



Step 2

Formal mapping

The second step in the assessment process, the **formal mapping**, establishes basic data on the legal and administrative system within the mining sector by identifying relevant national laws and regulations, local government codes, executive orders and memos, as well as intra-governmental coordination mechanisms and reporting lines for the specific public agency participating in the self-assessment.

The above list is not exhaustive, as the **formal mapping** should be tailored to focus on a specific entry point for the self-assessment.

Sufficient time should be allocated to the **formal mapping** at national, district, municipal and/or city levels. Conducting a comprehensive mapping of all existing laws could be cumbersome and too general in its application; therefore, **only those laws and regulations directly relevant to the agency and its functions related to the environmental governance of mining activities, as determined during the inception step, should be included.** (See Appendix 1 for a sample questionnaire on formal mapping.)

In addition to mapping laws and regulations directly relevant to the agency and its functions, special attention should be paid to the national legal and policy framework for gender equality, also covering actions by representatives of public services. Special attention should also be paid to identify laws and regulations that may discriminate against vulnerable groups such as women and children or in other ways exclude other groups of citizens.

Specifically, the information sought in this step serves to establish whether there are **formal safeguards guaranteeing the principles of the rule of law in the work of the administrative agency.** This relates in particular to services that determine the rights and entitlements of individuals who are affected by mining activities.

The **formal mapping** should enable the agency to gain a better understanding of its legal environment and explain any possible differences in the responses generated by **the agency and the target group surveys.** It is important to note that the legal framework can be different depending on the specific affected community assessed (artisanal, large-scale operators etc.).

The **formal mapping** should be conducted in successive steps, in which laws, regulations, instructions, decrees and so on are first compiled and then narrowed down to reflect the role and function of the specific public agency. **It is advisable to select a specific function within the public agency to clearly capture the interface between the agency and citizens.**

The formal mapping is not a survey; therefore, it is not necessary to interview the staff from the agency or from other agencies at this stage. Instead, if interviews are used, they should be targeted and conducted only with those staff who work directly with the selected entry point—for instance, issuing environmental licences for mining projects—as well as the agency's legal support services.

Where relevant, the questions on whether there are certain laws, institutions or other regulatory instruments should be complemented by space for respondents to add comments. This adds a qualitative element and is important to **contextualize the results from the formal mapping.** Such comments might include, for example, whether a specific law or regulation is about to be changed, whether a specific law in any way discriminates against certain groups of citizens, or if it is under review by a court and the decision might change its application. Gender implications of changes in the laws should be documented,

focusing on the extent to which gender equality policies are reflected in the legislative acts, and assess existing gender equality mechanisms stipulated in the legal framework.

The **formal mapping** must be finalized before embarking on the **agency** and **target group surveys**. The results of the **formal mapping** may be used to contextualize the survey questions and to make them more relevant and targeted to the agency's specific functions related to environmental governance of the mining sector. (See the sample report outline in Appendix 4 for an overview of the formal mapping as an integral part of the self-assessment results.)

Box 3.4

The deficit between *de jure* and *de facto* implementation: the case of Mongolia

In the case of Mongolia, the General Administrative Law (GAL) is harmonized with laws governing natural resources. There are no contradictions as such, yet situations arise where people working in the natural resources sector tend to follow sectoral laws only. GAL provisions such as transparency of decision-making, response time and access to information tend not to be followed up, and it is not clear in which cases sectoral laws should prevail. Moreover, although principles of the rule of law are sufficiently incorporated into laws, they are not sufficiently put into practice. There are a range of reasons for this, including inappropriate or ineffective regulations, regulations that are too general or too detailed, and a lack of coordination between general and sector-specific laws. Other reasons that emerged during the assessment pointed to a lack of knowledge among public servants and citizens, negative attitudes towards laws and inappropriate public-sector structures, management and responsibilities.

In conducting the formal mapping, it may be the case that the six principles do not weigh equally, with some being more of a priority than others according to the problem analysis. In Mongolia, the conflicts or overlaps between *de facto* and *de jure* implementation of the laws necessitated conducting a complementary study, as interlocutors attached more importance to the principle of legality and the general perception throughout interviews of a legal framework that was both opaque and complex. This affects both public servants and citizens or affected communities. For instance, it is risky for public servants to apply laws based on their own interpretations as a result of not having received enough targeted legal training on the application of amended and new laws. The results of the assessment also found that legal provisions on citizens' right to information conflict with each other, and regulations on agency confidentiality impede citizens' right to information. The results of the questionnaire also found that information disclosed in accordance with the law is limited voluntarily by agencies, which apply their own internal rules, and citizens are not provided with information on how government agencies deal with the environmental impacts of mining.

Formal mapping do's and don'ts

- Adhere as closely as possible to the environmental governance mandate and institutional context of the agency being assessed and the service it provides to affected communities. In some cases, national laws will be relevant, but this step should not be used to conduct a general legal analysis of a country's national and regional laws.

- If there is a lack of written records, data should be collected first through consultations with the host agency legal officer or support desk and next from legal professionals.
- Avoid highlighting challenges or issues of coordination between agencies in this step, even if some laws and codes overlap with how other agencies are governed—i.e. environmental governance of the mining sector, including licensing.
- Develop a checklist of key indicators of the organizational capacity of the selected agency related to environmental governance of the mining sector. This can be a supplement to conducting the formal mapping, and indicators may include the agency website or the availability of an e-governance system.

Formal mapping outcomes

At the end of Step 2, the following outcomes will have been achieved:

- The sample questionnaire in Appendix 1 has been adjusted to the specific context of the self-assessment, including decisions on specific entry points for the assessment.
- The necessary legal expertise and knowledge of the institutional context has been obtained either from relevant staff at the selected agency or from outside.
- Comments on the laws, regulations and institutions from the comment boxes in the formal mapping template have been compiled and analysed.
- A brief progress report written by the independent expert, summarizing the findings of the formal mapping, has been submitted to the lead government agency and the ROLPA advisory committee.

