RESPONSIBLE SOURCING: AFRICA

Andrew Britton and Vittoria Franchini, Kumi Consulting, UK, discuss the responsible sourcing of metals and minerals and its implications for mining companies operating in Africa.

Concerns about the responsible sourcing of minerals from countries in Africa have gained increased attention over the past three decades. Since the issue of so-called 'blood diamonds' linked to conflicts in West Africa permeated the public consciousness in the 1990s, there has been a steady increase in awareness of the risks that, particularly in certain geographies, mineral and metal production may be linked to conflict, human rights abuses or bribery and corruption.

Such risks are by no means limited to African countries. Nevertheless, these risks are very relevant across many mining jurisdictions in Africa, underpinned by challenges such as fragile national governance structures, widespread poverty and, in some geographies, residual or recent armed conflict.

In response to concerns about potential risks in mineral and metal supply chains, a growing number of measures have been established by governments, civil society and industry that aim to provide confidence that minerals and metals have been responsibly produced and sourced.

The US and EU have both adopted regulatory measures for companies sourcing tin, tantalum, tungsten and gold (also known as '3TGs' or 'conflict minerals'). The London Metals Exchange (LME) introduced responsible sourcing requirements for producers of aluminium, cobalt, copper, lead, nickel, tin and zinc. The mandatory responsible sourcing requirements established by the London Bullion Market Association (LBMA) have specific implications for gold producers. Various other industry schemes are in place that mandate compliance with responsible sourcing standards for their members.

Responsible sourcing gains teeth

On 1 January 2021, the EU Conflict Minerals Regulation comes into force. This means that EU-based importers of 3TGs will be required to demonstrate that they have undertaken due diligence on their supply chains and can demonstrate that the minerals they import into the EU are not contributing to issues such as conflict and human rights abuses. One very important difference between the EU Regulation and the US Conflict Minerals Rule, which has been in force since 2011, is that whilst the latter focuses on the Democratic Republic of Congo (DRC) and the adjoined countries, the EU Regulation has no such geographical limitation and is therefore potentially relevant to many African mining jurisdictions.

To support compliance with regulatory requirements, industry associations have developed their own standards to support members who fall within the scope of the legislation. The LBMA's Responsible Gold Guidance (RGG) programme is one of several industry schemes currently undergoing assessment by the European Commission (EC), the result of which will determine whether the EC grants the recognition of 'equivalence' to the requirements of the EU Regulation. For those schemes that successfully achieve this recognition by the EC, compliance with the scheme will demonstrate legal compliance with the regulation for companies that import 3TGs into the EU.

The LBMA's Responsible Gold Guidance (RGG) is mandatory for any gold or silver refiner on the LBMA's Good Delivery List – LBMA refiners account for over 90% of global annual gold production, so most gold mining companies operating in Africa will be sending their doré to an LBMA refiner. Gold mining companies need to be able to demonstrate to the refiners that receive the doré that the mine operates in accordance with the standards set out by the LBMA in order for that gold to be received; should the RGG be accepted by the EC as equivalent to the regulation, the legal compliance angle can be expected to further increase scrutiny on whether miners are effectively preventing and mitigating responsible sourcing risks. Failure to comply could cut off access to the EU market.

Similarly, the LME's responsible sourcing requirements will require LME-listed brands to demonstrate that producers in their supply chain comply with due diligence requirements in order to trade on the exchange. The LME's requirements are not limited

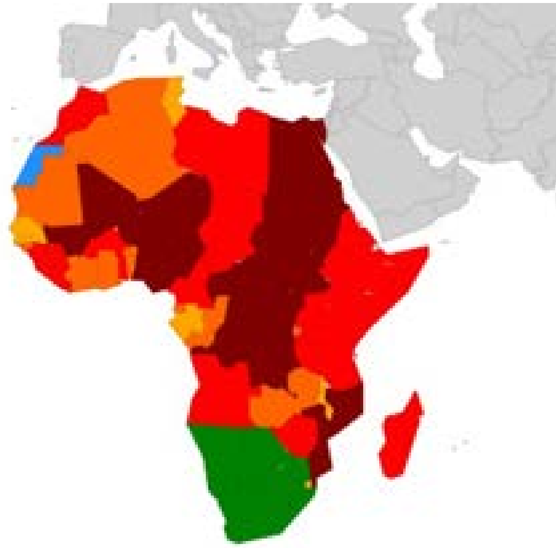

Figure 1. Distribution of CAHRAs in Africa as illustrated by Kumi's CAHRA Map using publicly available risk data and indices (with all four risk factors selected: conflict, human rights, governance and mineral flows). The darkest red colour indicates all four CAHRA risk factors are present in the country, graduating to yellow that indicates only one risk factor; green indicates the country is not a CAHRA and blue indicates that no data is available. Source: www.cahramap.com (May 2020).

to geography and, with a wide range of industrial metals in scope, will impact many African mining operations. This is likely to affect even those producers that do not trade on the LME. One can expect that growing awareness will lead to both downstream customers and trade financiers increasingly seeing the LME's requirements as a 'hygiene factor': a minimum compliance standard for mitigating potential exposure to responsible sourcing risks.

In the background to the physical metal or mineral supply chain, but very much with a stake in proceedings, is the finance sector. Whether providing finance to mining operators or supporting supply chain transactions, banks are becoming increasingly focused on ensuring that commercial and reputation risks caused by a mining operator not complying with responsible sourcing requirements are addressed.

The need to understand the OECD's due diligence framework

At the core of both regulatory and industry requirements that have been introduced in recent years is a common framework of reference: the OECD Due Diligence Guidance for Supply Chains of Minerals Sourced from High-Risk and Conflict-Affected Areas.

As suggested by its name, the starting point for the applicability of the OECD Guidance is whether minerals or metals may originate from a conflict-affected and high-risk area (CAHRA) or be otherwise linked to conflict or serious abuses due to the mineral supplier's circumstances. Whether companies are seeking to comply with the legal requirements of the EU Regulation or industry requirements such as those set out by the LME or LBMA, sourcing metals and minerals from a CAHRA will require enhanced due diligence on the supply chain. Due diligence responsibilities are not limited to purchasers of minerals or metals; implementation of the OECD Guidance is already a performance expectation within the ICMM's Mining Principles, which the 27 large-scale mining companies that are ICMM members are committed to uphold.

The definition of CAHRAs is often misunderstood. A common mistake is that companies take a narrow interpretation of what 'high-risk' means. Often the emphasis is given to 'conflict' only, whereas serious abuses relating to human rights, governance and the potential for minerals illicitly transiting into the supply chain are equally important risk factors.

When all four risk triggers (conflict, human rights, governance or mineral flows) are taken into account, this becomes a broad starting point for identifying a CAHRA. Figure 1 shows which countries in the region can be defined as CAHRAs. It is evident that many African mining jurisdictions fall within the definition.

While the identification of a CAHRA does not necessarily mean that all producers within that CAHRA are themselves high risk, it does mean that purchasers of minerals originating from (or transiting through) that CAHRA need to do further due diligence as the location of the producers' operations have increased the possibility of certain risks being present.

What are the implications for mining companies operating in Africa?

Mining companies operating in African countries that could be defined as a CAHRA need to ensure they can demonstrate that their operations are aligned with the standards set out in the OECD Guidance, with a particular focus on those risks that are due diligence 'triggers'.

Be prepared to demonstrate how corruption risks are being managed

Many mining companies operate in jurisdictions where governance is weak and therefore risks relating to corruption are high. Over 250 mining industry participants who were surveyed by EY identified bribery and corruption as one of the top ten risks facing the sector in 2019 - 2020. There are 26 countries in Africa that are rated as having a 'high' or 'very high' risk of corruption, according to the Corruption Perceptions Index published by the campaign group, Transparency International. High profile cases capture headlines in the media, such as Vale's lawsuit against BSG Resources in relation to the Simandou project in Guinea, or the UK Serious Fraud Office's investigation into Glencore's dealings in the DRC. However, studies have shown that 'lower level' corruption in mining areas, such as bribes to local officials or police, is a significant and widespread challenge across Africa. Such incidents may not capture the attention of global media, but seriously impact the ability for mining to deliver much-needed socio-economic benefits to local communities.

The fact that a mining company may be a large multinational corporation, perhaps also publicly listed, is not enough on its own to provide confidence that corruption risks are being managed. Companies are not only expected to have clear corporate commitments and effective management controls, but also to undertake risk-based due diligence on suppliers and business partners and to be transparent about the taxes, fees and royalty payments they pay to stakeholders. This includes transparency on payments made to secure access to mining concessions. Mining companies operating in Africa, particularly those operating in higher risk jurisdictions, need to be prepared to provide this information to their customers.

Figure 2. Copper from ASM production being graded at a warehouse before being sold to a smelter in the DRC-Zambia copperbelt region. Photo: Andrew Britton/Kumi Consulting.

Apply the voluntary principles for security and human rights

The risks that security forces may commit human rights abuses are increased in jurisdictions where the rule of law is weak and the rights of workers and civil liberties are not always protected. Just one example is the ongoing challenges at the North Mara gold mine in Tanzania, currently the subject of legal action in the UK High Court, where there are allegations of serious abuses by security forces employed by the mine.

Under the OECD Guidance, as well as other international standards such as the ICMM Mining Principles, mining companies are expected to apply the Voluntary Principles on Security and Human Rights (VPs) when contracting security forces. The VPs were launched 20 years ago specifically in response to the recognition by governments, industry and civil society that security forces were frequently being implicated in human rights abuses. However, many mining operations across the continent have often still not even heard of the VPs, let alone adopted them into their operations. Cases in which companies employ security forces without conducting adequate screening or training are still too common. In some cases, illegally armed security forces are directly employed by large-scale producers or their third-party suppliers.

Mining companies need to ensure that effective controls are in place to implement the standards and practices set out by the VPs across their operations, including joint-ventures and major contractors employing their own security forces.

Assess risks related to artisanal and small-scale producers

It is important not to stigmatise artisanal and small-scale mining (ASM). However, it is an incontrovertible fact that certain risk factors, such as the potential for child labour or mineral production to be appropriated by armed groups, may be more likely in ASM than in industrialised operations. The vulnerability of many ASM communities is a key factor elevating this risk.

While ASM in Africa is often associated with the 3TGs and diamonds, it is in fact widespread across a range of metals and minerals. In recent years, there has been a lot of attention on ASM cobalt production in the DRC after evidence emerged of children working in cobalt mines to supply downstream manufacturers of consumer goods, such as smartphones, laptops and electric vehicles. However, similar challenges are found across many mineral types, including those within the scope of the newly introduced LME requirements, such as copper, lead and zinc.

It is important to consider that the term 'ASM' covers a broad range of types of operations; the 'small-scale' part of 'artisanal and small-scale mining' is often overlooked. Small-scale mining is usually undertaken by legal mining operators who have access to some level of mechanisation, for example a backhoe and perhaps a concentrator plant. It is also often overlooked that many of these small-scale operations supply their ore or concentrates to large-scale mine and smelter operations.

Large-scale mining companies can be connected to these small-scale operations both directly, for example, by purchasing ore or concentrates from third party producers, or indirectly through joint venture relationships or off-take or tolling agreements with other companies that themselves source from small-scale operations. It is important that mining companies are honest about the linkages that do exist, undertake due diligence on such linkages and ensure relevant risks are responsibly mitigated.

Many mining companies may not be sourcing from ASM operations at all but may be located in areas where there is a significant presence of ASM. Instances of ASM workers competing with large-scale operators for the same resources have often been the source of conflict across the continent, frequently leading to human rights impacts. In any event, mining companies are encouraged to act responsibly and sensitively in any interactions they may have with ASM communities.

The importance of a proactive approach to risk management

It is evident that responsible sourcing concerns will not be swept away any time soon. Indeed, the reverse is happening, with the list of materials being drawn into the scope of responsible sourcing compliance requirements lengthening all the time. The ultimate users of mining companies' production, such as manufacturers of consumer products are increasingly focused on ensuring that they can be confident that the materials they use have been responsibly produced.

There is great potential for growth in the mining sector in Africa – arguably greater than anywhere else in the world. Mining companies in Africa need to ensure that they understand how responsible sourcing expectations and the compliance requirements that are coming into force in the coming months may be relevant to their operations. They need to take a proactive approach to risk management, ensuring that they can demonstrate to customers, finance providers and other external stakeholders that their operations are aligned with the standards set out in the OECD Guidance. Particular focus should be given to those risks that have been identified by the OECD and other stakeholders as being especially relevant to large-scale mining. Those companies that take a proactive approach will be best placed to position themselves as the 'supplier of choice' in a market where it is becoming increasingly important to metal and minerals consumers to know precisely where their raw materials have come from and how they have been produced. GMR