

# APPENDIX 1

## Sample questionnaire for formal mapping

This questionnaire applies to the laws, normative instruments, structures, reporting lines and processes relevant to the environmental public administration of the mining sector and the ministries, offices, departments and/or agencies that play a key role in this sector.

It applies to the full set of public administration roles and processes in the environmental governance of all stages of the mining cycle, including: exploration, assessment, land-use planning, consultation, negotiation, contracting, development, operation/exploitation, closure and post-closure.

The questions are grouped by each of the six basic principles of the rule of law: legality, accessibility, right to be heard/participate, transparency, right to appeal, and accountability.

The majority of the questions can be answered 'yes' or 'no'. A minority of the questions seek to establish a baseline of applicable laws, normative instruments and case law as a general description of a particular agency, service or process.

When the question asks for laws and other normative instruments, the response can include, for example, constitutional rules, statutes, case law, by-laws, rules, decrees and regulations, as well as internal rules of practice within the agencies.

In the right margin of the questionnaire is a box for comments. Comments can include, for example, information on when a particular law was enacted or if a particular area is regulated through case law instead of statutes, or vice versa. Comments may also elaborate on and specify the content of laws.

Be as specific and comprehensive as possible when writing the comments, and include year, publication number (e.g. in the Official Gazette or similar), case number and status when referring to laws or other normative instruments. Review and ask questions about documents such as:

- legal documents (e.g. constitution, laws, regulations, decrees and instructions, judicial rulings and administrative decisions and acts, concessions or other contracts, internal orders of the selected agency) relevant to one or more stages of the mining cycle;
- statistics (e.g. number of civil servants, number of claims, petitions and representations received by government or administrative agencies, including disaggregation by sex, age and region); and
- reports from supervisory bodies (e.g. supreme audit institutions and annual reports from ombudsmen institutions).

## General information

1. Name of the agency:
2. Year of establishment:
3. Administrative or jurisdictional status of the agency (e.g. national, district, local/city/municipal):
4. Principal areas of responsibility of the agency:
5. Geographical location of the agency:

## Principle 1: Legality

| Questions  | Yes | No | Comments |
|--|-----|----|----------|
| 1. <b>Hierarchy of laws and regulations across the mining cycle:</b> Is there a clear hierarchy between the laws and regulations governing and coordinating environmental issues in mining?  |     |    |          |
| 2. <b>Horizontal coordination:</b> Are there laws or other normative instruments that clearly divide the roles on governing environmental issues in mining within and across ministries and agencies?  |     |    |          |
| 3. <b>Vertical coordination:</b> Are laws and regulations coordinated and clearly distinguished between national, regional and local levels for each stage of the mining cycle?  |     |    |          |
| 4. <b>Coverage of laws:</b> Do the laws and regulations include provisions on assessment, contracting, licensing, monitoring, compliance, enforcement, sanctions etc.?   |     |    |          |
| 5. <b>Risks for forced displacement and resettlement:</b> Do the laws and regulations include provisions on cases of forced displacement and resettlement caused by mining projects?   |     |    |          |
| 6. <b>Updates of laws:</b> Are there established procedures ensuring that civil servants receive updates and amendments on the laws and normative instruments that govern the sector and instruments that govern their area of competence? If yes, please list these procedures. |     |    |          |
| 7. <b>Unlawful decisions:</b> Can unlawful administrative decisions by civil servants be withdrawn?  |     |    |          |
| 8. <b>Administrative discretion:</b> Are there laws or other normative instruments on how civil servants decide in matters of administrative discretion?   |     |    |          |
| 9. <b>Conflict of interest:</b> Are there laws or other normative instruments on conflict of interest?   |     |    |          |
| 10. <b>Equal treatment:</b> Are there laws or other normative instruments that explicitly ensure equality before the law, regardless of sex/ethnicity/religion/tribe/family/party affiliation or other social status?  |     |    |          |
| 11. <b>Gender equality:</b> Are there any laws or normative instruments promoting gender equality within the agency?   |     |    |          |
| 12. <b>Gender-responsive approach to mining:</b> Are there any laws or normative instruments promoting a gender-responsive approach to mining (i.e. targeted consultations for women, mapping gender outcomes)?  |     |    |          |



## Principle 2: Accessibility

| Questions   | Yes | No | Comments |
|---|-----|----|----------|
| 13. <b>Initiating the process:</b> Do laws or other normative instruments define clearly who has the right to initiate an administrative procedure related to environmental issues in the mining sector?  |     |    |          |
| 14. <b>Implementing the process:</b> Do laws or other normative instruments clearly outline differentiated requirements and procedures for large-scale mining and artisanal mining—i.e. taking into account the scale and complexity of the mining project?                 |     |    |          |
| 15. <b>Service delivery chain:</b> Do laws or other normative instruments clearly outline the process/steps for obtaining mining and environmental licences?  |     |    |          |
| 16. <b>Formalization of mining activities:</b> Are there laws or other normative instruments that stipulate procedures to promote formalization of mining activities?   |     |    |          |
| 17. <b>Third-party petitions:</b> Do laws or other normative instruments enable third parties (citizens, community groups, companies) to initiate an administrative procedure to address environmental and social issues in the mining sector (petitions, complaints etc.)? |     |    |          |
| 18. <b>Access by different groups:</b> Are there laws or other normative instruments to ensure the access of different groups, including companies and civil society groups representing women, indigenous peoples, minorities and other vulnerable groups, to the agency?  |     |    |          |
| 19. <b>Service hours:</b> Do laws or other normative instruments specify that the agency has to be open to the public during a certain period of time?  |     |    |          |
| 20. <b>Format of communication:</b> Do laws or other normative instruments require proper (e.g. appropriate, clear and understandable) use of language when the agency communicates with citizens, companies and other stakeholders?  |     |    |          |
| 21. <b>Format of petitions:</b> Do laws or other normative instruments require the agency to examine petitions/complaints related to one or more stages of the mining cycle even if they do not meet formal standards for petitions/complaints?                             |     |    |          |
| 22. <b>Service fees:</b> Are there fees and other administrative costs related to the services provided by the agency?  |     |    |          |
| 23. <b>Cost of services:</b> Are there laws or other normative instruments stating that costs for administrative services at the agency have to be reasonable (e.g. covering only expenses)?  |     |    |          |
| 24. <b>Language of petition:</b> Do laws or other normative instruments allow for requests or petitions made to the agency in a minority language? If so, please state which minority languages.  |     |    |          |
| 25. <b>Redirecting petitions:</b> Do laws or other normative instruments require the agency to assist stakeholders <sup>10</sup> in cases of obvious mistakes (e.g. when a request is sent to the wrong agency)?  |     |    |          |



10. Defined as persons, groups or companies that are, in their own view, affected by a mining operation.

### Principle 3: Right to be heard and to participate

| Questions   | Yes | No | Comments |
|---|-----|----|----------|
| 26. <b>Laws and regulations:</b> Are there laws or other normative instruments ensuring the right of concerned stakeholders to be heard and participate in the decision-making process before a decision with possible environmental impact is taken? If yes, please list decisions specifically requiring the participation of concerned stakeholders. |     |    |          |
| 27. <b>Definition of concerned persons:</b> Do these laws or other normative instruments define clearly which stakeholders have the right to be heard and participate in environmental issues in the mining sector? If yes, please list those stakeholders according to the legal instruments.  |     |    |          |
| 28. <b>Proactive communication of new information:</b> Are there laws or other normative instruments providing a duty for the agency to inform concerned stakeholders about new facts and evidence relevant to their case?  |     |    |          |
| 29. <b>Communicating with concerned stakeholders:</b> Are there laws or other normative instruments regulating <b>how</b> the agency should communicate with a concerned stakeholder, and whether the means of communication is different if the stakeholder is a person, group or company?   |     |    |          |
| 30. <b>Verbal communication:</b> Are there established procedures allowing stakeholders to communicate orally with the agency about environmental issues at any stage of the mining cycle?  |     |    |          |
| 31. <b>Public hearings:</b> Are there established procedures for conducting public hearings? If so, please state in the comments section if any person, group or company that considers itself a stakeholder can participate, if there is a cap on the time participants are given to talk, and which government agencies are involved in the hearing.  |     |    |          |
| 32. <b>Participation of concerned stakeholders:</b> Are there laws or other normative instruments regulating how the agency should ensure the participation of stakeholders?  |     |    |          |
| 33. <b>Minority languages:</b> Are there laws or other normative instruments ensuring that consultations/hearings led by the agency can be done in minority languages? If so, please list which languages.  |     |    |          |
| 34. <b>Timelines for decisions:</b> Are there laws or other normative instruments stipulating maximum timelines for when the agency must take a decision about an environmental issue that has been raised in relation to mining?   |     |    |          |
| 35. <b>Burden of proof/evidence:</b> Are there laws or other normative instruments defining who bears the main responsibility for producing facts and evidence to inform administrative decisions that involve the agency and can cause environmental impact related to mining?   |     |    |          |
| 36. <b>Recording of procedures:</b> Are there laws or other normative instruments to guide the recording of administrative procedures of the agency?  |     |    |          |



## Principle 4: Transparency and access to information

| Questions   | Yes | No | Comments |
|---|-----|----|----------|
| 37. <b>Open access to the legal framework:</b> Are there laws or other legal instruments that ensure public access to information on laws, standards and procedures that regulate the environmental impact of the mining sector, including issues? <sup>11</sup> Please list key legal instruments ensuring access to information on the legal framework.   |     |    |          |
| 38. <b>Access to environmental information:</b> Are there laws or other instruments ensuring public access to environmental information? Please list these legal instruments.   |     |    |          |
| 39. <b>Existence of laws:</b> Are there laws or other instruments that ensure access to information concerning laws, standards and procedures governing the work of the agency? Please list these legal instruments.  |     |    |          |
| 40. <b>Housing of information on environmental impact:</b> Do laws or other instruments specify which public agencies shall hold information related to the environmental impact of the mining sector? Please list the agencies.  |     |    |          |
| 41. <b>Proactive vs. reactive information provision:</b> Do laws or other instruments require public agencies to proactively make this information available, or only upon request?   |     |    |          |
| 42. <b>Proactive vs. reactive information provision by the private sector:</b> Do laws or other instruments require private companies to proactively make information on the environmental impact of their operations available to the agency, or only upon request?  |     |    |          |
| 43. <b>Format of requests for information:</b> Does a request for access to information concerning specific cases of environmental impact of mining operations have to be made in writing? If yes, please list the languages it may be submitted in.  |     |    |          |
| 44. <b>Format of information provided:</b> Do laws or other instruments specify the manner in which such information should be provided by the relevant public agency (within a specific timeline, electronically/hard copy, written/verbal/in person/remotely, using appropriate, clear and understandable language, using a minority language if needed)? |     |    |          |
| 45. <b>Cost of information:</b> Are there any fees or other costs involved in gaining access to the above information?  |     |    |          |
| 46. <b>Confidentiality of information:</b> Are there laws or other normative instruments concerning restrictions on access to information that concerns the privacy and integrity of persons?   |     |    |          |
| 47. <b>Recording and archiving:</b> Are there laws or other normative instruments requiring the agency to record and archive decisions made and minutes of hearings? If yes, please list documentation that is required to be recorded and archived.  |     |    |          |



11. Such as mining negotiations, contracting and licensing; environmental impact assessment; environmental management plan, including water recycling, land rehabilitation, relocation and compensation, biodiversity offset; and mine closure, monitoring, compliance, enforcement and sanctions.

## Principle 5: Right to appeal<sup>12</sup>

| Questions   | Yes | No | Comments |
|---|-----|----|----------|
| 48. <b>Appealing a decision:</b> Are there laws or other normative instruments defining who has the right to appeal a decision by the agency? If yes, please list both the legal instruments and the stakeholders who have the right to appeal. |     |    |          |
| 49. <b>Formulating decisions:</b> Are there laws or other normative instruments on how the agency should formulate its decisions (e.g. precise, adequate and understandable)?   |     |    |          |
| 50. <b>Notification of decisions:</b> Are there laws or other normative instruments on when the agency has to notify its decision to a concerned stakeholder (e.g. without undue delay)?  |     |    |          |
| 51. <b>Duty to inform:</b> Are there laws or other normative instruments providing a duty for the agency to inform concerned stakeholders about new facts added to their case?  |     |    |          |
| 52. <b>First instance of appeals:</b> Are appeals of the agency's decisions first reviewed by the agency itself?  |     |    |          |
| 53. <b>Appeals court:</b> Is there a separate system of courts or tribunals dealing with appeals of the agency's decisions?   |     |    |          |
| 54. <b>Administrative appeals:</b> Are administrative appeals procedures at the agency conducted in writing?  |     |    |          |
| 55. <b>Oral hearing:</b> Are there laws or other normative instruments allowing for a stakeholder to request an oral hearing when appealing a decision by the agency?   |     |    |          |
| 56. <b>Representation in appeal:</b> Are there laws or other normative instruments allowing a stakeholder to be represented by counsel if he or she wishes in the appeals procedure?  |     |    |          |
| 57. <b>Costs of appeal:</b> Are there any fees or other costs required of the stakeholder appealing the agency's decision?  |     |    |          |



12. Such as appeals by citizens against the approval of an environmental impact assessment or the issuance of a mining license; appeals by affected citizens against the denial of compensation; and appeals by companies against the denial of a license or sanctions considered unfounded.

## Principle 6: Accountability

| Questions   | Yes | No | Comments |
|---|-----|----|----------|
| 58. <b>Ethical code:</b> Are there ethical codes, charters or similar instruments guiding the work of civil servants at the agency?   |     |    |          |
| 59. <b>Gender equality:</b> Are there any guidelines on gender equality or similar rules of practice guiding the work of the civil servants at the agency?  |     |    |          |
| 60. <b>Internal evaluation:</b> Are there rules and regulations requiring <b>internal</b> evaluation and review (performance, audit etc.) of the agency applicable to each stage of the mining cycle?   |     |    |          |
| 61. <b>Evaluation by an independent body:</b> Are there laws or other normative instruments on evaluation and review (performance, audit etc.) of the agency by an independent body applicable to each stage of the mining cycle?   |     |    |          |
| 62. <b>Liability for wrongful decisions:</b> Are there laws or other normative instruments on the liability of the agency or individuals for wrongful decisions leading to negative environmental impact from mining operations? If yes, please list these legal instruments.   |     |    |          |
| 63. <b>Oversight bodies:</b> Is there a national human rights institution, ombudsman, anti-corruption or similar body to which stakeholders may submit complaints about violations of rights or discriminatory performance by the agency which may cause negative environmental impact? If yes, please list these oversight bodies. |     |    |          |
| 64. <b>Corruption:</b> Are relevant and necessary laws or other normative instruments on bribery, embezzlement, misappropriation of funds or other forms of corruption in place and applicable to the agency? If yes, please list the most relevant laws and other instruments.   |     |    |          |