



Responsible Business Conduct in the Extractive and Minerals Sector in Latin America and the Caribbean



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Foreword

In adopting responsible business conduct (RBC), all enterprises – regardless of their legal status, size, ownership structure or sector – can prevent and address negative consequences of their operations, while contributing to the sustainable development of the countries and communities in which they operate. RBC means integrating and considering environmental and social issues within core business activities, throughout the supply chain and in business relationships. More concretely, RBC means that firms respect – and contribute to respectfulness of – human rights; the preservation and restoration of the environment; protection of consumer interests; the fight against corruption; fair competition; and a just contribution to the treasury, among other areas. RBC also helps facilitate a level playing field among companies and economies by promoting a predictable and rules-based international investment climate.

This report provides a comprehensive analysis of RBC issues, initiatives and policies in the extractive sector, which encompasses mining, oil and gas, in Latin America and the Caribbean (LAC). It covers seven countries, namely: Argentina, Brazil, Chile, Colombia, Mexico, Panama and Peru. Businesses in the extractive sector make a significant contribution to economic activity across the LAC region but their operations also raise major RBC issues with regard to human rights, the environment, labour rights and conditions, implications for local communities. The report describes general trends across the region while providing specific examples and underlining that not all the RBC issues described are present to the same degree or intensity in all countries. Hence, the report does not set out to judge the severity of RBC issues or the effectiveness of policies or initiatives in any given country. Instead, it conveys a general yet solid impression of where the LAC region stands in terms of key RBC considerations and encourages countries and actors in the region to use RBC as a tool for inclusive and sustainable development in the extractive sector.

The findings in this report are intended to inform the implementation of RBC practices by companies and policymaking for RBC in the countries concerned. They also intend to advance the work of multilateral institutions and in particular to help target OECD engagement and capacity-building activities under the Responsible Business Conduct in Latin America and the Caribbean (RBCLAC) project.

This report was undertaken within the framework of the RBCLAC project which promotes smart, sustainable and inclusive growth in the region by supporting responsible business practices in line with international instruments. The RBCLAC project is implemented by the OECD in partnership with the International Labour Organisation (ILO) and the United Nations Office of the High Commissioner for Human Rights (UNOHCHR). For the first time, these three organisations are joining forces, with the support of the European Union, to promote responsible business conduct within the framework of a joint regional project. The project includes a mix of regional and country-specific activities. The latter are implemented in nine countries: Argentina, Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico, Panama and Peru.

Acknowledgments

This report has been prepared by the OECD Centre for Responsible Business Conduct (OECD RBC Centre), led by Allan Jorgensen. The report was supervised by Froukje Boele, Manager for Latin America and the Caribbean at the Centre. It was drafted by Beatrice Mosello, Lukas Rüttinger, Pia van Ackern, Markus Buderath and Katarina Schulz from Adelphi with guidance from Hannah Koep Andrieu and Luca Maiotti from the OECD Centre for Responsible Business Conduct. The report benefitted from comments by representatives of the UN OCHR and the ILO and by officials from participating countries. Further contributions were received from Germán Zarama, Inmaculada Valencia, Jorge Gálvez Méndez, Roxana Glavanov, Duniya Dedeyn and Valeria Patiño, also at the OECD RBC Centre. Randall Holden edited the report.

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This report draws on a review of publicly available literature and data on the extractive sector in the countries considered. This included examining 71 country-specific reports with the goal of producing a balanced representation of issues and stakeholders. Findings from the country-specific reports were compared to identify regional dynamics and trends, and supplemented with a review of eight issue-specific reports. Forty-two telephone interviews were conducted with experts that have worked or are working as external advisers to government institutions, civil society and industry from the countries covered in this report to fill gaps in the publicly available data and to verify the results of the analysis. This input was supplemented by the results of the *OECD 2021 Business Survey on Responsible Business Conduct (RBC) in Latin America and the Caribbean* which gathered responses from a set of businesses active in the extractive sector operating in or from the LAC countries targeted for this report. No field research was carried out to validate the findings of this report. The RBC key issues identified have been reported by a range of different actors and institutions, including in secondary data and third-party reports.

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Abbreviations and Acronyms

ACM	Asociación Colombiana de Minería (Colombian Mining Association)
ASM	Artisanal and small-scale mining
BGR	Bundesanstalt für Geowissenschaften und Rohstoffe (Federal Institute for Geosciences and Natural Resources), Germany
BMW	Bayerische Motoren Werke (Bavarian Motor Works), Germany
CAEM	Cámara Argentina de Empresarios Mineros (Argentina Chamber of Mining Companies)
CAMMA	Conferencia Anual de Ministerios de Minería de las Américas (Conference of Mining Ministries of the Americas)
CBD	Convention on Biological Diversity
CRAFT	Code of Risk-Mitigation for Artisanal and Small-Mining Engaging in Formal Trade
CSOs	Civil society organisations
ECLAC	Economic Commission for Latin America and the Caribbean (Comisión Económica para América Latina y el Caribe)
EITI	Extractive Industries Transparency Initiatives
ESIA	Environmental and Social Impact Assessments
EU	European Union
EY	Ernst & Young
FARN	Fundación Ambiente y Recursos Naturales (Environment and Natural Resources Foundation)
FCPA	Foreign Corrupt Practices Act, United States
FDI	Foreign direct investment
FPIC	Free, prior and informed consent
GDIAM	Grupo de Diálogo sobre Minería (Dialogue Group on Mining), Colombia
GHG	Greenhouse gas
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit, GmbH (German Agency for International Cooperation)
GLASE	Grupo Latinoamericano sobre el Sector Extractivo (Latin American Group on the Extractive Sector)
IBRAM	Instituto Brasileiro de Mineração (Brazil Mining Association)
ICMM	International Council on Mining and Metals
IDB	Inter-American Development Bank
IGF	Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development
ILO	International Labour Organisation
IPBES	Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services
IWGIA	International Work Group For Indigenous Affairs
KPMG	Klynveld Peat Marwick Goerdeler
LAC	Latin America and the Caribbean
MACRA	Mining Awards Corruption Risk Assessment

MinSus	Regional Cooperation for the Sustainable Management of Mining Resources in Andean Countries
MNE	Multinational enterprises
NCPs	National Contact Points for RBC
OCMAL	Observatorio de Conflictos Mineros de Latino America (Observatory of Mining Conflicts in Latin America)
OGP	Open Government Partnership
OHCHR	United Nations Office of the High Commissioner for Human Rights
PIM	Plataforma Integral de Minería de Pequeña Escala (Integral Small-Scale Mining Platform), Colombia and Peru
PRI	Principles for Responsible Investment
RAISG	Rede Amazônica de Informação Socioambiental Georreferenciada (Amazon Socio-Environment Geo-Referenced Information Project)
RBC	Responsible business conduct
RBCLAC	Responsible Business Conduct in Latin America and the Caribbean
RFM	Responsible Mining Foundation
RLIE	Red Latinoamericana sobre las Industrias Extractivas (Latin American Network on Extractive Industries)
SDG	Sustainable Development Goals
SEC	Securities and Exchange Commission, United States
SNMPE	Sociedad Nacional de Minería, Petróleo y Energía (National Society of Mining, Petroleum and Energy), Peru
SQM	Sociedad Química y Minera de Chile, S.A.
TI	Transparency International
TSM	Towards Sustainable Mining, Canada
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNGPs	United Nations Guiding Principles on Business and Human Rights
UNOHCHR	United Nations Office of the High Commissioner for Human Rights

Executive summary

Natural resources play an important role for growth and development in Latin America and the Caribbean (LAC). The region is home to extensive reserves of metals and minerals, including those that will be critical in the transition to greener and more sustainable energy sources. Oil and gas reserves are also significant; estimates indicate that the region accounts for nearly 20% of global oil reserves and around 4% of gas reserves. Moreover, production is likely to increase with several large mining projects being developed in some countries, and unconventional hydrocarbon resource discoveries and production techniques, such as deepwater drilling and shale, are also expected to further increase the oil and gas potential. Many LAC governments see the extractive sector as highly relevant for their development strategies, and have introduced financial and other incentives to attract foreign direct investment (FDI).

At the same time, the extractive sector is associated with a number of important environmental, social and governance challenges and risks, which are often linked to or are part of broader economic and political dynamics. To address these challenges, significant improvements in environmental and social regulations have been introduced that are aimed at fostering the role of the extractive sector as a catalyst for sustainable development. These have included enhanced environmental governance of the sector since the early 1990s, as well as adoption of international standards recognising the rights of Indigenous peoples. Countries have also implemented measures to improve transparency of tax revenues and distribution.

Despite those efforts, extractive activities in the region continue to cause environmental and social impacts, including cases of water, air and soil pollution; deforestation; and loss of biodiversity. Such environmental impacts have in turn posed risks to the livelihoods and health of communities, including Afro-descendants and Indigenous peoples living in rural and remote areas. In some instances they have also given rise to conflicts, affecting the stability and prosperity of certain areas. Informal and illegal mining – often linked to environmental degradation, violence, human rights abuses and organised crime – also remain a real challenge and monitoring organisations point to violence against environmental and human rights advocates.

In line with global trends, there is a growing interest among the public, civil society, industry, governments and international organisations to address such challenges and to advocate for RBC in the LAC extractive sector. The promotion and use of international standards and tools to help business and governments adopt RBC policies and practices play a major role in this regard. These include the OECD Guidelines for Multinational Enterprises, OECD Due Diligence Guidance for RBC and for Responsible Mineral Supply Chains and the National Contact Points (NCPs) network. They also include the UN Guiding Principles on Business and Human Rights (UNGPs) and its Working Group on Business and Human Rights as well as specific standards such as the ILO Convention No. 176 on Safety and Health in Mines.

These standards, together with the active involvement of all relevant stakeholders (governments, business, civil society and trade unions), will be key to addressing key challenges relating to human rights, environmental protection and anti-corruption. Company commitments and actions to address these challenges are crucial, but they need to include collaboration and dialogue with governments, civil society, local communities and other stakeholders to be effective.

1 Importance of the extractive sector

1.1 Introduction

Natural resources play a major role for growth and development in LAC. The region is home to extensive reserves of metals and minerals, including those that will be critical in the transition to a greener and more sustainable energy system. It is estimated that around 70% of global lithium reserves are located in Argentina, Bolivia and Chile (Bárcena, 2018). Chile is the world's largest producer of copper globally, Brazil the third largest producer of iron ore, and Mexico and Peru feature among the top ten gold producers (Bárcena, 2018; World Gold Council, 2020a; World Gold Council, 2020b). Oil and gas reserves in the region are also significant. LAC accounts for 18.8% of the total proved oil reserves and 4.2% of known natural gas reserves worldwide (BP, 2019). The value of fossil fuel reserves is equivalent to almost four times the GDP of the entire region and would be enough to pay its external debt almost tenfold (BP, 2019). Moreover, production in the region is likely to increase with several large projects being developed.

The extractive sector has significant economic relevance in the region. It contributes to approximately 10% of the GDP in Chile and Peru, and over 50% of their exports (Bastida, 2018). Many governments in LAC see the extractive sector as an important part of their development strategies, and have introduced financial and other incentives to attract foreign direct investment (FDI) – as in the case of the offshore oil and gas sectors of Brazil and Mexico. Artisanal and small-scale mining (ASM) has played a fundamental role in terms of livelihoods, economic development and employment, with more than 2 million people working in ASM in the region (World Bank, 2019a). Major improvements in environmental and social regulations have also followed, aimed at fostering the role of the extractive sector as a catalyst for sustainable development. Most countries in the region adopted environmental regulations in the early 1990s, and have prioritised enhancing environmental governance in the extractive sector since then. Their ratification of Convention No. 169 of the International Labour Organisation (ILO) on Indigenous and Tribal Peoples (ILO Convention No. 169) and its implementation have been an important step towards recognising the rights of Indigenous peoples. To varying degrees, countries in the region have also implemented measures to improve transparency in tax revenue and distribution – for example, most of them have joined or are currently planning to join the Extractive Industries Transparency Initiatives (EITI).

However, extractive activities in the region continue to raise several environmental and social challenges. Oil, gas and mining projects in LAC have led to instances of water, air and soil pollution, deforestation and loss of biodiversity. These environmental impacts have posed risks to the livelihoods and health of communities, and in particular Afro-descendants¹ and Indigenous peoples living in rural and remote areas. In some instances they have also given rise to conflicts, which have been a source of risk for investment in extractive industries in the region. Informal and illegal mining, often linked to severe environmental destruction, violence and conflict, human rights abuses and organised crime, also remains an important challenge throughout LAC, particularly in the Amazon. Moreover, monitoring organisations note a worrying trend of increasing violence against environmental and human rights defenders working to prevent adverse impacts on people and the environment, including as a result of activities within the sector (Global Witness, 2020). Governments' efforts to tackle this trend have resulted, among others, in the regional Escazú Agreement, which has recently come into force (see Chapter 3).

Reflecting trends worldwide, in recent years there has been growing interest among the public, civil society, industry, governments and international organisations in addressing these challenges and promoting responsible business conduct (RBC) in the extractive sector in LAC. Promotion of the OECD Guidelines for Multinational Enterprises (MNE Guidelines) is accompanied by the related OECD Due Diligence Guidance for Responsible Supply Chains to help businesses and governments implement them. Civil society has played – and continues to play – a strong role in monitoring and pushing businesses and governments to address RBC issues in the region through a variety of judicial and non-judicial grievance mechanisms, such as the OECD National Contact Points (NCPs) for RBC, and the Permanent Peoples Tribunals, as well as seeking remedy at the Inter-American and the United Nations Human Rights Systems. The pressure on companies to respect human rights has also mounted, with an increasing number of guidance and training programmes developed around the dissemination and implementation of the UN Guiding Principles on Business and Human Rights (UNGPs), including several human rights mechanisms and bodies, such as the Working Group on Business and Human Rights (OHCHR, 2021).

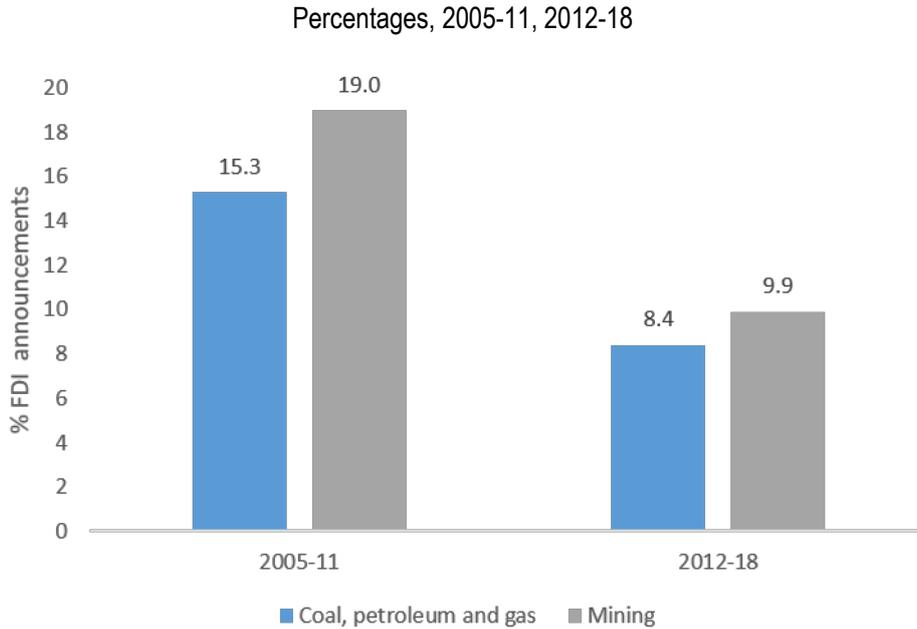
Areas for improvement remain however, particularly in relation to human rights, environmental protection and anti-corruption. Companies' commitment and action to address these challenges are crucial, but they are not enough. Collaboration and dialogue with governments, civil society, local communities and other stakeholders are also needed to advance RBC in the extractive sector. The findings of this regional report are intended to inform public policy related to RBC, the implementation of RBC practices by business and the work of multilateral institutions in this area. The findings are also intended to help target OECD engagement and capacity-building activities under the Responsible Business Conduct in Latin America and the Caribbean (RBCLAC) project.

1.2 Economic relevance of the extractive sector

Natural resources have historically been a driving force for the economic and social development of LAC.² First, during the colonial period the region was a key source of natural resources and raw materials that were fundamental in driving the industrialisation processes and economic growth of the first industrial powers. Then natural resources continued to play a major role during the independence and post-independence periods in LAC countries, which kept relying on export-driven economic growth models as a path towards socio-economic development. This was accompanied by further development of extractive sectors, in particular oil and gas (Peters, 2019). In many cases the exporting of crude oil and unprocessed minerals formed the basis of the newly independent countries. This trend continued well into the 1980s and 1990s, with countries in the region pursuing a policy that included fostering large public and private investments in the sector. Although the decline of commodity prices meant that exports of raw materials actually decreased during this period (Peters, 2019), at the same time structural reforms laid the basis for the “mining boom” of the early to mid-2000s (Bastida, 2018).

From the 2000s, the combination of high commodity prices (until the global financial and economic crisis) and institutional and legal frameworks that were more open to trade and investment significantly increased companies' interest and confidence in large parts of the region, triggering a sustained growth in investment in the mining and energy sectors, with only a few notable exceptions, such as Venezuela. From 2005-11, FDI announcements in the region's coal, petroleum and gas sector accounted for 15.3% of total FDI announcements, and those in the mining sector made up an additional 19% in the same period.³ In the 2012-18 “post-boom” period, when commodity prices decreased, FDI announcements in these sectors were lower but still significant (see Figure 1.1) (ECLAC, 2019b). In 2018 the three companies with the largest investment announcements for the region were Grupo México, Petronas and KGHM, all operating in the extractive sector, and all of which announced projects worth more than USD 2 billion (ECLAC, 2019b).

Figure 1.1. FDI announcements in select LAC region sectors

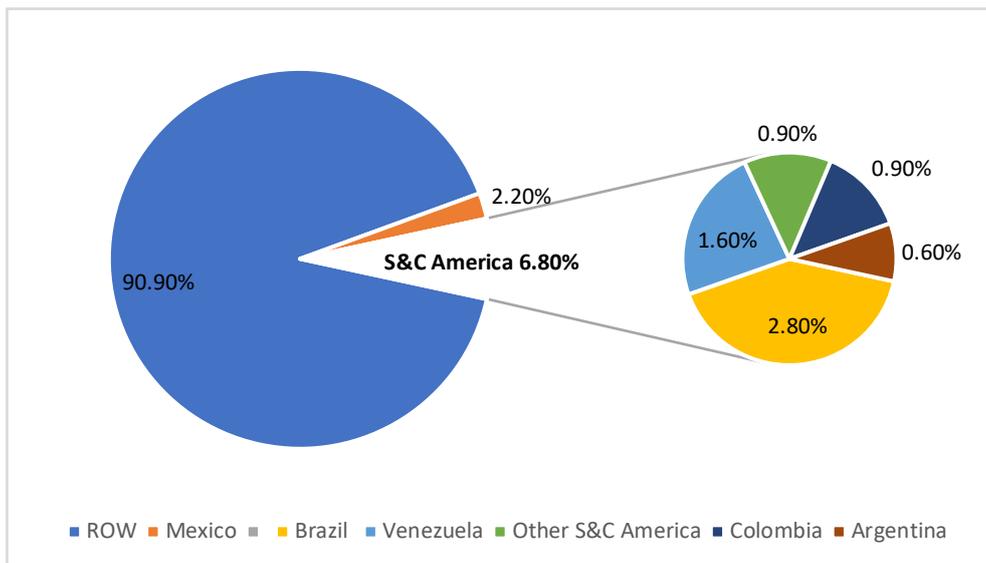


Note: Units measured as percentages of the cumulative amount of FDI announcements

Source: ECLAC (2019), *La Inversión Extranjera Directa en América Latina y el Caribe 2019*, <https://www.cepal.org/es/publicaciones/44697-la-inversion-extranjera-directa-america-latina-caribe-2019>

A closer look at the oil and gas sector shows the following developments over these past years. At the end of 2018, the South and Central America share of global oil production amounted to 6.9%; the majority could be attributed to Brazil, followed by Venezuela, Colombia and Argentina (see Figure 1.2). Meanwhile, Mexico accounted for 2.2% of global production (see Figure 1.2)⁴ In terms of natural gas, regional production levels were similar to reserve levels at 4.6% in 2018, excluding Mexico, which produced 1% of the world’s total.

Figure 1.2. Share of global oil production in thousands of barrels per day, 2018

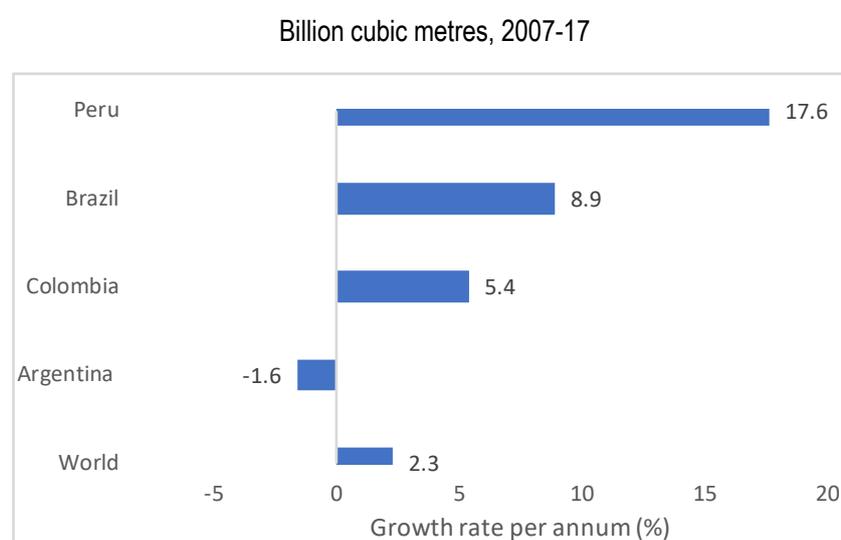


Note: ROW = Rest of world; S&C America = South and Central America.

Source: BP (2019), *Statistical Review of World Energy*, 68th edition, www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/energy-economics/statistical-review/bp-stats-review-2019-full-report.pdf.

However, production growth rates are what stand out in the oil and gas sector. For example, in the case of gas, during 2007-17, Peru, Brazil and Colombia saw growth rates that far exceeded the global rate of 2.3%. Argentina saw a decline but recovered in 2018 (see Figure 1.3), with a sectoral growth rate of 6.1% (BP, 2019). The oil and gas sector in Mexico, on the other hand, has witnessed a decline, which can largely be attributed to the country's limited production capacity and the challenge of increasing that capacity in relation to the option of importing natural gas for a relatively cheap price from the United States (Technology Offshore, 2019).

Figure 1.3. Growth rates per annum in natural gas production



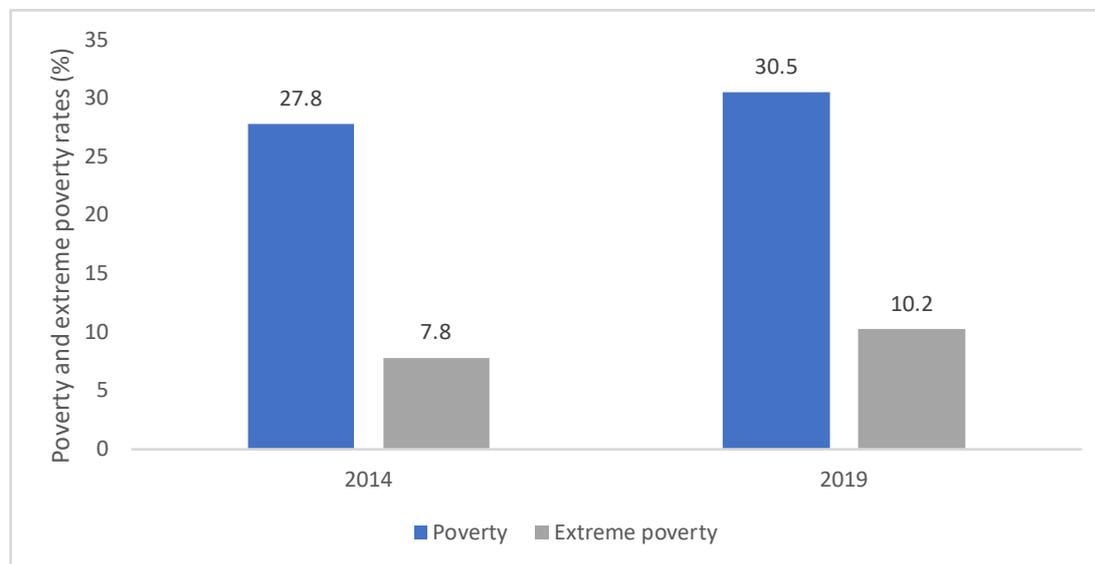
Source: BP (2019), *Statistical Review of World Energy*, 68th edition, www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/energy-economics/statistical-review/bp-stats-review-2019-full-report.pdf.

The economic importance of the extractive sector in the region is also reflected in export statistics. The exports of primary resources (including agrarian resources) accounted for 37% of all exports in the 2015-17 period, against a world average of 9% (ECLAC, 2018a). In some LAC countries, this number exceeded 50% (World Bank Group, 2018b). In 2017, exports of minerals and metals made up 17% of all LAC exports. Brazil, Chile, Mexico and Peru accounted for 85% of all mineral and metal exports from the region (ECLAC, 2018a). Meanwhile, South and Central American countries were responsible for 5.2% of global oil exports in 2018, while Mexico accounted for another 1.9% of the world's total. In terms of natural gas, South and Central America account for approximately 3.1% of the world's total exports (BP, 2019).⁵

Social and economic development in LAC are closely tied to trends in the extractive sector. The growth of the sector between 2002 and 2014 went hand in hand with social and economic advancements. Per capita GDP in the region grew from USD 3 753 in 2002 to USD 8 951 in 2019. However, the economic weight of the extractive sector also makes the region vulnerable to commodity price shocks. The significant fall of global commodity prices after 2014 contributed to the historic low of average economic growth of 0.4% over the 2014-19 period (ECLAC, 2019c). In turn, this led to higher unemployment rates (ILO, 2019) and a decrease in the wage share in GDP throughout the region (ECLAC, 2018b). Inequality, as measured by the Gini coefficient, decreased from 2014 to 2017 (latest available data), but at a much slower rate than in

the years prior to 2014 (ECLAC, 2018b). Even more concerning is the increase in poverty in recent years, from 27.8% in 2014 to 30.5% in 2019 (see Figure 1.4) (ECLAC, 2021).

Figure 1.4. Poverty and extreme poverty rates in the LAC region, 2014 and 2019



Note: The estimation of poverty is based on per capita income. A person is classified as “poor” when their income is below the poverty line, which measures the level of income that enables each household to meet the basic needs of all its members, including food and goods to meet their nutritional needs. The value of the basic food basket represents the extreme poverty line and to measure poverty.

Source: ECLAC (2020), https://repositorio.cepal.org/bitstream/handle/11362/46687/8/s2100150_es.pdf

The COVID-19 pandemic poses additional challenges to the LAC region’s economic and social development. In its January 2021 *World Economic Outlook Update*, the International Monetary Fund estimated a 7.4% economic contraction for the region (IMF, 2021). Meanwhile, poverty rose to 33.7% in 2020 (ECLAC, 2021). Commodity prices have decreased significantly since the beginning of the pandemic, including a 50% drop in crude oil prices, a 17% drop in coal prices, a 23% drop in platinum prices and a 15% drop in prices for copper and zinc in April 2020. Although prices have recovered ground during 2021, the only mineral price that has steadily increased is gold, as it is considered by investors a safe asset in times of uncertainty (World Bank Group, 2020). Parallel to the commodity price drop, exports across the region also decreased (World Bank Group, 2020).

1.3 Rationale for responsible business conduct and due diligence

Trade and investment in the extractive sector, if managed in a responsible way, can have positive impacts in terms of generating income, growth and prosperity, sustaining livelihoods, and fostering local development. However, companies may also be at risk of contributing to or being associated with significant adverse impacts through their producing, trading or procurement practices, such as environmental degradation, human rights abuses and corruption. As they often operate in areas characterised by socio-economic tensions and insufficient provision, management, control, regulation and accountability of security services, there are also risks associated with the way these services are contracted or provided around their operations. While governments have the primary responsibility of preventing conflicts, protecting their people and regulating for environmental protection, companies are also expected to respect human rights and the natural environment, and avoid the risks of contributing to, or being associated with, significant adverse impacts.

RBC sets out the expectation that all businesses – regardless of their legal status, size, ownership structure or sector – avoid and address the negative consequences of their operations, while contributing to sustainable development; examples of the latter include ensuring decent working conditions, promoting good community relationships, and supporting biodiversity. These expectations apply to the company's own operations and core business activities, but also to those throughout their supply chains.

A key element of RBC is risk-based due diligence – a process that businesses should carry out to identify, prevent and mitigate their actual and potential adverse impacts, but also to account for how those impacts are addressed. This process should be an integral part of business decision-making and risk management systems. It concerns adverse impacts caused or contributed to by enterprises, as well as those that are directly linked to their operations, products or services through a business relationship.

Expectations for RBC in the extractive sector are on the rise. Companies have been exposed to shareholder or investor requirements, and sometimes lawsuits, for the adverse impacts of their own operations and supply chains. Civil society organisations (CSOs), public benchmarking and consumer advocacy campaigns have demanded greater accountability for company behaviour. Key importing, producing and processing jurisdictions have introduced, or are considering introducing, legislation around RBC. In the EU, for instance, the European Commission announced in May 2020 the development of legislation on mandatory human rights and environmental due diligence for enterprises for 2021 (EC, 2020).

Companies also have a strong business incentive to act responsibly, aside from the expectations placed on them and the baseline standards they are required to meet. Responsible businesses are more likely to obtain and retain the social licence to operate, which is a critical component of long-term business strategy. Responsible business practices are also an efficient way to diversify portfolios, increase productivity and protect existing value through risk and reputation management.

1.4 OECD standards for responsible business conduct in the minerals sector

The OECD has pioneered efforts in RBC by developing a number of standards, guidance and tools. Four are particularly relevant for the extractive sector:

- the OECD Guidelines for Multinational Enterprises
- the OECD Due Diligence Guidance for Responsible Business Conduct
- the OECD Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas
- the OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector.

1.4.1 *The OECD Guidelines for Multinational Enterprises*

The OECD MNE Guidelines are the most comprehensive international standard on RBC. The Guidelines reflect what governments expect from businesses in terms of responsible behaviour. They cover all key areas, including human rights, labour rights, environment, bribery, consumer interests, information disclosure, science and technology, competition and taxation. The Guidelines were adopted in 1976 and last updated in 2011 to include a chapter on human rights and align with the UN Guiding Principles (UNGPs) on Business and Human Rights. To date, 50 countries have adhered to the Guidelines, which also include a unique non-judicial grievance mechanism: the National Contact Points (NCPs) for Responsible Business Conduct. NCPs are agencies established by governments with a twofold mandate: to promote the OECD MNE Guidelines and related due diligence guidance, and to handle cases (referred

to as “specific instances”) as a non-judicial grievance mechanism (see Box 1.1). NCPs exist in six of the seven countries targeted in this report: Argentina, Brazil, Chile, Colombia, Mexico and Peru.

Box 1.1. Specific instances in the extractive sector in LAC

NCPs provide a platform for discussion and assistance to stakeholders to help them find a resolution for issues arising from alleged non-observance of the Guidelines. NCPs must do so in a manner that is impartial, predictable, equitable and compatible with the principles and standards of the Guidelines. NCPs focus on problem solving – they offer good offices and facilitate access to consensual and non-adversarial procedures (e.g. conciliation or mediation). Complaints handled by NCPs (known as “specific instances”) are not legal cases and NCPs are not judicial bodies.

Between 2005 and 2021, a total of 26 specific instances on issues related to the extractive sectors in the LAC region have been presented to LAC and non-LAC NCPs by individuals, trade unions and non-governmental organisations. Most of the specific instances were related to the environment, human rights and disclosure chapters of the Guidelines, and covered five of the seven countries included in this report. A little under a third of the specific instances have now been concluded (17), a little under a quarter have not been accepted (6), and for the rest the process is still ongoing (3).

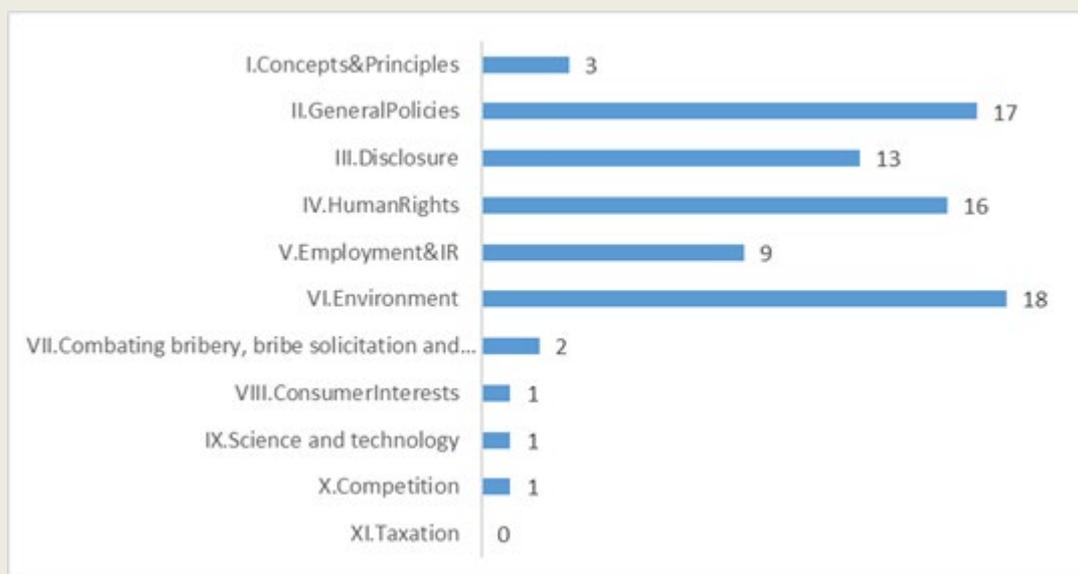


Figure: Number of specific instances presented per MNE Guidelines chapter

Note: one specific instance can be linked to more than one MNE Guidelines chapter.

Source: OECD database of specific instances, <http://mneguidelines.oecd.org/database/>.

1.4.2 The OECD Due Diligence Guidance for Responsible Business Conduct

This Guidance provides practical recommendation to enterprises for their implementation of the OECD MNE Guidelines, by offering plain language explanations of its due diligence recommendations and associated provisions (OECD, 2018). Like the Guidelines, it covers all sectors of the economy, addressing a range of risks in business operations and supply chains that include labour, the environment and integrity. The Guidance includes additional explanations, tips and illustrative examples of due diligence that may be of use to companies, including those in extraction, trade and manufacturing of minerals.

1.4.3 OECD Guidance relevant for the extractive sector

In addition, the OECD has developed sectoral guidance that helps enterprises identify and address adverse impacts in particular sectors. One example is the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (Minerals Guidance), which clarifies how companies can identify and better manage risks throughout the entire mineral supply chain –from mining, transport, local exporting and mineral processing to the manufacturing and brand-name companies that use these minerals in their products. The Minerals Guidance is aimed at helping companies respect human rights and avoid contributing to conflict, corruption, money laundering or tax evasion. The objective of the Minerals Guidance is to ultimately cultivate transparent mineral supply chains and promote responsible private sector engagement, especially in areas stricken with conflict or that pose high risk (OECD, 2016b).

Additional initiatives have been adopted in the extractive sector to promote responsible business conduct, including the Voluntary Principles on Security and Human Rights Initiative which promote a set of high-level recommendations that seek to manage the associated risks. Numerous tools and guidance documents have also subsequently been developed to explain expectations and provide clarity on responsible security linked to extractive operations (DCAF and OECD, 2020).

The OECD Due Diligence Guidance for RBC and the Minerals Guidance differ slightly in scope in terms of both the risks and sectors covered, but are complementary. Companies in the extractive sector are encouraged to first refer to the Minerals Guidance for detailed recommendations on how to identify and address adverse impacts in the extraction and trade of raw materials. Companies can then complement the process using the Due Diligence Guidance for RBC, which covers a broader set of risks (specifically those associated with the downstream manufacturing process) and offers more information and best practice on a number of due diligence issues (e.g. risk prioritisation, stakeholder engagement and remediation).

The other related major sectoral guidance offered is the OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector (Stakeholder Engagement Guidance), which aims to address the challenges that may emerge when practitioners in the mining, oil and gas industries engage with stakeholders. The Guidance provides a practical framework for identifying and managing risks to ensure companies play a role in avoiding and addressing adverse impacts as defined in the OECD Guidelines. The Guidance also includes an assessment framework for industry to evaluate their stakeholder engagement performance as well as targeted guidance for specific stakeholder groups, such as Indigenous peoples, women, workers, and artisanal and small-scale miners.

1.5 Global uptake of OECD due diligence instruments

In recent years, a combination of regulatory, political and market pressure has driven an uptake of responsible business practices in mineral supply chains via implementation of the different OECD due diligence guidance instruments.

The Minerals Guidance has been enshrined in national and regional regulatory frameworks across the globe. Notably, the European Union (EU) in 2017 passed Regulation 2017/821 promoting an integrated approach to due diligence in the supply chain of minerals from conflict-affected and high-risk areas. The EU regulation is based on the OECD Guidance and refers explicitly to its 5-step framework. In 2012 the US Securities and Exchange Commission's (SEC) Final Rule on Section 1502 of the Dodd-Frank Act recognised the OECD Minerals Guidance as an international framework available to companies sourcing from the African Great Lakes region. This helped those companies to perform due diligence for responsible mineral sourcing and hence meet their reporting obligations under the Act.

Political support for the OECD Minerals Guidance, the Stakeholder Engagement Guidance and the Due Diligence Guidance for RBC has come from the countries that adhered to the legal instruments underpinning them. By adhering to these OECD Council Recommendations,⁶ governments commit to promoting the use of these instruments by enterprises operating in and from their territories. Promoting the various due diligence guidance instruments is a core function of NCPs. The following countries covered in this report have adhered to these OECD Council Recommendations: Argentina, Brazil, Chile, Colombia, Mexico and Peru.⁷ (Box 1.2 provides an example of co-operation between an LAC country – Colombia – and the OECD on the implementation of instruments).

Implementing the Minerals Guidance has become a requirement imposed by regulators or industry bodies for doing business in various mineral supply chains around the globe. Industry initiatives estimate that approximately 90% of all refined gold, 95% of smelted tantalum, and 75-85% of smelted tin produced every year are covered by industry audit programmes designed to implement the Guidance, although some of these programmes have limited geographic scope. The China Chamber of Commerce of Metals Minerals & Chemicals Importers & Exporters adopted the Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains, which are based on the OECD Minerals Guidance. Major global exchanges have introduced responsible sourcing requirements based on the OECD Minerals Guidance. In gold supply chains, for example, the London Bullion Market Association requires all refiners to be annually audited on their implementation of the Minerals Guidance in order to be on its Good Delivery List, which is recognised globally as the benchmark standard for gold bullion bars (London Bullion Market Association, n.d.). In 2019 the London Metal Exchange introduced responsible sourcing requirements based on the Minerals Guidance for all brands listed to deliver on the exchange; this covers copper, lead, nickel and zinc producers and traders, among others (London Metal Exchange, 2019). The combination of regulatory requirements by industry and importing jurisdictions, such as EU Regulation 2017/821, are particularly relevant for companies involved in mineral production and trade in the LAC region.

Implementing responsible business conduct standards, such as the OECD Guidelines, the Minerals Guidance, the Stakeholder Engagement Guidance and the Due Diligence Guidance for RBC, can also help companies operationalise the Sustainable Development Goals (SDGs) and ensure their most significant impacts are prioritised. The enhanced positive impact of due diligence is, for example, linked to reducing opportunities for armed groups to benefit from mineral production and trade (SDG 16), as well as to improving the livelihoods of artisanal miners (SDG 8).

Box 1.2. The OECD and Colombia partnership on responsible mineral supply chains

Colombia and the OECD have been working together on implementing the OECD Minerals Guidance since 2012, when Colombia adhered to the pertinent OECD Council Recommendation. Between 2015 and 2017, the OECD Secretariat commissioned a series of baseline assessments of the gold supply chain in Colombia to analyse the risks associated with gold mining and trade, as well as the potential for building responsible mineral supply chains. During the 12th Forum on Responsible Mineral Supply Chains in April 2018, the Colombian Government and the OECD renewed their commitment to work together to implement the OECD Minerals Guidance in Colombian gold supply chains, focusing on capacity building, policy advice on strategic regulatory initiatives, and law enforcement co-operation.

In 2019 the OECD carried out a capacity-building programme for implementing the Minerals Guidance in Colombia in collaboration with two local partners, a civil society organisation and a research centre. The programme included 25 workshops for a total of over 800 participants, from government officials (ministry of mines, police, armed forces, customs, ombudsman) and members of the private sector (artisanal and small-scale miners, large-scale miners, traders, banks) to civil society organisations. As part of the project, the implementing team developed a booklet to facilitate implementation of the Minerals Guidance in the Colombian context, through consultation with representatives from government, civil society and private sector organisations (Alliance for Responsible Mining, 2019).

The OECD also provided technical advice on specific elements of primary and secondary regulatory initiatives (e.g. reform of the Single Registry for Mining Entities, the National Development Plan 2018-22, and the law against the illegal mining and trade of minerals, which was presented to the Colombian Congress in July 2020).

Colombian law enforcement officials regularly participate in meetings co-hosted by the OECD, the World Customs Organisations and the United Nations Office on Drugs and Crime. These focus on enhancing international co-operation and exchange of information among law enforcement agencies working on crimes related to the production and trade of mineral resources.

2 Responsible Business Conduct issues

Given the extractive sector's economic importance and its ability to drive development, many of the LAC governments see it as a key component of their post-pandemic socio-economic recovery and resilience plans. However, the sector also continues to pose a number of social and environmental challenges, which are often linked to, or are part of, larger economic, social and political dynamics and conflicts. The following sections offer an overview of the key RBC issues linked to business conduct in the extractive sector in the region.

2.1 Social conflicts and human rights

Instances of social conflict have marked the history of extractive activity in LAC. The sector has been intertwined with and reflects many of the social challenges and struggles faced by governments and societies in the region. For the past few decades, localised social conflicts around mining and oil and gas projects have been largely motivated by their actual and perceived social and environmental impacts, and the distribution of the benefits derived from them.

Companies are facing increasing challenges in managing community relations around extractive projects. In many instances they are reportedly not dedicating sufficient time or resources to stakeholder engagement, which has exacerbated conflict. As of July 2020, the Environmental Justice Atlas recorded 310 conflicts linked to the extraction of mineral ores and coal, representing 35% of all environmental conflicts in the region. The number of conflict cases linked to oil and gas exploration or extraction is lower (84 cases, or 9% of total cases). Most of conflicts concerning the extraction of mineral ores occur along the Andes Mountains and are linked to water issues (Environmental Justice Atlas, 2020; Temper et al., 2015).⁸ These numbers are confirmed in the countries that have national-level databases, including for example Argentina (Wagner and Wagner, 2020); Brazil (Comissão Pastoral da Terra, 2020); Mexico (Zaremborg et al., 2019); and Peru (Defensoría del Pueblo, 2020).

The history of social unrest in mining has affected the political and public discourse around the extractive sector, creating significant polarisation on the issue and the associated risks versus opportunities for RBC. The degree of opposition to extractive activities can vary significantly among regions and projects. Furthermore, the broader socio-political context and history of marginalisation and conflict in each country are important in shaping conflict risks for companies operating in the extractive sector. Most conflicts over mining take the form of protests and non-violent action, including the blocking of roads. For more than a decade, for example, a strong protest movement in Catamarca province in Argentina has fought against the development of the Agua Rica copper and gold mine through legal challenges and direct action, due to fears over environmental pollution and health impacts (Serafini, 2018).

Sometimes, however, these conflicts escalate into destruction of property or violence against protesters, company staff or state security forces. Apart from their high social cost and contribution to polarisation, these tensions can lead to significant disruptions in mining operations and represent a cost for business. For example, in 2019 a state of emergency was declared and military and police were mobilised in response to protests against two major copper mining projects in Peru, Las Bambas in the Apurímac region and Tía María in the Arequipa region (DuPée, 2019^[1]; Berger, 2019^[2]; Aquino, 2019^[3]).

Despite the potential for conflict, in recent years governments, companies and civil society have stepped up efforts to overcome polarisation and find common ground for the development of a responsible extractive sector that contributes to national and local development and does not exacerbate social and environmental problems. This is shown by the increasing number of multi-stakeholder initiatives and roundtables, such as the Dialogue Group on Mining (Grupo de Diálogo sobre Minería, GDIAM) and the Mining and Energy Committee (Comité Minero Energético) in Colombia, the Centre for Convergence and Good Mining and Energy Practices in Peru (Centro de Convergencia y Buenas Prácticas Minero Energéticas Rimay) and the Latin American Group on the Extractive Sector (Grupo Latinoamericano sobre el Sector Extractivo, GLASE), which operates at the regional level (GDIAM, 2020; Inter-American Development Bank, 2020; BNamericas, 2018; Tejerina, 2019).

The degree of government presence at local or sub-national levels influences broader conflict dynamics. In areas affected by conflict and fragility, the presence of non-state armed groups such as guerrilla or criminal groups can increase the risks for extractive companies and operations (see challenges related to informal and illegal mining below). For example, in Colombia, large-scale mining operations have been the target of guerrilla groups. In this type of contexts, companies often recur to private security services to protect their employees and infrastructure (Mendes, 2015; Asmann, 2018). However, in some cases, companies have also resorted to illegal responses, such as seeking the financial and political support of extreme right-wing paramilitary and guerrilla groups (OHCHR, 2020; OECD, 2016a; OECD, 2017a; OECD, 2017b; OECD 2017c; OECD 2017d; Human Rights Council, 2019). These have been linked to forced displacements and the killing of political opponents and human rights defenders (Business & Human Rights Resource Centre, 2018).

Attacks committed against human rights defenders, some associated with extractive activities, are reportedly on the rise across LAC. The NGO Global Witness ranked LAC as the region most affected by violence against human rights and environmental defenders since 2012 (Global Witness, 2020). Colombia, Brazil and Mexico were among the four countries with the highest number of documented killings worldwide across sectors (Global Witness, 2020). Globally, most killings are linked to the mining sector; more than half of these took place in Latin America (Global Witness, 2020). Other forms of aggression have included death threats, judicial harassment, intimidation, beatings and other forms of violence (Business and Human Rights Resource Centre, 2021). These attacks largely targeted human rights defenders who had raised concerns both about industrial large-scale extractive projects and about illegal mining operations; many of them belonged to Indigenous communities (Global Witness, 2020).

The adoption of the Escazú Agreement in 2018 has been a major step towards protection of environmental and human rights defenders in the region.⁹ The Agreement, the first-ever regional environmental agreement in LAC, was signed by all countries that were part of this assessment with the exception of Chile, and entered into force in April 2021 (Observatory on Principle 10 in Latin America and the Caribbean, 2020). Among its main provisions, it recognises the right of every person to live in a healthy environment and the obligation to ensure that the rights defined in the Agreement are freely exercised.

At the country level, national human rights institutions – such as public defenders, ombudsman offices and human rights commissions, councils or institutes – have proved an important mechanism for addressing human rights concerns (FUNDAR, 2012). Starting in the 1990s in many LAC countries, they have served as mediators, facilitators or conciliators in environmental and social conflicts on a regional or local basis (Quesada, Steiner and Gamboa, 2005; ILO Defensor del Pueblo, 2017; FUNDAR, 2012). However, concerns remain that warnings issued by these bodies often go unheeded by the authorities and institutions responsible for taking action (ILO Defensor del Pueblo, 2017).

Many conflicts are reported to involve Afro-descendants and Indigenous Peoples, who are often disproportionately affected by extractive activities.¹⁰ While most countries across the region recognise their rights to and usage of land, Afro-descendant and Indigenous communities still face higher levels of poverty and inequality, often reflecting a long history of social, economic and political exclusion and

marginalisation. At the same time, mining activities often take place in areas that are their traditional home, thereby giving rise to challenges for businesses around land tenure, collective rights, and expropriation. The environmental impacts of mining projects are also cause for concern for Afro-descendant and Indigenous communities, that largely rely on natural resources such as land, water and forests for their livelihoods. This was the case in all countries considered in this report: from those with a comparatively small mining sector such as Panama, where exploitation of the world's largest copper deposits (Cerro Colorado) has been a source of conflict with local Indigenous communities since the 1970s (Velásquez, 2012), to countries with a large mining sector such as Brazil (Ferreira da Rocha et al., 2018; Plummer, 2015; Borges and Branford, 2020), Chile (Budds, 2011) and Peru (Caparo, 2019), where conflicts with Afro-descendant and Indigenous communities are commonly reported.

Afro-descendant and Indigenous peoples' rights, including their rights to land, participation, consultation and free, prior and informed consent (FPIC), have often been reported to be key drivers of social conflicts in the region. Afro-descendant and Indigenous communities often feel that their rights are not being respected and their voices not being heard as part of consultation and planning processes. Research suggests that these issues are problematic for mining, oil and gas companies in the region, and require special attention to ensure positive outcomes for business and communities. In response, some companies have been investing more in consultation processes and engagement with local communities (Damote, 2012a, 2012b). For example, Chilean company SQM has started working on a new environmental compliance plan with major stakeholders, including Indigenous communities (Ouerghi, 2020), following their concerns over its use of water for its lithium extraction operations; that led to an environmental court ruling against the company (Reuters, 2020; Sanderson, 2020). At the same time, governments have enacted regulations to strengthen the rights of Indigenous communities, including ratification of ILO Convention No. 169.¹¹

Recognition of the collective rights of Afro-descendant communities, on the other hand, remains a more contested issue in the region; it has been granted to different extents in different countries (ELLA, 2010; World Bank Group, 2018a). Moreover, where these protection mechanisms exist, challenges remain with regard to their implementation (Due Process of Law Foundation, 2015). In some countries for instance, civil society organisations have noted irregularities in the consultation processes and denounced high levels of non-enforcement (Zarembeg and Torres Wong, 2018). This essentially means that Afro-descendant and Indigenous communities continue to feel excluded from decision making over the use of their territories and resources. It is also reported that some government efforts to attract investment have threatened the effective implementation of collective rights, e.g. in the Amazon region in Brazil (Phillips, 2019; Branford and Torres, 2019; Villén-Pérez et al., 2020).

Indigenous peoples are increasingly using legal means to claim collective rights. Improvements in national legislation and the increasing capacity of Indigenous communities and other actors that support them have opened up avenues to peacefully and legally resolve conflictive issues. Although not always successful, legal action has generally proved an important means for Indigenous groups to put on record their grievances and attain their rights (Damonte, 2012a; Damonte, 2012b; Damonte, 2012c; RMF, 2020a). In Peru for example, following enactment of the Prior Consultation Law in 2011, Indigenous communities have taken legal action over consultation rights (Cervantes, 2019). In Chile there have been several court decisions imposing penalties on extractive projects because of their failure to properly consult with Indigenous communities (Bustamente, 2015; OECD, 2016c; Caripis, 2017). Indigenous communities have turned to courts over environmental concerns linked to coal and nickel mining in Colombia (Morelo, 2019; El Tiempo, 2018). Afro-descendant communities are also increasingly turning to legal means to oppose extractive projects in their territories, but their efforts are often less visible due to other barriers they face, including self-identification and lack of recognition of their collective rights in domestic law (see e.g. Columbia Human Rights Law Review, 2020).

The current COVID-19 pandemic is negatively impacting many LAC economies and could exacerbate some of these conflict drivers and dynamics. Poverty and inequality are major structural

conflict factors that underlie many conflicts around extractive activities. If they increase, risks of conflict could also increase for business operating in the sector. Moreover, there have been reports that the quarantine measures imposed to restrict the spread of the COVID-19 pandemic have led to an increase in the killings of environmental defenders (in comparison to both the pre-pandemic period and the previous year). Those persons are increasingly isolated in their homes and communities, and therefore exposed to intimidation and reprisals from armed groups (Castro et al., 2020; Amnesty International, 2020).

2.2 Environmental impacts and risks

Extractive activities are often associated with severe environmental impacts and risks. These often go hand in hand with socio-economic challenges, for example when they affect natural resources that local communities rely on for their livelihoods. Research suggests that the following environmental issues are particularly challenging for mining, oil and gas companies operating in the seven countries analysed for this report.

The impacts of mining extractive activities on water resources are a concern across the region.

Extractive megaprojects, because of their extensive usage of land and water sources, may have significant impacts on the availability and quality of water and, in general, on the way the population accesses water and sanitation services (UN General Assembly, 2019). In LAC, mining especially often takes place in areas characterised by water scarcity and water stress – for example in parts of Chile, Mexico and Peru – or in places that have important water sources, such as glaciers in the Andes, or the Amazon (Morgan et al., 2020). This can be a source of conflict, especially with local communities. For example, in the province of Jujuy in Argentina, communities' concerns that lithium extraction could decrease water availability have led to several instances of social conflict (Marchegiani, Höglund Hellgren and Gómez, 2019).

The use of water in mining and minerals production can also have negative environmental and social impacts and lead to conflicts over water pollution. A case in point is the Cajamarca region in Peru, where the negative effects of mining activities on water supplies and the resulting distrust towards mining companies have been at the core of longstanding conflicts between communities and mining companies (Monge, 2016; OCMAL, 2019; Red Muqui, 2018; Paredes Peñafiel, 2019). The impacts of mining on livelihoods and health have also been highlighted as a source of concern in some instances. One example is the spill of almost 40 000 cubic metres of chemicals from Grupo Mexico's copper mine in the state of Sonora, which led the authorities to shut off the municipal water supply to 20 000 people in seven municipalities (BBC, 2014; Human Rights Council, 2017).

Biodiversity and deforestation remain important challenges. Many countries in LAC are home to important biodiverse areas, and mining is increasingly moving into more remote and biologically sensitive areas. Most of the countries studied faced the challenge of how to balance nature conservation and mining. Country-specific challenges, however, differed according to the resources mined, the ecosystems affected, and their protection status. In Argentina and Chile, for instance, the impact of mining on mountain landscapes – specifically glacierised and periglacial areas – has been a hotly debated issue (Stutt, 2019; Sherwood, 2018; OECD, 2016c). In Colombia, concerns over the negative impacts of extractive activities have triggered debates on the protection and demarcation of *páramo*¹² ecosystems (Hill, 2016; Semana Sostenible, 2018). In Mexico and Panama, hydrocarbon infrastructure development is raising concerns over ecosystem degradation (Cruz, 2019; Lasso, 2019).

A particularly worrying trend is that after years of decline, deforestation in the Amazon basin is reported to be on the rise again. Since the early 2010s, deforestation rates in the Amazon basin have soared, with almost 30 million hectares of tree cover and over 17 million hectares of primary forest lost between 2010 and 2019 (Butler, 2020a). Figures for mining-related deforestation vary across the Amazon countries. In Brazil for example, one study found that deforestation within mining leases, i.e. deforestation *directly* caused by mining activities, was three times the size of the average Amazon clearing rate (Sonter

et al., 2017).¹³ In an effort to account for other spatial determinants of deforestation, however, the same study found that mining activities *indirectly* caused twelve times as much deforestation off-lease, meaning that *indirect deforestation off-lease* accounted for a total of 9% of all deforestation in the Brazilian Amazon rainforest between 2005 and 2015 (Sonter et al., 2017).

Illegal mining is among the key drivers of deforestation and forest degradation (Butler, 2020b). In the Madre de Dios region in Peru, illegal mining has destroyed nearly 980 km² of rainforest since 1985; more than two-thirds of this deforestation has occurred between 2009 and 2017, according to research from the Centre for Amazon Scientific Innovation (Caballero, 2018). At the same time, research shows that forest recovery on previously mined areas in the Amazon has been very limited, and is in general hard to achieve (Kalamandeen et al., 2020).

Tailing dams and their management are a critical issue in LAC. Six of the twelve tailings incidents recorded by the World Mine Tailings Failures during 2018-19 were caused by extractive projects in LAC countries, including Brazil, Chile,¹⁴ Mexico and Peru (Responsible Mining Foundation, 2020c). Those incidents vary in magnitude, with the Brumadinho disaster¹⁵ giving the issue of tailings fresh importance and influencing the public's perception of the mining industry in Brazil and around the world.

Companies in the region are innovating to address concerns over the safety of tailings dams. For example, the Antofagasta Group, which operates the Los Pelambres and Zaldivar mining operations in Chile, has introduced an online tailings monitoring system at its El Mauro dam, allowing for real-time control of the dam's physical stability and integrity. This system is intended to be replicated for other dams worldwide (Antofagasta PLC, 2019).

Governments are also taking steps to improve the safety of tailings dams. Brazil introduced new regulation to increase the safety of tailings storage facilities in September 2020 (Sion, 2019; Freire, 2020; Reuters, 2019), and Chile has created a national inventory that provides public information about the location and basic safety of tailings storage facilities (Responsible Mining Foundation, 2020c; Fundación Chile, 2020). However, concerns around tailings dams go beyond their stability; experts warn of the risks posed by the leakage of chemical products used in processing. In Chile for example, the OECD *Environmental Performance Review* found that large volumes of tailings have contaminated soil, surface water and groundwater, and some have been discarded into the Chilean Pacific Ocean, with potential negative impacts on marine biodiversity (OECD, 2016c). In an effort to address the issue, in 2018 the Ministry of Mining began working on a National Tailings Plan that focuses on the safety of the population and the environment. The plan also aims to create public-private synergies for the management, removal and transfer of abandoned tailings to authorised sites.

The oil and gas sector is under increasing scrutiny. A number of countries in the LAC region are seeing increasing investments in their oil and gas sector. For example, natural gas and oil discoveries in the offshore pre-salt fields of Brazil have generated excitement among investors, and between 2016 and 2017 production of oil and gas in the pre-salt layer grew by 26% (EIA, 2019). Oil and gas production also increased in Peru, especially after the discovery of natural gas reserves near the Camisea River in the Amazon. The country is now considered a major player in the oil and gas sector in the region (EY, 2019).

At the same time, the sector is under increasing scrutiny. In addition to the implications that its rise can have for countries' climate change mitigation commitments and efforts, local communities and civil society organisations have in many instances opposed these new projects due to a range of environmental concerns. For example, Indigenous people living at the headwaters of the Amazon in Ecuador and Peru have called on European banks to stop financing oil development in the region, on the grounds that it damages an already fragile ecosystem and poses a threat to their livelihoods and forest-based culture (Harvey, 2020; Stand Earth, 2020). The use of fracking technologies to tap into shale gas and oil reserves has also been contentious in countries such as Argentina and Mexico, as their potential environmental impacts remain highly disputed (FUNDAR, 2018; Environmental Justice Atlas, 2018; Goñi, 2019; Observatorio Petrolero Sur, 2013; *Financial Times*, 2014).

Environmental governance has improved significantly, but implementation and enforcement remain a challenge. In all the countries reviewed, environmental governance in general and in the extractive sector in particular has improved significantly since the 1990s and 2000s. This has gone hand in hand with a more engaged and empowered citizenry and civil society, which have influenced governments in the region to strengthen environmental governance and to hold companies accountable (de Castro, Hogenboom and Baud, 2016). Internationally, there has also been a push by importing countries, international organisations and investors to increase environmental and social standards. The OECD Guidelines for Multinational Enterprises and Due Diligence Guidance, the IFC Performance Standards and the Mining Principles and Performance Expectations from the International Council on Mining and Metals (ICMM) all include strong environmental performance criteria to which businesses operating in extractive projects should adhere.

Companies have responded by stepping up their environmental management practices and ensuring that they follow environmental regulations and international best practices. For example, Sales de Jujuy and Minera Alumbra in Argentina and the CEMEX subsidiary in Panama have introduced programmes jointly with affected communities, NGOs and local governments to guarantee the continuous monitoring of air quality, water, soil, and noise levels (UNDP, 2019). Despite this progress, a number of challenges remain for companies operating in the region, particularly in relation to forest and biodiversity conservation, the management and transport of tailings and hazardous materials, and closure plans.¹⁶

Environmental and Social Impact Assessments (ESIA) remain a crucial part of identifying and addressing the negative environmental and social impacts of mining. In several countries, including Argentina, Brazil, Chile, Panama and Peru, ESIA processes are under particular public scrutiny for shortcomings especially on meaningful community and stakeholder consultation by extractive companies. Civil society and environmental organisations have in many instances criticised the consultation processes that are conducted as part of ESIA on the grounds that these remain too technical and lengthy, limiting the room for community members to fully understand a project's environmental and social impacts (Caripis, 2017).

Limited transparency of ESIA processes has also been raised as an issue. In Mexico for example, civil society organisations highlighted instances in which the consultancies that conducted the studies were not fully independent from the mining companies that commissioned them, and noted the difficulty of publicly accessing relevant documents (FUNDAR, 2017; Perevochtchikova, 2013; NRG, 2017). Some governments in the region have tried to better regulate these processes to ensure that stakeholder engagement was undertaken more thoroughly. For example, Peru has enacted new regulations for the public participation of oil and gas activities (Supreme Decree 002-2019-EM), which also cover the phase prior to negotiation of a contract or a tender process for exploration or exploitation (CMS Law, 2019).

Informal and illegal mining are both widespread and on the rise across LAC. There is a long history of artisanal and small-scale mining (ASM) in the region, and it still plays an important role in the livelihoods of many miners (see Box 2.1). The ASM contribution is particularly significant for economic development in vulnerable rural areas, with positive knock-on effects on employment, economic diversification and demand for products, services and infrastructure. According to the DELVE database, over 2 million people are working in the ASM sector in LAC (World Bank, 2019a). Many governments in the region – including those of Colombia and Peru – have enacted legislation and policies to formalise the ASM sector (Pacheco, 2020; Ministerio de Energía y Minas, 2018; Echavarría, 2014), and there have been several attempts by companies to foster the formalisation of suppliers across their value chains (ILO, 2016). However, the impacts of illegal mining continue to raise particular concern.

Box 2.1. Understanding artisanal and small-scale mining (ASM)

ASM refers to a spectrum of activities that are informal and subsistence level, or are small and organised but usually with low capital intensity, high labour intensity and relatively simple methods for exploration, extraction and processing. They typically do not operate through licences and permits required by law, but rather have a social licence to operate from the local community or through other local actors.

In illegal ASM operations, miners work without a mining licence, or the environmental permits and permissions just mentioned. In some cases these operations take place in protected areas, actively violate human rights, and fund organised crime.

When not formalised (and particularly in illegal operations), ASM may produce significant negative environmental and social impacts – as artisanal and small-scale miners lack the capacities, resources and knowledge to comply with sector regulations and guidelines.

Source: IGF, (2017, p. 49); UNITAR and UN Environment, (2018).

The Amazon basin is a hotspot for illegal mining. A 2018 study identified more than 2 000 illegal mining sites distributed over 22 areas in 6 Amazonian countries. The majority of these illegal mining sites are located in Venezuela, followed by Brazil, Ecuador and Peru.

Illegal mining of gold is often carried out using mercury, which pollutes rivers and groundwater with disastrous effects on the environment and the health of workers and local communities (RAISG, 2018). In Colombia, cyanide and mercury contamination from illegal gold mining affected 60% of the country's regions adjoining bodies of water with dire impacts on fish resources and the people that depend on them as a source of food and proteins (GAIN, 2016).

Indigenous territories and protected areas are particularly affected – for example, the Darien region in Panama (InSightCrime, 2016; Hammond, Rosales and Ouboter, 2013), the department of Madre de Dios in Peru (Salo et al., 2016; O'Faircheallaigh and Corbett, 2016), and the Tapajós River in Brazil (Cowie, 2019). In the Brazilian Amazon, a study found that 81% of fish, which are the main source of protein for Indigenous communities, had detectable mercury levels, most of which exceeded the World Health Organisation's guideline for maximal exposure (Venturieri et al., 2017). While a number of studies argue that mercury levels in Amazonian soils and rivers are naturally high and the contribution of gold mining to these levels is contested (Guimaraes, 2020), the fact remains that the use of mercury in ASM poses significant environmental and health risks (WWF, 2018).

Illegal mining is often linked with organised crime. Small-scale miners typically operate in a context of informality that makes them targets of organised crime and non-state armed groups. Since the early 2000s, high global gold prices and the fight against other forms of organised crime, such as drug production and trafficking, have started a trend of criminal and non-state armed groups turning to gold mining as a source of revenue. This is especially the case in geographic areas that are already experiencing instability, high crime and conflict. For example, in Colombia, Panama and Peru, illegal gold mining and trade is used for money laundering in connection with the illegal drug trade (GAIN, 2016; Sierra Praeli, 2020; Verité, 2016; InSightCrime, 2016). In many cases, and largely at the trading stage, regular businesses also play a role in facilitating money or gold laundering operations linked to illegal mining. For example, formal processing plants may claim the gold as their own with the help of intermediaries who provide fraudulent purchase receipts, or simply exaggerate their production to obscure the actual origins of the gold produced illegally, so that it can be exported (Global Initiative Against Transnational Organized Crime, 2016).

The vast majority of illegal gold production appears to be legally exported. This could explain the significant growth of gold exports from Colombia (from an estimated 5 to 10 tons per year in 2015 to more than 25 tons

per year in 2018), despite the actual decline in legal gold production (Massé, 2019). However, illegally mined gold is also smuggled across borders. For example, there is evidence that increasing amounts of gold illegally extracted from remote mining areas in Colombia (representing between 15% and 30% of the country's gold production in 2018) is being smuggled across the border to neighbouring countries. Political instability in Venezuela has further enabled smuggling and money laundering connected to illegal mining (International Crisis Group, 2019), with Colombian guerrillas and former rebels reportedly extending their control to illegal mining sites in the border regions with Venezuela (International Crisis Group, 2019). Impacts of the COVID-19 pandemic have further aggravated these trends by disrupting supply chains and thereby forcing artisanal miners to sell their mineral to informal traders, often at discounted prices (ARM, 2020).

Serious human rights violations can occur in the context of organised crime, conflict and illegal mining. Fracturing and infighting among armed groups for control of illegal mining activities can lead to the displacement of Indigenous communities. In Colombia for instance, according to 2015 statistics 40% of internal displacement occurred in Antioquia and Chocó, the regions where illegal mining is most prevalent (Verité, 2016). Labour exploitation, including forced labour and child labour, is also a common problem (GAIN, 2016). Often, human rights risks around illegal mining are gender-specific (see gender-based risks below); around illegal mining sites, there can be problems with sex trafficking, prostitution and sexual violence (GAIN, 2016). For example, sex trafficking is pervasive in illegal mining areas in Peru, and especially in the region of Madre de Dios (USAID, 2019; Carranza, 2019). Women and girls as young as 12 years old are recruited through false job offers and trafficked into mining areas to work in brothels (GAIN, 2017). In Brazil as well, illegal mining has been associated with an increased risk of prostitution, sexual violence and sexually transmitted diseases (Fany et al., 2019).

Responses to address illegal mining have had mixed results. Government responses to illegal mining have typically been two-pronged, using military and policing approaches to crack down on it while also trying to provide incentives for illegal miners to stop mining and/or to formalise. These strategies have had some successes. For example, Operation Mercurio, a military and police intervention in La Pampa, in the Madre de Dios region in Peru, led to a reduction of 92% of deforestation in the area in 2019, compared to the same period in 2018 (MAAP, 2019). In Brazil, Operation Verde Brazil ("Brazil Green"), launched by the government in September 2019 to combat illegal mining and deforestation in the Amazonas state, has led to the arrest of several people involved in the exploitation of illegal mining sites, the seizure of vehicles and machinery, and the imposition of fines adding up to 3 337 billion Brazilian reais (Governo do Brasil, 2021). However, civil society and Indigenous organisations have expressed concerns with regard to these initiatives. In the case of Operation Mercurio in Peru, for example, the shutting down of illegal mining operations might have pushed illegal mining and deforestation to other regions (Cantoso, 2019; Cannon, 2020). In Brazil, interviews with industry and civil society pointed to the lack of a comprehensive response to the problem of illegal mining (*Financial Times*, 2020; Human Rights Watch, 2019).

The formalisation processes of artisanal mining remain long and challenging. Companies and governments in the region have increasingly seen these processes as a way to counter illegal crime, and there have indeed been some successes. For example, establishment of the Integral Small-Scale Mining Platform (Plataforma Integral de Minería de Pequeña Escala, PIM) in Colombia and Peru, an initiative by the Solidaridad Network with support from the Dutch Government, has allowed small-scale miners to access responsible gold markets and certifications, given them better representation, and facilitated formalisation of the sector and knowledge sharing (Banda, Arista and Jaramillo, 2017).

Some private companies have also attempted formalisation programmes within their concessions. For example, in 2014 the company running the Buriticá gold project in Colombia started to formalise small-scale miners that were illegally operating within its concessions. It is estimated that between 2 500 and 2 800 miners have been successfully formalised since 2017, and 10 mining associations have been created (Oxford Business Group, 2020). Challenges remain, however. Experiences in countries such as Colombia and Peru illustrate that there are often not enough resources or capacities allocated to the

implementation or enforcement of formalisation policies, especially at the state/department and municipal levels (O’Faircheallaigh and Corbett, 2016). In Colombia, mining authorities currently estimate that the formalisation process could take between three and five years, and alternative livelihood options have rarely been found to be as lucrative as mining (OECD, 2017b; Salo et al., 2016).

Moreover, as both illegal and informal mining provide an important source of income for many local communities, formalisation attempts can be met with resistance. In some instances, protests have been directed towards large-scale mining projects seeking to expand into territories where ASM activity takes place. This was the case in the La Libertad and Cajamarca regions of Peru, where local communities have put pressure on the government not to allow new operations and/or to increase companies’ contributions to local services and infrastructure (Valdés et al., 2019).

2.3 Corruption and financial crimes

Fighting corruption has been high on the political agenda of governments in the region, especially after recent high-level incidents. Governments are trying to rebuild the public’s trust in state institutions and ensure that investments keep flowing. This has led to renewed transparency and anti-corruption initiatives, for example in the context of the Open Government Partnership (OGP) or EITI.

Corruption is reported to be a challenge for the region generally and for the extractive industry in particular. For example, the Operação Lava Jato (Car Wash Operation) case and the publication of the Panama Papers are two high-profile instances that revealed corruption and wrongdoing in the public and private sector as well as internationally. Anti-corruption investigations and reforms have followed these and other cases in several countries. Yet, according to Transparency International (TI)’s 2019 Corruption Perceptions Index, the region needs to achieve much more progress in the fight against corruption, with political party financing and electoral integrity being indicated as major challenges (Transparency International, 2020). The TI 2019 Corruption Barometer for the region notes that more than half of its citizens thought that corruption increased in their country over the past year, and considered government corruption a major problem (Pring and Vrushi, 2019).

Some extractive projects are reported to be affected by or involved in corruption, with several challenges shared across the region. One of them is the bribery of political figures by extractive companies in both the mining and oil and gas sectors; cases are under investigation. For example, in 2018 the United States Securities and Exchange Commission (SEC) charged the Brazilian state petroleum company Petrobras “with misleading U.S. investors by filing false financial statements that concealed a massive bribery and bid-rigging scheme at the company”. Petrobras agreed to pay USD 933 million in disgorgement and prejudgment interest and USD 853 million penalty in connection with the settlement of the SEC charges and a non-prosecution agreement with the US Department of Justice (US Securities and Exchange Commission, 2018a). Petrobras also reported carrying out changes to its corporate governance structure to prevent corruption (Petrobras, n.d.).

Another instance is the charge by the SEC in 2018 of the former CEO of the Sociedad Química y Minera de Chile, S.A. (SQM) with issuing improper payments to Chilean political figures. The former CEO agreed to pay a penalty to resolve these charges. In 2017, SQM paid USD 30 million to SEC to settle parallel civil and criminal charges that it violated the Foreign Corrupt Practices Act (FCPA) (US Securities and Exchange Commission, 2018b). In addition, Operation Car Wash has implicated several heads of government and their families in the region in the Odebrecht corruption scandal, involving among others a gas pipeline, the Gasoducto Sur Peruano (Shiel and Chavkin, 2019; Chavkin, 2020).

Corruption in connection with granting mining and exploitation poses a further risk. TI has published detailed results of its Accountable Mining Programme through its Mining Awards Corruption Risk Assessment (MACRA) tool for five LAC countries (Argentina, Chile, Colombia, Mexico and Peru).

According to MACRA, risks that were identified as significant or very high and which affect several countries include the following (Poder Ciudadano, 2020; Chile Transparente, 2018; Transparencia por Colombia, 2017; Transparencia Mexicana, 2020; Proética, 2019):

- Influence exerted by extractive companies on politicians or authorities to be granted a permit (e.g. through undue influence peddling).
- Taking advantage of asymmetry or inequality of information and power to manipulate communities that are affected by an extractive project.
- Lack of transparency of the legal framework, the permitting process, or the status of a mining area.
- People who have knowledge of corruption will not file a complaint or are not legally protected.

Another issue is **corruption and money laundering in connection with small-scale gold mining**. Cases have been uncovered of illegal gold miners bribing government and military and police officials to protect their operations, for example in the Colombian Antioquia, Chocó and Cauca regions, and in the Peruvian Madre de Dios and Puno regions (OECD 2016b, 2017c, 2017d). Bribery and fraudulent intermediaries and processing plants help obscure the origin of illegally produced gold, and facilitate its entry into international markets. In addition, transnational criminal organisations sell illegally mined gold to legal supply chain actors to launder criminal proceeds, e.g. from drug trafficking (GAIN, 2016; US Department of State, 2019).

2.4 Climate change and energy risks

Climate change poses increasing challenges for businesses operating in the extractive sector. Both internationally and in the LAC region, there is increasing evidence and awareness that the harmful consequences of climate change affect all human rights, including those to life, health, a decent standard of living, non-discrimination, self-determination and development (ECLAC, 2019a). As such, climate change impacts can exacerbate many of the environmental and social risks around extractive activities in the region. Higher temperatures and changed rainfall patterns can lead to more pronounced water stress. This can in turn accentuate the impact of mining operations on water availability, and hence conflict risks (Rüttinger et al., 2020). In Chile for example, increased water stress due to climate change impacts is reinforcing civil society's calls for tougher measures to protect glaciers against the risk of expanding mining activities (Wehr, Aynzúa and Valencia, 2019; Guzman, 2019). Extreme weather events can also damage mining operations and increase the risk of acid mine drainage, leakage of chemicals or toxic substances, and tailings dams' failure (Rüttinger et al., 2020).

At the same time, the low-carbon transition is expected to benefit some parts of the mining sector, as the technologies it requires – including wind turbines, solar panels and improved energy storage – all need significant mineral and metal inputs. For example, lithium production will have to increase by 450% to meet the demand from energy storage technologies in 2050 (Hund et al., 2020). However, lithium projects across the region have already attracted opposition due to their impacts on water resources, especially in regions suffering from water scarcity such as Salar de Atacama in Chile and Jujuy province in Argentina (Parks, 2019; Ehringfeld, 2019; Henríquez, 2018). More generally, there is a need to examine the supply chain of these minerals to understand where their extraction could exacerbate existing tensions, grievances and conflicts.

Overall, the extractive industry is facing greater scrutiny of its carbon emissions from investors, governments, and the public. Increased pressure to mitigate greenhouse gas (GHG) emissions is leading to growing opposition against oil and gas projects, including offshore projects. A study by the Inter-American Development Bank (IDB) found that the decline in global oil demand required to achieve the targets of the Paris Agreement would cause between 66% and 81% of proved, probable and possible oil reserves in the LAC region to remain unexploited. This would mean a decline in government revenues

derived from oil of between USD 1.4 trillion to USD 4.2 trillion by 2035 (Solano-Rodriguez et al., 2019). Moreover, investors and the public are increasingly demanding energy-efficient improvements in the energy-intensive extraction and production sectors, such as those for copper or aluminium. That has encouraged companies to find ways to reduce their GHG emissions, for example by using more renewable energy. However, extractive projects still primarily use energy from non-renewable sources and room for improvement in this area remains significant (Maennling and Toledano, 2018).

2.5 Gender-based risks

Women and men are impacted differently by extractive industries projects, due to gender norms and power structures shaping their access to resources and participation in decision-making processes. Research has shown that women's participation in consultation processes related to extractive projects is lower across LAC due to the persistence of patriarchal norms. Consequently, companies face challenges to including women's specific views and needs (DIHR, 2019). A recent report by the Global Forest Coalition noted that structural barriers in the region, including limited access to land and other productive resources, and lack of women's participation in public office also continue to be at the roots of human rights abuses and violence against women (Delgado, 2020).

Extractive industries and activities in LAC have also been linked to increasing cases of domestic violence, sexual abuse and harassment, alcoholism, and sexually transmitted infections (DIHR, 2019). Threats and violence against women human rights defenders have been especially common, along with criminalisation, stigmatisation, and marginalisation within their own communities (Barcia, 2017). Still, the 2020 report of the Responsible Mining Initiative found that companies only very rarely have systems to assess the impacts of their activities in a gender-disaggregated way (Responsible Mining Foundation, 2020b).

As in the rest of the world, women are underrepresented in the mining sector's workforce (Fernandez-Stark, Couto and Bamber, 2019). Gender-disaggregated statistics for the sector in the region are hard to come by, but global estimates identify 5% to 10% of female employees in extractive companies worldwide (WIM UK and PWC, 2015). A 2011 study found that women's participation in ASM is higher, at about 20% in Latin America (Hruschka, 2011). Regarding the formal sector, a specific problem is that in some LAC countries, legal barriers continue to prevent women from entering certain jobs that are perceived as physically intensive, dangerous or insalubrious (OECD, 2020b). On this point, the OECD states: "restrictions are sometimes supposedly in place in order to protect women, but they are nevertheless embedded in gender stereotyping – notably in terms of seeing women as weak and in need of protection" (OECD, 2020b, p. 161). Instead of addressing the issues that women face, these restrictions risk generating gender-based sectoral segregation in the labour force. Some countries and governmental bodies have recently tried to tackle this problem. In Argentina for instance, the Secretary of Mining of the Nation recently joined the Gender Parity Initiative by the IDB and the World Economic Forum – making it the first national body to do so (Clipping Minero, 2020). Shortly thereafter, the Argentina Chamber of Mining Companies (CAEM) also joined the initiative and is currently in the first stage of the implementation process (Cámara Argentina de Empresarios Mineros [CAEM], 2020).

3 Initiatives fostering RBC in the extractive sector

Business and governments in LAC have shown a growing interest in addressing the social, environmental and governance challenges around the extractive sector in the region. Many industry and company initiatives are being developed to foster responsible extractive supply chains through the implementation of corporate policies and management and certification systems at both the sectoral and territorial levels. Important RBC actions are also taking place in the context of LAC government support for responsible business.

This chapter provides an insight into company-specific efforts to foster RBC and to implement due diligence in the extractive sector in Latin America, drawing from the results of the OECD 2021 Business Survey on RBC in LAC (hereinafter Business Survey), as well as stakeholder interviews and desk-based research on examples of industry initiatives and good practices in the region. The chapter is structured in two parts: the first presents the results of the OECD Business Survey on the uptake of RBC practices; and the second addresses industry efforts and examples of good practice RBC initiatives.

3.1 Results of the OECD Business Survey on the uptake of RBC practices

The OECD conducted a Business Survey on RBC in LAC between November 2020 and January 2021 with a view to collecting data on the RBC practices and challenges of businesses operating in or from LAC countries. The Business Survey was disseminated on line in English, Spanish and Portuguese, receiving responses from 501 companies.

There were 122 responses from companies operating in the extractive sector in the seven countries analysed for this report. In terms of company size, 61% of the responses were provided by large companies (over 250 employees) and 39% by SMEs.¹⁷

The findings of the Business Survey usefully supplement the data used in this report to understand RBC practices in the region, provide insights on the impact of the COVID-19 crisis and its connection to RBC, and discover the good practices and future needs of companies operating in the extractive sector. However, the survey remains limited in terms of representativeness, largely due to the variation and relatively low number of responses obtained for the sector, as well as the geographic distribution of the supply chain actors and their share of national/regional production across different commodities. Another factor to take into account in interpreting the survey's results and findings is that survey data relied on self-reporting.

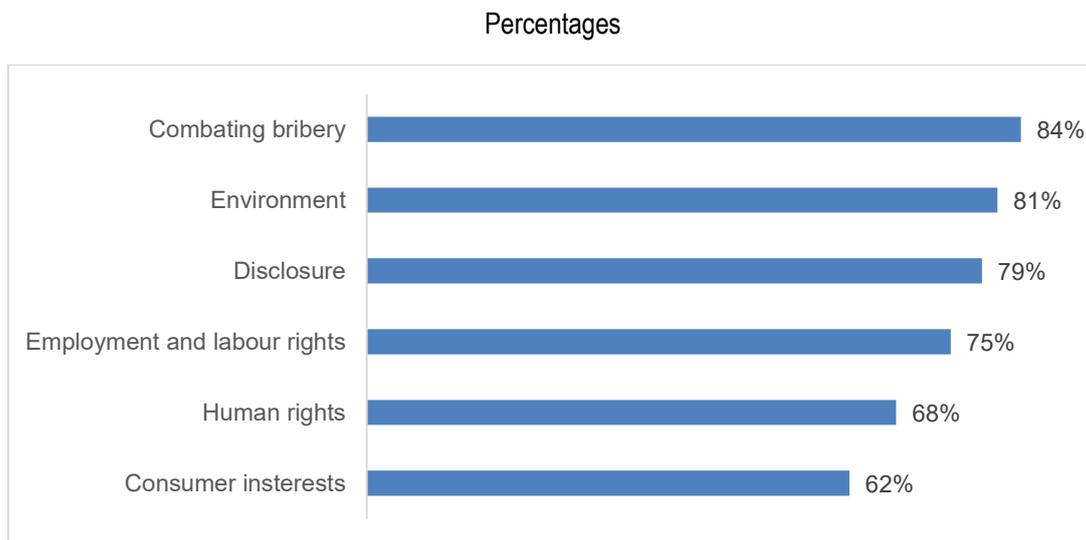
The following section analyses the responses from the extractive sector with respect to enterprise policies on RBC, due diligence practices and public reporting on RBC, as well as challenges and the need to scale up RBC practices.

3.1.1 Enterprise policies on RBC

Companies should embed responsible business conduct into their policies and management systems. They should do so by devising, adopting and disseminating a combination of business policies that articulate the enterprise's commitments to the principles and standards contained in the MNE Guidelines.

The Business Survey reveals that the majority of companies have policies on several RBC issues in place. According to the results, over half of the companies operating in the extractive sector in the seven countries analysed have actually embedded RBC issues in policies and management systems. With respect to these policies, 48% of businesses incorporate the Sustainable Development Goals (SDGs), 42% the UNGPs, 38% the Principles of the UN Global Compact, 25% the OECD MNE Guidelines and 21% the fundamental ILO conventions.¹⁸ On average, 59% have adopted a written RBC policy on one or more of the following issues: human rights; employment and labour rights; the environment; combating bribery; consumer interests; and disclosure. Most of the company RBC policies focus on combating bribery (84% of respondents have a policy on this issue), while the issue of consumer interests is comparatively the least addressed (63% of respondents) (see Figure 3.1).

Figure 3.1. Enterprise policies that articulate commitments for RBC issues, extractive sector



How to read: 84% of respondents operating in the extractive sector have a full and/or partial policy in place that articulates the enterprise's commitments to combating bribery.

Source: OECD 2021 Business Survey on Responsible Business Conduct in Latin America and the Caribbean.

3.1.2 Supply chain risk assessment and identification

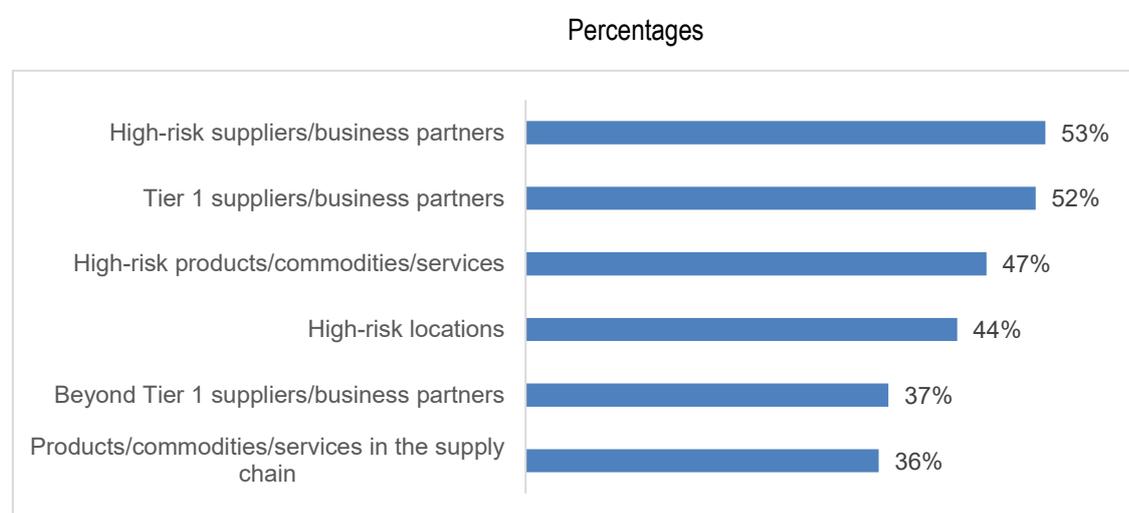
Risk-based due diligence is a process that businesses need to carry out in order to identify, prevent and mitigate their actual and potential adverse impacts and to account for how those impacts are addressed. This process should be an integral part of business decision-making and risk management systems. It concerns adverse impacts directly caused or contributed to by enterprises, as well as those that are directly linked to their operations, products or services through a business relationship.

The Business Survey showed that in the seven surveyed countries, 53% of companies carry out risk assessments on all suppliers and business partners as part of the supply chain due diligence process. In addition, 59% of the respondent companies operating in the extractive sector always adopt an *enhanced due diligence process* when risks are identified. Enhanced due diligence may include on-the-ground verification of the circumstances for red flag locations, products or business partners. Around 55% require

all Tier 1 suppliers and business partners to fulfil RBC expectations as part of a contract or agreement. However, only around a third conduct risks assessments beyond Tier 1 or on products, commodities or services in the supply chain (see Figure 3.2). Less than 30% of respondents organise training sessions on RBC or due diligence for suppliers and business partners.

These results for the extractive sector indicate a considerably higher uptake of risk assessment and due diligence practices in comparison to other sectors surveyed. This could be explained partly by the fact that businesses in the extractive sector may be more exposed to salient RBC risks and might therefore respond with more widespread implementation of appropriate practices. For instance, the percentage of respondents in the extractive sector carrying out risk assessment practices as part of a due diligence process with respect to their high-risk supplier or business partners in the seven countries surveyed is at least twelve percentage points higher than the full sample of businesses with activities in different sectors.

Figure 3.2. Companies' risk assessments practices as part of a due diligence process, extractive sector

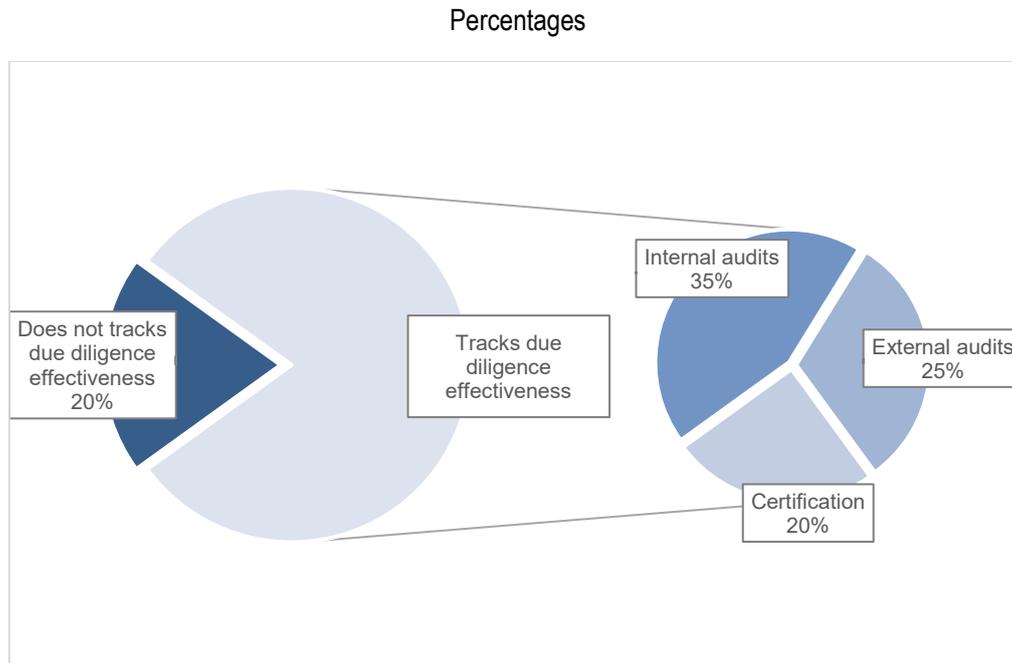


Note: Based on 53 responses from businesses operating in the seven Latin American countries. Multiple response option
Source: OECD 2021 Business Survey on Responsible Business Conduct in Latin America and the Caribbean.

3.1.3 Track implementation and results

Companies should track the implementation and effectiveness of their due diligence activities, for example by carrying out periodic internal or third-party reviews or audits of the outcomes achieved and by communicating results at relevant levels within the enterprise. The results of the Business Survey show that 80% of firms in the extractive sector report to verify that their due diligence practices are effective, indicating a slightly higher implementation of tracking practices compared to other sectors. Furthermore, the results indicate that companies' verification of the effectiveness of their due diligence practices is carried out mostly via internal audits, external audits and certification processes (see Figure 3.3). In terms of RBC issues, verification of due diligence processes is highest for combating bribery (89% of companies follow up) and lowest for consumer interests (75% follow up).

Figure 3.3. Companies' tracking of the effectiveness of due diligence practices, extractive sector



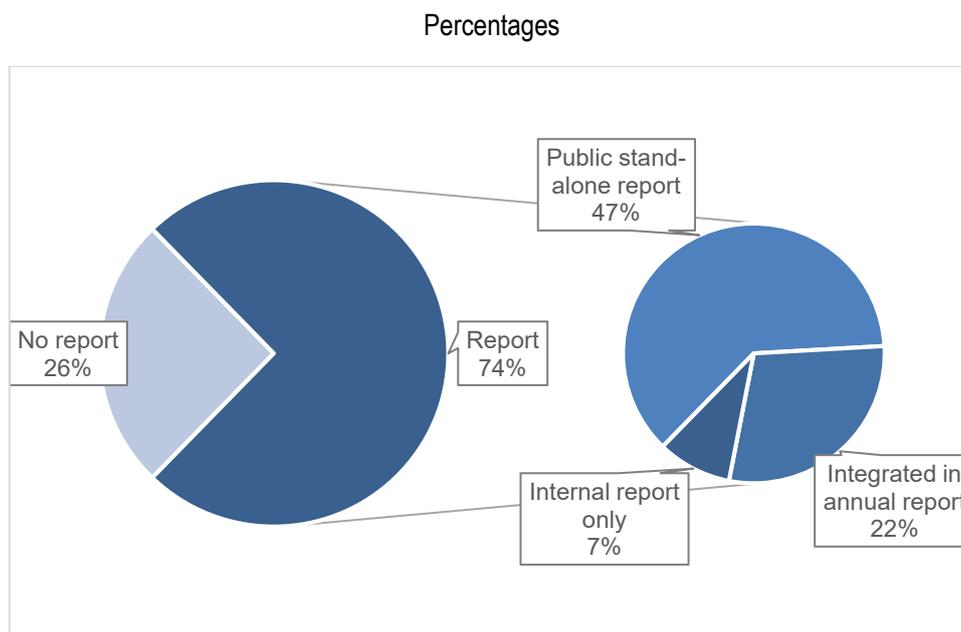
Note: Based on 53 responses from businesses operating in the seven Latin American countries researched.

Source: OECD 2021 Business Survey on Responsible Business Conduct in Latin America and the Caribbean.

3.1.4 Public reporting on RBC

Companies are also expected to publicly report on their supply chain due diligence policies and practices. They may do so through a dedicated annual report, by integrating due diligence reporting into their corporate social responsibility reports, or by providing information on their efforts in their annual reports to investors or shareholders. The results of the Business Survey show that almost three-quarters of respondent companies operating in the extractive sector report on RBC. This figure is 19 percentage points higher compared to responses from the whole survey sample, which could be partly explained by the fact that the share of larger companies with more resources, awareness and incentives to publicly report on RBC is higher in the extractive sector sample than, for instance, in the agricultural sector. Around one-quarter of the businesses do not publish any report on RBC (see Figure 3.4).

Figure 3.4. Public reporting by companies on RBC issues, extractive sector

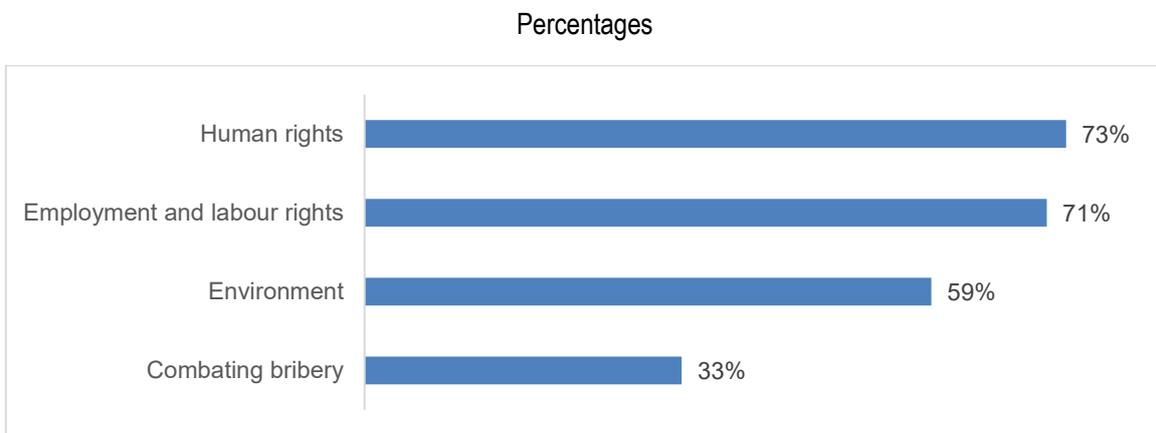


Note: Based on 73 responses from businesses operating in the seven Latin American countries researched
Source: OECD 2021 Business Survey on Responsible Business Conduct in Latin America and the Caribbean.

3.1.5 Challenges and needs to scale-up RBC practices

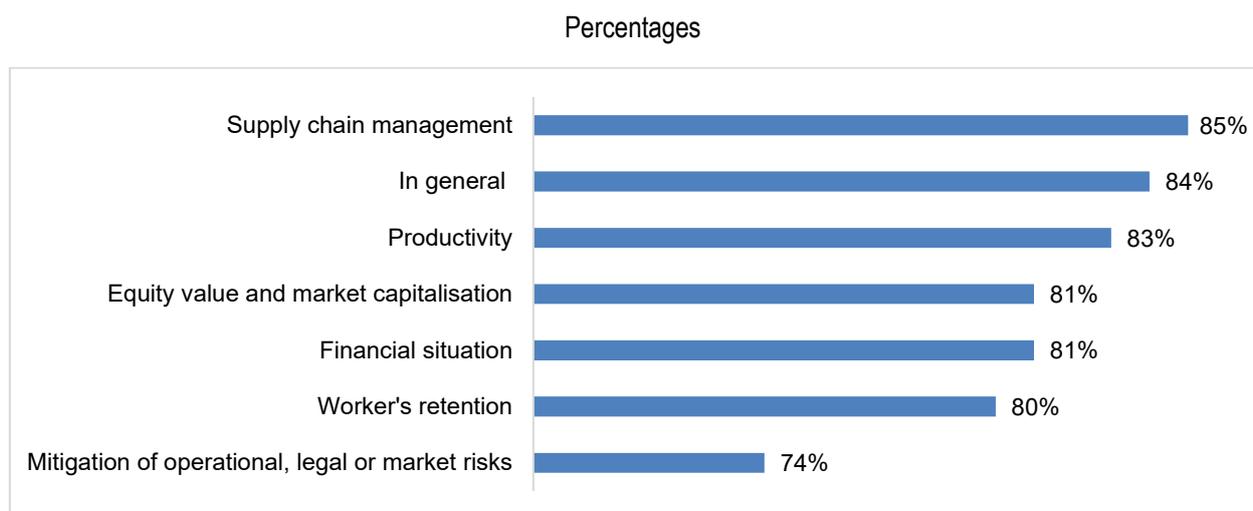
The COVID-19 crisis has created additional environmental, social and human rights challenges, and RBC practices have proved effective in strengthening the resilience of extractive business. According to the Business Survey results, 69% of respondent companies operating in that sector in the seven countries analysed for this report stated that the COVID-19 crisis affected their operations more than moderately. In this context, implementing business actions such as continuing workers' pay and supporting suppliers (e.g. by providing financial assistance or contract flexibility) is crucial to prevent and mitigate human rights violations as well as other RBC risks such as environmental harm and corruption. Almost three-quarters of these companies indicated that the pandemic caused specific challenges with regard to human rights issues and the results show a higher impact with regard to RBC issues generally (i.e. beyond human rights) than in other economic sectors. A total of 84% of businesses indicated that having responsible business practices in place, such as due diligence, has helped them amidst the COVID-19 pandemic, in particular with their supply chain management (85%). RBC practices have also helped companies' productivity, equity value and market capitalisation, their financial situation and workers' retention during the crisis (see Figure 3.5 and Figure 3.6). Implementing an RBC approach and using risk-based due diligence can thus generate short- and long-term benefits for companies in the extractive sector, such as increased resilience to better deal with current and future supply chain disruptions.

Figure 3.5. Nature of significant challenges posed to companies by the COVID-19 pandemic, extractive sector



Note: Based on 49 responses from businesses operating in the seven Latin American countries researched. Multiple response option.
Source: OECD 2021 Business Survey on Responsible Business Conduct in Latin America and the Caribbean.

Figure 3.6. Companies helped by RBC in meeting specific issues during the pandemic, extractive sector



Note: Based on 49 responses from businesses operating in the seven Latin American countries researched. Multiple response option.
Source: OECD 2021 Business Survey on Responsible Business Conduct in Latin America and the Caribbean.

3.1.6 Challenges for SMEs implementing RBC practices and due diligence processes

According to the Business Survey responses, SMEs operating in the extractive sector in LAC have lower levels of RBC practices and reporting. SMEs also show a significantly weaker implementation of supply chain due diligence and risk assessments. For instance, while 71% of large companies have written policies on RBC in place, this is the case with only 39% of the SMEs surveyed. Similarly, 89% of large companies report on RBC issues, whereas this percentage is 54% among SMEs.

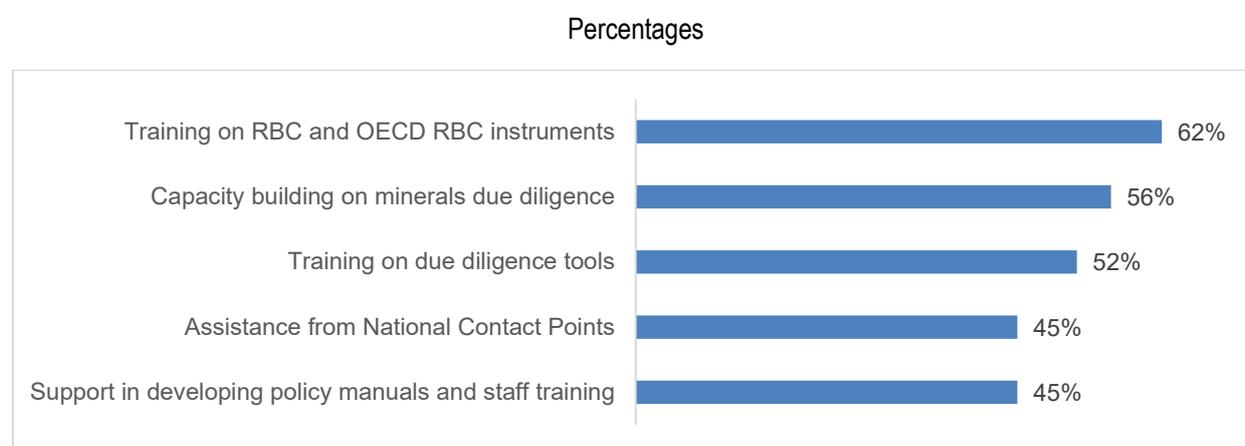
Analogous results have been found with respect to due diligence practices: 70% of large enterprises versus 39% of the SMEs always adopt an enhanced due diligence process when risks are identified; 62% of large

companies versus 35% of SMEs carry out risk assessments on all suppliers and business partners as part of a supply chain due diligence process.

As highlighted in recent findings in other OECD business surveys (OECD, 2021), SMEs tend to face higher costs and have less ability to implement due diligence processes due to their position in supply chains, which is mostly as supplier of goods and services to larger firms. SMEs also face constraints with regard to accessing and understanding RBC information and tracing RBC issues along their supply chain. Those constraints are due mainly to the small size and limited resources of those firms. Hence, SMEs could greatly benefit from RBC training programmes and support, including schemes provided by larger firms when they are purchasers of the products and services of SMEs.

The results of the survey also show that the majority of companies acknowledge the need for support and training to respond to the aforementioned challenges, and to implement risk-based due diligence on human rights, social and environmental risks (see Figure 3.7).

Figure 3.7. Companies' need for future RBC activities and support, extractive sector



Note: Based on 42 responses from businesses operating in the seven Latin American countries researched. Multiple response option.

Source: OECD 2021 Business Survey on Responsible Business Conduct in Latin America and the Caribbean.

3.1.7 Visibility of the NCP system with businesses operating in the extractive sector

National Contact Points (NCPs) exist in six of the seven countries targeted by the report (Panama is the exception). NCPs can play an important role in the promotion of RBC and related due diligence guidance, as illustrated by the OECD Minerals Guidance and OECD Stakeholder Engagement Guidance (see Chapter 2).

The Business Survey has shown that around 45% of the respondent companies with extractive operations in the surveyed countries are familiar with the NCPs, while 45% are not. At the same time, 49% of MNEs have general knowledge of the NCPs, while this is the case for 39% of SMEs. The experience of those companies that engaged with NCPs was rated on average 4.4 out of 10. As shown in Figure 3.7, almost half of the businesses (45%) indicated the need to receive strengthened assistance from the NCPs. These results indicate that familiarity with the NCPs among extractive companies is higher (by nine percentage points) in comparison to the full sample of surveyed businesses. Nevertheless, greater efforts to disseminate information on the functions and usefulness of the NCPs could result in a greater uptake of RBC practices and standards among business in the extractive sector in the seven countries surveyed for this report.

3.2 Industry efforts and examples of good practices to foster RBC

Regional and international initiatives have helped considerably in promoting RBC. Alongside governments' enhanced regulations and approaches for a more responsible extractive sector, a number of regional initiatives have also pushed for sustainable business practices. In 2014, the United Nations Economic Commission for Latin America and the Caribbean called upon countries in the region to develop a common vision towards natural resources and infrastructure governance (Altomonte and Sanchez, 2016; ECLAC, 2016). These efforts continue through Regional Cooperation for the Sustainable Management of Mining Resources in Andean Countries (MinSus), a German-sponsored programme that fosters regional co-operation for the sustainable management of mineral resources in Bolivia, Chile, Colombia, Ecuador and Peru (MinSus, 2018).¹⁹ The Annual Conference of Mining Ministries of the Americas (Conferencia Anual de Ministerios de Minería de las Américas, CAMMA), which was established during the 1990s was relaunched in 2018 (Bastida, 2018; ECLAC, 2018c). Examples of international initiatives are the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF), industry organisations such as the International Council on Mining and Metals (ICMM), and voluntary and regulatory multi-stakeholder initiatives such as EITI.

National and regional legislation in importing countries has also benefitted from RBC practices in the sector. Examples constitute the Extractive Sector Transparency Measures Act in Canada and European Union Regulation 2017/821 establishing supply chain due diligence obligations for Canadian and European importers, respectively. Both regulations aim at promoting good governance in the extractive sector, with a particular focus on conflict-affected and high-risk areas, including in LAC.

LAC governments have shown dynamism in addressing RBC challenges. The mining reforms that took place in most LAC countries in the 1990s focused primarily on creating enabling conditions for investment, for example through streamlining mineral tenure regimes, and setting competitive tax regimes. At the same time, however, they looked at improving environmental and social regulations to foster the role of the extractive sector as a catalyst for sustainable development. Over time, sustainable development has become a guiding principle in most legal and policy frameworks in the region, which have expanded to cover public participation, local content, transparency, anti-corruption, and access to information. OECD accession processes in LAC have partly driven these trends (e.g. in the case of Chile, Colombia and Mexico).²⁰ In addition, Argentina, Brazil, Chile, Colombia, Mexico and Peru established NCPs for RBC upon adherence to the OECD Guidelines. Tasked with promoting OECD due diligence instruments among businesses, and functioning as non-judicial grievance mechanisms, NCPs have also contributed to driving the uptake of RBC in the sector.

Increasing awareness of the importance of proactively managing RBC risks has played an important role. Various consultative processes on national levels have taken place, aimed at developing a shared vision for the role of the mining sector in countries' social and economic development. These include government-led processes, such as the development of Mining Vision 2030 in Peru, National Mining Policy 2050 in Chile and the Strategic Plan for Mining Development in Argentina, as well as processes driven by multi-stakeholder groups, such as the Dialogue Group on Mining in Colombia (Grupo de Diálogo sobre Minería en Colombia, GDIAM) (Ministerio de Energía y Minas Perú, 2019; Ministerio de Minería Chile, 2020; Boletín Oficial de la República Argentina, 2020; GDIAM, 2020).

Extractive companies operating in LAC are increasingly recognising the need to implement RBC practices. In recent years, key stakeholder groups – including host communities, consumers, NGOs and investors – have grown more influential, and have been able to exert greater pressure on companies. As a consequence, there have been an increasing number of initiatives to improve RBC and due diligence practices that have varied in scope and focus depending on the sector, company size, and country of operation. In the oil and gas sector, companies' initiatives have tended to respond to consumer pressures motivated by global issues, such as climate change. In the mining sector, companies have mostly reacted to concerns from local stakeholders about the socio-economic and environmental impacts of their projects.

In this context, mining companies in some countries (e.g. Brazil, Colombia and Peru) have used processes to empower communities to develop a shared vision of their future, and to ensure that local stakeholders are able to contribute to its realisation (Donadelli, et al., 2016; Cobb, 2019; SNMPE, 2020). Over the past years, extractive companies in the region have also developed innovative practices to implement RBC and due diligence. For instance, companies in the region identify and assess RBC-related risks by tracking and disclosing data from mining sites (Table 3.1).

Table 3.1. Examples of good practice RBC actions by companies

CODELCO	CODELCO in Chile maintains an online ethics portal through which it discloses data on complaints received from workers at each mining site. The data are published quarterly and the same platform is used to report unethical or illegal activities. The types of complaints recorded and disclosed relate to (e.g.) unsafe workplaces, corruption and conflicts of interest, harassment or discrimination at the workplace, and violence and sexual harassment. For each mining operation, the company discloses the number of each type of complaints received and the results of the research (RMF, 2020a). CODELCO also signed an agreement with the BMW Group to increase ecological and social responsibility along the copper supply chain, which established the "Responsible Copper Initiative" (BMW, 2018).
Los Pelambres	The Los Pelambres mine in Antofagasta, Chile provides online data for seven surface water and three groundwater monitoring points around the mining site, measuring copper, molybdenum, coliforms, faecal coliforms and sulphate levels (in surface waters also iron levels) over a period of ten years (RMFb, 2020).
Sales de Jujuy	Sales de Jujuy, the company that operates the Salar de Olaroz lithium mine in the Puna region in Argentina, conducts monitoring of air quality, water, saltwater, soil and noise levels in three-month intervals. Community representatives partake as "veedores" (observers). The company welcomed the community's suggestion to conduct the monitoring in a more systematic manner. This participatory monitoring process was set up in response to a commitment made during the Environmental Impact Assessment process (UNDP, 2019).
Minera Alumbrera Limited	Minera Alumbrera Limited, the company that operates the copper, gold and molybdenum open-pit Alumbrera mine in Argentina, regularly conducts environmental monitoring of surface water and air. The monitoring committee "Sistema de Transparencia Comunitaria" oversees the company's monitoring activities (it now examines the closure of the mine), and was formed in response to a dialogue process between environmental organisations and the company (UNDP, 2019).
Vale	Brazilian mining company Vale has linked its sustainability Key Performance Indicators to its variable compensation programme, which applies to all company employees. Efforts to reduce water use are some of the actions for which indicators have been created (others refer to, for example, reductions in energy use and greenhouse gas emissions). The indicators intend to encourage continuous improvement in sustainability performance in each of the company's operations (RMFa, 2020). Vale has also integrated biodiversity management and ecosystem services into its global strategy. In early 2020, the company published guidelines for biodiversity management, seeking alignment with the Convention on Biological Diversity (CBD) and the Global Strategic Plan for Biodiversity (Vale, 2020).

Civil society organisations (CSOs) and communities in LAC have launched several regional initiatives to address RBC issues. CSOs such as the Observatory of Mining Conflicts in Latin America have introduced methods and instruments to address the challenges posed by extractive industries in the region (Table 3.2). Several communities have also been carrying out participatory environmental monitoring initiatives with companies; these are collaborative processes for collecting, analysing and sharing environmental data in mining-affected areas.

State development co-operation agencies and the geological and mining services of the United States, Canada and several European countries support the above-mentioned efforts by providing financial and technical assistance to governments and other stakeholders. Examples from the small-scale gold sector are the Better Gold Initiative, developed and implemented in partnership with the Swiss Development Cooperation, and the Integral Small Scale Mining Platform (PIM), supported by the Netherlands (Better Gold Initiative, 2019) (PIM, 2019). Various international agencies, including the United Nations Development Programme (UNDP), the World Bank Group and the Inter-American Development Bank (IDB), have provided technical assistance to support the implementation of the Extractive Industries Transparency Initiatives (EITI), streamline information in cadastres, and improve operational practices with the uptake of international best practice standards on issues such as human rights, free, prior and informed consent (FPIC), and environmental protection.

Table 3.2. Examples of civil society initiatives

<u>Latin American Network on Extractive Industries (Red Latinoamericana sobre las Industrias Extractivas, RLIE)</u>	The Latin American Network on Extractive Industries brings together civil society organisations and engages in research, exchange of experiences and advocacy (RLIE, 2019).
<u>Observatory of Mining Conflicts in Latin America (Observatorio de Conflictos Mineros de Latino America, OCMAL)</u>	OCMAL has introduced methods and instruments for co-ordination and dialogue to better address the challenges posed by extractive industries in LAC.
<u>Amazon Socio-Environment Geo-Referenced Information Project (RAISG)</u>	RAISG is managed by a consortium of six civil society organisations from Bolivia, Brazil, Colombia, Ecuador, Peru, and Venezuela; it provided the first-of-its-kind map on illegal mining activities in the Amazon region in 2018 (Chow, 2018).
<u>Latin American Network of Women Defenders of Social and Environmental Rights (Red Latinoamericana de Mujeres Defensoras de Derechos Sociales y Ambientales)</u>	The Network supports policies, projects and practices contributing to the defence of the rights of communities and nature that are impacted by extractive mining projects, with a particular focus on women.

Multi-stakeholder co-operation is key to verifying and monitoring the uptake of RBC and due diligence practices. Efforts have been made to promote multi-stakeholder dialogues in several cases of conflict concerning extractive projects, and have often been successful in fostering dialogue and trust building between communities, companies and the local government. Since the Brumadinho disaster in Brazil in January 2019, there has also been a proliferation of initiatives aimed at improving standards for the safe management of tailings dams such as the Investor Mining and Tailings Safety Initiative (Table 3.3). A significant number of companies in the region are voluntarily applying and publicly reporting on sustainability standards, such as those of the Towards Sustainable Mining (TSM) initiative (Table 3.3).

Table 3.3. Examples of business and multi-stakeholder initiatives

<u>Towards Sustainable Mining (TSM) initiative</u>	The TSM initiative was established by the Mining Association of Canada (Mining Association of Canada, 2016), and includes companies such as First Quantum Minerals, Vale, Teck Resources, Newmont Goldcorp and Hudbay Minerals, all of which have operations in LAC. The Brazil Mining Association (IBRAM) and Chamber of Mining Entrepreneurs in Argentina (CAEM) have also joined the initiative (Mining Technology, 2019).
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Investor Mining and Tailings Safety Initiative	<p>In 2019, the Investor Mining and Tailings Safety Initiative, chaired by the Church of England Pensions Board and the Swedish Council on Ethics, wrote to nearly 700 extractive companies requesting greater disclosure on their management of tailings storage facilities (Church of England, 2019). As a result, several major companies, including Vale, are now publicly disclosing the number and exact location of all their tailings storage facilities (Vale, 2019). A few companies, such as Rio Tinto and Teck, have stood out by providing the relevant data in machine-readable format (RMF, 2020a).</p>
Global Tailings Portal	<p>The ICMM, Principles for Responsible Investment (PRI) and United Nations Environment Programme (UNEP) have set an independent panel of experts in charge of developing global standards for tailings facilities. In 2020 they launched the Global Tailings Portal, which has published an unprecedented global standard on tailings management (Global Tailings Review, 2020).</p>
The Dialogue's Energy and Resources Committee	<p>The Dialogue's Energy and Resources Committee is a multi-stakeholder group, one-third of which consists of companies, that supports and engages with the Dialogue, a network of representatives from the United States and 21 LAC countries; the Dialogue deals with critical energy, climate change and extractive industry issues in LAC. The Committee facilitates a dialogue among key actors in the energy and mining spheres as well as access to policy perspectives and analysis (The Dialogue, 2020).</p>
Fairmined	<p>Fairmined, founded by the Alliance for Responsible Mining, is an assurance standard that certifies gold from responsible ASM organisations. The Fairmined Standard was developed based on a two-year multi-stakeholder process conducted in Latin America. It has been revised in a transparent process with open forums involving a broad range of stakeholders representing the entire supply chain. In LAC, 30 organisations are certified according to the Fairmined Standard (most of them located in Colombia and Peru, one in Brazil) (Fairmined, 2020).</p>
Code of Risk-mitigation for Artisanal and small-mining engaging in Formal Trade (CRAFT)	<p>The Code of Risk-Mitigation for Artisanal and Small-Mining Engaging in Formal Trade (CRAFT) – also by the Alliance for Responsible Mining – seeks to encourage improved practices in artisanal and small-scale mining and facilitate access to legal markets, in collaboration with local communities, as well as public and private partners.²¹ In the LAC region, CRAFT is applied in Colombia and Honduras (CRAFT, 2020).</p>
Latin American Group on the Extractive Sector (Grupo Latinoamericano sobre el Sector Extractivo, GLASE)	<p>The Latin American Group on the Extractive Sector is a multi-stakeholder group composed of diverse actors from different LAC countries, representing different visions and interests related to the extractive sector. They propose 16 actions in four sustainability areas (social, environmental, economic and institutional) (Inter-American Development Bank, 2020). The group published the document “Towards a New Shared Vision on the Extractive Sector and Its Role in the Sustainable Development of Latin America and the Caribbean”, promoted by the IDB.</p>

Conclusions

Multi-stakeholder initiatives in LAC towards a more responsible extractive sector have been growing significantly in recent years. Various international and regional agencies have provided technical assistance to support implementation of the Extractive Industries Transparency Initiative (EITI), streamline information and improve cadastres and operational practices. These efforts are based on international best practice standards addressing issues such as human rights; free, prior and informed consent (FPIC); and environmental protection. Some countries, for example Argentina, Chile, Colombia and Peru, have also taken a more active stance and launched consultative processes at the national level to create a shared vision of how the mining sector can contribute to the country's economic and social development. Civil society organisations and human rights defenders continue to play an active role in addressing conflicts related to extractive activities in LAC through research, exchange of experiences and bringing together communities, governments and companies to search for joint solutions.

However, the degree to which these good practices are being used by companies and incorporated into policies and business activities varies between countries and even within countries in the region. The results of the OECD 2021 Business Survey on RBC in LAC indicated that the majority of businesses operating in the sector do not implement RBC practices and need reinforced capacity building. Meanwhile, pressure on companies and governments to improve RBC performance in the extractive sector is growing from trade partners, international finance institutions and an increasingly well-informed and engaged civil society. While there is no "one-size-fits-all" approach, success will hinge on identifying gaps in the existing responses to RBC challenges and developing concrete commitments and actions to address the adverse impacts of extractive activities.

Meanwhile, the extractive sector continues to be of significant economic importance in the region; for example, it contributes to circa 10% of the GDP in Chile and Peru and makes up approximately 17% of all LAC exports. Social and economic development in LAC is closely tied to trends in the extractive sector – as seen in the period between 2002 and 2014, when the region's growth went hand in hand with significant advancements in many LAC countries. Companies thus have an important role to play to ensure that the extractive sector contributes to prosperity. This regional report has identified a number of areas where further action from companies, with the support of the OECD, could be beneficial to improve RBC performance in the extractive sector.

Still, there remain important RBC challenges in the extractive sector in LAC. Addressing them requires strong action by companies, working together with governments and other stakeholders. In particular, it is important for companies to have strong internal due diligence policies and processes for the identification and management of the full range of socio-economic, environmental, security, health and regulatory/political risks they may face. The topics of security and human rights in particular should be key elements of their RBC approach, by ensuring implementation of the Voluntary Principles the use of private security companies certified by the International Code of Conduct Association; and co-operation with public security forces, to reduce security and human rights risks associated with their operations. Adequate public reporting systems and complaints and grievance processes are also important in this regard.

The negative impacts of extractive projects on the environment can fuel social conflict in the region. Therefore, it is also important for companies to ensure that relevant environmental standards and

international best practices are part of their strategy and decision-making processes and are integrated in the design, operation and closure of projects and related infrastructure.

Like their counterparts worldwide, extractive companies in LAC are under increasing scrutiny from investors, governments and public opinion on the levels of carbon emissions from their activities. At the same time, many of the negative environmental and health impacts of their operations are likely to be exacerbated by the impacts of climate change (e.g. water scarcity). As a consequence, companies are encouraged to engage proactively on the topic, by a) disclosing how they plan to improve their energy efficiency and reduce carbon emissions in line with the mitigation targets of host governments; b) adapting their own operations to the impacts of climate change; and c) investing in local communities to help them adapt.

Especially in the wake of recent corruption cases in the region, companies should demonstrate commitment to tackling corruption. There are a number of international standards to which companies can align, such as the EITI principles and guidelines.

The OECD has fostered and supported many of the efforts promoting RBC in the LAC region, as well as globally. The OECD Guidelines were one of the first international instruments to integrate respect for human rights as a corporate responsibility, in alignment with the UNGPs. Since then, the OECD has published a wide range of other tools and materials – notably the OECD Due Diligence Guidance for RBC, the Minerals Guidance and the Stakeholder Engagement Guidance for the Sector – to help companies prevent and address human rights, social and environmental impacts, and thereby ensure that the extractive sector is truly a motor for sustainable and inclusive development.

Annex A. Reference Tables

Table A.1. Global or regional issue-specific reports

Type of report	Institution	Title	Website	Countries covered
Global Human Rights Report	Human Rights Watch	World Report 2018 (Events of 2017)	www.hrw.org/sites/default/files/world_report_download/201801world_report_web.pdf	Argentina, Brazil, Chile, Colombia, Mexico, Peru
Global Human Rights Report	Amnesty International	Amnesty International Report 2017/18 - The State Of The World's Human Rights	https://www.amnesty.org/en/documents/pol10/6700/2018/en/	Argentina, Brazil, Chile, Colombia, Mexico, Peru
Global Report on Indigenous Situation	International Work Group For Indigenous Affairs (IWGIA)	The Indigenous World 2019	www.iwgia.org/images/documents/indigenous-world/IndigenousWorld2019_UK.pdf	Argentina, Brazil, Chile, Colombia, Mexico, Panama, Peru
Global Report on Child Labour	US Department of Labor	US Department of Labor's 2018 Findings on the Worst Forms of Child Labor	www.dol.gov/sites/dolgov/files/LAB/child_labor_reports/tda2018/ChildLaborReportBook.pdf	Argentina, Brazil, Chile, Colombia, Mexico, Panama, Peru
Global Report on Trafficking in Persons	Verité	Strengthening Protections Against Trafficking in Persons in Federal and Corporate Supply Chains 2017	www.verite.org/wp-content/uploads/2017/04/EO-and-Commodity-Reports-Combined-FINAL-2017.pdf	Argentina, Brazil, Chile, Colombia, Mexico, Panama, Peru
Global Biodiversity report	Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES)	The Regional Assessment Report on Biodiversity and Ecosystem Services for the Americas 2018	https://ipbes.net/sites/default/files/2018_americas_full_report_book_v5_pages_0.pdf	Argentina, Brazil, Chile, Colombia, Mexico, Panama, Peru
Global report on corruption in mining	Transparency International	Combating Corruption In Mining Approval: Assessing the risks in 18 resource-rich countries	www.transparency.org/whatwedo/publication/combating_corruption_in_mining_approvals	Chile, Colombia, Peru
Regional report on corruption	Transparency International	Transparency International LAC Corruption Barometer 2019	www.transparency.org/whatwedo/publication/global_corruption_barometer_latin_america_and_the_caribbean_2019	Argentina, Brazil, Chile, Colombia, Mexico, Panama, Peru

Table A.2. Examples of country-specific reports

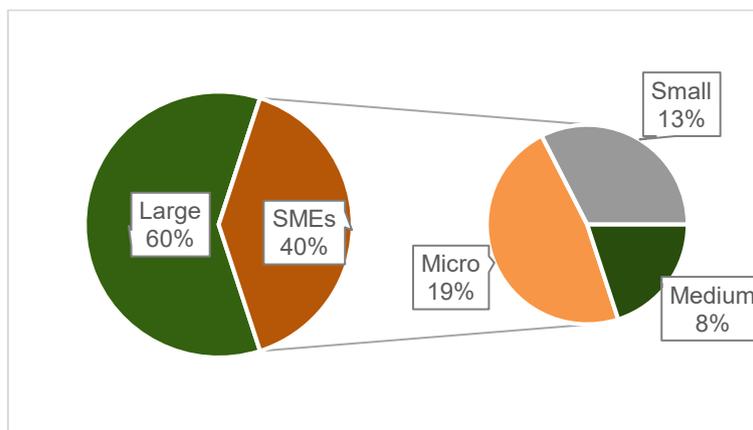
Type of report	Example 1	Example 2	Example 3
Civil society reports	Natural Resource Governance Institute and local partners: La Agenda de la Sociedad Civil frente a las Industrias Extractivas en Chile, Colombia, Brasil,	Observatorio de Conflictos Mineros de América Latina (OCMAL) 2019: Conflictos Mineros en América Latina: Extracción, Saqueo y Agresión - Estado de situación en 2018 (Argentina, Brasil, Chile, Colombia, México, Panamá,	Fundación Ambiente y Recursos Naturales (FARN) 2019: Lithium extraction in Argentina: A case study on the social and environmental impacts; https://farn.org.ar/wp-content/uploads/2019/05/DOC_LITHIUM_ENGLISH.pdf

Type of report	Example 1	Example 2	Example 3
	México, Perú; https://resourcegovernance.org/analysis-tools/publications/la-agenda-de-la-sociedad-civil-frente-las-industrias-extractivas-en-america-latina	Perú); www.ocmal.org/wp-content/uploads/2019/05/informe-final.pdf	
Industry reports	KPMG and EY Extractive sector country mining guides (Argentina, Brazil, Chile, Mexico, Peru)	IBRAM (Instituto Brasileiro de Mineração) 2019: Relatório anual de atividades, Julho de 2018 – Junho de 2019; http://portaldaminerao.com.br/ibram/wp-content/uploads/2019/07/relatorio-anual-2018-2019.pdf	Asociación Colombiana de Minería (ACM) 2018: Colombian Mining Sector Development 2018-22: http://acmineria.com.co/acm/wp-content/uploads/2018/10/acm-colombianminingsectordevelopment.pdf
Think tank reports	Fundación Friedrich Ebert/FES America Central 2015: El Extractivismo en América Central: Un balance del desarrollo de las industrias extractivas y sus principales impactos en los países centroamericanos (chapter on Panama); https://library.fes.de/pdf-files/bueros/fesamcentral/11626.pdf	Bertelsmann Transformation Index 2018 Country Reports (Argentina, Panama)	
Reports by international organisations	OECD Environmental Performance Reviews: Brazil and Chile	United Nations 2016: Report of the Special Rapporteur on the rights of Indigenous peoples on her mission to Brazil; http://unsr.vtaulicorpuz.org/site/images/docs/country/2016-brazil-a-hrc-33-42-add-1-en.pdf	World Bank: Panama Locking in Success. Systematic Country Diagnostic. http://documents.worldbank.org/curated/en/180611468100727814/pdf/947060SCD0P1510IC0disclosed03030150.pdf
Other reports	InSight Crime 2019: Gold Smugglers Innovating Along Colombia-Panama Route; www.insightcrime.org/news/brief/gold-smugglers-innovating-colombia-panama-route/	Centro Amazónico de Antropología y Aplicación Práctica 2020: Madre de Dios: Enfrentamiento entre fuerzas del orden y mineros deja un muerto en La Pampa durante Estado de Emergencia, www.caaap.org.pe/website/2020/03/21/enfrentamiento-entre-fuerzas-del-orden-y-mineros-deja-un-muerto-en-la-pampa-durante-estado-de-emergencia/	The Global Initiative against Transnational Organised Crime 2016: Organised Crime and Illegally Mined Gold in Latin America (Brazil, Colombia, Peru); https://globalinitiative.net/wp-content/uploads/2016/03/Organized-Crime-and-Illegally-Mined-Gold-in-Latin-America.pdf

Annex B. Business Survey Sample

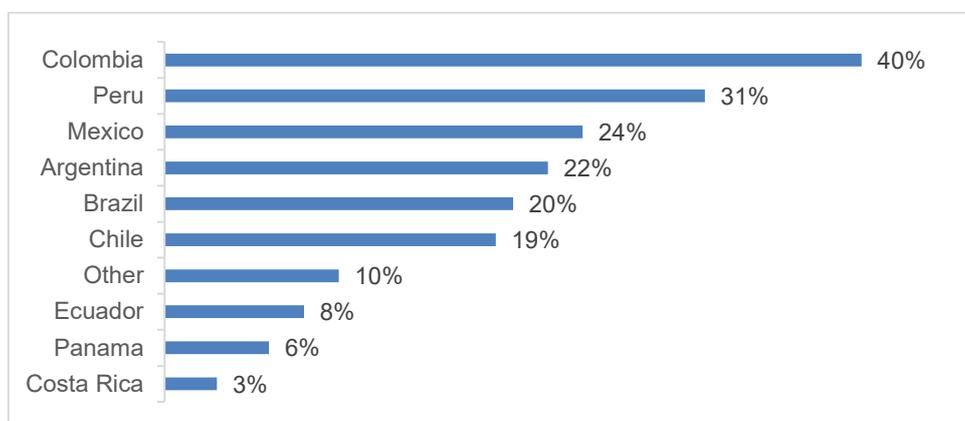
The Business Survey collected responses from 122 companies operating in the minerals/extractive sector in Latin America. In terms of company size, 60% of these responses were provided by large companies (over 250 employees) and 40% by SMEs (see Figure B.1). The Business Survey received responses from companies operating in all nine Latin American project countries, with variability across countries (see Figure B.2). Over 90% of responses were provided by privately owned or publicly listed companies (see Figure B.3). As for their positioning in the supply chain, over a third of companies that responded were active in mining (see Figure B.4). Limitations exist, however, in the variation and number of responses for the minerals sector, which needs to be considered when interpreting the results and findings.

Figure B.1. Responses by business size (numbers of employees), extractive sector



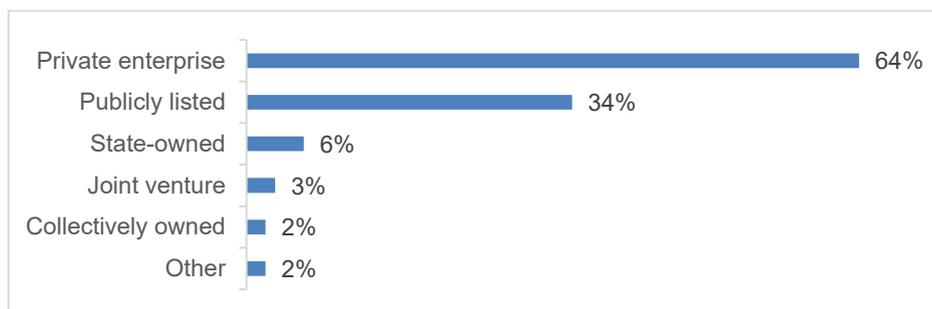
Note: How to read: 60% of respondent businesses are large enterprises with more than 250 employees (micro: less than 10; small: 10 to 49; and medium: 10-249 employees). Based on 122 responses.

Figure B.2. Responses by country of operation, extractive sector



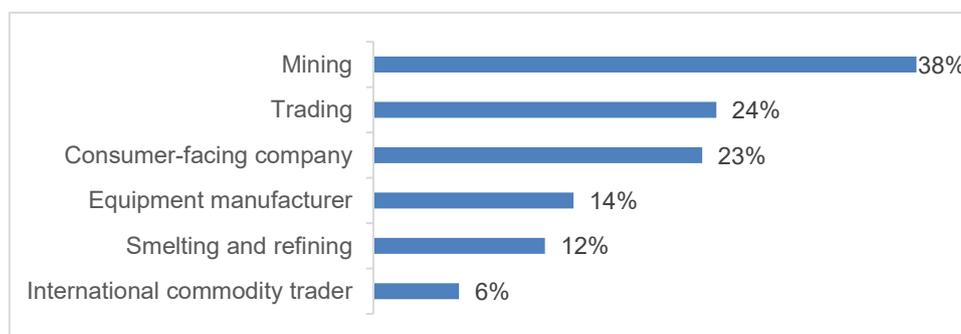
Note: How to read: 40% of respondent businesses operate in or from Colombia. Based on 122 responses. Multiple response option.

Figure B.3. Responses by ownership type, extractive sector



Note: How to read: 64% of respondent businesses are private enterprises. Based on 122 responses. Multiple response option.

Figure B.4. Responses by position in the supply chain, extractive sector



Note: How to read: 38% of respondent businesses operate at the stage of mining in the supply chain. Based on 122 responses. Multiple response option.

Glossary

Responsible business conduct – RBC means that all businesses – regardless of their legal status, size, ownership structure or sector – avoid and address any negative consequences of their operations, while contributing to the sustainable development of the countries and communities where they operate. RBC means integrating and considering environmental and social issues within core business activities, including throughout the supply chain and business relationships.

Due diligence – This is a key element of RBC, and should be an integral part of business decision-making and risk management systems. Businesses perform due diligence by undertaking analyses to identify, prevent and mitigate actual and potential adverse impacts, and account for how those impacts are addressed.

The extractive sector – The assessment covers all extractive industries (mining, oil and gas) and all stages of the supply chain relevant from a risk perspective that are located within the particular country primarily extraction, smelting/refining and transport.

Minerals – The term encompasses energy minerals (oil, gas, coal and uranium), metallic minerals (ferrous, precious and base metals), and non-metallic minerals (industrial and construction minerals and precious stones).

RBC issues – Following the OECD Guidelines for Multinational Enterprises, the report covers the following issues: human rights, the environment, employment and industrial relations, governance and corruption and disclosure. Two issues were added to those covered by the OECD Guidelines: gender, and conflict and fragility, in particular the question of whether extractive sector activities are taking place in conflict-affected and high-risk areas.

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Notes

1. The selected term is used to refer to the different communities and identities of African descent as a whole; different organisations have used other terms, including People of African Descent (UN General Assembly, 2014) or Persons of African Descent (OAS, 2016).

2. The focus of the research is on Argentina, Brazil, Chile, Colombia, Mexico, Panama and Peru. Analysis and examples in this section mainly focus on these countries.

3. Contrary to other FDI data sources, fDi Markets on which the Economic Commission for Latin America and the Caribbean (Comisión Económica para América Latina y el Caribe, CEPAL) bases their analyses examines press releases from companies and other sources to calculate “intended” FDI flows. Mergers and acquisitions are not included in the analysis. As such, the data are a sound indicator of companies’ trust in – or the attractiveness of – a given investment destination.

4. Data of the BP Statistical Review of World Energy distinguishes between South and Central America and North America. Therefore, Mexico is part of North America.

5. With the exception of Trinidad & Tobago, which alone exports 3.9% of the world's total (BP, 2019).

⁶. Recommendation of the Council on Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas [[OECD/LEGAL/0386](#)]; Recommendation of the Council on the Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector [[OECD/LEGAL/0427](#)]; and Recommendation of the Council on the OECD Due Diligence Guidance for Responsible Business Conduct [[OECD/LEGAL/0443](#)].

⁷. Peru did not adhere to the Recommendation on the Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector.

⁸. The data collected by the Environmental Justice Atlas are not comprehensive and based on contributions from academia, citizens, informal committees, NGOs and other activist groups. However, in the absence of other more comprehensive data sources, they do give an indication of the scale of the challenges and regional trends.

⁹. Officially, the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean.

¹⁰. Indigenous peoples number about 39 million, or 7.4% of the total population of LAC (Davis-Castro, 2020). About one in four people in the region self-identify as Afro-descendants (World Bank Group, 2018a). The term “Afro-descendants” refers to a highly heterogenous population and does not have an agreed definition, as people with African ancestry use different terms – such as “Afro-Indigenous” – or prefer not to identify as African-descendant at all to avoid discrimination. Overall, however, the term has become increasingly popular in recent years, as Afro-descendant communities have been fighting for recognition, their community and land rights (Davis-Castro, 2020; World Bank Group, 2018a).

¹¹. International law in the form of Convention No. 169 of the International Labour Organisation (ILO) requires previous consultation and guarantees free, prior and informed consent (FPIC) for Indigenous populations on decisions that affect them and their lands, including in the context of large development projects. ILO 169 also emphasises the state's duty to protect the rights of Indigenous peoples, including by requiring the state to consult with them on relevant matters with the objective of achieving agreement on or consent to the proposed measures. ILO 169 is most widely ratified by Latin American countries, with more than half of the state parties to the convention from the region. However, the ways in which the right to FPIC has been recognised, and the ways in which prior consultation processes have been implemented in the different countries, have diverged considerably (Columbia Center on Sustainable Investment, 2020).

¹². *Páramo* is a rare alpine tundra ecosystem particularly vulnerable to human impact and climate change; 50% of this tundra area is located in Colombia (El Tiempo, 2016).

¹³. The Amazon clearing rate, or deforestation rate, refers to the area of Amazon forest cleared for human use, including the removal of trees for wood products and for croplands and grazing lands, as well as partial logging and accidental fires, which thin out the trees to the extent that the forest structure is changed dramatically.

¹⁴ Chile has informed the OECD Secretariat that the Superintendency of Environment is undertaking a review of the case referred to here.

¹⁵. In January 2019, a tailings dam at Vale's Córrego do Feijão iron ore mine, located close to the town of Brumadinho in the Brazilian state of Minas Gerais, collapsed, releasing most of the 11.7 million cubic meters of tailings over approximately 295 hectares, and killing an estimated 270 people (BBC, 2019a; BBC, 2019b; BCC, 2019c).

¹⁶. Although closure plans are generally recognised as an effective mechanism for minimising the economic and social problems related to closing down an extractive project, they are often not covered by environmental and social impact assessments (ESIAs). In Latin America there are only two countries, Peru and Chile, that have mine closure legislation and guidance in place. Even in those cases, however, recent analyses noted that not enough emphasis is placed on the social aspects of mine closure, including human rights, or on land use post-mining (IGF, 2021; FIO, GIZ, CEPAL, 2019).

¹⁷. See Annex B for detailed information on the sample of the survey responses from companies operating in the extractive sector in the seven researched countries.

18. Implementing RBC standards such as the OECD Minerals Guidance and the Due Diligence Guidance for RBC can help companies to operationalise the SDGs and ensure that their most significant impacts are prioritised. Effectively preventing and mitigating adverse impacts also helps an enterprise maximise positive contributions to society, improve stakeholder relationships, and protect its reputation. By implementing risk-based due diligence, businesses can systematically manage risks and demonstrate their contribution to the SDGs in a measurable way

19. CEPAL is the regional counterpart of the programme. The German Agency for International Cooperation (GIZ) and Federal Institute of Geosciences and Natural Resources (BGR) are implementing partners.

²⁰. Argentina and Peru have also applied for OECD membership, and Brazil holds Key Partner status in its engagement with the OECD.

²¹. Launched in July 2018, CRAFT is a global code, open source aligned with the OECD Due Diligence Guidance and common framework for continuous improvement.

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