation,⁴⁶ and supported an increase in the price of gold.⁴⁷

Field prices for gold in Peru plummeted to less than 50 percent of pre-pandemic prices.⁴⁸ The pre-pandemic price of gold in Peru was close to 97 percent of the international market price.⁴⁹ The drop in prices may also deepen the wage gap in a sector where women already make less than men.⁵⁰ For example, in Puno *pallaqueras*, female “gold pickers” who search for residual ore on mountaintops in the Andes, work 42 percent more than male miners, but they make only 60 percent of the average income—U.S. \$255 per month for women compared to U.S. \$420 for men.⁵¹

The rising gold prices on international markets also resulted in an increase of illegal gold mining in the Amazon, both by people living in poverty from Andean regions and by organized criminal groups drawn by high gold prices and an easy avenue for laundering drug money.⁵²

D. Impacts of COVID-19 on Peru’s Informal Workforce, Including Artisanal and Small-Scale Gold Miners

Informal employment is a reality in Peru that extends beyond the mining sector. Over 70 percent of Peru’s workforce, including at least 12.5 million workers,⁵³ is engaged in informal employment.⁵⁴ The

⁴⁶ CNBC, *Gold Rises as New Coronavirus Cases Spur Lockdown Fears*, June 18, 2020. Retrieved from <https://www.cnbc.com/2020/06/19/gold-markets-coronavirus-dollar-in-focus.html>. Last visited September 28, 2020.

⁴⁷ Peter Velt and Patricia Quijano Vallejos, *COVID-19, Rising Gold Prices and Illegal Mining Threaten Indigenous Lands in the Amazon*, World Resources Institute, September 8, 2020. Retrieved from <https://www.wri.org/blog/2020/09/covid-19-rising-gold-prices-and-illegal-mining-threaten-indigenous-lands-amazon>. Last visited November 22, 2020.

⁴⁸ Francesca García Delgado, *Madre de Dios: La Minería Ilegal de Oro No de Tregua en Época de Pandemia*, El Comercio, June 2, 2020. Retrieved from <https://elcomercio.pe.cdn.ampproject.org/c/s/elcomercio.pe/peru/madre-de-dios/coronavirus-en-peru-madre-de-dios-la-mineria-ilegal-de-oro-no-da-tregua-en-epoca-de-pandemia-informe-noticia/?outputType=amp>. Last visited November 24, 2020. Shawn Blore, Marieke Kroll, and Kevin Telmer, *Artisanal Gold Communities as Prime COVID-19 Intervention Targets: Supply Chain Reform, Health In Gold Out*, Artisanal Gold Council, May 14, 2020. Retrieved from <https://www.artisanalgold.org/2020/05/artisanal-gold-communities-covid-19-intervention/>. Last visited October 13, 2020. The Conversation, *Meet the Struggling Gold Miners Who are Missing Out on Boom in the Precious Metal*, May 21, 2020. Retrieved from <https://theconversation.com/meet-the-struggling-gold-miners-who-are-missing-out-on-boom-in-the-precious-metal-138997>. Last visited October 13, 2020. Franco Arista, *ASGM in the Time of COVID-19: How to Reactivate Artisanal and Small-Scale Mining in Peru?*, planetGOLD, April 27, 2020. Retrieved from https://www.planetgold.org/sites/default/files/2020-04/ASGM%20in%20the%20time%20of%20COVID-19_planetGOLD_EN.pdf. Last visited October 13, 2020.

⁴⁹ Kevin Telmer, *Impacts of COVID-19 on ASGM Communities*, Artisanal Gold Council, March 23, 2020. Retrieved from: <https://www.artisanalgold.org/2020/03/possible-impacts-of-covid-19-on-asgm-communities/>. Last visited September 28, 2020.

⁵⁰ OECD Watch, *Emergency Action Needed for Vulnerable Artisanal & Small-Scale Mining Communities & Supply Chains*, May 12, 2020. Retrieved from <https://www.oecdwatch.org/2020/05/12/emergency-action-needed-for-vulnerable-artisanal-and-small-scale-mining-communities-and-supply-chains/>. Last visited October 13, 2020.

⁵¹ Patrick Wieland, *Hernando de Soto, The Lone Prospector and the Formalization of Artisanal and Small-Scale Mining: A Case Study from La Rinconada, Peru*, *Environ: Environmental Law and Policy Journal* 43(1), 1-66, 2020. Retrieved from <https://environs.law.ucdavis.edu/volumes/43/1/Articles/Wieland.pdf>. Last visited November 11, 2020.

⁵² Peter Velt and Patricia Quijano Vallejos, *COVID-19, Rising Gold Prices and Illegal Mining Threaten Indigenous Lands in the Amazon*, World Resources Institute, September 8, 2020. Retrieved from <https://www.wri.org/blog/2020/09/covid-19-rising-gold-prices-and-illegal-mining-threaten-indigenous-lands-amazon>. Last visited November 22, 2020.

⁵³ Peru’s 72 percent informality rate is high compared to the 53 percent rate across Latin America and the Caribbean. See Franco Arista, *ASGM in the Time of COVID-19: How to Reactivate Artisanal and Small-Scale Mining in Peru?*, planetGOLD, April 27, 2020. Retrieved from https://www.planetgold.org/sites/default/files/2020-04/ASGM%20in%20the%20time%20of%20COVID-19_planetGOLD_EN.pdf. Last visited October 13, 2020. See also, John Letzing, *The Plight of Peru Illustrates the Danger of COVID-19 to Developing Countries*, World Economic Forum, June 17, 2020. Retrieved from <https://www.weforum.org/agenda/2020/06/the-plight-of-peru-illustrates-the-danger-of-covid-19-to-developing-countries/>. Last visited November 9, 2020.

⁵⁴ Victor Adrián Vargas Espejo and Jordy Vilchez Astucuri, *Economía Informal en Perú: Situación Actual y Perspectivas*. Centro Nacional de Planeamiento Estratégico, March 2016. Retrieved from <https://perureports.com/wp-content/uploads/2016/08/Economia-informal-en-Peru-situacion-actual-perspectivas-15-03-2016.pdf>. Last visited November 16, 2020.

informal sector represents almost 20 percent of the country's GDP.⁵⁵ Peru's informal sector was particularly hard hit by the COVID-19 lockdown. Over 50 percent of workers in Peru's informal sector lost their entire incomes due to the lockdown, compared to the 16 percent of workers in the country's formal sector who reported a total loss of income.⁵⁶

Many informal sector workers in Peru rely on payments from mine employees through local community restaurants, barber shops, and brothels.⁵⁷ However, in order to stop the spread of COVID-19, mining company protocols prohibit worker contact with local communities.⁵⁸ While such protocols aid in advancing public health objectives, they also have negative economic impacts on informal sector workers, with disproportionate impacts on women in the informal sector.⁵⁹

Loss of jobs in both formal and informal sectors in Peru have led to an increase in illegal mining during the COVID-19 pandemic. In particular, the loss of jobs across Peru resulted in an increase in illegal mining in the Peruvian Amazon⁶⁰ and exacerbated the spread of COVID-19 in ASGM regions like Madre de Dios. While Madre de Dios had 1,467 confirmed cases and 25 deaths on June 29, 2020,⁶¹ these numbers rose to 9,107 cases and 149 deaths by November 20, 2020.⁶² As is the experience in many mining regions, the remoteness of Madre de Dios is coupled with lack of access to health services.⁶³ While Peru's large-scale mining sector was able to conduct some activities during the lockdown and fell within the earliest phase of the reopening schedule in the table above, the lockdown for miners in the ASM sector extended for an additional month for miners in the formal sector and even longer for miners in the formalization process.

An additional and ongoing concern in the ASGM sector is use of mercury. Mercury is linked to a wide range of negative environmental, social, and public health impacts—including organ damage that can result in increased severity of COVID-19 symptoms.⁶⁴ Peru ratified the Minamata Convention on Mercury in 2016⁶⁵ and is taking steps to phase out mercury use in the ASGM sector. COVID-19 measures and impacts serve as both barriers to and drivers of mercury use. For example, travel and other

⁵⁵ Nate Frierson, *Economic Informality and Gold Mining in Madre de Dios*, University of Maryland School of Public Policy in Peru, April 2018. Retrieved from <https://umdpolicyperu2016.wordpress.com/2018/04/01/economic-informality-and-gold-mining-in-madre-de-dios/>. Last visited November 16, 2020.

⁵⁶ John Letzing, *The Plight of Peru Illustrates the Danger of COVID-19 to Developing Countries*, World Economic Forum, June 17, 2020. Retrieved from <https://www.weforum.org/agenda/2020/06/the-plight-of-peru-illustrates-the-danger-of-covid-19-to-developing-countries/>. Last visited October 13, 2020.

⁵⁷ Karolien van Teijlingen and Barbara Hogenboom, *COVID-19 Impact on the Value Chain in Latin America*, Centre for Latin American Research and Documentation (CEDLA), July 2020 at p. 6. Retrieved from https://www.clingendael.org/sites/default/files/2020-07/Policy_Brief_COVID-19_impact_value_chain_Latin_America_July_2020.pdf. Last visited November 28, 2020.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Peter Velt and Patricia Quijano Vallejos, *COVID-19, Rising Gold Prices and Illegal Mining Threaten Indigenous Lands in the Amazon*, World Resources Institute, September 8, 2020. Retrieved from <https://www.wri.org/blog/2020/09/covid-19-rising-gold-prices-and-illegal-mining-threaten-indigenous-lands-amazon>. Last visited October 13, 2020.

⁶¹ Sergio Saffron, *Soaring Gold Prices During Pandemic Fuel Peru's Illegal Gold Mining*, InSight Crime, June 20, 2020. Retrieved from <https://www.insightcrime.org/news/brief/peru-coronavirus-illegal-mining/>. Last visited October 28, 2020.

⁶² Gobierno del Perú Ministerio de Salud - MINSa, *Sala Situacional: COVID-19 Perú*, November 19, 2020. Retrieved from https://covid19.minsa.gob.pe/sala_situacional.asp. Last visited November 20, 2020.

⁶³ Gisselle Vila Benites and Anthony Bebbington, *Political Settlements and the Governance of COVID-19: Mining, Risk, and Territorial Control in Peru*, *Journal of Latin American Geography*, May 27, 2020. Retrieved from <https://muse.jhu.edu/article/760941>. Last visited November 8, 2020.

⁶⁴ Kevin Telmer and Marieke Kroll, *COVID-19 and ASGM Communities--An Early Look at the Crisis*, Artisanal Gold Council, March 23, 2020. Retrieved from: <https://www.artisanalgold.org/covid-19-and-asgm-communities-early-look-crisis/>. Last visited October 13, 2020.

⁶⁵ See United Nations Environmental Programme, *Minamata Convention on Mercury, Peru Ratifies the Minamata Convention*, January 29, 2016. Retrieved from <http://www.mercuryconvention.org/DNNAdmin/AllENGLISHNewsEntry/tabid/3444/articleType/ArticleView/articleId/93710/language/en-US/Peru-ratifies-the-Minamata-Convention.aspx>. Last visited November 20, 2020.

restrictions decrease mercury trade and drive up mercury prices,⁶⁶ creating barriers to mercury use. However, with few other economic options, miners who have access to mercury may increase use to expedite revenue from gold.⁶⁷ The pandemic has disrupted programs that train miners to use mercury-free processing methods.⁶⁸

Another concern in the ASGM sector that is closely related to COVID-19 is the reality that many miners in the sector are migrant workers. This further exacerbates the spread of COVID-19 and complicates efforts to contain the virus.⁶⁹ Migrant workers also face a range of issues that predate the pandemic but can be intensified by deepening and prolonged economic hardship. These issues include labor exploitation led by cartels and criminal gangs; unsafe working conditions and exposure to COVID-19 at work sites; and lack of access to government support.⁷⁰

Likewise, many female ASGM miners in Peru are not able to access government support.⁷¹ For example, almost 80 percent of *pallaqueras* have not received any government assistance related to the pandemic.⁷² Two-thirds of *pallaqueras* do not even have access to basic information about COVID-19 symptoms, spread, and protocols.⁷³ Yet *pallaqueras* may have respiratory and other health conditions related to their work that place them at higher risk for contracting COVID-19,⁷⁴ and most do not have access to health care services.⁷⁵ In addition to heightened risk for COVID-19, women in the ASGM sector may also face increased risk for sexual exploitation and gender-based violence.⁷⁶ These concerns are in addition to the pressures faced by women in Peru to take on increased unpaid work in caretaking and

⁶⁶ For example, in Zimbabwe, COVID-19 has reduced mercury trade and pushed prices to up to U.S. \$10 per teaspoon. See Pact Zimbabwe, *Implications of the COVID-19 and the Recent Lockdown Lift on the Zimbabwean Artisanal and Small-Scale Mining (ASM) Sector*, Mining Zimbabwe, May 22, 2020. Retrieved from: <https://miningzimbabwe.com/implications-of-the-covid-19-and-the-recent-lockdown-lift-on-the-zimbabwean-artisanal-and-small-scale-mining-asm-sector/>. Last visited October 13, 2020.

⁶⁷ Kenneth Davis, *Monitoring the Impacts of COVID-19 on Artisanal and Small-Scale Mining*, *planetGOLD*, April 1, 2020. Retrieved from: <https://www.planetgold.org/monitoring-impacts-covid-19-artisanal-and-small-scale-gold-mining>. Last visited September 28, 2020.

⁶⁸ This has been the case of multi-stakeholder initiatives in Zimbabwe, for example. See Pact Zimbabwe, *Implications of the COVID-19 and the Recent Lockdown Lift on the Zimbabwean Artisanal and Small-Scale Mining (ASM) Sector*, Mining Zimbabwe, May 22, 2020. Retrieved from: <https://miningzimbabwe.com/implications-of-the-covid-19-and-the-recent-lockdown-lift-on-the-zimbabwean-artisanal-and-small-scale-mining-asm-sector/>. Last visited October 13, 2020.

⁶⁹ OECD Watch, *Emergency Action Needed for Vulnerable Artisanal & Small-Scale Mining Communities & Supply Chains*, May 12, 2020. Retrieved from: <https://www.oecdwatch.org/2020/05/12/emergency-action-needed-for-vulnerable-artisanal-and-small-scale-mining-communities-and-supply-chains/>. Last visited October 13, 2020.

⁷⁰ *Id.*

⁷¹ Celine Salcedo-La Viña, Ruchika Singh, and Natalie Elwell, *Rural Women Must Be at the Heart of COVID-19 Response and Recovery*, World Resources Institute, September 21, 2020. Retrieved from: https://www.wri.org/blog/2020/09/rural-women-must-be-heart-covid-19-response-and-recovery?utm_campaign=wrigest&utm_source=wrigest-2020-10-6&utm_medium=email&utm_content=readmore. Last visited October 13, 2020. Women in Peru are often barred from formal work within the mines because of traditional Andean beliefs about underground mining. Patrick Wieland, *Hernando de Soto, the Lone Prospector and the Formalization of Artisanal and Small-Scale Mining: A Case Study from La Rinconada, Peru*, *Environs: Environmental Law and Policy Journal* 43(1), February 28, 2020. Retrieved from: <https://environs.law.ucdavis.edu/volumes/43/1/Articles/Wieland.pdf>. Last visited August 11, 2020; Solidaridad, *You Can Contribute to Alleviate COVID-19 Impact on Small-Scale Miners*, July 28, 2020. Retrieved from: <https://www.solidaridadnetwork.org/news/you-can-contribute-to-alleviate-covid-19-impact-on-small-scale-miners>. Last visited September 28, 2020.

⁷² Nacho Doce, *Pallaqueras, the Women Who Hunt for Gold at the Top of the World*, Reuters, March 11, 2020. Retrieved from <https://www.theguardian.com/artanddesign/gallery/2020/mar/11/pallaqueras-women-who-hunt-for-gold-andes>. Last visited November 30, 2020. Solidaridad, *You Can Contribute to Alleviate COVID-19 Impact on Small-Scale Miners*, July 28, 2020. Retrieved from: <https://www.solidaridadnetwork.org/news/you-can-contribute-to-alleviate-covid-19-impact-on-small-scale-miners>. Last visited September 28, 2020.

⁷³ Solidaridad, *You Can Contribute to Alleviate COVID-19 Impact on Small-Scale Miners*, July 28, 2020. Retrieved from: <https://www.solidaridadnetwork.org/news/you-can-contribute-to-alleviate-covid-19-impact-on-small-scale-miners>. Last visited September 28, 2020.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ OECD Watch, *Emergency Action Needed for Vulnerable Artisanal & Small-Scale Mining Communities & Supply Chains*, May 12, 2020. Retrieved from: <https://www.oecdwatch.org/2020/05/12/emergency-action-needed-for-vulnerable-artisanal-and-small-scale-mining-communities-and-supply-chains/>. Last visited October 13, 2020.

domestic work through the pandemic, which can diminish availability for paid work and access to related revenue.⁷⁷

Children in ASGM families and communities also face additional pressures related to COVID-19. The Government of Peru categorized children as “high risk” in the pandemic.⁷⁸ Many schools were closed when the lockdown began and have remained closed through the pandemic.⁷⁹ Lack of reliable access to electricity and Internet in rural communities limits options for home schooling, and once out of school, some children in vulnerable circumstances may never return to school.⁸⁰ Although child labor is illegal in Peru, including in mining,⁸¹ children in ASGM families who are not in school may also face increased pressure to engage in work at ASGM sites.⁸²

E. Impacts of COVID-19 on Indigenous Peoples in Peru

Peru’s Ministry of Culture recognizes 55 groups of Indigenous Peoples, 51 originally from the Amazon and 4 from the Andes.⁸³ Indigenous Peoples in Peru have been heavily impacted by COVID-19. The Coordinator of the Indigenous Organizations of the Amazon Basin stated that, as of August 25, 2020, there were 12,043 confirmed cases of COVID-19 and 387 related deaths of Indigenous People in the regions of Madre de Dios, Loreto, Amazonas, San Martín, Ucayali, Cusco, Huánuco, Junín, Pasco, and Cajamarca.⁸⁴ By October 2020, these numbers had increased to 15,000 confirmed cases and almost 400 related deaths.⁸⁵ Indigenous communities in Peru have requested more support from government and other stakeholders to save the lives of members of their communities who have contracted COVID-19.⁸⁶

⁷⁷ Celine Salcedo-La Viña, Ruchika Singh, and Natalie Elwell, *Rural Women Must Be at the Heart of COVID-19 Response and Recovery*, World Resources Institute, September 21, 2020. Retrieved from: https://www.wri.org/blog/2020/09/rural-women-must-be-heart-covid-19-response-and-recovery?utm_campaign=wridigest&utm_source=wridigest-2020-10-6&utm_medium=email&utm_content=readmore. Last visited October 13, 2020.

⁷⁸ U.S. Embassy in Peru, *COVID-19 Information*, October 13, 2020. Retrieved from: <https://pe.usembassy.gov/covid-19-information/>. Last visited October 13, 2020.

⁷⁹ Ministerial Resolutions No. 160-2020-MINEDU and 229-2020-MINEDU established provisions for at-home learning (or, in the case of rural areas with zero cases of COVID-19, in-person learning) at the primary and secondary education levels, but the efficacy may be limited, given low access to electricity, Internet, and other complicating factors. See also U.S. Embassy in Peru, *COVID-19 Information*, October 13, 2020. Retrieved from: <https://pe.usembassy.gov/covid-19-information/>. Last visited October 13, 2020.

⁸⁰ Tina Blazquez-Lopez, *The Effect of Covid-19 on Women in Artisanal Mining*, Bryan Cave Leighton Paisner LLP, June 8, 2020. Retrieved from: <https://www.lexology.com/library/detail.aspx?g=708720a4-eeb7-4c00-b487-b84ea179c5a6>. Last visited September 28, 2020.

⁸¹ See Supreme Decree 03-94-EM, Regulation of General Mining Law (1994) at Art. 260. Peru also ratified the Convention on the Rights of the Child on September 4, 1990 (entered into force September 2, 1990) and the International Labour Organization (ILO) Worst Forms of Child Labour Convention, 1999 (No. 182) on January 10, 2002 (entered into force November 19, 2000). Both conventions call for elimination of child labor.

⁸² OECD Watch, *Emergency Action Needed for Vulnerable Artisanal & Small-Scale Mining Communities & Supply Chains*, May 12, 2020. Retrieved from: <https://www.oecdwatch.org/2020/05/12/emergency-action-needed-for-vulnerable-artisanal-and-small-scale-mining-communities-and-supply-chains/>. Last visited October 13, 2020.

⁸³ La República, *Organizaciones Indígenas Rechazan Consulta Previa Virtual para Proyecto Minero en Moquegua*, July 8, 2020. Retrieved from: <https://larepublica.pe/sociedad/2020/07/08/comunidades-indigenas-organizaciones-indigenas-rechazan-consulta-previa-virtual-para-proyecto-minero-en-moquegua/>. Last visited November 22, 2020.

⁸⁴ Coordinadora de las Organizaciones Indígenas de la Cuenca Amazónica, *Impacto del COVID-19 en los Pueblos Indígenas de la Cuenca Amazónica*, August 25, 2020. Retrieved from: <https://drive.google.com/file/d/1isGrREHrf1i9Zeij1APr2fo0Cr1B7qs/view?fbclid=IwAR1AOqQPgsFiH-VvrSw-ZWFDYb3mIlanVTsxfGiTpsDityJvDmy7P8kLpyQ>. Last visited November 30, 2020.

⁸⁵ *Id.*

⁸⁶ La República, *Organizaciones Indígenas Rechazan Consulta Previa Virtual para Proyecto Minero en Moquegua*, July 8, 2020. Retrieved from: <https://larepublica.pe/sociedad/2020/07/08/comunidades-indigenas-organizaciones-indigenas-rechazan-consulta-previa-virtual-para-proyecto-minero-en-moquegua/>. Last visited November 22, 2020.

The spread of COVID-19 to Indigenous populations is closely linked to the influx of illegal miners to the Peruvian Amazon.⁸⁷ However, large-scale mining operations, which were able to resume critical maintenance operations immediately during the lockdown⁸⁸ and obtained an almost immediate exception to the reopening schedule presented above, may also expose Indigenous Peoples in the Amazon to COVID-19.⁸⁹

In addition to exacerbating the spread of COVID-19, illegal miners may also be engaged in crimes that impact Indigenous communities, including human trafficking, child labor, money laundering, and drug smuggling.⁹⁰ Since the beginning of COVID-19 lockdowns in Peru, the country's Special Environmental Prosecutor's Office (FEMA), with National Policy and Navy agents, carried out at least 75 interventions against illegal mining in rivers and protected areas, including interventions against illegal mining in Madre de Dios.⁹¹ An area of focus for these interventions has been the Tambopata National Reserve, one of the most biologically diverse areas in the world, where intensified illegal activity, including fuel and mercury trafficking related to illegal mining, contributes to contamination and destruction.⁹²

ASGM regions such as Madre de Dios also lose revenue due to illegal gold mining that could otherwise be spent on basic infrastructure. The region could earn substantial revenue if the gold were traded in formal markets at international market prices. The Regional Governor of Madre de Dios, Luis Hidalgo, has called on the Government of Peru to authorize a bank to buy gold at the international market price, which would allow at least 10 percent of the revenue to stay in the region.⁹³ He estimates that this would encourage formalization while bringing in between U.S. \$70 million to U.S. \$120 million each year—money that could be used to repair a hospital and expand access to healthcare services in the midst of the COVID-19 pandemic.⁹⁴

III. Law and Policy Responses to COVID-19 for Gold Mining in Peru

A. COVID-19 Measures Focused on Large-Scale Gold Mining

As noted above, the Peruvian economy reopened in four phases. Importantly, early in the lockdown and well before Phase 1 allowed reactivation of large-scale mining activity, large-scale mines were able to conduct “essential works”—critical maintenance activities such as ensuring that tunnels do not collapse, ongoing drainage so that a mine doesn't flood, water treatment so that drainage water doesn't cause

⁸⁷ Sergio Saffron, *Soaring Gold Prices During Pandemic Fuel Peru's Illegal Gold Mining*, InSight Crime, June 30, 2020. Retrieved from: <https://www.insightcrime.org/news/brief/peru-coronavirus-illegal-mining/>. Last visited October 13, 2020. This spread is happening across the Amazon to Indigenous tribes. In Brazil, COVID-19 likely entered the Yanomami Indigenous territory through illegal miners. Peter Velt and Patricia Quijano Vallejos, *COVID-19, Rising Gold Prices and Illegal Mining Threaten Indigenous Lands in the Amazon*, World Resources Institute, September 8, 2020. Retrieved from: <https://www.wri.org/blog/2020/09/covid-19-rising-gold-prices-and-illegal-mining-threaten-indigenous-lands-amazon>. Last visited October 13, 2020.

⁸⁸ Bnamericas, *Regulus to Resume Drilling at Peru Project after COVID-19 Halt*, August 29, 2020. Retrieved from <https://www.bnamericas.com/en/news/regulus-to-resume-drilling-at-peru-project-after-covid-19-halt>. Last visited November 28, 2020.

⁸⁹ Servindi, *Minería y Petróleo: Las Consecuencias Devastadoras de los Privilegiados*, May 24, 2020, quoting a report from Civil Society Platform on Business and Human Rights (La Plataforma de la Sociedad Civil Sobre Empresas y Derechos Humanos). Retrieved from: <https://www.servindi.org/actualidad-noticias/24/05/2020/mineria-y-petroleo-las-consecuencias-devastadoras-de-los>. Last visited October 13, 2020.

⁹⁰ Francisca García Delgado, *Madre de Dios: La Minería Ilegal de Oro No de Tregua en Época de Pandemia*, El Comercio, June 2, 2020. Retrieved from <https://elcomercio.pe.cdn.ampproject.org/c/s/elcomercio.pe/peru/madre-de-dios/coronavirus-en-peru-madre-de-dios-la-mineria-ilegal-de-oro-no-da-tregua-en-epoca-de-pandemia-informe-noticia/?outputType=amp>. Last visited November 24, 2020.

⁹¹ *Id.* In Madre de Dios such interventions typically involved seizure and destruction of machinery.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

environmental damage, stabilization work on slopes, etc.⁹⁵ This maintenance activity is very important for ongoing environmental management.

The mining sector was initially included in the lockdown measures with reactivation under Phase 1. Initial lockdown measures were imposed on March 14, 2020, but on March 17, 2020 the national government issued a statement that exempted large scale mining companies from the lockdown measures.⁹⁶ On that date Peru's Ministry of Finance issued OFICIO 059-2020-EF/10.01 to include the mining sector as a "critical operation" under Supreme Decree 044-2020-PCM.

Notably, Peru's General Mining Law, which is focused on large-scale mining but incorporates medium-scale mining and ASM, requires mining companies to provide healthy and safe working conditions and to establish wellness, safety, and hygiene programs organized through a committee in which workers are represented.⁹⁷

In order to reopen, mining companies were required to present to the government protocols to protect the health of workers and communities—a substantial hurdle for some companies.⁹⁸ Protocols such as restrictions on travel of workers to their homes and extension of work shifts were proposed—some in violation of labor rights and many largely ineffective.⁹⁹

Large-scale mining companies had difficulty maintaining social distancing in underground mines, worker dormitories, canteens, and other gathering places, and also faced challenges ensuring access to testing and health services in remote locations.¹⁰⁰ Despite objections of union leaders regarding lack of protective measures, by early May eight large-scale mining companies had confirmed exposures to COVID-19, with a total of 264 reported cases, and by May 22 at least 821 mining workers tested positive for COVID-19, due largely to an outbreak at the Antamina Mining Company.¹⁰¹

On April 14, 2020 the "Perfect Suspension of Labor" (*Suspensión Perfecta de Actividades*) Emergency Decree 038 was signed. This Decree suspended labor rights by allowing Peruvian mining companies who

⁹⁵ Bnamericas, *Peru's Large-Scale Mining to Return to Normal Production Levels in July*, June 22, 2020. Retrieved from <https://www.bnamericas.com/en/interviews/perus-large-scale-mining-to-return-to-normal-production-levels-in-july>. Last visited November 10, 2020.

⁹⁶ Karolien van Teijlingen and Barbara Hogenboom, *COVID-19 Impact on the Value Chain in Latin America*, Centre for Latin American Research and Documentation (CEDLA), July 2020 at p. 6. Retrieved from https://www.clingendael.org/sites/default/files/2020-07/Policy_Brief_COVID-19_impact_value_chain_Latin_America_July_2020.pdf. Last visited November 28, 2020.

⁹⁷ General Mining Law, 1992, at Articles 210-212.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ Two hundred sixteen of these cases are associated with Antamina Mining Company. The company had to stop operations following the identification of seven cases and the protest of miners. See Gisselle Vila Benites and Anthony Bebbington, *Political Settlements and the Governance of COVID-19: Mining, Risk, and Territorial Control in Peru*, *Journal of Latin American Geography*, May 27, 2020. Retrieved from <https://muse.jhu.edu/article/760941>. Last visited August 11, 2020. BHP and Glencore's Antamina mine had the largest COVID-19 outbreak of any mine in the country, and one of the worst reported worldwide. Marco Aquino, *Exclusive: Peru Miners Restart Pandemic-hit Operations with Mass Testing, Isolating Workers*, Reuters, June 18, 2020. Retrieved from <https://www.reuters.com/article/us-health-coronavirus-peru-mining-exclus/exclusive-peru-miners-restart-pandemic-hit-operations-with-mass-testing-isolating-workers-idUSKBN23P1L6>. Last visited October 13, 2020. See Servindi, *Minería y Petróleo: Las Consecuencias Devastadoras de los Privilegiados*, May 24, 2020. Retrieved from <https://www.servindi.org/actualidad-noticias/24/05/2020/mineria-y-petroleo-las-consecuencias-devastadoras-de-los>. Last visited October 13, 2020. See also Karolien van Teijlingen and Barbara Hogenboom, *COVID-19 Impact on the Value Chain in Latin America*, Centre for Latin American Research and Documentation (CEDLA), July 2020 at p. 6. Retrieved from https://www.clingendael.org/sites/default/files/2020-07/Policy_Brief_COVID-19_impact_value_chain_Latin_America_July_2020.pdf. Last visited November 28, 2020.

are unable to pay salaries, unilaterally and without prior authorization of the Ministry of Labor, to put workers on unpaid leave for up to three months—a period later extended to up to nine months.¹⁰²

The Government of Peru postponed a pre-pandemic process to revise the national mining law, including proposals to increase taxes on the sector¹⁰³ that may now be needed in the pandemic response.

B. COVID-19 Measures Focused on Artisanal and Small-Scale Gold Mining

Mining activities in Peru are divided into four categories: large scale mining, medium scale mining, small-scale mining, and artisanal mining. Peruvian law makes a distinction between artisanal and small-scale mining and between informal and illegal mining. Peruvian Law No. 27651 defines “artisanal” mining operations as operations that encompass an area of up to 1,000 hectares of land and produce up to 25 metric tons per day. “Small-scale mining” tends to involve the use of more advanced equipment, and it occurs over larger areas of land, up to 2,000 hectares.¹⁰⁴

The terms “illegal mining” and “informal mining” are often used interchangeably in studies of Peruvian mining, but Legislative Decree 1105 establishes distinct differences between the two. Illegal mining encompasses mining activities that operate outside of a designated mining concession. Informal mining takes place inside legally designated mining zones, but such miners operate without a formal government permit.¹⁰⁵ Unlike illegal mining, “informal” mining activities as defined under this framework do not take place in environmentally sensitive areas. Informal miners may use approved mining techniques and mine within a mining concession, but often they do not own the concession and do not have official permission from the State to conduct mining activities.¹⁰⁶

Under the Peruvian formalization law, Law No. 27651, informal mining may be regulated to become formalized through a six-step process that includes submitting an affidavit of intent; negotiating an exploitation agreement with a mining concession owner; obtaining surface rights; filing a water authorization; conducting a “rapid environmental impact assessment;” and obtaining a license to operate.¹⁰⁷ However, the Government of Peru has effectively suspended official formalization processes during the pandemic, leaving informal miners in a particularly vulnerable position in the midst of the pandemic.¹⁰⁸

¹⁰² Karolien van Teijlingen and Barbara Hogenboom, *COVID-19 Impact on the Value Chain in Latin America*, Centre for Latin American Research and Documentation (CEDLA), July 2020 at p. 6. Retrieved from https://www.clingendael.org/sites/default/files/2020-07/Policy_Brief_COVID-19_impact_value_chain_Latin_America_July_2020.pdf. Last visited November 28, 2020.

¹⁰³ *Id.*

¹⁰⁴ Patrick Wieland, *Hernando de Soto, The Lone Prospector and the Formalization of Artisanal and Small-Scale Mining: A Case Study from La Rinconada, Peru*, *Environ: Environmental Law and Policy Journal* 43(1), 1-66, 2020. Retrieved from <https://environs.law.ucdavis.edu/volumes/43/1/Articles/Wieland.pdf>. Last visited November 11, 2020.

¹⁰⁵ Aubrey L. Langeland, Rebecca D. Hardin, and Richard L. Neitzel, *Mercury Levels in Human Hair and Farmed Fish near Artisanal and Small-Scale Gold Mining Communities in the Madre de Dios River Basin, Peru*, *International Journal of Environmental Research and Public Health* 14(302), 1-18, 2017. Retrieved from: <https://www.mdpi.com/1660-4601/14/3/302>. Last visited November 30, 2020.

¹⁰⁶ Valeria Piñeiro, Jenny Thomas, and Pablo Elverdin, *The Agricultural Sector as an Alternative to Illegal Mining in Peru: A Case Study of Madre de Dios*, International Food Policy Research Institute, 2016. Retrieved from: <https://www.ifpri.org/publication/agricultural-sector-alternative-illegal-mining-peru-case-study-madre-de-dios>. Last visited November 30, 2020.

¹⁰⁷ Patrick Wieland, *Hernando de Soto, The Lone Prospector and the Formalization of Artisanal and Small-Scale Mining: A Case Study from La Rinconada, Peru*, *Environ: Environmental Law and Policy Journal* 43(1), 1-66, 2020. Retrieved from <https://environs.law.ucdavis.edu/volumes/43/1/Articles/Wieland.pdf>. Last visited November 11, 2020.

¹⁰⁸ *Id.*

Informal miners in the process of formalization are registered in Peru's Register of Mining Formalization (REINFO), with nearly 89,000 registrants.¹⁰⁹ On June 21, 2020 the Ministry of Energy and Mines enacted a decree that amended REINFO.¹¹⁰ The amendment prevents miners in the formalization process from obtaining a registration number (RUC) at the Peruvian Tax Authority (SUNAT) and submitting their environmental management instrument (IGAFOM) in a timely manner.¹¹¹ These terms will apply through December 31, 2020.¹¹² These obstacles are significant because miners must have a RUC to complete the formalization process. Miners who complete the formalization process are eligible for health and employment benefits, technical assistance, and bank loans, as well as greater access to social services.¹¹³ Access to these benefits and social services is particularly important to miners during the pandemic. The amendments to REINFO are also significant because they could negatively impact environmental management, due to barriers to filing IGAFOM. Prior to the pandemic, at least 6,091 environmental management instruments were registered in the formalization process.¹¹⁴

Miners in Peru's formal ASGM sector were eligible for some forms of government support under Peru's COVID-19 response framework. As noted above, Peru's Ministry of Economy and Finance put into place measures to support micro, small, and medium-sized enterprises during the pandemic.¹¹⁵ Formalized ASGM operations were part of this group,¹¹⁶ allowing qualified miners who earn up to 1,500 soles a year (U.S. \$430) to receive subsidies of up to 35 percent of their salaries.¹¹⁷ However, Peru's legislation to reopen the economy delayed reactivation of small-scale mining and formalized artisanal mining until Phase 2. During this period of lockdown, miners were unable to work and earn income through Peru's formal ASM sector. Some miners in the formal sector also faced difficulty accessing government support due to lack of access to telecommunications, difficulty navigating government systems, and other factors.

While ASGM is a significant source of revenue for many miners in Peru, it is also the cause of many environmental challenges in the country, including deforestation and forest degradation, mercury pollution, and large carbon emissions.¹¹⁸ Prior to the pandemic, the Peruvian government cited several priorities relating to the ASM sector: mitigation of deforestation and environmental degradation of the Amazon; managing mercury pollution; and formalizing the sector, particularly in the mineral-rich Madre de Dios mining corridor.¹¹⁹ Such efforts have largely been abandoned during the pandemic. However, in

¹⁰⁹ Bnamericas, *MINEM: Mining Formalization Achieves Progress of 40%*, October 14, 2020. Retrieved from:

<https://www.bnamericas.com/en/news/minem-mining-formalization-achieves-progress-of-40>. Last visited October 14, 2020.

¹¹⁰ Supreme Decree 015-2020-EM amended Article 7.2 b) and c) of Supreme Decree 001-2020-EM, the decree that established Peru's Register of Mining Formalization (REINFO).

¹¹¹ Supreme Decree 015-2020-EM.

¹¹² Supreme Decree 015-2020-EM.

¹¹³ Bnamericas, *MINEM: Mining Formalization Achieves Progress of 40%*, October 14, 2020. Retrieved from:

<https://www.bnamericas.com/en/news/minem-mining-formalization-achieves-progress-of-40>. Last visited 14 October 2020.

¹¹⁴ Francesca García Delgado, *Madre de Dios: La Minería Ilegal de Oro No de Tregua en Época de Pandemia*, El Comercio, June 2, 2020.

Retrieved from <https://elcomercio.pe.cdn.ampproject.org/c/s/elcomercio.pe/peru/madre-de-dios/coronavirus-en-peru-madre-de-dios-la-mineria-ilegal-de-oro-no-da-tregua-en-epoca-de-pandemia-informe-noticia/?outputType=amp>. Last visited November 24, 2020.

¹¹⁵ Franco Arista, *ASGM in the Time of COVID-19: How to Reactivate Artisanal and Small-Scale Mining in Peru?* planetGOLD, April 27, 2020.

Retrieved from https://www.planetgold.org/sites/default/files/2020-04/ASGM%20in%20the%20time%20of%20COVID-19_planetGOLD_EN.pdf. Last visited October 13, 2020. Tina Blazquez-Lopez, *The Effect of Covid-19 on Women in Artisanal Mining*, Bryan Cave Leighton Paisner LLP, June 8, 2020. Retrieved from <https://www.lexology.com/library/detail.aspx?g=708720a4-eeb7-4c00-b487-b84ea179c5a6>. Last visited September 28, 2020.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

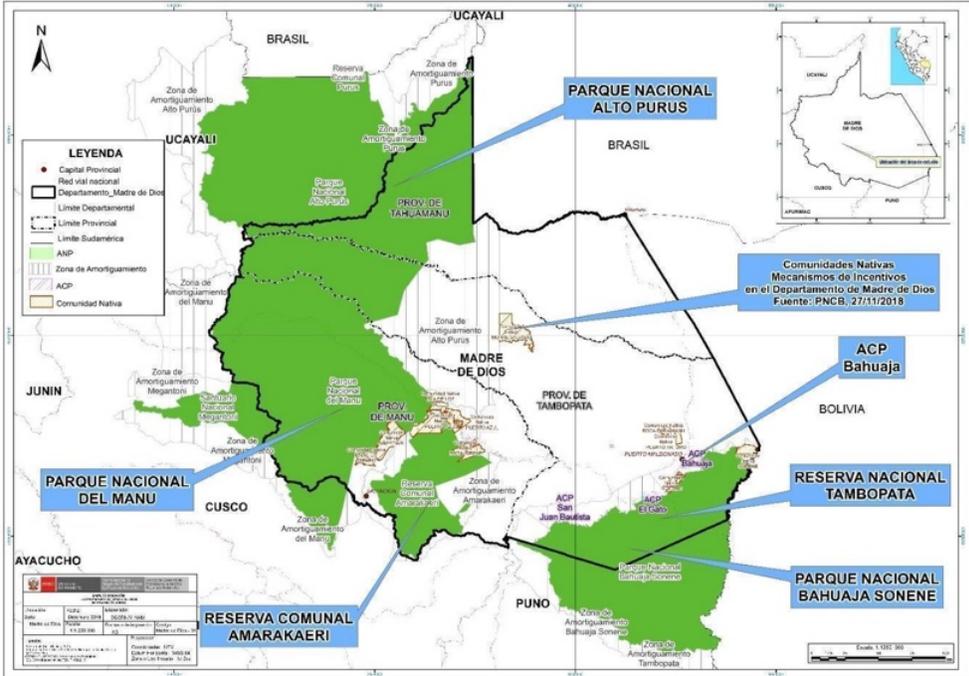
¹¹⁸ Jorge Caballero Espejo, et al, *Deforestation and Forest Degradation Due to Gold Mining in the Peruvian Amazon: A 34-Year Perspective*, Remote Sensing 10 (1903), 1-17, 2018. Retrieved from <https://doi.org/10.3390/rs10121903>. Last visited November 16, 2020.

¹¹⁹ World Bank, *2019 State of the Artisanal and Small-Scale Mining Sector*, 2019. Retrieved from

<https://www.plataformaintegraldemineria.org/sites/default/files/2019-04/Delve-2019-State-of-the-Artisanal-and-Small-Scale-Mining-Sector.pdf>. Last visited November 11, 2020.

November 2020, a draft law was proposed, No. 6641/2020-CR, titled “Bill that Creates Conditions to Sustainably Develop Amazonian Alluvial Gold Mining as the Main Alternative Economic Activity in the Face of the Impact of COVID-19.” The bill aimed to simplify access to formal work in the ASGM sector and execution of new exploitation contracts in the Peruvian Amazon. It also aimed to respond to the loss of jobs during the COVID-19 lockdown and the related economic downturn by focusing on ASGM as an avenue to reactivate Peru’s economy, with Madre de Dios serving as a pilot district. Due to strong public reactions, the sponsor of the bill voluntarily withdrew it the day after it was presented,¹²⁰ promising to rethink the draft.¹²¹

Map of Madre de Dios, Natural Protected Areas and Resident Indigenous Communities



Source: Government of Peru, Ministry of Environment

Madre de Dios in particular is an important region for ASGM. The World Bank estimates that over 70 percent of Peru’s artisanal and informal gold production occurs in Madre de Dios.¹²² Because most of the miners in this region are categorized as informal or illegal, a vast amount of the mining in the region is conducted outside of the regulatory framework. Around 97 to 99 percent of mining concessions in Madre de Dios are considered illegal.¹²³ As noted above, the loss of jobs across Peru’s economy resulted in an increase in illegal mining in Madre de Dios and across the Peruvian Amazon,¹²⁴ exacerbating the spread of COVID-19 while increasing the prevalence of other negative environmental and social impacts.

¹²⁰ Congressman Alexander Lozano Inostroza, Oficio No. 430-2020-ALI/CR, November 13, 2020.
¹²¹ Congressman Alexander Lozano Inostroza (Alexander Lozano – Congresista), November 13, 2020, 13:29 Tweet.
¹²² World Bank, *2019 State of the Artisanal and Small-Scale Mining Sector*, 2019. Retrieved from <https://www.plataformaintegraldemineria.org/sites/default/files/2019-04/Delve-2019-State-of-the-Artisanal-and-Small-Scale-Mining-Sector.pdf>. Last visited November 11, 2020.
¹²³ Aubrey L. Langeland, Rebecca D. Hardin, and Richard L. Neitzel, *Mercury Levels in Human Hair and Farmed Fish near Artisanal and Small-Scale Gold Mining Communities in the Madre de Dios River Basin, Peru*, *International Journal of Environmental Research and Public Health* 14(302), 1-18, 2017. Retrieved from: <https://www.mdpi.com/1660-4601/14/3/302>. Last visited November 30, 2020.
¹²⁴ Peter Velt and Patricia Quijano Vallejos, *COVID-19, Rising Gold Prices and Illegal Mining Threaten Indigenous Lands in the Amazon*, *World Resources Institute*, September 8, 2020. Retrieved from <https://www.wri.org/blog/2020/09/covid-19-rising-gold-prices-and-illegal-mining-threaten-indigenous-lands-amazon>. Last visited October 13, 2020.

Efforts of nongovernmental organizations have helped address issues in the ASGM sector in Peru, particularly during the COVID-19 pandemic. Solidaridad, planetGold Peru, Alliance for Responsible Mining, Artisanal Gold Council, the Institute of Social Development Networks, Improvement of the Environmental Management of Mining and Energy Activities in Peru (MEGAM), and Pure Earth launched the campaign "ASM without COVID-19."¹²⁵ The campaign produced and circulated a booklet on worker hygiene to stop the spread of COVID-19.¹²⁶ The booklet provides recommendations for traveling to and from the workplace; provides guidance for limiting contamination in workplace facilities, common areas, and cargo transportation areas; and provides recommended procedures for acting on suspected or confirmed cases of COVID-19.¹²⁷ The booklets, expected to reach around 300,000 to 400,000 artisanal and small-scale miners this year, were circulated to miners through WhatsApp, Facebook groups, and text messages.¹²⁸

C. COVID-19 Measures Focused on Environmental and Social Impact Assessment and Management

Since 1992, the Government of Peru has required applicants for a license for mining activity to submit an Affidavit confirming commitment to Principles that include:¹²⁹

Environmental and Social Excellence: Carry out mining activities in accordance with the State's environmental policy framework, conducting social and environmental management with excellence, and promoting responsible use and management of natural resources to promote sustainable development.

The Government of Peru has taken a number of actions during the COVID-19 pandemic that have implications on environmental and social impact assessment (ESIA) and related management in the mining sector. One practical action previously discussed in this case study was allowing large-scale mining companies to carry out critical maintenance activities during the lockdown that were necessary for environmental management and to mitigate environmental risks.¹³⁰

Peru's ESIA legal framework requires that any private or public project (or mix of those) that may cause significant negative environmental impacts must have an environmental certification, approved by the competent authority.¹³¹ On June 16, 2020 Peru's Ministry of Environment (MINAM) issued Ministerial Resolution No. 108-2020-MINAM related to the arrangements for carrying out field work in preparation of baseline studies for environmental management instruments. The purpose of the Resolution is to ensure that field work is conducted in a manner that prevents the contagion, spread, and health impacts of COVID-19.

¹²⁵ Solidaridad, *You Can Contribute to Alleviate COVID-19 Impact on Small-Scale Miners*, July 28, 2020. Retrieved from: <https://www.solidaridadnetwork.org/news/you-can-contribute-to-alleviate-covid-19-impact-on-small-scale-miners>. Last visited September 28, 2020.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ General Mining Law Procedures, Art. 17(i), as Modified by Supreme Decree 052-2010-EM.

¹³⁰ Bnamericas, *Peru's Large-Scale Mining to Return to Normal Production Levels in July*, June 22, 2020. Retrieved from <https://www.bnamericas.com/en/interviews/perus-large-scale-mining-to-return-to-normal-production-levels-in-july>. Last visited November 10, 2020.

¹³¹ Law of the National Environmental Evaluation System, Art. 3; Regulation of the Law of the National Environmental Evaluation System, Art. 15

Resolution No. 108-2020-MINAM states that during the State of Emergency due to COVID-19, priority is given to secondary information for elaboration of baseline studies, taking into consideration related guidance in Ministerial Resolution No. 455-2018-MINAM, Peru's guidance document on baseline studies. MINAM must verify that the secondary information complies with the approved Terms of Reference and environmental regulations, and that it is representative for the study area based on factors such as compatibility with purpose, level of detail, and appropriate quality of information for the method of analysis. The information may cover areas of Indigenous and local communities.

Secondary information must be verifiable and based on a list of official sources including:

- Monitoring reports of national and regional public entities;
- Reports of monitoring programs of private companies or public entities;
- Monitoring or investigation reports prepared by third parties, including private entities, non-governmental organizations, or research centers;
- Approved baselines of investment projects located in areas close to the area of study; and
- Inventories or databases of pre-existing activities in the areas of study, such as environmental liabilities or contaminated sites.

In cases where secondary information is not available or does not comply, investors must carry out field work to elaborate a baseline for environmental management instruments. The owner of the investment project must verify that any personnel complete a symptom assessment and a COVID-19 test before conducting field work, prepare a work plan for sanitary measures, and take proper preliminary actions to reduce risk.

The Resolution, which remains valid until the end of the State of Emergency, was required by Legislative Decree No. 1500. This Decree outlined special measures to reactivate, improve, and optimize the execution of public and private investment projects in response to COVID-19. Article 4 of the Decree extends the validity of "authorizations, permits, licenses and any other qualifying title, as well as environmental certifications" due to expire by December 31, 2020, but necessary for public infrastructure or public services, by a period of 12 months after the expiration date. There is an exception that the extension must not violate protection of cultural heritage.

A draft law regarding ESIA and management, Draft Law No. 6639/2020-CR, was proposed in November 2020 but was quickly withdrawn due to strong public opposition. The draft law, which aimed to promote investment and economic growth, would exempt owners of ongoing projects from having to obtain an environmental certificate for a new component of the ongoing project, as long as the new component was limited to 10 percent of the total investment in the project.

D. COVID-19 Measures Focused on Public Engagement

As noted above, since 1992, the Government of Peru has required applicants for a license for mining activity to sign an Affidavit committing to a list of Principles. This list of Principles includes:¹³²

Continuous Dialogue: Maintain a continuous and timely dialogue with regional and local authorities, the population of the area of influence of mining activity and its representative

¹³² General Mining Law Procedures, Art. 17(i), as Modified by Supreme Decree 052-2010-EM.

organs, using an intercultural approach, providing transparent, timely and accessible information about mining activities through reports and media as appropriate to allow the exchange of opinions, expression of suggestions and participation of all actors involved, in accordance with the applicable rules of public participation.

Peru's legal framework for the mining sector also includes a Regulation on the Public Participation Process for Mining Activities as well as a Ministerial Resolution on Public Participation Mechanisms to aid in implementation of the Regulation on the Public Participation Process. The public participation requirements include participation of local communities and apply to mining concessions; exploration, exploitation and beneficiation projects; mine development; and mine closure.

Legislative Decree No. 1500 Decree includes a range of articles related to public participation and public engagement through the COVID-19 pandemic. Article 6 of Legislative Decree No. 1500 requires that mechanisms of citizen participation carried out before and/or during the production of ESIA's and management instruments must be in strict compliance with COVID-19 sanitary measures. Article 6.2 of the Decree states that "the mechanisms for citizen participation are adapted to the particular characteristics of each project, the population that participates and the environment where it is located, being able to use electronic means, virtual or other means of communication," as determined by the competent authority, considering: ability to provide effective and timely information about the investment project; availability of a channel for citizens to communicate their contributions, suggestions, and comments during the participation period; and compliance with provisions contained in current regulations. This Article remains in force for the duration of the COVID-19 sanitary measures.

Article 7 of the Decree exempts companies from the obligation of presenting environmental reports, monitoring, and other environmental or social information that implies field work, with the exception of cases in which the company has such information in advance; it is evident that there is a circumstance of imminent danger or high risk of serious damage to water, air, or soil, natural resources, people's health and actions aimed at mitigating environmental degradation or damage; or environmental emergencies or catastrophes. This applies until the activity subject to environmental control is restarted. COVID-19 sanitary measures must be applied if environmental audits are required under these exceptions.

The Decree also allows the owner of an investment project to implement or modify work camps, canteens, offices, medical areas, etc. for purposes of complying with sanitary measures, with a prior communication to the competent environmental authority. However, if such additional components generate imminent danger or high risk to the environment or people's health, the competent authority can impose administrative measures.

Also relevant to the topic of public participation is the Government of Peru's recently decision to table ratification of the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, also known as the Escazú Agreement.¹³³ In 2018 Peru was one of the first countries to sign the Agreement, which also protects the rights of environmental defenders. The Escazú Agreement promotes Principle 10 of the Rio Declaration, which states:

¹³³ See United Nations, Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement). Retrieved from <https://www.cepal.org/en/escazuagreement>. Last visited December 3, 2020.

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.¹³⁴

In October 2020, Peru's Foreign Relations Commission approved in a vote of nine to three an opinion that recommends not approving the Agreement through the proposed draft Legislative Resolution 4645/2019-PE.¹³⁵ Rationale for this decision includes finding that the country's legal framework for ESIA and related management systems already regulates access to information, referencing Peru's Constitution, Law No. 27806 on Transparency and Access to Public Information, the Law of the National System of Environmental Management, the Prior Consultation Law, the Resolution for the Protection of Environmental Human Rights Defenders, creation of the Ministry of Justice National Transparency and Access Authority's Court of Transparency and Access to Public Information, and other laws and mechanisms.¹³⁶

Legislator Alberto de Belaunde voted in favor of ratifying the Escazú Agreement, noting that it "would allow Peruvians from all regions of the country to access updated, understandable and orderly information on the environment that would be an important element for making future decisions on environmental matters."¹³⁷ Belaunde also added, in reference to the Agreement's protection of the rights of environmental defenders, that "in Peru alone in this pandemic five men have died defending everyone's home."¹³⁸

The Escazú Agreement is the first environmental agreement adopted by the Latin America and the Caribbean region. Mexico ratified the Agreement on November 5, 2020, becoming the 11th country to ratify and triggering the agreement's entry into force, effective 90 days after the 11th ratification.¹³⁹ Ratification of the agreement took on new importance for countries in the Latin American region during the COVID-19 pandemic, which has exposed inequalities and amplified the need to implement comprehensive, participatory, inclusive planning processes.¹⁴⁰

¹³⁴ United Nations General Assembly, Rio Declaration on Environment and Development, 1992. Retrieved from https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf. Last visited December 3, 2020.

¹³⁵ Bnamericas, *Foreign Relations Commission of the Peruvian Congress Shelves Proposal to Ratify Escazú Agreement*, October 20, 2020. Retrieved from <https://www.bnamericas.com/en/news/foreign-relations-commission-of-the-peruvian-congress-shelves-proposal-to-ratify-escazu-agreement>. Last visited December 3, 2020.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ Institute for Sustainable Development and International Relations, *The Entry Into Force of the Escazú Agreement: A Landmark in the Global Environmental Governance?*, November 17, 2020. Retrieved from: <https://www.iddri.org/en/publications-and-events/blog-post/entry-force-escazu-agreement-landmark-global-environmental#:~:text=Eleven%20countries%20have%20ratified%20the,Latin%20America%20and%20Caribbean%20region>. Last visited December 3, 2020.

¹⁴⁰ *Id.*

E. COVID-19 Measures Related to Indigenous Rights and Prior Consultation

Peru ratified the International Labour Organization (ILO) Convention 169 in 1993.¹⁴¹ In September 2011, in response to civil unrest among Indigenous populations regarding proposed mining operations on Indigenous lands, Peru enacted Law 29785, the Prior Consultation Law. Under this law, the State must consult with Indigenous Peoples about the commencement of mining operations and how their communities may be impacted. The law must also be interpreted in accordance with the obligations of ILO Convention 169.

Legislative Decree No. 1500, the Decree discussed in the subsection above that outlines special measures to reactivate investment projects in response to COVID-19, contains a provision that guarantees the collective rights of Indigenous Peoples, in accordance with current regulations. Indigenous groups and nongovernmental organizations in Peru have demanded that the Government of Peru not weaken the right to Prior Consultation as part of economic reactivation processes.¹⁴²

In March 2020, Peru's Ministry of Energy and Mines began suspending Prior Consultation processes due to the outbreak of COVID-19.¹⁴³ This was decided with Peru's Office for Social Management and consultation coordinators in order to protect the health of participants.¹⁴⁴

Peru's Ministry of Energy and Mines is leading eight Prior Consultation processes related to extractive projects.¹⁴⁵ Most of these processes are related to exploration projects with one related to a mine expansion.¹⁴⁶ When government leaders considered virtual Prior Consultation measures, including for a large-scale copper-gold mining project,¹⁴⁷ the Inter-Ethnic Association for the Development of the Peruvian Jungle (AIDSESEP), the National Agrarian Confederation (CNA), the National Union of Aymara Communities (UNCA), the Peasant Confederation of Peru (CCP), the Confederation of the Amazonian Nationalities of Peru (CONAP) and others rejected virtual consultations and argued that ILO Convention 169 must be respected.¹⁴⁸ UNCA has noted that Aymara communities do not have Internet access so would be effectively barred from a virtual consultation, and the President of AIDSESEP has stated that the virtual format damages and violates collective rights.¹⁴⁹

¹⁴¹ See International Labour Organization Indigenous and Tribal Peoples Convention, No. 169, 1989. Retrieved from https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169. Peru ratified the Convention through Legislative Resolution 26253.

¹⁴² La República, *Cusco: Minem Suspendió Consulta Previa de Proyecto Antapaccay en Espinar*, March 17, 2020. Retrieved from <https://larepublica.pe/sociedad/2020/03/17/cusco-minem-suspendio-consulta-previa-de-proyecto-antapaccay-en-espinar-lrsd/>. Last visited November 22, 2020.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ Ani Lu Torres, *Hay Nueve Consultas Previas que se Retomarán*, La República, July 13, 2020. Retrieved from <https://larepublica.pe/economia/2020/07/13/ministerio-de-energia-y-minas-hay-nueve-consultas-previas-que-se-retomaran/>. Last visited November 20, 2020.

¹⁴⁶ *Id.*

¹⁴⁷ Buenaventura, *San Gabriel Project*. Retrieved from <https://www.buenaventura.com/en/operaciones/detalle/6>. Last visited November 22, 2020.

¹⁴⁸ La República, *Organizaciones Indígenas Rechazan Consulta Previa Virtual para Proyecto Minero en Moquegua*, July 8, 2020. Retrieved from <https://larepublica.pe/sociedad/2020/07/08/comunidades-indigenas-organizaciones-indigenas-rechazan-consulta-previa-virtual-para-proyecto-minero-en-moquegua/>. Last visited November 22, 2020.

¹⁴⁹ *Id.*

Peru's prior Minister of Economy and Finance, María Alva, has considered use of virtual consultations in projects needed to generate employment and economic growth.¹⁵⁰ However, Susana Vilca, Peru's prior Minister of Energy and Mines, opposed a virtual process, noting that the Inter-American Commission on Human Rights (IACHR) has ruled against governments conducting virtual consultation processes with Indigenous communities.¹⁵¹ Peru's Ministry of Culture¹⁵² has advised that in all contexts the mechanisms for carrying out Prior Consultation must be agreed with Indigenous communities, according to their social and cultural reality.¹⁵³ The Ministry of Culture also advised that any consultation must be coordinated with the Ministry of Health in the context of the pandemic.¹⁵⁴ A reality underscored by Alicia Abanto, deputy for Environmental and Indigenous Peoples with the Peru's Ombudsman's Office, is that virtual consultations are not possible due to widespread lack of access to telecommunications.¹⁵⁵

These concerns were echoed in virtual hearings before the IACHR on October 6th and 9th, 2020 on the violation of rights of Indigenous Peoples during the COVID-19 pandemic.¹⁵⁶ The hearings raised concerns regarding violation of the right to Free, Prior, and Informed Consent in the context of extractive industry projects.¹⁵⁷ In the hearings, more than 40 organizations of Indigenous Peoples and civil society in Mexico, Colombia, Peru, and Brazil asked their governments to strengthen the right to Prior Consultation by guaranteeing:

- Autonomous institutions with sufficient resources ensure timely consultation processes, with intercultural information and publicity mechanisms, and monitor compliance with agreements between Indigenous Peoples and the State; and
- Reasonable benefits or remedies, free from duress or conditioning.¹⁵⁸

¹⁵⁰ Ani Lu Torres, *Hay Nueve Consultas Previas que se Retomarán*, La República, July 13, 2020. Retrieved from <https://larepublica.pe/economia/2020/07/13/ministerio-de-energia-y-minas-hay-nueve-consultas-previas-que-se-retomaran/>. Last visited November 20, 2020.

¹⁵¹ La República, *Ministra de Energía y Mines Descarta Consulta Previa Virtual: "Será in Situ,"* July 9 2020. Retrieved from <https://larepublica.pe/economia/2020/07/09/ministra-de-energia-y-minas-descarta-consulta-previa-virtual-sera-in-situ-lote-192-mef-maria-alva-cidh/>. Last visited November 22, 2020. Ani Lu Torres, *Hay Nueve Consultas Previas que se Retomarán*, La República, July 13, 2020. Retrieved from <https://larepublica.pe/economia/2020/07/13/ministerio-de-energia-y-minas-hay-nueve-consultas-previas-que-se-retomaran/>. Last visited November 20, 2020.

¹⁵² See Plataforma Digital Única del Estado Peruano, *Ministerio de Cultura*. Retrieved from <https://www.gob.pe/cultura>. Last visited November 22, 2020.

¹⁵³ Ani Lu Torres, *Hay Nueve Consultas Previas que se Retomarán*, La República, July 13, 2020. Retrieved from <https://larepublica.pe/economia/2020/07/13/ministerio-de-energia-y-minas-hay-nueve-consultas-previas-que-se-retomaran/>. Last visited November 20, 2020.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ La República, *¿Consulta Previa y Reactivación Económica: Seguir Cometiendo los Mismos Errores?*, November 9, 2020. Retrieved from <https://larepublica.pe/sociedad/2020/11/09/consulta-previa-y-reactivacion-economica-seguir-cometiendo-los-mismos-errores/>. Last visited November 22, 2020. See IACHR, *IACHR Announces Calendar of Public Hearings for 177th Period of Sessions and Issues Invitations to Meetings with States and Civil Society*, September 16, 2020. Retrieved from http://www.oas.org/en/iachr/media_center/PReleases/2020/220.asp. Last visited November 22, 2020. Amazon Watch, *Indigenous Peoples of the Ecuadorian Amazon Denounce Rights Violations and Government Inaction During COVID-19 Pandemic Before the Inter-American Commission on Human Rights*, October 9, 2020. Retrieved at <https://amazonwatch.org/news/2020/1009-indigenous-peoples-of-the-ecuadorian-amazon-denounce-rights-violations-during-covid-19-pandemic>. Last visited November 22, 2020.

¹⁵⁷ Amazon Watch, *Indigenous Peoples of the Ecuadorian Amazon Denounce Rights Violations and Government Inaction During COVID-19 Pandemic Before the Inter-American Commission on Human Rights*, October 9, 2020. Retrieved at <https://amazonwatch.org/news/2020/1009-indigenous-peoples-of-the-ecuadorian-amazon-denounce-rights-violations-during-covid-19-pandemic>. Last visited November 22, 2020.

¹⁵⁸ La República, *¿Consulta Previa y Reactivación Económica: Seguir Cometiendo los Mismos Errores?*, November 9, 2020. Retrieved from <https://larepublica.pe/sociedad/2020/11/09/consulta-previa-y-reactivacion-economica-seguir-cometiendo-los-mismos-errores/>.

The organizations also requested that governments not weaken the right to Prior Consultation in efforts to reactivate economies, including through virtual Prior Consultation that would not guarantee intercultural dialogue or the health and accessibility of Indigenous populations.¹⁵⁹

As referenced by Susana Vilca, IACHR made a formal call to governments, including Peru, not to weaken social and environmental safeguards through legislative initiatives or promotion of extractive projects on Indigenous Territories during the pandemic when carrying out Prior Consultation processes is not possible.¹⁶⁰ The Government of Peru has not proposed legislation specifically related to use of virtual platforms for Prior Consultation with Indigenous communities as of the publication of this case study. As noted above, the Peruvian Government has made a commitment in Legislative Decree No. 1500 to guarantee the collective rights of Indigenous Peoples, in accordance with current regulations. Government actors must uphold this commitment in actions related to Prior Consultation with Indigenous communities through the COVID-19 pandemic.

The National Confederation of Private Business Institutions (CONFIEP) Reactivation Agenda 2020,¹⁶¹ published in August 2020, proposed to cut consultation time in order to expedite investments, calling for the government to replace the Prior Consultation process in the mining exploration stage with “prior approval” of the State.¹⁶² Peru’s new Minister of Mines, Jaime Galvez, supports efforts to streamline the consultation period prior to granting mining licenses, in order to promote exploration and investment.¹⁶³ This includes support for a proposal to reduce the consultation period from the current period of approximately 12 months to six months for the exploration phase.

IV. Approaches of Other Countries

A. Bolivia

In Bolivia, ASGM is an important driver of economic development. Gold production in Bolivia is conducted by 1,406 mining cooperatives and provides direct benefits to 42,000 people and indirect benefits to more than 250,000 people.¹⁶⁴ COVID-19 brought mining activity to a halt across the country, with small ASGM cooperatives reporting losses of approximately U.S. \$136,500 per month, large cooperatives reporting losses of U.S. \$1,024,000, and total losses across cooperatives totaling approximately U.S. \$25 million.¹⁶⁵ Travel restrictions and decreases in commercial activity due to COVID-

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ See CONFIEP, *Agenda de Reactivación 2020*, August 2020. Retrieved from <https://www.confiep.org.pe/wp-content/uploads/2020/08/Agenda-de-Reactivacion-2020.pdf>. Last visited November 22, 2020.

¹⁶² CONFIEP, *Agenda de Reactivación 2020*, August 2020. Retrieved from <https://www.confiep.org.pe/wp-content/uploads/2020/08/Agenda-de-Reactivacion-2020.pdf>. Last visited November 22, 2020. La República, *¿Consulta Previa y Reactivación Económica: Seguir Cometiendo los Mismos Errores?*, November 9, 2020. Retrieved from <https://larepublica.pe/sociedad/2020/11/09/consulta-previa-y-reactivacion-economica-seguir-cometiendo-los-mismos-errores/>. Last visited November 22, 2020.

¹⁶³ Cecilia Jamasmie, *Peru New Mining Minister Vows to Streamline Permitting*, La República, November 30, 2020. Retrieved from <https://www.mining.com/peru-new-mining-minister-vows-to-streamline-permitting/>. Last visited December 3, 2020.

¹⁶⁴ United Nations Industrial Development Organization – UNIDO, *The Government of the Plurinational State of Bolivia and UNIDO Take First Steps to Provide Technical Assistance to More than 10,000 Artisanal and Small-scale Gold Miners*, 2020. Retrieved from: <https://www.unido.org/news/government-plurinational-state-bolivia-and-unido-take-first-steps-provide-technical-assistance-more-10000-artisanal-and-small-scale-gold-miners>. Last visited November 30, 2020.

¹⁶⁵ Cumbre del Sajama S.A. and Solidaridad, *Impact of Coronavirus (COVID-19) on Artisanal and Small-Scale Mining in Bolivia*, 2020. Retrieved from: https://www.plataformaintegraldemineria.org/sites/default/files/2020-06/Diagnostico%20COVID%20minería%20artesanal%20Bolivia_INGLES%20%282%29-min.pdf. Last visited November 30, 2020.

19 measures had impacts across supply chains, from access to fuel necessary for gold extraction to access to markets.¹⁶⁶

The Government of Bolivia provided one-time bonds for basic food for vulnerable populations and for child support for the general public; a universal bond for all Bolivians ages 18 to 60 who are not eligible for the bonds previously noted; support paying electric, water, and gas network bills; and a number of economic measures for “companies”—a category that does not include mining cooperatives.¹⁶⁷ Mining cooperatives in Bolivia were allowed to reopen after approximately six weeks of lockdown, but typically were not able to meet the requirements to reopen, which included measures such as submission and authorization of biosafety protocols, establishment of disinfection chambers, and implementation of mobile hospitals.¹⁶⁸

Some miners in Bolivia’s ASM sector also benefited from Bolivia’s Price Stabilization Account (CEPREM), established by Supreme Decree No. 29769 in 2008¹⁶⁹ to offset periods of low mineral prices by paying an average price to cooperatives and requiring cooperatives to replace funds in periods when prices are above average.¹⁷⁰ The fund, however, didn’t help ASGM miners during the COVID-19 pandemic because prices were linked to the international market, where prices were high.¹⁷¹

The Government of Bolivia was able to bolster its support for the ASGM sector through forming strategic partnerships. In August 2020, the Bolivian government and the United Nations Industrial Development Organization launched “Global Opportunities for the Long-term Development of the Artisanal and Small-Scale Gold Mining Sector.”¹⁷² This program aids miners in the ASGM sector to take part in planetGOLD, a program focused on sustainable mining and formalization of the ASGM sector.¹⁷³ The Government of Bolivia also collaborates with the Swiss Better Gold Association’s Better Gold Initiative.¹⁷⁴ The initiative aims to simplify the process for miners to become formalized¹⁷⁵ and has also provided support through the pandemic by providing 570 food parcels to miners in Bolivia’s ASGM sector who were unable to work and earn income due to COVID-19 measures.¹⁷⁶

ASGM workers have benefited from other partnerships during the COVID-19 pandemic as well. The nonprofit organization Solidaridad partnered with Bolivian company Cumbre del Sajama and the Government of the Netherlands to produce a booklet with good hygiene and disinfection

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ Lexivox Portal Jurídico Libre de Bolivia, *Bolivia: Decreto Supremo No. 29769, 29 de Octubre de 2008*, October 29, 2008. Retrieved from <https://www.lexivox.org/norms/BO-DS-29769.html>. Last visited November 30, 2020.

¹⁷⁰ Cumbre del Sajama S.A. and Solidaridad, *Impact of Coronavirus (COVID-19) on Artisanal and Small-Scale Mining in Bolivia*, 2020. Retrieved from: https://www.plataformaintegraldemineria.org/sites/default/files/2020-06/Diagnostico%20COVID%20mineria%20artesanal%20Bolivia_INGLES%20%282%29-min.pdf. Last visited November 30, 2020.

¹⁷¹ *Id.*

¹⁷² United Nations Industrial Development Organization – UNIDO, *The Government of the Plurinational State of Bolivia and UNIDO Take First Steps to Provide Technical Assistance to More than 10,000 Artisanal and Small-scale Gold Miners*, 2020. Retrieved from: <https://www.unido.org/news/government-plurinational-state-bolivia-and-unido-take-first-steps-provide-technical-assistance-more-10000-artisanal-and-small-scale-gold-miners>. Last visited November 30, 2020.

¹⁷³ *Id.*

¹⁷⁴ State Secretariat for Economic Affairs SECO, *Better Gold Initiative for Artisanal and Small-Scale Mining Fact Sheet*, 2020. Retrieved from: <https://www.seco-cooperation.admin.ch/dam/secocoop/de/dokumente/themen/handel/factsheet-bgi-for-asm.pdf.download.pdf/Factsheet%20Better%20Gold%20Initiative%20for%20Artisanal%20and%20Small-Scale%20Mining.pdf>. Last visited November 30, 2020.

¹⁷⁵ *Id.*

¹⁷⁶ SBGA Swiss Better Gold Association, *COVID-19: Better Gold Initiative Provides Emergency Support to Bolivian Gold Miners*, May 11, 2020. Retrieved from: <https://www.swissbettergold.ch/new-at-sbga/covid-19-better-gold-initiative-provides-emergency-support-bolivian-gold-miners>. Last visited November 30, 2020.

recommendations, aimed to control COVID-19 risks at worksites and as workers travel to and from mine sites.¹⁷⁷ Bolivia’s Mining and Metallurgy Ministry has also promoted the booklet.¹⁷⁸

B. Chile

Chile’s National Mining Company (ENAMI), a state-owned enterprise that promotes small and medium scale mining in Chile,¹⁷⁹ responded to COVID-19 impacts on small-scale copper and gold miners by focusing on protecting the health of workers and collaborators; supporting operational continuity of mine facilities; and establishing measures for the direct benefit of the country’s small-scale mining producers.¹⁸⁰ ENAMI used resources from Chile’s Copper Price Stabilization Fund¹⁸¹ to aid small-scale miners during the COVID-19 pandemic through advance payments for gold producers of up to 50 percent of value on sale, plus an additional 25 percent 12 days later.¹⁸² Early in the pandemic, in March 2020, ENAMI started a Production Support program that offers emergency financing for miners—up to U.S. \$5,000 for relatively minor operation issues that could have long-term consequences and a Reactivation of Mining Works and Program Support program that provides loans up to U.S. \$35,000 for small-scale miners.¹⁸³ By June 30, 2020, ENAMI had approved over U.S. \$3.1 million to support small-scale miners in Chile.¹⁸⁴

The Government of Chile delayed mining registry renewal deadlines for small-scale miners.¹⁸⁵ This provided more flexibility for miners; alleviated pressure on the registry office that was operating with partial staffing due to COVID-19; and helped prevent spread of COVID-19 that can result from travel to and from the registry office and waiting in long, crowded lines.¹⁸⁶

¹⁷⁷ Solidaridad, *You Can Contribute to Alleviate COVID-19 Impact on Small-Scale Miners*, July 28, 2020. Retrieved from: <https://www.solidaridadnetwork.org/news/you-can-contribute-to-alleviate-covid-19-impact-on-small-scale-miners>. Last visited September 28, 2020.

¹⁷⁸ *Id.*

¹⁷⁹ ENAMI, *Sobre ENAMI*. Retrieved from: <https://www.enami.cl/SobreEnami>. Last visited November 30, 2020.

¹⁸⁰ Atacama Noticias, *ENAMI Reinforces Its Commitment to Small-Scale Mining and Highlights the Execution of Promotion Programs*, June 30, 2020. Retrieved from: <https://www.atacamanoticias.cl/2020/06/30/enami-refuerza-compromiso-con-la-pequena-mineria-y-destaca-ejecucion-de-programas-de-fomento/>. Last visited October 14, 2020.

¹⁸¹ See Government of Chile, Ministry of Mining, Decree No. 33/2018 at Article 5. The Decree regulates implementation of Law No. 21.055, a law that creates a stabilization mechanism of the price of copper for small-scale mining. The Decree is available through *Ley Chile*, the Library of the National Congress of Chile, published in the Official Gazette on February 16th, 2019. Retrieved from <https://www.bcn.cl/leychile/>. Last visited December 9, 2020.

¹⁸² Franco Arista, *ASGM in the Time of COVID-19: How to Reactivate Artisanal and Small-Scale Mining in Peru?*, planetGOLD, April 27, 2020. Retrieved from: https://www.planetgold.org/sites/default/files/2020-04/ASGM%20in%20the%20time%20of%20COVID-19_planetGOLD_EN.pdf. Last visited October 13, 2020.

¹⁸³ Bnamericas, *Chile’s Mining Industry Struggling to Contain COVID-19*, July 20, 2020. Retrieved from: <https://www.bnamericas.com/en/news/chiles-mining-industry-struggling-to-contain-covid-19>. Last visited November 30, 2020. Atacama Noticias, *ENAMI Reinforces Its Commitment to Small-Scale Mining and Highlights the Execution of Promotion Programs*, June 30, 2020. Retrieved from: <https://www.atacamanoticias.cl/2020/06/30/enami-refuerza-compromiso-con-la-pequena-mineria-y-destaca-ejecucion-de-programas-de-fomento/>. Last visited October 14, 2020.

¹⁸⁴ Atacama Noticias, *ENAMI Reinforces Its Commitment to Small-Scale Mining and Highlights the Execution of Promotion Programs*, June 30, 2020. Retrieved from: <https://www.atacamanoticias.cl/2020/06/30/enami-refuerza-compromiso-con-la-pequena-mineria-y-destaca-ejecucion-de-programas-de-fomento/>. Last visited October 14, 2020.

¹⁸⁵ Franco Arista, *ASGM in the Time of COVID-19: How to Reactivate Artisanal and Small-Scale Mining in Peru?*, planetGOLD, April 27, 2020. Retrieved from: https://www.planetgold.org/sites/default/files/2020-04/ASGM%20in%20the%20time%20of%20COVID-19_planetGOLD_EN.pdf. Last visited October 13, 2020.

¹⁸⁶ *Id.*

C. Colombia

Colombia's ASGM sector provides approximately 60 percent of the country's gold production.¹⁸⁷ COVID-19 measures in Colombia have disrupted Colombia's informal economy, including the livelihoods of over 400,000 miners in Colombia's ASM sector,¹⁸⁸ many of whom rely on income from the sector to meet daily subsistence needs.¹⁸⁹ The sector includes workers in remote areas with low levels of education, female heads of household with little to no savings or access to financial services, and a high concentration of Afro-Colombian communities.¹⁹⁰

In response to COVID-19, Colombia's President issued Decree 457 of 2020,¹⁹¹ which authorized continuation of activities necessary to ensure "the supply logistics chain, supplies for the production, sourcing, import, export, and provision of minerals" during the country's quarantine.¹⁹² However, according to the Alliance for Responsible Mining, the Decree was not applied to all mining sectors—miners in Colombia's ASM sector have not been able to work and have difficulty accessing formal markets due to COVID-19 measures.¹⁹³ Lack of access to formal markets drives miners to sell minerals on the black market, where prices are 30 percent lower and do not result in taxes and royalties for the government.¹⁹⁴

The Swiss Better Gold Association's Better Gold Initiative has helped by providing over U.S. \$100,000 in emergency support to Colombian small-scale miners,¹⁹⁵ but the sector needs additional support. The Colombian Government has a strategy for formalization of the ASM sector in its "National Development Plan 2018 to 2022."¹⁹⁶ The strategy includes creating an entity to manage the formalization process, facilitate commercialization of minerals, and add value to assets and services related to mining activities.¹⁹⁷ The National Mining Agency leads the mining formalization process in the country,¹⁹⁸ which has eliminated the use of mercury at 71 beneficiation plants in Colombia;¹⁹⁹ developed and promoted a "Mining Formalization Subcontract" between large-scale mines and small-scale miners; and supported

¹⁸⁷ MITD-Lab, *Building Inclusive Economy with Small Scale Miners – Colombia*. Retrieved from: <https://d-lab.mit.edu/innovation-practice/inclusive-regional-economies/building-inclusive-economy-small-scale-miners>. Last visited November 30, 2020.

¹⁸⁸ Alliance for Responsible Mining, *Impact of COVID-19 on Artisanal and Small-Scale Mining*. Retrieved from: <https://www.responsiblemines.org/en/2020/04/impact-covid-19-artisanal-small-scale-mining/>. Last visited November 30, 2020. Jacopo Seccatore, Marcello Veiga, Chiara Origliasso, Tatiane Marin, and Giorgio De Tomi, *An Estimation of the Artisanal Small-Scale Production of Gold in the World*, *Science of the Total Environment*, v. 496, October 15, 2014 at pp. 662-667. Retrieved from: <https://www.sciencedirect.com/science/article/abs/pii/S0048969714006603>. Last visited November 30, 2020.

¹⁸⁹ Alliance for Responsible Mining, *Impact of COVID-19 on Artisanal and Small-Scale Mining*. Retrieved from: <https://www.responsiblemines.org/en/2020/04/impact-covid-19-artisanal-small-scale-mining/>. Last visited November 30, 2020.

¹⁹⁰ *Id.*

¹⁹¹ Posse, Herrera, Ruiz, *COVID 19 – Mandatory Isolation in Colombia*. Retrieved from: <http://www.phrlegal.com/noticia/covid-19-mandatory-isolation-in-colombia/?lang=en>. Last visited November 30, 2020.

¹⁹² Alliance for Responsible Mining, *Impact of COVID-19 on Artisanal and Small-Scale Mining*. Retrieved from: <https://www.responsiblemines.org/en/2020/04/impact-covid-19-artisanal-small-scale-mining/>. Last visited November 30, 2020.

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ Swiss Better Gold Initiative, *COVID-19: 100,000 Dollars Emergency Support for Colombian Small-Scale Miners*, May 6, 2020. Retrieved from: <https://www.swissbettergold.ch/new-at-sbga/covid-19-100000-dollars-emergency-support-colombian-small-scale-miners>. Last visited October 15, 2020.

¹⁹⁶ Departamento Nacional de Planeación, *Plan Nacional de Desarrollo 2018-2022: Pacto por Colombia, Pacto por la Equidad*, 2019, Resumen p. 147. Retrieved from: <https://colaboracion.dnp.gov.co/CDT/Prensa/Resumen-PND2018-2022-final.pdf>. Last visited November 30, 2020.

¹⁹⁷ *Id.*

¹⁹⁸ Agencia Nacional de Minería, *ANM Entrega Avances de Legalidad Minera en Seis Departamentos*, September 24, 2019. Retrieved from: <https://www.anm.gov.co/?q=anm-entrega-avances-de-legalidad-minera-en-seis-departamentos>. Last visited November 30, 2020.

¹⁹⁹ Departamento Nacional de Planeación, *Plan Nacional de Desarrollo 2018-2022: Pacto por Colombia, Pacto por la Equidad*, 2019, Resumen p. 147. Retrieved from: <https://colaboracion.dnp.gov.co/CDT/Prensa/Resumen-PND2018-2022-final.pdf>. Last visited November 30, 2020.

creation of formal ASM companies.²⁰⁰ However, Colombia continues to face many challenges in its ASM sector that are exacerbated by COVID-19. In July 2020, Colombia’s Minister of Energy and Mining Diego Mesa stated his intention to address these challenges, including a goal to formalize 27,000 miners and provide them with technical assistance.²⁰¹

D. Zimbabwe

As in Peru, miners in Zimbabwe’s ASGM sector also experienced declining field prices for gold during the COVID-19 pandemic, despite rising prices of gold in the international market.²⁰² The Government of Zimbabwe’s only gold buyer, Fidelity Printer and Refineries, responded to the pricing issues by establishing a new gold buying framework that set a flat fee of U.S. \$45 per gram of gold for miners in the ASGM sector.²⁰³ The new framework improved field prices for gold from the ASGM sector, but the Zimbabwe Miners Federation (ZMF), a small-scale mining organization, criticized the framework for not being aligned with higher prices in the international market. The Zimbabwe Environmental Law Association (ZELA) also criticized the framework for incentivizing ASGM sector gold production without increasing support for ASGM formalization.²⁰⁴

In 2019, ASGM contributed about 60 percent of gold produced in Zimbabwe.²⁰⁵ The Government of Zimbabwe initially classified the sector as “non-essential” in its COVID-19 response and lockdown.²⁰⁶ The advocacy of ZMF and other stakeholders for an exception due to the importance of the ASGM sector to economic development eventually led to all mining operations in Zimbabwe being granted permission to operate.²⁰⁷

The COVID-19 lockdown in Zimbabwe also had impacts on access to mercury. Travel limitations and supply chain disruptions limited or eliminated access to mercury in some parts of Zimbabwe, increasing prices to as high as U.S. \$10 per teaspoon.²⁰⁸ This has increased the cost of operation in the ASGM sector.²⁰⁹ Prior to the pandemic, Pact Zimbabwe, a non-governmental organization, began working with Zimbabwe’s Ministry of Mines and Mining Development, Zimbabwe’s Environmental Management

²⁰⁰ Portafolio, *160 Familias Mineras Pasan a la Formalización en California*, September 16, 2020. Retrieved from:

<https://www.portafolio.co/mas-contenido/legalizacion-de-mineros-en-california-santander-544699>. Last visited November 30, 2020.

²⁰¹ PIM Plataforma Integral de Minería a Pequeña Escala, *Colombia – Nuevo Ministro de Minas y Energía: "La Meta es Formalizar a 27 Mil Mineros"*. July 9, 2020. Retrieved from: <https://www.plataformaintegraldemineria.org/es/noticias/colombia-nuevo-ministro-de-minas-y-energia-la-meta-es-formalizar-27-mil-mineros>. Last visited November 30, 2020.

²⁰² Donald Nyarota, *Zimbabwe: Gold Price Increase Will Not Curb Illicit Trade*, allAfrica, June 1, 2020. Retrieved from: <https://allafrica.com/stories/202006010570.html>. Last visited November 30, 2020.

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ Mining Zimbabwe, *ZELA Conducts Research on Formalisation of Artisanal Miners*, June 29, 2020. Retrieved from: <https://miningzimbabwe.com/zela-conducts-research-on-formalisation-of-artisanal-miners/>. Last visited November 30, 2020.

²⁰⁶ Mining Zimbabwe, *Implications of the COVID-19 and the Recent Lockdown Lift on the Zimbabwean Artisanal and Small-Scale Mining (ASM) Sector*, May 22, 2020. Retrieved from: <https://miningzimbabwe.com/implications-of-the-covid-19-and-the-recent-lockdown-lift-on-the-zimbabwean-artisanal-and-small-scale-mining-asm-sector/>. Last visited November 30, 2020.

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ Mining Zimbabwe, *Implications of the COVID-19 and the Recent Lockdown Lift on the Zimbabwean Artisanal and Small-Scale Mining (ASM) Sector*, May 22, 2020. Retrieved from: <https://miningzimbabwe.com/implications-of-the-covid-19-and-the-recent-lockdown-lift-on-the-zimbabwean-artisanal-and-small-scale-mining-asm-sector/>. Last visited November 30, 2020. Zimbabwe was one of the first signatories to the Minamata Convention in 2013, but the country has yet to ratify the convention. See United Nations Development Programme, *Minamata Convention on Mercury, Parties and Signatories—Status of Signature, and Ratification, Acceptance, Approval or Accession*. Retrieved from: <http://www.mercuryconvention.org/Countries/Parties/tabid/3428/language/en-US/Default.aspx>. Last visited November 30, 2020.

Agency, the United Nations Development Programme (UNDP), and ZELA to pilot a mercury-free plant for miners in the ASGM sector.²¹⁰ However, the project was stalled by the COVID-19 pandemic.²¹¹

V. Recommendations

The experiences of Peru, Bolivia, Chile, Colombia, and Zimbabwe thus far in the COVID-19 pandemic demonstrate that the ASGM sector across these countries has been particularly impacted both by the spread of the virus as well as by the economic impacts of lockdown measures and implications across supply chains. These impacts are especially deep for miners in informal ASGM, and are even deeper for many women in informal ASGM sectors. This section will present recommendations for consideration in the ongoing COVID-19 pandemic, as well as in preparation for future emergencies.

These recommendations do not constitute legal advice. National and subnational circumstances vary widely and must be uniquely and carefully considered, taking into consideration the advice of experts in the relevant jurisdiction as well as the input and objectives of a broad cross-section of local stakeholders.

A. Classify of Artisanal and Small-Scale Mining as “Essential” Sector

The ASGM sector contributes substantially to national economic development as well as the livelihoods of hundreds of thousands of miners and mining communities across Peru and other countries studied for this case study. However, the Governments of Bolivia, Colombia, and Zimbabwe did not recognize workers in the ASM sector as “essential.” The Government of Peru delayed reactivation of the ASM sector for over a month beyond the large-scale mining sector’s exception to the lockdown and placement in Peru’s reopening schedule. Workers in the ASGM sector make substantial direct and indirect contributions to the economy, yet are particularly vulnerable to negative impacts of any work stoppage due to their subsistence livelihoods and lack of access to services. ZMF recognized this when successfully advocating for exemptions for miners in Zimbabwe’s ASM sector during the country’s COVID-19 lockdown. Negative impacts of work stoppage can be particularly harsh for women in the ASGM sector, deepening inequities and reversing progress women have made to advance gender equality. Peru should recognize workers in the ASM sector as essential moving forward in this pandemic and in future emergency responses.

B. Prioritize Worker and Community Health and Safety

Worker health and safety should continue to be a priority in Peru, beyond the COVID-19 pandemic and extending to the informal ASGM sector. This should include providing basic supplies such as soap, water, sanitation facilities, hand sanitizers, and other sanitary supplies as well as personal protective equipment, gloves, and other essential safety equipment.²¹² In many rural areas where ASGM and COVID-19 are prevalent, workers and communities do not have access to health care services. Support to rapidly improve access to health care services and related infrastructure are critical to contain COVID-

²¹⁰ Mining Zimbabwe, *Implications of the COVID-19 and the Recent Lockdown Lift on the Zimbabwean Artisanal and Small-Scale Mining (ASM) Sector*, May 22, 2020. Retrieved from: <https://miningzimbabwe.com/implications-of-the-covid-19-and-the-recent-lockdown-lift-on-the-zimbabwean-artisanal-and-small-scale-mining-asm-sector/>.

²¹¹ *Id.*

²¹² See Shamiso Mtisi, Joyce Nyamukunda, Nobuhle Mabhikwa, Joshua Machinga, and Paul Matshona, *COVID-19: Mining Sector and Communities’ Situational Report (Sit-Rep) 3rd Series, Zimbabwe Environmental Law Group*, May 2020. Retrieved from: <http://www.zela.org/covid-19-publications/>. Last visited October 13, 2020.

19 and to address health concerns beyond the pandemic. Partnerships between government, companies, hospitals and clinics, and nongovernmental organizations can be leveraged to stop the spread of COVID-19 in Peru's most vulnerable communities, including ASGM regions.²¹³

C. Uphold Indigenous Rights, including Prior Consultation

As noted above, in efforts to stimulate investment in Peru, government actors have discussed conducting virtual Prior Consultations in Peru. While no formal legislation has been presented on this topic, it is important to recognize the perspectives of Indigenous groups in Peru on virtual consultations, the reality that lack of Internet access is pervasive across Indigenous communities in Peru, and the mandate of IACHR that governments must not weaken Indigenous rights through use of virtual platforms for consultations. Due to these factors, Prior Consultation should be conducted in person when safe to do so. The rights of Indigenous communities cannot be overlooked or weakened in response to the COVID-19 pandemic or any future emergency that may arise.

D. Strengthen Peru's Fiscal Stabilization Fund

The Government of Peru and other stakeholders should review use of Peru's Fiscal Stabilization Funds to ensure that funds are available to assist Peruvian companies with protecting the health of employees and communities and also to assist vulnerable workers in Peru's ASGM sector. In particular, Peru can learn from Chile's use of funding from the Copper Price Stabilization Fund to aid miners in the ASM sector through the pandemic. Funds from Peru's Fiscal Stabilization Fund could be available to miners in the ASM sector not only during the pandemic or other national or subnational emergency, but also in times of commodity price fluctuations that are regularly experienced in the mining sector.

E. Purchase Gold at International Market Rates

Peru can learn from experience with Bolivia's Price Stabilization Account (CEPREM) and Zimbabwe's Fidelity Printer and Refineries gold buying framework to develop strategies that offset periods of low mineral prices and improve field prices for gold. This could incentivize ASM formalization while building government revenue from the sector and stabilizing income for miners in the ASM sector. As noted by the Regional Governor of Madre de Dios, purchase of gold at the international market price could substantially increase local revenue, perhaps as much as U.S. \$70 million to U.S. \$120 million per year in Madre de Dios, while also encouraging formalization.

F. Amplify Transparency and Public Access to Information

Peru's National Open Data Portal is an excellent tool for enhanced revenue transparency, including use of funds for the current COVID-19 emergency response. Use of this Portal should be expanded and enforced through mandates in order to ensure that funds are being utilized in a manner that is transparent, accountable, and equitable. Peru should also ratify the Escazú Agreement to strengthen commitment to transparency, access to public information, and protection of environmental defenders.

²¹³ *Id.*

G. Increase Access to Support for the Informal Sector

Informal sector workers in Peru, including those in the ASM sector, are particularly vulnerable yet often lack access to health care, financial services, and government support. These workers are often women, with many working on a subsistence basis without any safety net. These workers and the families who rely on them warrant special consideration in COVID-19 and other emergency response policies to ensure they are not left behind. Support could include basic food supplies, special attention to the educational and health needs of children, and measures to ensure that illicit actors are not taking advantage of individuals or groups during this or future emergencies.

H. Protect the Rights of Women and Children, including in ASM Communities

According to the United Nations Human Development Index, Peru ranks 87th out of 162 countries in gender inequality.²¹⁴ Inequities in how funds and resources to address COVID-19 are managed can widen gender gaps and reverse decades of progress toward gender equality.²¹⁵ Transparency International and UN Women are among many organizations calling for responses to COVID-19 to be inclusive, transparent, and free from corruption.²¹⁶ This is particularly important as women are disproportionately impacted by COVID-19.²¹⁷ In a joint report, Transparency International and UN Women recommend that such inequalities can be addressed by:²¹⁸

- Making sure the emergency funds and relief packages target women;
- Ensuring women have equal access to health care;
- Improving data and access to information (e.g., disaggregating health and financial data by gender) and taking this into account during decision-making;
- Making sure women have a seat at the political table and are included in decision-making, including budget-making and distribution of aid;
- Recognizing that women are disproportionately affected by inefficient use of public resources and lack of public services that affect their economic and social rights;
- Ensuring that, especially in the midst of emergencies like the COVID-19 pandemic, governments prevent gender-based violence.

As noted above, women are often engaged in informal sector ASM work. Their ability to earn income advances gender equality, the empowerment of women, and the well-being of children. Governments, companies and other stakeholders can work to ensure equal pay for equal work as well as equal access to information, services, and benefits for women.

²¹⁴ United Nations Development Programme, *Human Development Report 2019: Beyond Income, Beyond Averages, Beyond Today: Inequalities in Human Development in the 21st Century*, 2019. Retrieved from <http://hdr.undp.org/sites/default/files/hdr2019.pdf>. Last visited November 19, 2020.

²¹⁵ Transparency International, *Anti-Corruption Response to COVID-19 Must Include Women*, June 10, 2020. Retrieved from <https://www.transparency.org/en/news/anti-corruption-response-to-covid-19-must-be-transparent-and-include-women>.

²¹⁶ *Id.*

²¹⁷ See Organisation for Economic Co-operation and Development, *Women at the Core of the Fight Against COVID-19 Crisis*. Retrieved from https://read.oecd-ilibrary.org/view/?ref=127_127000-awfnqj80me&title=Women-at-the-core-of-the-fight-against-COVID-19-crisis. Last visited October 26, 2020; United Nations, *Policy Brief: The Impact of COVID-19 on Women*. Retrieved from <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/policy-brief-the-impact-of-covid-19-on-women-en.pdf?la=en&vs=1406>. Last visited October 26, 2020.

²¹⁸ Transparency International, *Anti-Corruption Response to COVID-19 Must Include Women*, June 10, 2020. Retrieved from <https://www.transparency.org/en/news/anti-corruption-response-to-covid-19-must-be-transparent-and-include-women>.

Children are also “at risk” through the COVID-19 pandemic and other emergencies, particularly children in ASM families. The Government of Peru should emphasize services available for children in ASM communities through school closures, particularly in areas where access to virtual learning is not possible due to lack of Internet access. Children in ASGM regions are vulnerable and may be drawn into child labor, trafficking, and difficult circumstances that create major obstacles to returning to school and the opportunities that education can bring to their futures.

I. Maintain and Strengthen Strategic Partnerships

Peru’s relationships with international organizations and nongovernmental organizations has been important both in its response to COVID-19 and in its work to address environmental and social issues in the ASGM sector. Continued collaboration with Solidaridad, planetGold Peru, Alliance for Responsible Mining, Artisanal Gold Council, Institute of Social Development Networks, MEGAM, the Swiss Better Gold Association and other institutions, such as universities, should continue and be strengthened through and beyond the COVID-19 pandemic.

Conclusion

As noted in the introduction to this case study, Peruvian law and policy is often presented as good practice. Peru has an opportunity through the COVID-19 pandemic to serve as a model government actor on regional and international levels. The country should learn from its experience in the pandemic response thus far, from the experience of the stakeholders discussed in this case study, and from the experience of other governments to inform its future actions in this pandemic and to prepare for future emergencies. In particular, the Government of Peru should improve its COVID-19 response and policies for future emergencies to address the unique concerns of informal sector workers, Indigenous communities, women, and children, with a focus on the country’s ASGM regions.