

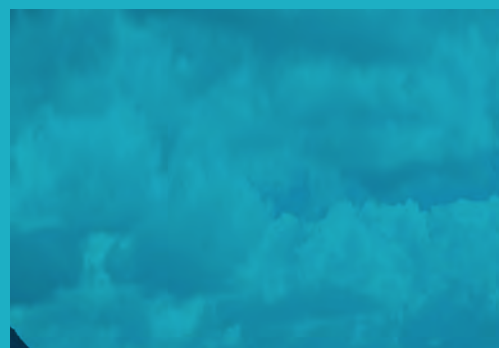


# USERS GUIDE

**Assessing the Rule of Law  
in Public Administration:  
the Mining Sector**



June 2019







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# FOREWORD

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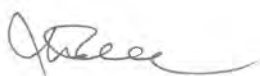
More than three years after the adoption of the SDGs, the world faces several troubling and mutually reinforcing trends: loss of **biodiversity and ecosystem services**, **climate change** and rising **inequality, conflict and fragility**. Underpinning these linked trends are patterns of unsustainable **management of natural resources, including the mining sector**.

**Mining**, if managed well, can provide an opportunity for countries to advance economic development and **human well-being**. It can bring long-term investments, generate greater fiscal revenues and produce commodities needed to advance economic growth and broader sustainable development. Metals and minerals are needed for roads, buildings and other infrastructure, as well as technologies such as computers, mobile phones, and more efficient, cleaner, modern energy systems needed to advance the 2030 Agenda and the Paris Agreement. The demand for minerals is also expected to grow significantly over the coming decades to meet the needs of expanding and more affluent urban populations.

If not managed well, however, the potential benefits accrued from the mining sector will not be sustainable and can be outweighed by negative impacts. Weak governance of the sector can contribute to and exacerbate environmental and social disruptions, including **degradation of key ecosystems**, an increase in **gender-based** and other forms of inequalities, **human rights** violations, **corruption, conflict, displacement**, and greater emissions contributing to **climate change**.

Good governance, grounded in principles of the **rule of law**, is critical to managing these risks and to ensuring that mining can contribute to **sustainable development**. The rule of law in the mining sector is ensured by **public institutions** that can formulate and **implement** clear, accessible and just laws that provide fair, equitable and accountable development outcomes and services to all. The rule of law in public administration serves to protect **human rights**, including **procedural environmental rights**: the right to participation in decision-making, the right to access information, and the right to redress in cases where rights have been violated. These are key principles to empower citizens to protect the environment, and by extension, a range of human rights.

With this Users' Guide, the Folke Bernadotte Academy, the Swedish Environmental Protection Agency and the United Nations Development Programme hope to make a valuable contribution to the existing landscape of mining sector assessments. This self-assessment, and the six principles of the rule of law on which it is based, will enable affected communities and civil servants to identify and address key procedural rights and justice issues involving the environmental governance of the mining sector. In this way, governments, communities and other stakeholders can mitigate the risk of socio-environmental conflict and help advance sustainable development.



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# 1

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## Overview

## Purpose

This Users' Guide, 'Assessing Rule of Law in Public Administration: The Mining Sector' (hereinafter the ROLPAM Users' Guide), has been designed to help policymakers and civil servants identify specific strengths and challenges in the application of **principles of the rule of law** in the way the **public administration** regulates the **mining industry**.

It has been developed with a particular focus on public administration performance concerning six principles of the rule of law: **legality, accessibility, the right to be heard and to participate, transparency, the right to appeal, and accountability of decision-making**.<sup>1</sup> These six principles are considered fundamental to effective, transparent and accountable public-sector governance.<sup>2</sup>

The rule of law-based approach to public administration is aligned with the key principles of **procedural environmental rights**—participation in decision-making and access to information, redress and justice—which have been found to be an effective way of protecting the environment, and by extension human rights, and contribute to sound environmental governance of the mining sector.

It is a practical tool that enables the staff of the agency granting environmental and mining licences and the communities affected by large-scale mining projects, such as smallholders, farmers and resettled communities, as well as mining rights holders, including small-scale and artisanal mining affected by large-scale mining projects, to identify procedural issues and outline clear recommendations for **reform of the mining sector** from a rule of law perspective.

The Users' Guide has been developed in close cooperation between UNDP, the Folke Bernadotte Academy (FBA) and the Swedish Environmental Protection Agency.<sup>3</sup>

## Rule of law and the exploitation of metals and minerals

Ensuring the rule of law in the exploitation of natural resources, including metals and minerals, is essential to ensuring inclusive and sustainable economic growth and **human development**, and to protecting and fulfilling **human rights**. With the advent of Agenda 2030, and in particular Sustainable Development Goal (SDG) 16 but also several of the other goals, both the rule of law and the responsiveness of public institutions are crucial in the regulation of the mining industry—for instance, by ensuring **equal opportunity** and **reducing inequalities** of outcome, for example by eliminating discriminatory laws, policies and practices (SDG 10).

Promoting **political inclusion** and **participatory planning** underpins the achievement of many other SDGs, such as ensuring access for all to **clean water** (SDG 6), and preventing and halting **land degradation and biodiversity loss** (SDG 15). This intersects with SDG 1 on **reducing poverty**, which states that all men and

1. The six principles of the rule of law are derived from international and human rights law, in addition to national laws, established practice, legal precedent and jurisprudence: legality, accessibility, the right to be heard and to participate, transparency, the right to appeal, and accountability.

2. United Nations, General Assembly, The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General, S/2004/616 (23 August 2004), available from [www.undocs.org/S/2004/616](http://www.undocs.org/S/2004/616).

3. FBA is the Swedish governmental agency for peace, security and development.



women, in particular those who are poor or vulnerable, have equal rights to economic resources, as well as access to basic services, ownership and control over land and other forms of property, inheritance and natural resources.

Reinforcing the rule of law is also key to ensuring **strong and accountable institutions** as an effective pillar in preventing conflict and guaranteeing a fair and equitable distribution of resources. Hence, the role of accountable public institutions and their application of the principles of the rule of law are vital to the **Sustaining Peace Agenda**. Experts and governments expect natural resources to become key drivers in a growing number of disputes, with potentially significant consequences for international and national **peace and security**. Research on the frequency of reported conflicts between mining companies and communities shows a progressive increase since 2002, and they are still rising in frequency and intensity. Enhancing institutional capacity to govern natural resources, and thus effectively navigating social conflict and preventing escalation to violent conflict, both at the local and national level, is one of the six lessons extracted from a recent UNDP-CIRDI report on mining and the role of host governments in conflict prevention.<sup>4</sup>

## Complementary tools

The ROLPAM Users' Guide complements many other like-minded toolkits for the mining sector, including the **World Bank's Mining Sector Diagnostic (MSD)** and the **Mining Policy Framework (MPF)** developed and implemented by the **Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF)**. However, it differs in certain ways, notably in its focus on individuals, often those in affected communities who are most at risk of being left behind, and their interactions with administrative bodies in the mining sector. This focus is informed by a specific rule of law and human rights perspective.

### Box 1.1

#### Pilot assessments

The tool has been tested through UNDP–Swedish Environmental Protection Agency support to a series of pilot self-assessments by government agencies in Colombia, Mongolia and Mozambique. The agencies conducting pilot assessments are the national environmental and mining licensing agencies. The pilot assessments have resulted in recommendations pointing to a need for greater institutionalization of rule of law standards in application and granting procedures, harmonization of practices and procedures to allow easier communication and handling of requests from individuals, and more transparent decision-making in improving public administration performance.

It builds on, and is aligned with, the **Global Guidance Note 'Extracting Good Practices: A Guide for Governments and Partners to Integrate Environment and Human Rights'**

4. See <http://bit.do/eRca7>.

into the Governance of the Mining Sector'<sup>5</sup> and represents a practical guide to better understand shortcomings in the way that administrative agencies are managing issues such as legal certainty, accountability, access to information, the right to be heard, and the right to redress in the mining sector.

The ROLPAM Users' Guide was piloted between 2015 and 2017 in **Colombia, Mongolia and Mozambique** with a focus on large-scale mining and the extent to which principles of the rule of law—and, by extension, procedural environmental rights (the right to participate in decision-making and access to information, justice and redress)—are respected in environmental governance of the mining sector. It builds on previous cooperation between UNDP and the FBA that resulted in the 'Guidance Note for Assessing Rule of Law in Public Administration' (see <http://bit.do/eRcbz>).

The ROLPA self-assessment is designed to be **flexible** and relatively **inexpensive** and **rapid** to use; it can be rolled out in a matter of months. It can be applied to a single agency within a country's public administration, providing one particular service at the local level—for example, regulating environmental licences or addressing issues of resettlement—or to several agencies at the regional or national level. The self-assessment can also be adapted to a **range of contexts** and assessment purposes in relation to public administration governing the mining sector—for example, to quickly assess challenges related to the rule of law in newly established administrative agencies or to create **baseline data** for longer-term quality control and assurance. The different questionnaires can be used separately or in combination to achieve these objectives.

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5. See <http://bit.do/eRcbH>.

# 2

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What the tool  
measures—  
and who it is for

## Public agencies in the mining and environmental sectors

The ROLPAM Users' Guide is designed for use at both national and subnational levels of public administration. It targets agencies with responsibility for environmental protection in the mining sector and underscores key qualitative rights and justice issues for the individual in relation to the public administration responsible for governance of the mining sector. The self-assessment and the six principles of the rule of law on which it is based emphasize both the demand side of public administration (the services that affected communities consider essential and any aspects they consider problematic in terms of procedural rights) and the supply side (enabling civil servants to identify the most challenging justice issues for environmental governance of the mining sector).

The specific focus of the self-assessment is not, generally, on civil service management, policy formulation or financial management, but on the downstream citizen-interface functions of public administration, including service delivery, related to environmental governance of the mining sector. Within this realm, the focus is on the **chain of actions and decisions taken by an agency that affect the rights, liberties or interests of individuals**.

Sound environmental decisions in the mining sector depend, partially, on procedures that guarantee the participation of stakeholders, including in particular people who may be negatively affected by mining. These people find in the processes established by law and governed by public administrative agencies an opportunity to guarantee their right to a healthy environment and to influence decisions regarding mining projects.

The way in which government agencies with a mandate to govern environmental aspects of the mining sector are structured, regulated and supervised differs between countries. **People's expectations and problems with the rule of law in relation to public administration also differ** depending on where they live, their gender or ethnicity and their level of general knowledge and awareness, and based on their previous interactions with the agency or the public administration in general.

**Civil servants also experience different challenges** depending on the level of resource allocation and the regulatory environment, the clarity of instructions and mandates, access to technical support and solutions, their training and qualifications, and the complexity of the services they are entrusted to provide. Thus, to properly understand the challenges that public agencies face in governing the mining sector, the ROLPAM Users' Guide combines the views and perspectives of civil servants and affected communities on the six principles of the rule of law, and situates these perspectives in a broader analysis of the legal and regulatory environment within the mining sector.

For the purpose of the ROLPAM Users' Guide, public administration governing the mining sector is understood as the **agencies and actions of the State at the central, regional** (districts, counties etc.) **and local levels** (towns, cities, municipalities etc.) that have a mandate for issuing mining and environmental licences. Administrative processes and services are understood to refer to the chain of actions and decisions taken by an agency that affect the rights, liberties or interests of stakeholders concerning, for example, the issuance of commercial or mining licences.



**Box 1.1****Colombia: a perceived lack of accountability in a fragile environment**

The use of public hearings to address contentious issues related to mining is commonplace in Colombia, with a range of individuals in affected communities registering to have their concerns heard. Additionally, illegal or informal mining is a significant challenge within the context of the nascent peace process, putting more emphasis on ensuring that not only do these hearings take place but that the authorities recognize the need to address their outcomes. Doing so is a key ingredient in building trust and de-escalating potential conflict tensions in regions that have suffered most from structural inequalities and violations and where the absence of the State has been most noticeable. Colombia has a robust legal framework governing the mining sector, with concomitant appeals processes and participatory mechanisms for affected communities, yet the assessment results from those surveyed in Gramalote showed widespread concerns that it was not adhered to. Further, a significant number of those surveyed had little or no knowledge of the role and mandate of the national environmental licensing agency, Autoridad Nacional de Licencias Ambientales (ANLA). Surveys were conducted by splitting the population into two groups: those who participated in the public hearing and those who did not. Revealingly, when mentioning issues on the primacy of the law, the results did not vary much between the two surveyed populations: both participants in the public hearings and non-participants considered that the authorities responsible for environmental issues did not act under the principle of legality, but, on the contrary, operated in such a way that unaccountable and corrupt practices were commonplace. Over two thirds (69 percent) of those who participated and 72 percent of those who did not participate in public hearings responded that they knew about a case in which the authorities in charge of the environmental licensing of a mining project had deviated from the legal framework. In addition, 74 percent of those who participated and 67 percent of those who did not participate stated that the environmental authorities did not apply the law in decision-making processes. Further, concerning bribery and corruption among officials of the authorities in charge of the environmental licensing of mining projects, more than 60 percent of both populations considered corrupt practices to be frequent, and more than 70 percent of both populations surveyed considered bribery commonplace. In short, the surveys underscored the perceptions of widespread illegality in institutional decision-making processes in the mining sector—in this case, licensing—pointing to clearly differing perceptions between the State and its citizens of *de jure* and *de facto* implementation of the laws.

Public administration agencies that provide environmental licences and guarantee the rights of individuals to a healthy environment can include, for example, local government and central government agencies and public bodies responsible for the issuance of licences for commercial activity, urban planning entities and agencies making decisions on matters related to mineral resource extraction, government oversight of natural resources and issuing licences to private contractors and mining companies. Public administration service providers thus cover broad and often contentious areas closely related to economic development, security and justice.

Within these agencies and in relation to these broad areas of responsibility, the staff members that have relevant mandates contingent with the initial problem analysis of the assessment, including supervisors and managers, as well as specific rank and file should be considered for interview. This means that the focus is on those civil servants who receive petitions and requests for services, as well as complaints and appeals, and those directly involved in investigating and deciding on cases that affect the rights and interests of affected communities.

## Who are the target groups?

### Box 2.2

#### Defining the key stakeholders in the ROLPA approach: the cases of Colombia and Mozambique

One of the main lessons learned from the country pilots was the need to define 'who' is the affected community and how to map out their respective experiences in negotiating the legal framework of each country's mining sector public administration. For example, this was particularly challenging in the case of Mozambique, where an initial problem analysis focused on environmental licensing, rather than on the impact of potential maladministration or skewed legal practices on individual rights holders further down the service delivery chain. Instead, consultants (or agents) act as intermediaries between the licensing agency and the affected communities and represent the latter in all the steps of the application process. Affected communities (or the registered licensees) did not have any interactions themselves with the agency but only paid a fee as a client to a private-sector provider operating within the current legal framework, making it challenging to make an accurate assessment of how the rule of law in the granting of licences is effectively defined and how the relationship between the State and its citizens is regulated during this process. For instance, to obtain an adequate picture of this process, the assessment team in Mozambique conducted five focus group discussions with communities (four with artisanal associations and one with civil society organizations), showing the necessity of defining a clear analysis of the survey target group at an early stage in the assessment and to avoid any confusion in the problem analysis (see 'Inception' below).

In contrast, in Colombia, the profile of the affected communities or those individuals affected by mining practices was defined as the following and guided the approach adopted in conducting the assessment:

- people within the immediate area of an environmentally licensed mining project who are being impacted by the mining operation and who have participated, formally, in consultations provided in the environmental licensing process;
- people within the immediate area of an environmentally licensed mining project who are being impacted by the mining operation but who have not participated in consultations provided in the environmental licensing process. For example, their right to participate in meetings or forums has not been respected or facilitated, they are unaware of the details of the project or they are unable to attend the consultations;
- mining companies or individual miners who have requested the environmental licence from the national authorities and who are beneficiaries of the public service; and
- public servants from other government agencies that are not directly aligned with the environmental licensing authority who have the duty to interact with the agency that is conducting a ROLPA self-assessment, to protect the rights of all the stakeholders involved in the process. In this group we can find the municipal or regional ombudsman, the regional environmental authorities and others.

Settling on a definition of those who may legally claim public services or who are affected by decisions made by the authorities that govern the mining sector is a critical aspect of the inception phase outlined below. The ROLPAM Users' Guide for the mining sector defines affected communities as:

- communities (or surface rights holders) affected by large-scale mining projects (smallholders, farmers, resettled communities, other groups dependent on the land); and
- mining rights holders—i.e. small-scale and artisanal mining affected by: 1) large-scale mining projects; and 2) limitations in the regulatory framework (and practice) to allow formalization.

These two groups can be further defined depending on each context, as, usually, identifying different types of affected communities is dependent on the context and an analysis of the political economy. For instance, evidence pointing to rights-based administrative decision-making both in relation to direct (active) and indirect (passive) individuals in affected communities can point to possible marginalization of certain stakeholder groups, and, in the case of the latter, even without their knowledge.

A third group that plays a role in—and is also affected by—the mining sector, while at the same time presenting a dilemma for a rule of law problem analysis, is artisanal and small-scale miners. They are effectively individuals, groups or communities involved in mining but often informally. There is no common definition for this group, as its legal status or defining criteria differ from context to context. Identifying whether or not this group can be defined as a 'rights holder' depends on the context analysis.

## Principles of the rule of law

The ROLPAM Users' Guide takes as its point of departure the definition of the rule of law suggested in the '[Report of the Secretary-General: The rule of law and transitional justice in conflict and post-conflict societies](#)' (S/2004/616).<sup>6</sup> The rule of law is understood as a principle of governance related to human rights and democracy, and as an indispensable component of economic development, poverty reduction and peace and security.

It is firmly established in most national constitutions and in turn sets the regulatory framework for public administration by ensuring that decision-making follows a clear set of procedures and functions and guarantees predictability in the implementation of administrative procedures. This ROLPAM Users' Guide in particular seizes on the many references in international law and standard-setting practice (treaties, practice, recommendations and doctrine) to a common or similar set of principles of the rule of law for good administration or good governance, including standard-setting practices at the national level.

The six principles of the rule of law identified for this ROLPAM Users' Guide thus reflect good practices from national jurisdictions around the world, both civil and common law, as expressed in constitutional provisions, case law or specific administrative law and administrative procedure law regulations. The Sustainable Development Goals and

6. United Nations, General Assembly, [The rule of law and transitional justice in conflict and post-conflict societies](#): Report of the Secretary-General, S/2004/616 (23 August 2004), available from [www.undocs.org/S/2004/616](http://www.undocs.org/S/2004/616).

Principle 10 of the Rio Declaration reinforce the necessity of taking action according to these principles. While the principles of the rule of law at the root of the ROLPA approach are not specific to the environment, they are deeply interwoven with the environmental sustainability agenda. This means that reinforcing the rule of law in the mining sector reinforces both improved governance and environmental sustainability.

**TABLE 2**

**Time-frame and actions for the ROLPA self-assessment**

<b>Legality</b>	The principle requires that public administration abides by the law, and that all its decisions and content have a basis in law. This includes the equal treatment of different groups of citizens, including women and men. In certain settings, a broad spectrum of laws can exist, and enforcing these laws consistently can present difficulties for under-resourced agencies operating in constrained environments.
<b>Accessibility</b>	The principle means that everyone should have access to public administration and that public authorities have a duty to accept and deal with different groups of citizens' requests and questions properly. It also requires ensuring practical access for women and men, such as sufficient opening hours or easy means of communication—for example, that an agency uses a language that can be understood by the general public.
<b>Right to be heard/to participate</b>	The right to be heard means that the public authorities must hear an individual before taking a decision that affects his or her rights and interests. It also means that a person should have an opportunity to submit facts, arguments or evidence before a decision is taken, and ensures that participation is guaranteed from an early stage and throughout the hearing process. The public authorities must inform the persons concerned of their decision, and has a duty to take a decision within a reasonable time, according to a clear and understandable administrative process.
<b>Transparency</b>	The principle of transparency ensures that the work of public authorities and civil servants is conducted openly. Public authorities have a duty to provide information about their work and to ensure access to laws, acts and administrative documents on request. The right to information should only be restricted by the limitations necessary in a democratic society for the protection of legitimate public interests or privacy.
<b>Right to appeal</b>	The right to appeal allows the individual to seek redress against administrative decisions, through internal review processes, or judicial review by the ordinary courts or specialized administrative courts. The right to appeal is also dependent on substantive aspects, such as the duty of administrative agencies to communicate their decisions and the reasons for them to concerned parties and to provide an indication of where and how to appeal.
<b>Accountability</b>	The principle of accountability ensures that public officials and administrative agencies are held to account for wrongful actions or actively undermining rules and procedures for personal gain, and to improve the way in which a mining sector agency conducts its work. The principle further ensures that public officials are held liable as well as responsible for their actions throughout the mining cycle. To guarantee accountability, mechanisms such as disciplinary measures, internal reviews, internal audits, ethics boards and independent supervision are often involved, hence reducing the possibilities for negotiations to take place behind closed doors.



**Box 2.3****Challenges and lessons learned**

In general, and throughout the different pilots, certain principles can resonate more than others depending on the context. Public participation in particular is an ongoing challenge for all the Environmental Governance Project pilot countries due to the lack of a coherent structure, approach and credible methods to measure and ensure that it happens. In Colombia, a lack of participation has long been identified as one of the main drivers of conflict and as one of the fundamental principles crucial to the success of the peace process. The pilot revealed that a significant number of affected communities decide not to participate in public hearings, seeing them as irrelevant and a waste of time. According to these individuals, participation is pointless; they cite a lack of trust in institutions and admit that they do not have sufficient knowledge of established procedures or how to access them. Across the pilot countries, cultural aspects of public participation put demands on the assessment experts to clearly outline what works and what does not, to be adaptable in how they approach communities and target groups (as well as how to sustain these processes). It is imperative that the assessment team take into account the highly contextual nature of communities and not to be overly reliant on the six principles of the rule of law in the ROLPAM Users' Guide. These are effectively yardsticks or indicators, and although they are few in number for reasons of easier and speedier measurement, broadening the scope of the assessment should not be ruled out.

**Addressing gender inequalities through the principles of the rule of law**

Inherent in the principles of the rule of law and rights-based administrative decision-making, addressing gender inequality is an integral part of the assessment methodology and each step outlined in the ROLPAM Users' Guide. It allows public agencies to assess whether policies and decisions related to environmental and mining licensing processes are designed and implemented using a gender-responsive approach. This can take place in various stages of the assessment and can, for example, include:

- identifying possible gender implications and impacts of mining operations on women and men, boys and girls through an initial context and conflict analysis;
- assessing the extent to which the legislative framework enforces non-discriminatory/gender-equal policies in the environmental/mining sector, as well as the extent to which any laws or normative instruments recognize women's marginalization by mining operations and are proactively promoting gender empowerment;
- identifying whether existing normative instruments facilitate women's engagement and meaningful participation in consultations related to local environmental and mining issues; and, if needed, organizing targeted consultations in situations where mining projects might have negative effects particularly on women;
- assessing gender equality and women's representation within public agencies in the mining and environmental sectors; and
- providing platforms for women to voice their concerns in areas affected by mining operations through targeted group surveys and focus group discussions, as

well as assessing women's 'decision-making authority' within the mining sector (including in cases of artisanal mining activities).

Implementing the ROLPAM Users' Guide in the steps outlined below can ultimately create opportunities to streamline a gender-responsive approach within agencies in the environmental governance sector—for example, by engaging authorities in adopting revised normative instruments/procedures for land-use planning, land titling and property rights laws, provisions on cases of forced resettlement, drafting community development plans, taking into account women's empowerment/employment opportunities, designing local initiatives to promote legal awareness etc.

#### Box 2.4

##### Gender-responsiveness in the pilots

In general across the pilots, there was a low level of participation in surveys at the start, with no evidence of gender-responsive legislation or regulations in relation to mining. Gender-neutral laws cannot change the situation of inequality as such, and political will is needed for implementation to move from de jure to de facto. Legislative regulation often fails to take into account or is not specific about the fact that women's experiences, needs and tasks are often different from men's, and although legislation might be considered gender-neutral in general, legal awareness is very low in practice. This includes poor levels of understanding of anti-discriminatory/equal rights laws among women and men, and there is often no acknowledgement of gender inequality as a significant problem, with few cases of people seeking judicial redress. In the agency and target group surveys, results were disaggregated by gender. However, they did not differ significantly, and it was often left for interpretation, with very low numbers of women even taking part in focus group discussions and surveys. Based on this evidence, the ROLPAM Users' Guide recommends that targeted surveys, focus group discussions and interviews should be conducted with a majority of women or with women-only groups.

# 3

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How to do it

## The stages of implementation

The self-assessment is rolled out in the following three stages:

- A formal mapping of laws, regulations and the institutional environment in which a particular mining-sector administrative agency operates
- A perception-based questionnaire that examines the specific challenges that staff of the government agency in question face with regard to, for example, providing timely and accessible services, ensuring transparency in channels for redress or ensuring efficient accountability mechanisms in their working environment
- A perception-based survey targeted at those who are affected by the decisions taken by the government agency conducting the self-assessment. This will often be the local communities living in a mining area. The questions mirror those answered by the civil servants in the second stage and will, for example, gauge whether affected communities think that the government agency treats different groups of citizens equally, regardless of their sex/ethnicity/religion or other social status, whether it is easy to contact the agency, access information and argue their case before a decision is taken, and whether appealing against a decision or complaining about a specific administrative agency is perceived as likely to be successful.

## Conducting the self-assessment

It is a fundamental principle of the ROLPA methodology that the selected government agency owns, leads and participates in all the stages of the self-assessment process. The assessment serves as a way to conduct an in-depth problem analysis by using an impartial, evidence-based approach for the purpose of identifying priorities for actions and change at the institutional level. To achieve this goal, there is a need for active engagement from the agencies in all steps, with the emphasis being on developing an action plan to guide the specific agencies in implementing the assessment results.

**To conduct the self-assessment successfully, it is also important that the selected agency consults and cooperates with an independent expert coordinating and managing the day-to-day implementation of the self-assessment.**

The capacity, time and resources required to undertake the self-assessment are not generally readily available within a public administration, in particular at the local level. In addition, an independent actor helps guarantee the integrity and independence of the assessment process and the findings of the study.

For practical and cultural reasons, and to avoid perceptions of bias, it is important that the independent expert, in close cooperation with the selected agency, conducts the agency and target group survey questionnaires and the formal mapping. Similarly, an independent expert should be primarily responsible for managing the data analysis, report-writing and presentation of the results.

The scope of facilitation from independent experts will depend on the purpose and the extent of the self-assessment (one or several public service providers). **The relationship between the selected agency and the independent expert should be clearly outlined.** (For sample terms of reference, see Appendix 7.)



Independent experts could be individual contractors or consultants. Independent facilitation might also take the form of institutional cooperation between the selected agency and a non-governmental organization with research and analysis capacity, or academic bodies and institutes working in the areas of public administration and good governance. It would be useful if the independent expert had prior experience of conducting similar research as well as access to multidisciplinary capacities such as the use of statistics, law or sociology.

## Self-assessment in steps

First, identify the challenge regarding the rule of law within the mining sector and the way it is governed by public administrative agencies. This can be done by responding to either a request for support from the relevant ministries or from a designated country development strategy. As part of this process, a Conflict and Development Analysis (CDA) should be conducted (including a brief risk assessment and a gender analysis) as a means of providing evidence-based analysis for action.

### Box 3.1

#### The iterative approach of the ROLPA: the case of Mozambique

To more closely assess the ROLPA-informed problem analysis in Mozambique, the staff of the National Directorate of Territorial Ordering and Resettlement (Direcção Nacional de Ordenamento Territorial—DINOTER) were also included in interviews. DINOTER is the institution with a mandate to resettle communities in the event of mining exploration, and the implementation of its decisions has a direct impact on human rights, socio-economic and environmental issues in mining areas. The results of the study showed that in many cases mining licences were granted before or without both an environmental licence and resettlement plans for the community (which is required by the law), with 70 percent of mining licences granted before the issuance of environmental licences. On the one hand, there are significant delays in granting licences due to budgetary constraints and overly centralized administrative processes, while on the other hand, some decisions on cases were reached in record time, including mining concessions issued in one day, while normal decisions can take up to 180 days and require ministerial approval. In terms of legality, there are no guidelines for civil servants on how to handle conflicts of interest if they arise during resettlement issues, accusations of environmental degradation or licensing processes, or whether the same provisions that apply to infrastructure projects also apply to mining projects. Moreover, DINOTER staff have little or no training in questions of resettlement. On several occasions, the mining company, Vale-Mozambique, had to ratify agreements and memoranda with the government to resolve questions not envisaged in the law and outside the established mechanisms for compensation to resettled communities. Post-resettlement questions and the withdrawal of investors are not regulated and are one of the main reasons for clashes between communities and companies. In many cases, wrongful and consistently arbitrary practices are allowed to persist, and although no formal judicial proceedings were submitted by the affected communities, large-scale protests against the company's infrastructure took place from 2012 to 2017. Although not included for assessment during the inception, the question of resettlement and its myriad legal and administrative dilemmas emerged incrementally by using the principles of the rule of law as entry points to the analysis.

The assessment is conducted in six steps, beginning with an **inception phase**. This is followed by the implementation of a **formal mapping of laws, regulations, procedures**

and institutional reporting lines that apply to the selected agency. The third step is the implementation of **agency and target group surveys**. The surveys are followed by **data analysis and a preliminary report**. The final step is the **presentation and identification of follow-up strategies**, consisting of feedback, quality control and the presentation of findings, results and forward-looking action plans. It is important to apply a gender-aware approach throughout all six steps of the self-assessment process.

After each step of the process, it is advisable that the independent expert coordinating the assessment produces a brief progress report and shares this with an advisory committee and any other stakeholders involved in the process. This will be used to guide the project to ensure timely and substantive outcomes as well as transparency and a logical flow throughout the self-assessment.

Once the assessment is finalized, and results are available, they should feed into a baseline and build on the CDA conducted at the start of the inception. This will ensure that the implementation of the assessment recommendations remains realistic, actionable and responsive to shifts in the context.

The final step in the assessment process consists of drafting and implementing an action plan. In certain cases, implementation can take months, depending on the context and the political will for change; therefore, the action plan would need to carefully consider the political economy implications of the proposed actions and explicitly place ownership with the agencies involved.

TABLE 2

## Time-frame and actions for the ROLPA self-assessment

Step	Objectives	Actions	Time
<b>1</b> <b>Inception CDA and risk assessment</b>	Identify participating agencies;		
	Gain an understanding of the political economy of the sector by means of an ICA exercise;	Prepare practical and logistical arrangements (procurement if necessary);	2–3 weeks
	Establish ownership and lead processes;	Establish an advisory committee and identify an independent expert	
	Agree on the scope and objectives of the assessment		
<b>2</b> <b>Formal mapping</b>	Understand the legal and institutional framework applicable to the participating agency	Conduct the formal mapping in close cooperation with an independent expert and legal experts at the participating agency	2–4 weeks
<b>3</b> <b>Agency staff survey</b>	Map the perceptions of civil servants at the participating government agency on strengths and challenges relating to the six key principles of the rule of law	Administer the agency survey, including a pre-test survey, with adapted questions to suit the context (if necessary)	2–3 weeks
<b>4</b> <b>Target group survey</b>	Map the affected communities' perceptions of the participating agency's respect for the principles of the rule of law	Administer the target group survey, including a pre-test survey, with adapted questions to suit the context (if necessary); Employ profiling for selection to ensure that the survey targets affected communities that actually use the agency's service	4–6 weeks
<b>5</b> <b>Data analysis, triangulation and report-writing</b>	Identify and categorize the main findings	Prepare a preliminary report Hold a stakeholder seminar	4–6 weeks
<b>6</b> <b>Presentation and dissemination of results</b>	Disseminate the findings to target groups and the broader audience, including national/local authorities, non-governmental organizations, international organizations etc.; Prior to this activity, ensure that a validation process takes place with assessment stakeholders to guarantee credibility of results	Publish and disseminate final report; Organize follow-up events with key stakeholders	2 weeks
<b>7</b> <b>Follow-up actions (training, policy and administrative reforms etc.)</b>	Develop and implement an action plan to address the capacity gaps and institutional bottlenecks identified in the self-assessment	Take political and administrative action at the municipal level, with lobbying and advocacy at higher levels for reforms that improve the mandate and or competency of local government	3–6 months



1

Inception CDA and  
risk assessment

2

Formal mapping

3

Agency staff survey

4

Target group survey

5

Data analysis,  
triangulation and  
report-writing

6

Presentation and  
dissemination  
of results

7

Follow-up actions



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# Step 1

Inception

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The objective of this step is to make the **initial preparations for the self-assessment**. This includes **identifying the target agency, agencies or units within agencies that should take part in the self-assessment**.

Target groups within the selected agency—that is, the managers, supervisors, front-line staff (if applicable) and other relevant positions—should also be identified.

It is important that staff members at the agency actively participate in the overall process of assessment and feel comfortable with the objectives of the assessment and with the survey questionnaires.

**This phase also includes defining and identifying the affected communities in an area where there is apparent or potential environmental and social degradation as a result of mining.** Affected communities can include groups such as artisanal miners, smallholders, communities that depend on the land for agriculture, and pastoralists.

### Identify an agency coordinator and an independent expert

A designated agency coordinator should be appointed to liaise with the independent expert. The agency coordinator should take part in all relevant meetings and receive regular updates from the independent expert.

An independent expert, or team, should be identified and contracted as soon as possible to facilitate the assessment process (see Appendix 7 for sample terms of reference). The independent expert could be a university, a non-governmental organization with research capacity, an individual contractor or a mix thereof.

### Conduct a Conflict and Development Analysis<sup>7</sup>

The independent expert should use the CDA criteria for ensuring that the assessment does not negatively affect or influence conflict dynamics in the assessment area. There is always potential for conflict between companies and communities, with data showing a direct correlation between the frequency of conflict incidents and the rise and fall of global mining activity. Yet, even if the conflict is generally played out at the community–company interface, it is often the result of an interplay between a range of actors, including various government agencies, civil society, companies and others. In Colombia, for example, it has been documented that a significant number of social conflicts in the mining sector can be traced back to grievances from flawed or absent administrative decisions.<sup>8</sup>

Typically, conflict determinants are highly interrelated in mining and need to be taken into account before embarking on an assessment. Social conflicts are often prevalent as a result of perceived grievances and social inequalities associated with governance of the mining sector. Events that could potentially trigger outbreaks of conflict could be the forced displacement of artisanal and small-scale miners from mining concessions and/or unilateral decisions by government to change policies and rules of procedures without consultation. Examples of indicators include land and resources ownership, compensation and livelihood issues, dependency of local communities on mining companies, distribution of benefits from the large-scale mining sector, environmental degradation and threats to biodiversity or water quality and supply, as well as a real or perceived lack of transparency and accountability in central and local government.

7. See <http://bit.do/ePd8z>.

8. See <http://bit.do/ePd87>.

As a guide to obtain a solid evidence base, the CDA should take into account two normative characteristics specific to the mining sector when identifying conflict drivers and triggers: a) the extent to which the communities believe that their interests are respected or protected (i.e. the extent to which they feel that they have what they need or deserve from the mining operation); and b) the degree to which communities believe that they can influence outcomes through conflict in the context of their relations with the company and/or government authorities (i.e. the extent to which communities believe that they can gain what they want or need from the presence of a mining operation through the use of conflict).<sup>9</sup>

### Establish an advisory committee

During the inception stage, the option of setting up an advisory committee should be considered (see Appendix 7 for sample terms of reference). The advisory committee is an informal grouping of prominent stakeholders that can be convened to advise on the implementation of the ROLPA assessment. It may be particularly relevant if there are low levels of trust between government agencies and affected communities (identified in the CDA during the inception). Although not a decision-making body, it can be a useful instrument to allow for greater transparency and increased target group participation in the implementation of the assessment, even if the independent expert and the participating government agency are the main drivers of the process. In certain cases, the role of advisory committees in the assessments can be increased further, with expanded mandates to facilitate the implementation of recommendations (perhaps as the process moves on to action plans), and the independent expert and the agency may even consider developing the capacity of the advisory committee through training in how the ROLPAM Users' Guide is implemented. The advisory committee can benefit from piggybacking on existing advisory groups, multi-stakeholder forums, round tables etc.

### Where possible, civil society organizations should be consulted in the assessment process

#### Box 3.2

##### Lessons learned regarding advisory committees: the case of Mongolia

In Mongolia, only two agencies were included in the working group at government level or in the advisory committee. This is too few if: a) the implementation of the assessment is to be conducted transparently by emphasizing buy-in at an early stage; b) it reduces local ownership and limits future coordination on results; and c) it risks the effective and sustainable design and integration of action plans. No working groups or similar bodies were created in any other country during the pilot phase. Without these, or enough political will, action plans or measures to integrate the results into national development strategies—although designed in good faith and representing the right type of recommendations emanating from the assessments—will invariably face challenges in their implementation. Additionally, there was an absence of CSOs in the working group, reflecting a more general view that the main focus of the assessment concentrated more on the agency survey than on the target group survey. Although the latter was conducted, there was an overly weighted focus on the principle of legality and the decision-making powers of government institutions with mining sector mandates, at the expense of an equally relevant assessment of participation, fair treatment and access to redress among communities at the local level.

9. See <http://bit.do/ePegi>.

Civil society organizations (CSOs) often have broad informal networks among communities. In some cases, where government agencies have limited presence, this can often result in the right type of feedback on survey questionnaires. It also enhances transparency, accountability and impartiality and allows a participatory approach to be adopted from the start of the assessment. In Mozambique, CSOs took part in the focus group discussions. However, it is important to ensure that CSOs that do participate are independent and not only appointed by the local authorities.

### Inception do's and don'ts

- **Select a research team that has the requisite multidisciplinary competencies to conduct the assessment.** The team should have a thorough understanding of the strategic goals and the workings of the mining sector and its related environmental challenges as well as expertise on the workings of the public administration and its legal environment, and developmental issues at both national and local level.
- **Seek a formal directive from the responsible ministries and/or other agencies (e.g. mayor's office or city council), and keep them informed throughout the process.** In certain cases, this may even be mandatory to ensure the legitimacy of the assessment results and subsequent action plans.
- Ensure that the diagnostic is clear before moving on to Step 2. If this is not clear following the inception, there is a risk that the assessment either a) does not result in any concrete recommendations and becomes a validation exercise or b) will be met by apathy among affected communities and potentially lower levels of trust in the government agency, if the right type and scope of questions are not addressed from the start.
- **Conduct a profiling of respondents.** Respondents' profiles will help to contextualize their responses. The data will also help explain the level of respondents' understanding of the principles of the rule of law and their relevance to service provision. Crucially, profiling should only take place once the independent expert and participating agency have agreed on the definition and identification of the affected communities directly impacted by a rule of law deficit in how the mining sector is governed.
- **Ensure the '3 Ps' have been carefully considered in light of the CDA and other scoping activities and before embarking on the next step.** These are: a) identify the Problem: a thorough analysis has taken place that results can satisfactorily validate at a later stage; b) plan the Process: the scope and roll-out of the assessment and identification of implementation risks; and c) identify the People impacted: ensure that there are no deviations from the categories of affected communities most impacted, which are based on the initial problem analysis.
- When identifying people impacted by the activities, it is important to collect sex-disaggregated data for men, women, boys and girls, to strengthen the overall analysis that can be undertaken. Additionally, being able to demonstrate a gender-balanced process also strengthens the legitimacy of the process and its outcomes. One way of ensuring that a gender perspective is integrated could be by considering the role of civil society in the assessment process and, more specifically, including a representative of a local women's rights group in the advisory committee.

### Box 3.3

#### Securing the right competencies and managing process

In Mongolia, affected communities—i.e. mining companies, citizens, environmental assessment companies—all have different perspectives, interests and incentives in the mining sector. In the pilot assessment, all of these actors were put in one group, making it difficult to accurately collect statistical data and differentiate between them. This even concerns municipalities and local government authorities, as these often have different levels and mandates for establishing viable assessment entry points. To facilitate the work of the research team, obtaining an organigram early on would enable the team to gain a more simplified and relevant picture of a potentially complex survey sample—i.e. job descriptions, scheme of delegation, leadership structure and delegated decision-making powers.

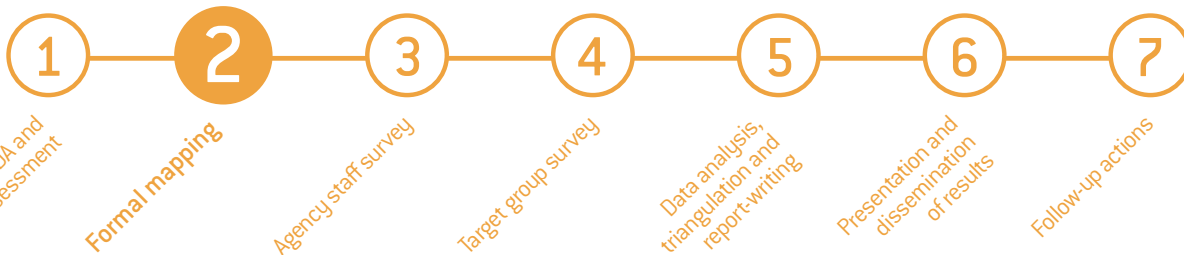
In certain cases, the research team may also face challenges within its own confines and distribution of roles. Although expertise and experience in the research team was of a high quality in the case of Mongolia (including a public administration expert, mining expert, research coordinator, legal expert, administrative lawyer and a sociological organization), the team members did not interact satisfactorily, operating mainly in silos and pursuing separate threads. The research team leader should ensure that there is good coherence between the experts, with milestones established and space and time for consultation—particularly during the inception, analysis and report-writing stages.

Further, in the case of Mozambique, subcontracting the enumerators was not properly managed, as those teams of four that went into the field were not experts in either human rights or mining, only general sociologists. Hence, no follow-up questions were asked, even though they were crucial for interpretation. In addition, focus groups, which could have been useful for interpreting results, were not used, resulting in little or no elaboration of key outputs.

### Inception outcomes

At the end of Step 1, the following outcomes will have been achieved:

- The agency or agencies participating in the self-assessment are identified. The areas of service delivery included in the self-assessment, and the relevant target group of staff, are specified in as much detail as possible.
- Purpose and scope are determined, and a general time-frame established.
- An agency coordinator is appointed to liaise with the independent expert and the advisory committee and report back to the managerial level of the selected agency.
- An independent expert, or team, is identified and—if necessary—contracted to facilitate the self-assessment.
- An advisory committee has been formed and has held its first meeting
- A brief progress report on the inception step has been written by the independent expert and submitted to the advisory committee.



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# Step 2

Formal mapping

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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

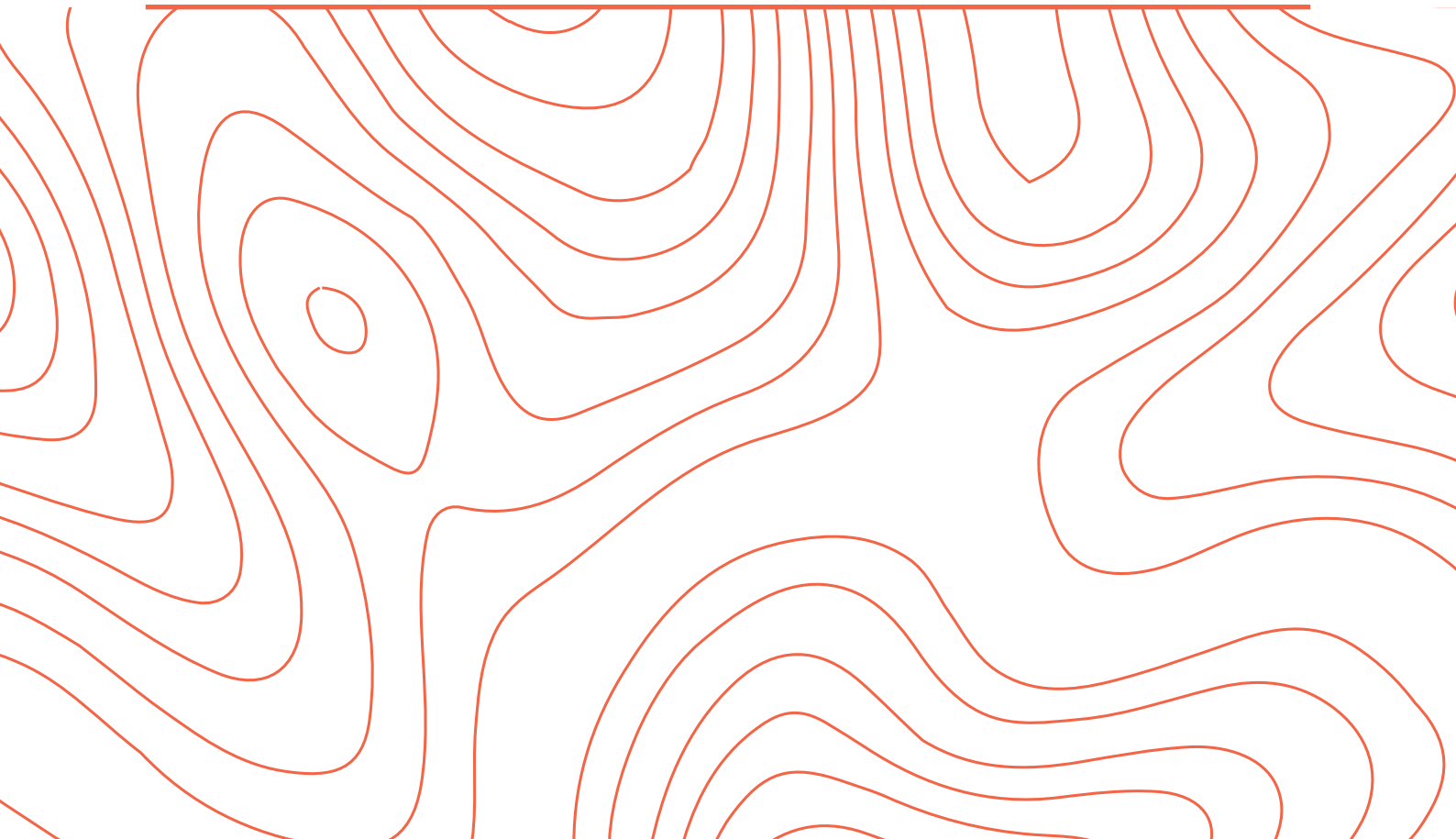
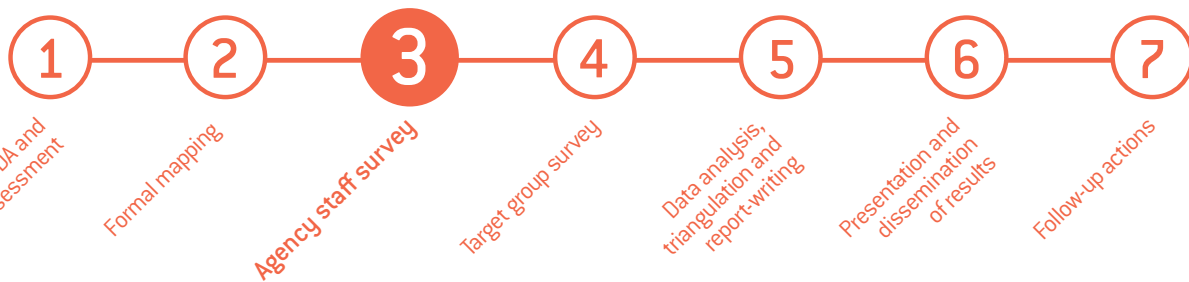
At the end of Step 2, the following outcomes will have been achieved:

- 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.









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# Step 3

Agency staff survey

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The third step, the **agency staff survey**, contrasts the data from the formal mapping with **civil servants' views and opinions** on the challenges related to the rule of law at the agency conducting the self-assessment. It will be used as a guideline for writing a cumulative analysis of the respect for the principles of the rule of law in the public administration.

The survey is perception-based and asks agency staff questions related to the application of the six principles of the rule of law. The questions probe both general legal topics, such as the existence of key laws and other normative instruments, and specific institutional aspects—for example, whether they are informed about new laws and regulations, whether it is difficult to handle requests from affected communities within established time-frames, and how well complaints and appeals are handled at the selected agency (see Appendix 2 for a sample questionnaire for agency staff). The **agency staff survey is conducted through face-to-face interviews** to ensure more effective data collection.

### Customizing the agency staff survey

Before initiating the survey, the survey questions must be customized and adapted. This means adjusting the questions to the specific public agency's functions and services. The results of the formal mapping can serve as starting points for customizing the agency staff questions.

**Sample questions will need refinement and context adjustment to adequately cover the roles and responsibilities of the agency staff** participating in the self-assessment (e.g. supervisors, decision makers, front-line staff, if applicable). In addition, an equal division between women and men should be promoted among the participating agency staff. The independent expert should review the primary set of principles of the rule of law and correlating questions presented in Appendix 2, in cooperation with the agency coordinator. **It might also be necessary to reduce the number of questions, add questions of local relevance or adjust the options for scoring the questions to reflect local conditions or issues related to the environmental governance of mining.**

### Customization also means translating the questionnaire where necessary

After customization, the survey should be pre-tested, which gives the independent expert and the public agency an opportunity to further adapt the questions in the survey. **A focus group of civil servants could be employed to ensure proper customization of the questionnaire.** Ideally, the civil servants in the focus group should not participate as respondents to the questionnaire at a later stage, to avoid issues of bias.

**Four measurement units are used in the questionnaire: *not at all*, *to a small extent*, *to a large extent* and *to a very large extent*.** The measurement unit *don't know* is a silent option not given to the respondent but used by the interviewer when the respondent cannot answer a question. This four-point scale may encounter challenges depending on the cultural and linguistic nuances of each context. **It is advisable to consult a statistics expert or sociologist when customizing the survey measurement units.**

The independent expert should, in the brief progress report summarizing the agency staff survey, describe carefully how the questionnaire was customized and adapted.



### Agency survey do's and don'ts

- **Assess job descriptions within the agency.** Ensure that staff directly involved in all aspects of the identified mining sector process, whether this be environmental protection, issuing licences or land registration etc., form the majority of those interviewed.
- **Cluster sampling should be used for the survey of agency personnel in most cases.** For example, if the agency is not too large, all its employees should be surveyed.
- **Conduct the interviews with staff in the workplace, in a specially designated room where they can be invited for face-to-face interviews.** It is important to assure interviewees that their answers will not be made known to management or other employees. Confidentiality forms can be drafted to this end. This allows the employees the time and privacy to adequately answer the survey, avoids bias and prevents managers from influencing the responses.
- **Do not offer the employees the choice of self-administering the survey,** as they may not prioritize it and may have a number of questions on the content. Aim to interview management and heads of departments last.
- **The importance of the assessment and the approach to conducting the survey with the help of enumerators should be well anchored within the management of the agency or agency unit being assessed.** Otherwise, the initial planned number of staff participating may decrease due to the prioritization of other agency-related work.
- Consider broadening the survey methods by conducting focus group discussions and in-depth interviews, especially to ensure confidentiality, honesty and openness of the answers. Consider holding in-depth interviews with agency staff to discuss complex cases where principles of the rule of law risk being particularly undermined, such as cases of forced resettlement.
- **Here, it is also a priority to consider possible gender implications when conducting surveys.** Traditionally, public agencies can face a number of challenges related to gender equality, such as: a) failing to address a set of unrecognized or unvoiced problems; and b) explicit factors concerning a common disparity in numbers of civil servants, where men are predominantly in higher positions, while women take lower-ranked roles. Assessing the status of gender parity in public administration, particularly in decision-making positions, can also be part of the CDA phase prior to the inception.
- **When interviewing agency staff, questions about gender should be included.** Gender dimensions within the agency could be crucial in the implementation of core principles of the rule of law. If decisions cannot be understood, it presents difficulties for people to appeal. Probing into how the agency communicates with its target audience could also be a useful additional exercise. If few women or girls can read, radio could be a better channel than leaflets, for example.

## Agency staff survey outcomes

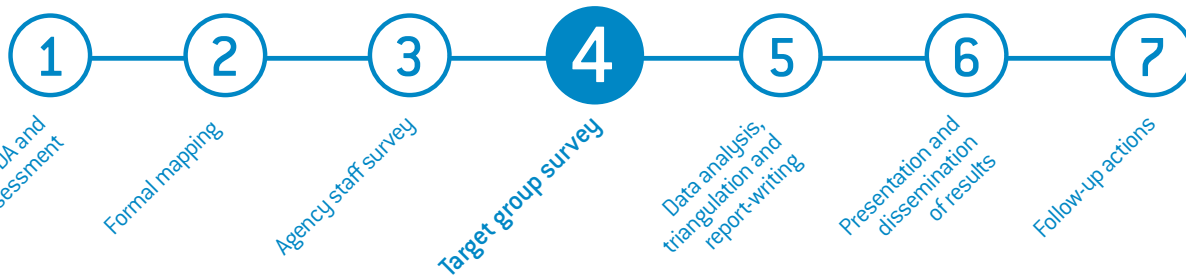
At the end of Step 3, the following outcomes will have been achieved:

- The questionnaire is adjusted and customized according to the purpose and scope of the self-assessment and on the basis of data from the formal mapping.
- The questionnaire is translated, where necessary.
- The customized and adjusted questionnaire is pre-tested using focus group discussions.
- A brief progress report written by the independent expert summarizes the agency staff survey step and is submitted to the advisory committee.









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# Step 4

Target group survey

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The objective of Step 4 is to contrast the **formal mapping** and **agency staff survey** results with the perceptions of affected communities regarding whether the participating agency demonstrates respect for basic principles of the rule of law.

### Customizing the survey

Before initiating the target group survey, the **questions must be customized**. Sample questions will need refinement and context adjustment to adequately reflect citizens' interactions with and levels of awareness and expectations of a specific public agency. **Results from the formal mapping and agency survey can be used as entry points for the customization of survey questions.**

The sample questionnaire for the survey (see Appendix 3) gives examples of questions divided into the six principles of the rule of law, but **there may be a need to reduce the number of questions, add questions of local relevance or adjust the options for scoring the questions to reflect local conditions or issues.**

### Box 3.5

#### The difficulty of citizen engagement: the case of Mongolia

Tailoring target group surveys can be about more than simply tweaking questions. Independent experts also need to take into account socio-cultural norms and behaviour as well as perceptions of affected communities. In Mongolia, there is a relatively weak culture of citizen engagement compared to other post-Soviet transition States. Coupled with the failure of the General Administrative Law (2016) to include details on citizens' participation and access to information in all decision-making steps—i.e. from developing draft administrative decisions to their finalization—this presents a hurdle for the independent expert to overcome to gather relevant and usable data. There are no appropriate mechanisms to enable citizens to comment on legislation or provide citizens with information, fuelling conflict between communities and companies, especially when companies operate in specially protected areas. For instance, the right to participate is included in general in environmental laws, but there are no mechanisms envisaged such as (mandatory) consultations, oversight and accountability. Writing petitions carries a symbolic role only. Most affected communities surveyed did not submit any appeals and had low awareness of which agency to address for mining or environmental complaints, but they were generally positive about the possibility of appealing. Yet, as one respondent pointed out, “citizens are blamed by mining companies for expressing their opinions. Their children often work for mining companies, and they can be fired if their parents speak up.” In certain cases, enumerators will need to delve deeper without inserting bias into the responses and without being perceived as jeopardizing the livelihoods of respondents.

It is important to ensure that the questions are in an appropriate language and level of detail to be properly understood by respondents.

Like the agency staff survey, **customization of the survey can also include translating the questionnaire if necessary. After customization, the survey should be pre-tested** to give the independent expert and the public agency an opportunity to further adapt the questions in the survey, and to specifically gauge how well the questions are understood and the type of answers they generate. **Focus groups can be used for this purpose.**

## Conducting the target group survey

This survey is implemented in face-to-face interviews. A profiling of the respondents is required to determine active and passive individuals within affected communities who legally claim public services and what the margin of error will be by dividing up respondents into these respective groups (see Appendix 5 on sampling survey strategy). The number of respondents depends on the scope of the self-assessment undertaken, the number of agency staff and the number of agencies participating in the self-assessment. Smaller-scale assessments should include a minimum of 300 respondents, to minimize margins of error. **Statistical consultation may be needed when estimating the best sample size for respondents.**

**Records and decided cases should be used to select a purposive sample of respondents.** If records are not reliable or accessible for other reasons, interviews with affected communities at the agency or through address contact lists should be conducted to reach ‘real’ affected communities. If interviewing on the streets, the ‘snowball’ approach may be used, where existing study subjects suggest other individuals to be interviewed. As the sample size increases, enough data will be collected to be useful for the research. **Random sampling is a last resort** if profiling proves too difficult. Samples can be drawn from a part of the population when it may be expected that a significant number have been in contact with the particular agency. References to large sample sizes are again connected to random samples, while in **purposive sampling, even a small number of interviewees can provide important insights** (even though more is certainly better).

**Household-based surveys are free from the shortcomings of exit polling;** however, the proportion of refusals to respond is higher, and affected communities may have already forgotten the details of the service delivery chain and general impression of their interface with the agency in question. The cost of making each contact is also higher. If the assessment is conducted on a service received by a small proportion of citizens, household-based surveys may not be cost-effective. In the majority of cases it would be relevant to conduct interviews partially by way of exit polling and partially through household-based surveys.

### Box 3.6

#### Reducing the complexity of survey questions: the case of Colombia

Across the pilot countries, it was evident that the questionnaires in their current form posed challenges to implementation. It is important to consider the level of formal education of the people to be surveyed and the number of questions that will be applied. Pre-piloting or testing is essential in adapting the surveys. The language of the questions as well as how to qualify answers may need to be adapted to make them more understandable for interviewees with little or no prior exposure to this type of language and process. For example, the ROLPA assessment in San Roque, Antioquia or the Chocó region in Colombia showed that a disproportionate number of respondents impacted by government agencies’ decision-making processes are illiterate and more concerned with everyday livelihood matters than what they themselves perceive to be less important questions related to the rule of law. Some approaches to address this included tailoring focus group discussions, developing more in-depth and simplified questionnaires and pre-testing surveys.



During the process of identifying respondents, or determining methods for reaching respondents, it is important to strive for an equal division between women and men, to gain valuable data on possible discriminatory differences perceived by the affected communities.

The respondents are asked questions from a structured questionnaire focusing on the six principles of the rule of law (see Appendix 3 for a sample questionnaire for the target group survey).

**The same four measurement categories used in the agency staff survey are employed for the target group survey:** *not at all, to a small extent, to a large extent, to a very large extent*. Similarly, the category *don't know* is a silent option not given to the respondent but used by the interviewer when the respondent cannot answer a question.

### Training of enumerators

The independent expert should **organize a workshop to train enumerators**. Training should cover the methodology and objectives of the assessment, how to ask questions and survey techniques. To ensure a high-quality survey, all the different aspects must work and inaccuracies must be avoided to the greatest extent possible. This is particularly important when the data collection is based on interviews, since errors can occur at every stage of a survey. Interviewers must be informed about possible errors and how to minimize them.

**The independent expert will be responsible for training and guiding the enumerators.** The tasks will include assigning locations for interviews, planning and organizing the data collection work, supplying enumerators with all the necessary field materials, visiting the enumerators to monitor progress, resolving data collection problems, receiving completed questionnaires and ensuring that the questionnaires have been completed correctly.

### Target group survey do's and don'ts

- **Adapt the language, grammar and cultural aspects of the ROLPAM Users' Guide to each setting and test them.** For example, in some contexts, the term 'rule of law' can mean 'legality' or 'strict adherence to the law' and/or be largely associated with criminal justice.
- **It is recommended to use the purposive sampling method for the target group survey.** This means that respondents are selected using screening or filter questions, such as: 'Have you ever used the service provided by the environmental licensing agency?'
- **Conduct the interviews at the agency where the service is provided or at a resource centre to ensure maximum contact with relevant affected communities.**
- **With a sample size of approximately 500 people, about 10–12 interviewers are needed.** Before starting, it is necessary to conduct special training with the interviewers and prepare documents, such as questionnaires, instructions for interviewers, route sheets and identification cards.
- **Consider using focus group discussions to supplement the data or information generated by the structured survey instrument.** This approach can provide deeper insights and interpretation of the survey responses, and validate the data produced by the survey.

- It is useful to identify respondents outside those endorsed or identified by the agency conducting the self-assessment. Other respondents would allow greater inclusiveness and reduce the potential for bias on the part of the agency.
- Conduct a pre-test of the survey. A pre-test of the survey questionnaire is optional but can help identify how the questions may be tweaked or improved before conducting the full-scale survey.
- Ensure equal representation of women and men in surveys, focus group discussions and interviews. If needed, and depending on the findings of the CDA, design and conduct targeted questionnaires pertaining to women's concerns in areas affected by mining.
- Consider other aspects of diversity (age, disability, different population groups) in the selection of respondents.

## Target group survey outcomes

At the end of Step 4, the following outcomes will have been achieved:

- The questionnaire is adjusted and customized according to the purpose and scope of the self-assessment and on the basis of data from the formal mapping and agency staff survey.
- The questionnaire is translated, where necessary.
- Focus group discussions are conducted to ensure an appropriate level of detail and language in the questions for affected communities.
- The respondent scope is decided, and respondents are identified or methods for reaching respondents are determined.
- The independent expert has trained and prepared the enumerators.
- Face-to-face interviews have been conducted and the results analysed.
- A brief progress report summarizing the survey is written by the independent expert and submitted to the government agency and the ROLPA advisory committee.



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# Step 5

Data analysis, triangulation and report-writing

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The combined analysis and report-writing aim to ensure that the final result is an **easy-to-understand report, highlighting the main findings and suggesting concrete and actionable recommendations as well as potential follow-up strategies**. The report should not only emphasize the agency's shortcomings but also identify strengths on which to build any planned policy reform.

The independent expert has the main responsibility for analysing the data from the formal mapping, agency survey and target group survey. Based on this data analysis, the expert will draft a preliminary report. The independent expert should liaise with the agency coordinator during the report-writing process to ensure agreed final results and recommendations based on the report outline (see Appendix 4 for a sample report outline).

The data collected from the surveys can be described numerically as well as graphically, using different background variables such as gender, age, education and year of employment (see Appendices 2 and 3 for background variables in relation to each survey).

### Using background variables, tables and charts

The choice of background variables to present in the preliminary report has to be made with regard to the context and purpose of the assessment and the data generated. It might be more interesting to follow one variable or to compare two variables—for example, how men and women answered the same question on access to the selected agency or the question on whether the costs of using the agency's services are affordable. Similarly, it might be interesting to compare years of work experience of civil servants at the selected agency and their ability to make decisions within the given time-frame.

The exact content of the report depends on the purpose and scope of the assessment process, but it should contain the **main findings and conclusions in an easy-to-understand format**. It is important that graphs, figures and other visual illustrations of the data are clearly described and explained in a narrative context, and not presented without proper analysis of what they mean or how to interpret them. It is also of special importance that the visual illustrations are disaggregated between women and men, to present the potential differences.

Complete tables—i.e. including all the questions in a theme—are best presented in an appendix, rather than directly in the text of the report. Use smaller, selected samples of tables to illustrate or emphasize a finding, and refer back to the appendix where the complete table can be found.

It might also be interesting to 'stack' all variables, to identify problems in relation to different areas. This presents an overview of principles and variables. An alternative is to 'double-stack' variables—for example, by examining the group that answered 'not at all'. To make the table easy to read, it is useful to present background variables and the questions based on 'to a small extent', as Table 3 illustrates.

After the tables of background variables have been created, a cross-tabulation can be made. This is done to compare how variables are distributed among subgroups, and to examine the relation between variables. Such tables are often referred to as contingency tables or pivot tables. Table 4 illustrates an example of cross-tabulation.

**Table 3**

Example of how to double-stack background variables with survey questions

Target group survey	Q1.2	Q1.3	Q1.4	Q 1.5	Q 1.6
Answering category: to a small extent	[name of agency] follows the law	Civil servants at [name of agency] have access to laws, regulations and instructions to guide their work	Civil servants at [name of agency] are sufficiently trained on the laws and procedures that guide their work	Civil servants at [name of agency] would decide in a case in which he/she or a friend or relative is directly concerned	[name of agency] treats everybody the same way
Age groups					
<25 years					
25–44 years					
>44 years					
Sex					
Men					
Women					
Sex and age groups					
Men <25 years					
Men 25–44 years					
Men >44 years					
Women <25 years					
Women 25–44 years					
Women >44 years					

When using cross-tabulation, it is important to distinguish between dependent and independent variables. In Table 4, for example, 45.3 percent of the respondents who answered that they have access to laws and regulations ‘to a small extent’ also answered ‘not at all’ about their ability to respond to queries and requests within a reasonable time.

**Table 4**

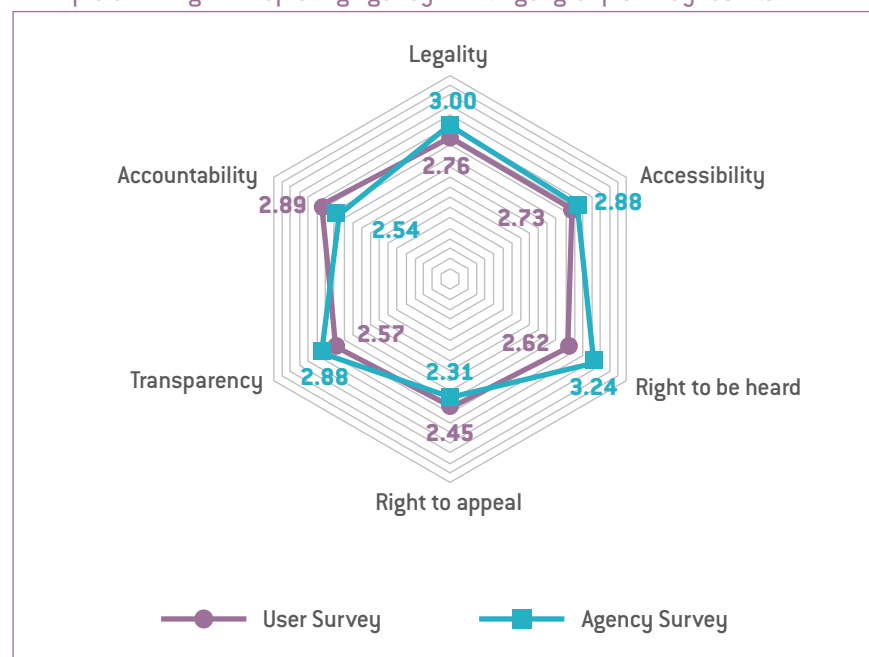
Example of cross-tabulation

1.2 Access	Not at all	To a small extent	To a large extent	To a very large extent	Don't know
2.2 Respond in a reasonable time					
Not at all		45.3			
To a small extent					
To a large extent					
To a very large extent					
Percentage	100.0	100.0	100.0	100.0	100.0

The use of a diagram is possible, depending on the target group survey and grading in the questionnaires, as shown in Figure 1.

**Figure 1**

Example of a diagram depicting agency and target group survey results



### Cumulative description and analysis of strengths and challenges

The analysis of challenges relating to the rule of law and the strengths and weaknesses of the selected agency undertaking the self-assessment in relation to its role in the mining sector should take into account the six different principles individually but also **provide a comprehensive description of challenges and opportunities as a whole in a narrative, drawing on the formal mapping, agency staff survey and target group survey cumulatively**. This means making an overall assessment in the report of the challenges to overcome and opportunities available for the selected agency to strengthen its respect for the principles of the rule of law in its interface with society.



Describing strengths and challenges relating to the rule of law holistically requires that the independent expert **cumulatively assesses responses and data from the formal mapping, agency staff survey and target group survey**, including comments made in the formal mapping and comments by respondents to the surveys. The report does not have to cover all the data that are reported but should focus specifically on contentious issues—for example, where there are divergent views between agency staff and affected communities on a certain principle, high response rates (i.e. for 'not at all') or differences identified based on the background variables. A comprehensive description of the results should also entail a gender-aware approach—i.e. a description of potential differences between women's and men's perceptions. Attention should also be paid to information about possibly discriminatory administrative laws and regulations or practices regarding gender, ethnicity, religion or any other social status in public service delivery.

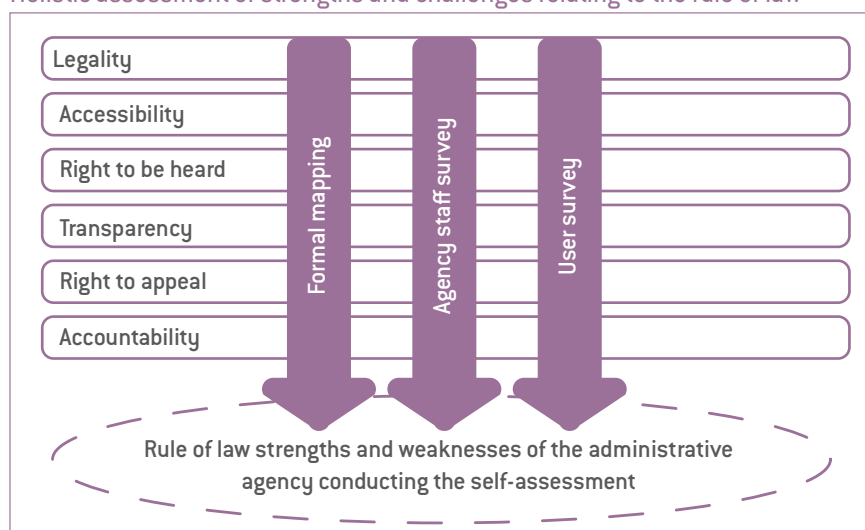
### Box 3.7

#### Challenges identified in Mozambique

In Mozambique, the different bodies (INAMI, DINAB and DINOTER) have coordination mechanisms for granting the different licences and authorizations required for mining. In certain cases, however, coordination between these ministries goes beyond what is legally envisaged. Requests for a mining licence are often lodged without the applicant possessing an environmental licence, while some even obtain the mining licence before they are granted an environmental licence. There is evidence to suggest that so-called 'comfort letters' are being issued by the ministry supervising the environmental area in question to guarantee that mining operations do not have to stop while the environmental licensing process is under way. Furthermore, there was no provision of a resettlement plan for the community that was moved to make way for the mining operations. The effect on communities is exacerbated by the centralization of mining licensing, environmental licensing and resettlement, limiting access to the services, as the heaviest concentration of mining activity takes place outside Maputo province. Artisanal and small-scale miners should have the opportunity to apply for licences at provincial level, which does not happen in practice.

**Figure 2**

Holistic assessment of strengths and challenges relating to the rule of law



## Recommendations and follow-up actions

The recommendations and follow-up actions should identify **problems and challenges that could require different approaches**. This could mean, for example: (a) **legal challenges**, such as a lack of understanding of laws, the complexity of laws, contradictions in the laws, and limited training on or low level of access to laws; (b) **institutional challenges**, such as few formal mechanisms for complaints, weak institutional structures for ensuring accountability and transparency, overlapping institutional mandates, limited physical access and a tendency to prioritize compliance over functionality; and (c) **capacity-related challenges**, such as a lack of understanding of how to access the services provided by the selected agency, difficulties in understanding written procedures and difficulties acting within established time-frames.

To ensure that the ROLPA approach ventures beyond assessment, it is key that these challenges are addressed through **follow-up actions that respond to the results of the assessment**. This includes designing action plans with implementation milestones, detailed roles, responsibilities and tasks allocated to each agency unit and clearly defined and realistic objectives based on available resources and institutional capability. It also includes **developing an adaptive monitoring and evaluation** technique that emphasizes a more problem-driven and iterative approach (instead of first thinking of possible solutions and following quantitative indicators), creates an enabling environment for leadership and agency staff to engage more actively on results and encourages ownership of the process.

**Further follow-up activities** might include efforts aimed at producing updated policies or legislation, improving implementation of existing policies and laws, building the capacities of agency staff, increasing accountability mechanisms, and improving outreach and communication with communities affected by mining activities. Recommendations and follow-up actions could also include gender-specific initiatives, such as the development or improved implementation of laws and policies for gender equality, equal legal rights and access to qualitative services.

It is important that the ROLPA assessment report **distinguishes between problems which the agency can address on its own and problems that require the involvement of other multi-level stakeholders participating in the self-assessment**. Often, specifically at the local governance level, a selected agency's service provision is dictated by laws, regulations and institutional mechanisms at regional and central levels of the State. Highlighting difficulties related to multi-level governance, including regional- or national-level control and guidance, can serve advocacy purposes.

## Analysis and report-writing do's and don'ts

- When writing the report, ensure that the model report outline in the ROLPAM Users' Guide is followed, with recommendations and actions at the policy level clearly outlined.
- The analysis of the survey results should be done using the SPSS program or similar software, which allows for the most comprehensive data processing and analysis.
- The report should show a cumulative flow of measuring the application of principles of the rule of law in the agency being assessed.

- Although the six principles vary in scope, they must be used as guidelines for an overarching rule of law analysis and not in isolation. This is essential when presenting the final report (see Step 6 below) and for formulating the policy recommendations.

## Analysis and report-writing outcomes

At the end of Step 5, the following outcomes will have been achieved:

- Data are collated and analysed using SPSS or a similar program.
- Charts, graphs and tables are produced, with descriptive text and analysis explaining their meaning.
- A preliminary report is drafted and submitted to the agency coordinator for review and comments
- Recommendations and follow-up actions are drafted and included in the report.
- A brief progress report on the reporting and analysis step is written by the independent expert and submitted to the advisory committee.



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# Step 6

Presentation and dissemination of results

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After the analysis and the completion of a draft report, the **independent expert will communicate with the agency coordinator to discuss the major findings, and to seek input, comments and suggestions from key stakeholders such as agency managers, unit heads and members of the ROLPA advisory committee.**

With a draft report in hand, the participating agency and the independent expert are well prepared to organize a stakeholder workshop. The comments and additional information received from these stakeholders can be inserted into the final version of the report. **The agency management, together with the independent expert and technical support agencies—for example, UNDP and SEPA, if the assessment is conducted through the global Environmental Governance Project—can co-chair the stakeholder workshop.**

Communication between the independent expert and members of the ROLPA advisory committee will improve the analysis of the results and generate advice and policy on how to present the results, as well as additional strategies for dissemination.

It may not be possible to invite all the stakeholders to the workshop. Those invited should reflect a gender-balanced representation and a varied sample of stakeholders. A reasonable number of non-governmental stakeholders must be included so that no single interest dominates the workshop.

### Presentation and dissemination of results do's and don'ts

- The results and conclusions should be presented at different levels to ensure a systemic approach—for example: (a) discussion of the results with the management of the agency; (b) presentation and discussion of the report at a meeting of the advisory committee; and (c) presentation of the final report at a session of the city council/meeting of all departments of the municipality, in particular those involved in environmental governance and/or governance of the mining sector.
- As part of (c) above, a draft action plan should be developed to address the challenges of applying principles of the rule of law to administrative decision-making at local level, including the short-term objective of developing specific actions that improve respect for principles of the rule of law, and the long-term goals of introducing the ROLPA self-assessment into the local government performance assessment system.
- The plan should be comprehensive and approved at the relevant decision-making level to ensure the necessary buy-in (ministerial, head of government agency, local government council session etc.).

### Presentation and dissemination of results outcomes

At the end of Step 6, the following outcomes will have been achieved:

- The agency coordinator and ROLPA advisory committee are consulted for their feedback and suggestions on the draft report.
- A stakeholder workshop is conducted, and views are collected from agency staff, non-governmental organizations, other government or administrative agencies, the private sector, including mining companies, and other interested parties.
- The report is updated and finalized.
- The report is disseminated to concerned parties and communicated to agency staff, the media, the mining industry and non-governmental organizations.







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# Appendices

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# 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.			

# APPENDIX 2

## Sample questionnaire for agency staff survey

The following introductory text could be used when starting the interview with civil servants.

"[Name of agency/agencies or responsible actor] is conducting a self-assessment of the application of principles of the rule of law in public administration of the mining sector and linked environmental and social issues. The purpose of this assessment is to identify strengths and weaknesses in [name of agency] and to support the agency to improve its capacity.

This survey is about your views, opinions and awareness as a civil servant. It will take approximately 40 minutes. We would like to ask you some questions on how, in your professional capacity, you think that the agency performs in relation to the following principles: legality, accessibility, right to be heard and participate, transparency, right to appeal, and accountability, as they apply to each stage of the mining cycle.

We do not need to know your name, and we will not be recording anything that will identify you on the questionnaire.

The participation of you and your colleagues is important for this self-assessment, to improve the work of the agency.

May I start reading the first question?"

Interviewer: \_\_\_\_\_

Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Time: \_\_\_\_\_

### General background variables

- |                                         |                                                                                 |
|-----------------------------------------|---------------------------------------------------------------------------------|
| 1. Age of respondent:                   | a. __ years old                                                                 |
| 2. Gender of respondent:                | a. __ Female<br>b. __ Male                                                      |
| 3. Years of formal education/schooling: | a. __ years<br>b. __ Don't know<br>c. __ Declined to answer                     |
| 4. Years at the agency:                 | a. __ less than three<br>b. __ between three and eight<br>c. __ more than eight |
| 5. Position:                            | a. __ Permanent<br>b. __ Contract (short term)                                  |
| 6. Additional background variables      |                                                                                 |

## Principle 1: Legality

Please indicate to what extent:	Not at all	To a small extent	To a large extent	To a very large extent	Don't know
1. <b>Powers, mandates and responsibilities:</b> You find that the rules defining the powers and mandate of the agency and your responsibilities are understandable.					
2. <b>Powers and mandates of other agencies:</b> You find that the rules defining the powers and mandate of other agencies (working on or in areas linked to the environmental impact of the mining sector) at the central and local levels are understandable.					
3. <b>Overlapping powers and mandates:</b> The powers and mandates of these other agencies and your agency are complementary to each other and do not overlap.					
4. <b>Horizontal coordination:</b> You find that there are clear rules establishing coordination between agencies (horizontal) working in areas linked to the environmental impact of the mining sector.					
5. <b>Vertical coordination:</b> You find that there are clear rules establishing coordination between central and local levels of government (vertical) in areas linked to the environmental impact of the mining sector.					
6. <b>Gaps and inconsistencies:</b> You encounter situations where the law provides insufficient or conflicting guidance on how to make administrative decisions that can potentially have an environmental impact.					
7. <b>Updates of laws:</b> You have easy access to the latest laws, regulations and instructions in your area of work which are significant for regulating the environmental impact of the mining sector.					
8. <b>Training on laws:</b> You receive training on the new legislative instruments in your area of work that are significant for mitigating the environmental impact of the mining sector.					
9. <b>Conflict of interest:</b> You have instructions on how to deal with situations where there is a conflict of interest that can lead to a negative environmental impact.					
10. <b>Equal treatment:</b> There are clear mechanisms to provide for equal treatment of people of different sex/ethnicity/religion/tribe or family affiliation/political affiliation or social status by the agency.					
11. <b>Gender equality:</b> You have instructions on how to act in line with a gender-responsive approach to the mining sector and its environmental impact (here it would be good to have an example explaining the meaning of 'a gender-responsive approach'—i.e. 'you are instructed to find out in what way men, women, boys and girls are affected differently by a specific mining activity').					
<b>Additional respondent comments on legality:</b> Is there any additional information you would like to provide on the existence of laws and other normative instruments needed to perform your duties as they relate to the environmental impact of the mining sector?					



Principle 2: Accessibility					
Please indicate to what extent:	Not at all	To a small extent	To a large extent	To a very large extent	Don't know
12. <b>Time limit for responding to queries:</b> There are clear targets for the maximum time to respond to stakeholder queries that relate to the potential environmental impact of the mining sector. If yes, please list the maximum time.					
13. <b>Time available for service:</b> It is possible to respond to queries from stakeholders within a reasonable time and without causing a potential increase in the environmental impact of the mining operation in question.					
14. <b>Language of service:</b> It is possible to handle queries in other languages than the official language (for example, in a minority language). If yes, please list the languages.					
15. <b>Redirecting petitions:</b> You have instructions on how to assist stakeholders in cases of obvious mistakes (for example, queries sent to the wrong agency).					
16. <b>Cost of service:</b> You have clear instructions on the charges, if any, for services provided by the agency.					
17. <b>Equal treatment:</b> Stakeholders have equal access to information and services provided by the agency, regardless of sex/ethnicity/religion/tribe or family affiliation/political affiliation or other social status.					
Additional respondent comments on accessibility:					



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

Please indicate to what extent:	Not at all	To a small extent	To a large extent	To a very large extent	Don't know
18. <b>Awareness of the right to be heard:</b> You are familiar with laws and instruments guiding who has the right to be heard in relation to the regulation of mining operations with a potential environmental impact.					
19. <b>Awareness of the right to participate:</b> You are familiar with the laws and instruments guiding who has the right to participate in relation to the regulation of mining operations with a potential environmental impact.					
20. <b>Hearing stakeholders:</b> You have established procedures for hearing a stakeholder before taking a decision that has an environmental impact on that stakeholder's geographic area.					
21. <b>Stakeholder participation:</b> You have established procedures to ensure the participation of stakeholders, as established by the laws and other normative instruments.					
22. <b>Distilling complex environmental and mining issues:</b> You have procedures for ensuring that complex issues related to the environmental impact of mining are communicated to stakeholders <sup>13</sup> in a manner that makes it more likely that they can participate.					
23. <b>Taking stakeholder considerations into account:</b> You have established procedures for taking into account the considerations of concerned persons, groups or companies, as established by the laws and other normative instruments.					
24. <b>Stakeholder communication:</b> You have established procedures for communicating with a concerned person, group or company.					
25. <b>Verbal communication:</b> You have established procedures for hearing stakeholders orally or through interviews before taking a decision.					
26. <b>Sourcing independent expertise:</b> There are established procedures for using outside expertise to assess potential environmental impact before taking a decision.					
27. <b>Timelines for decisions:</b> You have clear instructions on time limits for when decisions that affect, positively or negatively, the environmental impact of mining must be taken.					
28. <b>Equal treatment:</b> You have instructions on how to ensure that the right to be heard and to participate is consistently respected for different groups of citizens, regardless of sex/ethnicity/religion/tribe or family affiliation/political affiliation or other social status.					

Additional respondent comments on the right to be heard and participate:



13. It is important that women and girls are included as 'stakeholders' when they are affected by the agency's decisions.

## Principle 4: Transparency

Please indicate to what extent:

Not  
at all

To a  
small  
extent

To a  
large  
extent

To a very  
large  
extent

Don't  
know

**29. Access to general information on laws, standards and procedures:** You have instructions and procedures on providing stakeholders with access to information related to the environmental impact of mining.

**30. Responding to information requests:** There are clear instructions and established practice on how to respond to a stakeholder who seeks information on laws, standards and procedures that guide the work of the agency.

**31. Equal treatment:** You have instructions and there are established practices on how to ensure that the access to information is consistent for different groups of stakeholders, including women and men, different ethnic groups, persons, companies and civil society organizations etc.

**32. Responding to information requests on specific cases that relate to environmental issues in the mining sector:** You have instructions on how to respond to requests for information from a stakeholder on issues related to the environmental impact of mining.<sup>14</sup>

**33. Proactive information provision:** Your agency has established procedures on providing information and data related to environmental impact to the public proactively, on a regular and timely basis, even in the absence of a request. If yes, please list the format(s) for sharing such information with the public.

**34. Integrity and confidentiality:** You have instructions and established practices on how to handle integrity and privacy of information.

**35. Recording and archiving:** You have established procedures for recording and archiving data.

Additional respondent comments on transparency:



14. Such as negotiation of mining concessions, 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

Please indicate to what extent:

Not at all	To a small extent	To a large extent	To a very large extent	Don't know
------------------	-------------------------	-------------------------	---------------------------------	---------------

**36. Formulating decisions:** You have clear instructions on what an administrative decision that relates to the environmental impact of mining shall include (for example, reasoning, indication of remedies and more).

**37. Communicating decisions:** You have clear instructions on how a stakeholder should be informed about a decision.

**38. Appealing a decision:** You have instructions on how to advise a stakeholder who wants to appeal against a decision by your agency.

Additional respondent comments on the right to appeal:



## Principle 6: Accountability

Please indicate to what extent:

Not  
at all

To a  
small  
extent

To a  
large  
extent

To a very  
large  
extent

Don't  
know

39. **Ethical codes:** You are familiar with the ethical code(s) of the agency.

40. **Oversight bodies:** Your work is influenced by decisions and instructions from oversight agencies.

41. **Internal accountability system:** Your agency has an established mechanism for holding staff accountable for their decisions.

42. **Accountability for environmental impact:** When assessing accountability for grievances and damages, the accountability mechanisms in your agency consider environmental damage (current or potential).

43. **Violation of law:** You have clear instructions on what to do when you suspect that someone within the agency has violated the law, causing potential negative social or environmental impact while performing his/her official functions.

44. **Corruption:** You think a civil servant at the agency could accept a bribe without being detected and punished.

45. **Other practices reducing accountability:** You have knowledge of practices by civil servants at the agency which reduces the level of accountability? If yes, please list the different practices.

46. **Dealing with complaints:** You have instructions for how to deal with complaints against the agency or its staff.

47. **Equal treatment:** You have experienced a situation where someone has been discriminated against due to sex/ethnicity/religion/tribe or family affiliation/political affiliation or other social status.

48. **Gender equality:** You are aware of laws, regulations and/or internal policies on gender equality applicable to the agency.

Additional respondent comments on accountability:

# APPENDIX 3

## Sample questionnaire for target group survey

### Target group surveys will target citizens and their representation, as well as mining companies and their representation

The following introductory text could be used when approaching potential respondents.

“Excuse me. I was wondering if you would have the time to answer a few questions. We are conducting a public opinion survey on behalf of [name of agency] and would like to ask you to participate.

The survey will take approximately 25 minutes and is about your views, opinions and awareness of the agency. Your participation is important for improving the work of the agency.

We do not need to know your name, and we will not be recording anything that will identify you on the questionnaire. Would you like to participate?”

If yes, proceed with, ‘May I start reading the first question?’

If no, end the interview and say, ‘Thank you for your time.’ (Note down gender and location of the person declining.)

Interviewer: \_\_\_\_\_

Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Time: \_\_\_\_\_

Location: \_\_\_\_\_

#### General background variables

- |                                                                                       |                                                                                                                |
|---------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|
| 1. Age of respondent:                                                                 | a. __ years old<br>b. __ Don't know<br>c. __ Declined to answer                                                |
| 2. Gender of respondent:                                                              | a. __ Female<br>b. __ Male                                                                                     |
| 3. Years of formal education/schooling:                                               | a. __ years<br>b. __ Don't know<br>c. __ Declined to answer                                                    |
| 4. Have you been in contact with the agency?                                          | a. __ Yes<br>b. __ No                                                                                          |
| 5. [If yes on question 4] When was the last time you were in contact with the agency? | a. __ one year or less<br>b. __ between one and three years<br>c. __ more than three years<br>d. __ don't know |
| 6. Additional background variables                                                    |                                                                                                                |

## Principle 1: Legality

Please indicate to what extent:<sup>15</sup>

Not at  
all

To a  
small  
extent

To a  
large  
extent

To a very  
large  
extent

Don't  
know

**1. Specification of the agency:** You think it is clear which public agencies are responsible for dealing with the environmental impact related to the mining sector.

**2. Scope of powers:** You think it is clear what the agency can do and is allowed to do in relation to mining operations.

**3. Role in minimizing environmental impact:** You think that the agency has a responsibility for minimizing the environmental impact of the mining sector.

**4. Abiding by the law:** You think that the agency staff generally follow the law when performing their functions.

**5. Professionalism of the agency:** You think that the agency staff are professional in providing services and understand their duties according to the law.

**6. Equal treatment:** You think that the agency staff treat persons or groups differently depending on gender, age, ethnic, tribal or political affiliation.

Additional respondent comments on legality:



15. In the users' survey, the questions make sense if asked to artisanal miners who could apply for licences. However, and it is important to note, they are less applicable to communities in their current form. To ensure robust and balanced qualitative data, adapting the questions depending on the context and target groups is a requirement in the users' survey. Alternatively, the research team should check which exact 'services' could be relevant for the community in relation to government authorities (e.g. appeals or the right to be heard/participate).

## Principle 2: Accessibility

Please indicate to what extent:

Not at  
all

To a  
small  
extent

To a  
large  
extent

To a very  
large  
extent

Don't  
know

7. **Agency structure:** You think it is easy to access the services of the agency.

8. **Navigating the administrative set-up:** You think it is easy to understand which units in the agency are responsible for addressing the environmental impact of mining.

9. **Openness:** You think that the agency and the relevant unit within the agency are accessible in terms of visiting and communication.

10. **Language of communication:** You think it is possible to communicate with the agency in other languages than the official one.

11. **Cost of service:** You think that the cost of the agency's services is affordable.

12. **Equal access to services:** You think that different groups of citizens have equal access to the services provided by the agency, regardless of their sex/age/ethnicity/religion/tribe or family affiliation/political affiliation or other social status.

Additional respondent comments on accessibility:



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

Please indicate to what extent:	Not at all	To a small extent	To a large extent	To a very large extent	Don't know
13. <b>Awareness of the right to be heard:</b> You are familiar with your right to be heard in matters concerning the environmental impact of mining operations.					
14. <b>Awareness of the right to participate:</b> You are familiar with your right to participate in matters concerning the environmental impact of mining operations.					
15. <b>How to exercise the right to be heard:</b> You are familiar with the procedures for exercising your right to be heard.					
16. <b>How to exercise the right to participate:</b> You are familiar with the procedures for exercising your right to participate.					
17. <b>Hearing concerned persons:</b> You think that the agency listens to your views and arguments before it takes a decision that has an environmental impact which can affect you.					
18. <b>Definition of concerned persons:</b> You think that you are affected by the environmental impact of mining, but you are not considered a concerned person or group by the agency.					
19. <b>Redirecting petitions:</b> You think that the agency would assist you in cases of obvious mistakes, such as if you sent an inquiry to the wrong agency.					
20. <b>Timelines for decisions:</b> You think that there are time limits for when the agency must take decisions in cases related to the environmental impact of the mining sector.					
21. <b>Timelines for decisions:</b> You think that the agency follows time limits when taking decisions affecting cases that raise concerns over environmental impact.					
22. <b>Equal treatment:</b> You think that the agency gives you equal access to be heard and participate in decision-making, regardless of your sex/age/ethnicity/religion/tribe or family affiliation/political affiliation or other social status.					
Additional respondent comments on the right to be heard and participate:					





## Principle 4: Transparency

Please indicate to what extent:

Not at  
all

To a  
small  
extent

To a  
large  
extent

To a very  
large  
extent

Don't  
know

**23. Access to information:** You can obtain information on the laws, standards and procedures that guide the work of the agency in relation to the environmental impact of mining activities.

**24. Proactive vs. reactive provision of information:**  
You can obtain this information only upon request (as opposed to the information being readily available and proactively shared with stakeholders, including local communities).

**25. Access to information on specific cases of mining environmental issues:** You think you can obtain information on specific cases related to the environmental impact of mining.<sup>16</sup>

**26. Specification of public agency:** It is clear to you which public agency houses information on cases addressing environmental concerns related to mining.

**27. Ability to obtain information:** You think you can obtain information from the agency on any specific case related to the environmental impact of mining which concerns you.

**28. Privacy and integrity:** You think that the agency will give out sensitive or private information.

**29. Equal treatment:** You think you have equal access to information from the agency, regardless of your sex/age/ethnicity/religion/tribe or family affiliation/political affiliation or other social status.

Additional respondent comments on transparency:



16. Such as land-use planning, negotiations of mining concessions, contracting and licensing; environmental impact assessments; environmental management plans, including water recycling, land rehabilitation, relocation and compensation, biodiversity offset; and mine closure, monitoring, compliance, enforcement and sanctions.

### Principle 5: Right to appeal

Please indicate to what extent:

Not at  
all

To a  
small  
extent

To a  
large  
extent

To a very  
large  
extent

Don't  
know

**30. Formulating decisions:** You think that the agency explains the reasons behind its decisions in cases related to the environmental impact of the mining sector.

**31. Feedback:** You think that the agency will inform you if and when it has taken a decision in a case with a potential environmental impact that concerns you.

**32. Appealing a decision:** You think you can appeal decisions by the agency in the event of a negative environmental impact affecting you. (Potential follow-up question on whether or not the respondent has made an appeal.)

**33. Proactive awareness-raising of the right to appeal:**  
You think that the agency would advise you on how to appeal a mining-related decision that it has taken and which could lead to a negative environmental impact.

**34. Counsel:** You think there are other public agencies that would advise you on how to appeal a decision by the agency if there is a risk that the decision will have a negative impact on the environment.

**35. Fair review of appeal:** You think that the agency would fairly and objectively review its own decisions related to the environmental impact of mining.

**36. Cost of appeal:** You think you can appeal the agency's decision at a reasonable cost.

**37. Equal treatment:** You think that the agency would review its own decisions fairly and objectively, regardless of your sex/ethnicity/religion/tribe or family affiliation/political affiliation or other social status.

Additional respondent comments on the right to appeal:



## Principle 6: Accountability

Please indicate to what extent:

Not at all	To a small extent	To a large extent	To a very large extent	Don't know
------------	-------------------	-------------------	------------------------	------------

38. **Sector-wide practices:** You think there are corrupt practices<sup>17</sup> in the mining sector in general.

39. **Corruption:** You think that civil servants at the agency are offered bribes.

40. **Impunity:** You think that a civil servant at the agency could accept a bribe without being detected and punished.

41. **Oversight bodies:** You think that oversight agencies (e.g. ombudsman, national human rights institutions etc.) have an influence over the work of [name of the agency].

42. **Priority areas of oversight bodies:** You think that oversight agencies (e.g. ombudsman, national human rights institutions etc.) influence the work of the agency with the aim of reducing the environmental impact of mining.

43. **Violation of law:** You think that civil servants at the agency know how to deal with situations where another civil servant is suspected of breaking the law.

44. **Dealing with complaints:** You think that complaints against the agency that relate to the environmental impact of mining operations are taken seriously and dealt with accordingly.

45. **Equal treatment:** You have experienced a situation where someone has been discriminated against due to sex/ethnicity/religion/tribe or family affiliation/political affiliation or other social status.

46. OR

47. You think that a civil servant at the agency could discriminate against citizens (due to sex/ethnicity/religion/tribe or family affiliation/political affiliation or other social status) without being corrected.

Additional respondent comments on accountability:

17. Such as the misappropriation of funds or other forms of corruption.

# APPENDIX 4

## Sample report outline

Foreword (written by the head of the administrative agency, mayor, head of municipality or similar functions)

Executive summary

1. Introduction and overview

2. Results of the self-assessment and overall analysis

3. Review of selected principles of the rule of law, challenges and strengths

4. Conclusions, recommendations and follow-up actions

Appendix (additional charts, graphs and tables)

## Executive summary

The executive summary describes the main findings and outlines the main policy recommendations regarding the rule of law for the area being assessed—for instance, housing, social protection, informal squatters, civic registration—in each context.

## Introduction and overview

It is not necessary to provide a detailed description of the data collection methods used. Instead, this section should describe the way in which the surveys have been used, any problems related to data cleaning and possible biases, and overall delimitations and risks.

The introduction should include a short discussion on how and why the process was initiated, and a background description of the administrative agency or agencies. It should also clearly state the aim of the assessment, and support, commitments and endorsements from departments or ministerial authorities should be particularly emphasized.

The introduction should include a brief history of public administration in the country, past and ongoing reform initiatives in the public sector, and the current state of public administration. The background should also contain information and narratives specifically relevant to the participating administrative agency.

## **Results of the self-assessment and overall analysis**

The narrative should outline the cumulative analysis of challenges relating to the rule of law for the administrative agency or agencies. This should use an easy-to-understand text and format. It requires that the independent expert, the participating agency and the agency coordinator assess the responses from the formal mapping, the agency staff survey and the target group survey.

## **Review of selected principles of the rule of law, challenges and strengths**

After the overall analysis, in which the rule of law as a whole for the administrative agency or agencies is described, the report should cover the individual principles. Not all the principles need to be described, and the independent expert, together with the administrative agency and the agency coordinator, should identify those areas where there are specific challenges, opportunities or disagreements between the agency, affected communities or the formal mapping survey.

## **Conclusions, recommendations and follow-up actions**

This section can also outline recommendations for implementation, or the next phase if developing a potential project.

# APPENDIX 5

## Survey sampling strategies

A survey sampling strategy could help reduce time, costs and the need for human resources, and improve the quality of the survey. The sampling strategy should, however, be adapted to the objectives and context of the assessment, and balanced with the resources available. Irrespective of the assessment's objectives and application of the tool, the sample size, selection of respondents etc. should be based on accepted statistical methods. Some general considerations and principles in the development of sampling strategies are set out below.

Agency staff survey	Decide on a sample size for the agency staff survey	<p>The sample size of respondents depends on the number of agencies participating in the self-assessment:</p> <p>If the group of civil servants (the population of interest) is small in size (e.g. 50–70), the agency survey should include as many as possible. If the population of interest is large, a random sample may be used.</p>
	Select respondents for the agency staff survey	<p>Use the employment records of civil servants if the population size is large. Focus on junior to mid-level civil servants as well as respondents with direct responsibility for decision-making.</p>
Target group survey	Decide on a sample size and select respondents for the survey	<p>The selection of respondents depends on the size of the population of interest.</p>
	Identify legal and ethical regulations on surveys and data collection	<p>Identifying a population of interest through public records and archives must consider legal and ethical principles on integrity and privacy in the particular context of measurement (e.g. confidentiality or disclosure policies).</p>
		<p>If possible, use reliable records and archives to identify actual affected communities and reach a population of interest or a sample population of interest. If it is not possible to use records, target affected communities directly in relation to the agency. Alternatively, use a snowball approach or a random sample.</p>
	Identify and select respondents for the target group survey	<p>Create a sample on the basis of records, or use other approaches where records are not available. If it is a matter which appears with significant frequency—for example, the issuance of civil registration documents—a large random sample from the general population can be used.</p> <p>Irrespective of the approach to data collection, standard methodological considerations for the selection of respondents should be followed.</p>

# APPENDIX 6

## Sample guidelines for training enumerators

Preparation	Familiarize interviewers with the survey. Go through the principles during the preparation to sort out possible questions and misunderstandings.
	Let interviewers test the interview on each other so that they become familiar with reading the questions out aloud and to see if or where someone might have problems answering the questions.
Ensuring correct answers	Interviewers have to be sure about the respondent's answer and must never draw his/her own conclusions about what the respondent really means.
	Interviewers are not allowed to give explanations and should avoid synonymous or probing questions. If the respondent still does not understand the question, they should comment on that and go on to the next question. This means that there will be no answer to that question.  If the respondent misunderstands the question, interviewers can only ask him/her to listen carefully, read the question once again and accept whatever answer they get.
Location and logistics	Interviewers should be prepared to conduct interviews at the agency (agency staff survey), and 'on-the-spot' interviews at the agency, on the street or in other locations where a sample of users might be found (user survey).
	Interviewers should try to be alone with the respondent, since he/she will give more honest answers and will be able to answer without interruption or influence.  Interviewers should cover 10–12 respondents per day on average.
Approaching respondents	Interviewers have to be fully transparent in explaining the purpose of the survey and ensuring that the respondent is comfortable with the situation and fully understands the purpose of the interview.
	Interviewers should stress the anonymity of the respondent.
Conducting the interview	Interviewers have to ask the questions exactly as they are formulated in the questionnaire. Interviewers have to repeat the answer alternatives after each question.
	Interviewers are not allowed to give explanations and should avoid synonymous or probing questions.  Answer alternatives have to be repeated after every question, with no exceptions. Only one alternative may be marked. If two alternatives are marked, the questionnaire will be void.
Reporting	Reports on how the survey is going and about non-responses should be submitted continuously to the supervisor/external expert.



# APPENDIX 7

## Sample terms of reference for independent experts

SSA: Independent expert

Location:

Duration:

Start date:

### Scope of work

To assist in coordinating and facilitating the implementation of the assessment of [name of agency/region], [name of agency or contracting agency if other] is looking for an independent expert.

### Specifically, the expert will perform the following tasks:

- Provide substantive advice and support to [name of agency]
- Ensure necessary logistical preparations and follow-up, including organization of meetings with stakeholders to address operational and substantive issues as they arise and address needs in a timely manner
- Strategically manage partnerships and cooperation between the assessment implementation team and the agency stakeholders
- Ensure a gender perspective throughout all steps of the self-assessment, from the formal mapping to the analysis and dissemination of results
- Produce periodic updates on the implementation of the project
- Assist [name of agency] in implementing the formal mapping and agency staff and target group surveys (i.e. customize the sample questionnaires, identify enumerators, identify training facilities for enumerators, monitor the collection of data)
- Analyse data and draft a preliminary report
- Organize and conduct a stakeholder workshop to collect feedback on the preliminary report
- Draft a final report and assist dissemination activities.

### Required competencies

The selected candidate should have a good understanding of the issues and challenges associated with both public administration and reform of the rule of law,

ideally with hands-on experience and skills in the implementation, management and coordination of related programmes. Experience with a national government entity and/or international agency working in [name of country/region/city] is important.

It would also be useful if the selected candidate has a good understanding of gender issues and prior experience of integrating a gender perspective in similar research.

In addition, the independent expert should have a mix of operational and managerial competencies that will enable him/her to perform well in this challenging post and produce high-quality outputs. He/she should have:

- a good understanding of the political nature and of the possible sensitivity around public administration reform and rule of law issues in [name of country/region/city], and the capacity to operate diplomatically and sensitively with the various national stakeholders;
- a demonstrated ability to research and analyse complex programming issues related to public administration and the rule of law, and the ability to work in a process-oriented manner;
- excellent organizational and planning capacity, with good time and task management skills; and
- an effective ability to interpret and define alternative solutions to emerging challenges and issues.

## Required education and experience

- Master's degree or equivalent in Law, Economics, Social Sciences, Human Rights, Gender Studies, International Development, Public Policy, Public Administration or a closely related field
- At least 10 years of professional experience, including at least seven years of substantive experience on issues related to public administration and/or rule of law reforms
- A proven track record of working effectively with national governments, civil society, international organizations and other stakeholders
- Excellent written and oral communication skills in English, and native-level knowledge of [official language].

Candidates affiliated with an academic or research institution in [name of country] are also encouraged to apply.

# APPENDIX 8

## Sample terms of reference for the advisory committee

### Terms of reference

SSA: Advisory committee for pilot implementation

Location:

Duration:

Start date:

### Scope of work

To facilitate the implementation of the assessment in [name of country], and to provide inputs on the conduct of the assessment exercise, an advisory committee will be appointed consisting of representatives from [name of participating stakeholders].

Specifically, the advisory committee will perform the following tasks:

- Oversee the administrative, programmatic and logistical aspects of the process from preparation to final presentation of the report
- Be responsible for ensuring a smooth implementation process for the duration of the assessment process by enabling speedy and thorough decision-making processes
- Provide substantive advice and support to [name of lead expert] and other implementing partners involved in the assessment process
- Together with [name of lead expert] and [name of administrative agency], assist in publishing and disseminating the decision to initiate the diagnostic process through relevant media and communication channels
- Oversee the necessary logistical preparations and follow-up, including organization of meetings with [name of lead expert] to address operational and substantive issues as they arise and address needs in a timely manner
- Together with [name of lead expert], oversee the gender perspective throughout the self-assessment process
- Through their representation on the advisory committee, strategically manage partnerships and cooperation between the independent expert and their respective agencies
- Assist in data analysis and presentation.

# APPENDIX 9

## Sample action plan outline

Foreword (written by the head of the administrative agency, mayor, head of municipality or similar functions)

Executive summary

1. Introduction and overview

2. Action steps priority I

3. Action steps priority II

4. National-level recommendations

5. Risk analysis

6. Monitoring

Annexes (official executive order to implement the action plan, additional charts, graphs and tables, problem tree)

### Executive summary

Describes the main action steps and recommendations to address rule of law challenges identified in the assessed agency and the specific area—for instance, granting of environmental and mining licenses at local level.

### Introduction and overview

The introduction should clearly state the aim of the action plan. It can essentially serve two functions: 1) transform assessment results into actionable strategies, thereby guiding and supporting agencies and relevant management groups in prioritizing what to do, why and when; and 2) communicating results and actions externally to a wider group (e.g. local communities, CSOs and networks, relevant ministries, donors and assistance providers). The operationalization of the action plans requires political and administrative action at the municipal level, as well as lobbying and advocacy at higher levels for reforms that improve the mandate and/or competency level of agencies at local/regional level.

Differences in terms of political commitment and local resources, including staff capacity, are likely to affect the pace and character of how recommendations are implemented and if they lead to significant reform. Communication between political and administrative decision makers and officials is critical for the successful implementation of the action plan. Possibilities for external coaching could be

considered for the implementation of specific action points.

The introductory section could, furthermore, refer to various stages of drafting the action plan. These could include:

- analysis of self-assessment results in workshop formats using cause and effect diagrams;
- identifying and prioritizing action points with the highest feasibility (i.e. political commitment, technical capacity, resources);
- identifying recommendations for authorities at national level pertaining to the national legal framework etc.;
- carrying out a risk analysis;
- drafting a timetable/work plan; and
- drafting and issuing the official executive order to implement the action plan.

The Advisory Committee is responsible for all stages of the action plan process. To facilitate implementation, action points can be divided into two priority levels: 1) action points of priority I may include tasks with high feasibility outcomes and short-term implementation time-frames; and 2) action points of priority II might require authorization from authorities at higher levels, additional resources and/or longer implementation time-frames.

The action plan can also include recommendations to address rule of law challenges at national level that could potentially have an impact on the respect for the principles of the rule of law at local/regional level.

## Action steps priority I

This section can include a brief analysis of core issues identified through in-depth problem analysis workshops undertaken jointly with the Advisory Committee, external experts and/or CSOs. Action steps may include tasks related to the streamlining of legal procedures, management and internal workflow issues within the agency, as well as possibilities to improve communication channels between targeted communities and the agency.

Example:

<b>Step 1</b>	Improve internal regulations, including develop standards on conflicts of interest
<b>Responsible person/unit</b>	Legal department
<b>Time-frame</b>	Within 6 months
<b>Specific tasks</b>	<ul style="list-style-type: none"> <li>• Amend procedure for processing requests for public information from the agency and its executive offices;</li> <li>• Draft a resolution regarding the provision of free legal aid assistance as part of the authority's services;</li> <li>• Develop a code of conduct for civil servants to handle conflict of interests and provide required training for civil servants.</li> </ul>

## Action steps priority II

Steps listed under the second priority level could complement action points already listed. For example, in case one of the first priority steps aimed at drafting standards or streamlining internal procedures, actions mentioned here would aim at their implementation and, thus, in addition to formal approval, might require additional financial support.

Example:

Step 1	Agency introduces free legal aid services on concerns related to environmental and mining impact
Responsible person/unit	Legal department
Time-frame	Within 12 months

## National-level recommendations

Typically, certain findings from a self-assessment carried out at local/regional level will point to rule of law challenges observed in the national legal framework. Including recommendations for national authorities can provide further advocacy and lobbying opportunities.

## Risk analysis

Possible risks should be outlined for each proposed action step. Along with an analysis of the likelihood and potential impacts of identified risks, possible mitigation/risk response strategies should be included.

## Monitoring

Action plan monitoring can take place in the form of workshops, informal briefings and/or (formal) reporting. Regular monitoring is critical to facilitate an iterative implementation process, assessing both progress and challenges, as well as documenting quick wins.

Engagement from local CSOs and media presence during action plan presentations and relevant stakeholder meetings could also be encouraged to promote public monitoring of the action plan implementation process.

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