



REVIEW OF THE APPLICATION OF THE RULE OF LAW PRINCIPLES IN THE ENVIRONMENTAL GOVERNANCE OF THE MONGOLIAN MINING SECTOR

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ACRONYMS

EITI	Extractive Industries Transparency Initiative
GAL	General Administrative Law
GASI	General Agency for Specialized Inspection
IRIM	Independent Research Institute of Mongolia
LATUTM	Law on Administrative and Territorial Units and Their Management
LEIA	Law on Environmental Impact Assessment
LEP	Law on Environmental Protection
LERO	Law on Environmental Rehabilitation Operations
LITRI	Law on the Information Transparency and Right to Information
LM	Law on minerals
LPS	Law on the Public Service
LRACC	Law on Resolving Administrative Cases in Court
LRPCICGOO	Law on Resolution of Petitions and Complaints issued by Citizens to Government Organizations and Officials
LRPPIPSPCI	Law on Regulating Public and Personal Interests in Public Service and Preventing Conflict of Interests
LSSI	Law on State Supervision and Inspections
MoET	Ministry of Environment and Tourism
MoMHI	Ministry of Mining and Heavy Industry
MRPA	Mineral Resources and Petroleum Authority
NAA	National Audit Authority
NAMEM	National Agency for Meteorology and Environmental Monitoring
PCC	Permanent Commission on Complaints
SEPA	Swedish Environmental Protection Agency
UK	United Kingdom
UNDP	United Nations Development Program

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IRIM is responsible for the content of this review and the conclusions.

Any comments related to this review can be sent to IRIM, and comments related to follow-up measures and actions of this review should be sent to the related state agencies.

Independent Research Institute of Mongolia

PREFACE

Growth in extractive industries can bring much-needed resources to finance social and economic development. When managed appropriately, it can create jobs, spur innovation and bring investment and infrastructure of a game-changing scale over a long period. Yet, if managed poorly, mining can also lead to environmental degradation, displaced populations, inequality and increased conflict, among other challenges. Mining activities typically cause impacts on land, water, the climate and the flora, fauna and people that depend on these resources

Therefore, regulation of environmental impacts from the extractives sector has become the greatest challenge for developing countries that are heavily dependent on natural resources. This is often due to weak capacities of environmental protection agencies, ministries of environment, and of states more broadly, to fulfill their mandates for governing the sector in ways that protect the environment, advance social progress, and accelerate sustainable growth.

In order to respond to growing demand for programs that strengthen environmental protection, human rights and the rule of law in the extractives industries, the UNDP in collaboration with the Swedish Environmental Protection Agency (SEPA), initiated a four-year program to support the environment, mining, planning and finance ministries—as well as other public and private stakeholders—in four countries: Colombia, Kenya, Mongolia, and Mozambique. Under the framework of the program, a special tool was designed for reviewing how the government agencies, which are responsible for regulating environmental issues related to the mining industry, comply with rule of law principles in their operations. Consequently, a review was made simultaneously in all four countries in 2016–2017.

The mining sector in Mongolia accounts for about 20 per cent of the country's Gross Domestic Product (GDP) and over 90 per cent of total exports. “Sustainable Development Vision—2030”, a document that the State Great Khural (Parliament of Mongolia) endorsed in February 2016, sets forth development objectives including devoting priority importance to the mining industry, establishing transparent and responsible mining, ensuring local community engagement for environmental sustainability, ensuring environmental rehabilitation is done according to international standards, protecting pristine nature and bio-diversity and maintaining eco-system sustainability. Moreover, the State Policy on the Mineral Resources Sector, which was adopted by the State Great Khural in January 2014, sets forth an agenda for developing a transparent and responsible extractive sector that meets environmental and health requirements.

Many stakeholders are involved in the regulation of environmental impacts caused by mining. These include MoET, the Ministry of Mining and Heavy Industry (MoMHI), the Mineral Resources and Petroleum Authority (MRPA), GASI, the Environmental Crime Department of the State Investigation Agency and local governments.

IRIM NGO conducted a review titled “Review of the Application of Rule of Law Principles in the Environmental Governance of the Mongolian Mining Sector” in response to a request from the UNDP. For the review, we selected MoET and GASI, the two agencies responsible for policy and policy oversight/inspection, respectively, regarding environmental governance.

The review was conducted using a tool jointly developed by the UNDP and Folke Bernadotte Academy, a Swedish government agency. The tool is designed to review governance practices in terms of the application of six main principles of rule of law: “legality”, “accessibility”, “right to be heard”, “transparency”, “right to appeal” and “accountability”. The review analyzed the legal environment in which the operations of government agencies are regulated. It also included a survey on the perceptions of public servants on rule of law principles.

The review aims to build trust between public administration agencies, officers and citizens by increasing their awareness of rule of law principles and developing recommendations that adhere to rule of law principles.

1. METHODOLOGY

1.1 DEFINITION OF “RULE OF LAW”

The terminology “rule of law” is often translated differently in the Mongolian language, including “хууль дээдлэх ёс” (respect for the law), “эрх зүйт ёс” (principle of legality), “эрх зүйт төр” (legitimate state), and “хуулийн засаглал” (governance of law) followed by various interpretations. For instance, Section 2, Article 1 of the Constitution of Mongolia sets forth, “... rule of law shall be the key principle of the performance of the state of Mongolia”. The rule of law therefore does not have a fixed and precise definition, and its meaning can be different in different nations, legal traditions and across different professions.

In philosophical terms, rule of law is an ancient ideal in western thought which goes back to ancient Greek philosophy. The central idea of rule of law throughout the centuries has been that if a king were to rule according to the law, he would be constrained and his power would be limited. This idea was central to the development of constitutionalism and the separation of powers in the context of the foundation of the United States of America in the late 18th century. Both the terminology and the philosophical concepts emerging from that period had a fundamental impact on the eventual global reach of these ideas. This is also what underlines the understanding of the Universal Declaration of Human Rights (1948).

Modern jurisprudence experts often propose two forms of rule of law:

1. a more substantive theory that promotes the rules and regulations grounded in substantive legislation that guarantees the fundamental rights of persons (the primary form)
2. a formal approach, which consists of rules and regulations created throughout the legislative process regardless of whether the legislation is good or bad.

Among lawyers there is a view that the formal approach is a narrow interpretation, and it is therefore better for lawyers to understand the rule of law in the broader sense.

British scientist Albert Venn Dicey¹, a key proponent of substantive theory, identified three principles which together establish the rule of law:

1. the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power
2. equality before the law or the equal subjection of all classes to the ordinary law of the land administered by the ordinary courts
3. the law of the constitution is a consequence of the rights of individuals as defined and enforced by the courts.

Joseph Raz² makes it clear that it cannot just mean that government actions are authorized by law since the concept would then be narrow. Any law properly passed by parliament would meet the rule of law defined in this manner. That laws should be passed in the correct legal manner is none the less a necessary facet of a formal conception of the rule of law. It is not however,

¹ Albert Venn Dicey (1835–1922)

² Joseph Raz (1939), Israeli legal, moral and political philosopher

sufficient. According to good rule of law principles: laws should be prospective, not retrospective; they should be relatively stable; particular laws should be guided by open, general and clear rules; there should be an independent judiciary; there should be access to the courts; and the discretion which law enforcement agencies possess should not be allowed to undermine the purposes of the relevant legal directives.

The Oxford English Dictionary defines rule of law as: “The authority and influence of law in society, especially when viewed as a constraint on individual and institutional behavior; (hence) the principle whereby all members of a society (including those in government) are considered equally subject to publicly disclosed legal codes and processes.”²

International organizations, civil society groups and research institutions that promote the rule of law, define and use the concept as follows.

The United Nations

The Secretary-General of the United Nations (UN) defines the rule of law as: “a concept at the heart of [the UN’s] mission. It refers to a principle of governance in which all persons, institutions and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.”³

Examples of reviewing the enforcement of the rule of law

At the global level, the World Bank’s World Governance Indicators aggregate several indicators focused on property rights, contract enforcement and security of persons and property. Meanwhile, the World Justice Project’s Rule of Law Index⁴ uses 44 indicators across eight categories, each of which is scored and ranked globally and against regional and income peers: constraints on government powers, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice, and criminal justice. In total, 113 countries were ranked according to their level of rule of law in 2016, and Mongolia was ranked 55th in the list, which is topped by Denmark, Norway, Finland, Germany, Sweden, Netherlands, New Zealand, Austria, Singapore and the United Kingdom.

Understanding of rule of law in public administration

The Swedish Folke Bernadotte Academy issued a survey report titled “Rule of Law in Public Administration: Problems and Ways Ahead in Peace-Building and Development” in 2008 and the report highlighted that “A number of international, regional and bilateral agencies are currently engaged in various aspects of promoting the rule of law. Their efforts often focus on the criminal

³ UN Secretary-General’s Reports Submitted to the United Nations Security Council, 23 August 2004, S/2004/616

⁴ The World Justice Project is an independent, multidisciplinary organization working to advance the rule of law worldwide.

justice side of the legal system, where many initiatives deal with transitional justice issues, criminal procedure reform, reforming the police, and a variety of related issues”.⁵

This report confirms that the rule of law is also of great relevance outside the justice sector, particularly in public administration, and that the international community needs to expend more effort on integrating rule of law dimensions and perspectives into public administration reform. In short, the goal of public administration is to link the state and citizens and plays an important role in relations between these two stakeholders.

Public administration agencies are the principal interfaces between the state and the individual and deal with matters of relevance for fundamental human rights, such as civil registration and health services. The report also emphasized that legislation often fails to clearly state the functions of public administration. According to the report, such situations are coupled with high levels of corruption, centralization of public administration, undue political influence and lack of accountability. It concluded that unclear laws, sudden changes of law, discrimination and lack of clear right to appeal in an environment with weak access to judiciary and weak citizens’ knowledge of rights and accountabilities often hits vulnerable and marginalized groups particularly hard.

The UNDP, in partnership with Folke Bernadotte Academy, developed the following tool for reviewing the rule of law in the public administration according to six main principles.⁶

OVERVIEW OF SIX KEY RULE OF LAW PRINCIPLES	
Legality	The principle requires that public administrative agencies abide by the law, and that all their decisions and content have a basis in law. This includes the equal treatment of different groups of citizens. In certain settings, a broad spectrum of laws can exist, and enforcing these laws on a consistent basis can present difficulties.
Accessibility	The principle means that everyone should have access to public administration and a duty on public authorities to accept and deal with different groups of citizens’ requests and questions properly. The principle also requires 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.
Right to be heard	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. The right to be heard means that public authorities must inform the persons concerned of their decision, as well as a duty to take a decision within a reasonable time.
Transparency	The principle of transparency ensures that the work of public authorities and public servants is conducted openly. Public authorities have a duty to provide information about their work and to ensure access to laws, acts and

⁵ Folke Bernadotte Academy is the Swedish government agency for peace, security and coordinating the international conflict and crisis, particularly improving the quality and impact of peace keeping missions.

⁶ Folke Bernadotte Academy and UNDP, Guidance Note for Assessing Rule of Law in Public Administration, Stockholm/New York, January 2015.

	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.
Right to appeal	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 a duty on administrative agencies to communicate their decisions as well as the reasons for their decisions to concerned parties, and provide an indication of where and how to appeal.
Accountability	The principle of accountability ensures that public officials and administrative agencies are held to account for wrongful actions and to improve the way in which an agency conducts its work. The principle further ensures that public officials are held liable as well as responsible for their actions. In order to guarantee accountability, mechanisms such as disciplinary measures, internal reviews, internal audits, ethics boards and external supervision are often involved.

These six principles relate to administrative processes, e.g. operating in compliance with the law, protecting the rights of citizens and being accountable to citizens. Therefore, we used the terminology “rule of law” in the Mongolian language version of this report, thereby avoiding any other versions that may have meanings related to morality or politics.

1.2 REVIEW ON THE RULE OF LAW IN THE PUBLIC ADMINISTRATION

The tool, jointly developed by the UNDP and Folke Bernadotte Academy, aims to help policymakers and service providers identify specific challenges, strengths and weaknesses related to the rule of law in the services delivered by a specific government agency to its end users. It also facilitates self-assessment with a particular focus on assessing rule of law practices in public administration.

The self-assessment is in three parts as follows:

1. The first part is a questionnaire that allows a formal mapping of laws and regulations, and a description of the institutional environment in which a particular administrative agency operates.
2. The second part is a perception-based questionnaire that examines the specific challenges public servants at administrative agencies face with regard to providing services—for example, providing timely and accessible services or using accountability mechanisms in their working environment.
3. The third part of the self-assessment is a perception-based survey targeted at the service users of the administrative agencies or those who are affected by the decisions made by the agencies.

The tool and related questionnaire were developed for public service agencies (e.g. civil registration, social welfare, education and health agencies), which interact and interface with citizens on a day-to-day basis and which make decisions that are potentially the most detrimental to the legitimate interests and rights of citizens. Therefore, the work of adapting the tool to the Mongolian context and the public administration agencies involved in environment governance

was done with consultation and input from respective officers of the UNDP headquarters in New-York, the regional center and Mongolia as well as representatives from MoET and GASI.

1.3 SCOPE OF THE REVIEW

Many stakeholders are involved in the regulation of environmental impacts caused by mining. These include MoET, MoMHI, the MRPA, GASI, the Environmental Crime Department of the State Investigation Agency and local governments. For the review, we selected MoET and GASI, the two agencies responsible for policy and policy oversight/inspection, respectively, regarding environmental governance. MoET is a central state administrative agency in charge of enforcing government policies and legislation on environmental protection/conservation, environmental rehabilitation, sustainable use of natural resources, ensuring environmental balance, preventing potential damage to the environment and getting the damage and losses remedied⁷. GASI is a government agency that performs the functions of preventing the loss of ecological balance and adverse impacts on the environment, ensuring safe operations within mining and geological industries, creating conditions for healthy and safe living for citizens and implementing inspections preventing negative impacts⁸. In other words, the two agencies were considered to fit with the review goal in terms of: key functions and operational areas. Moreover, selection of the public agencies for the review also took into account whether they had local units (subsidiaries and/or branches).

As representative of active mining areas, IRIM selected Umnugobi aimag's Dalanzadgad and Tsogttsetsii soums, and Arkhangai aimag's Tsenkher and Tsetserleg soums.

As representative of active mining areas, we selected Umnugobi aimag's Dalanzadgad and Tsogttsetsii and Arkhangai aimag's Tsetserleg and Tsenkher soums.

Target group and sampling

The review data was collected from both national and provincial-level public servants of the Ministry of Environment and Tourism and the General Agency for Specialised Inspection (jointly responsible for environmental protection) and citizens and businesses that use the services of both agencies; nationally and at the provincial level.

- ✓ **Public Servants.** Key target groups for the review were public servants of the Ministry of Environment and Tourism and the General Agency for Specialized Inspection (in charge of environmental issues related to mining) and their officers working at the provincial level. Prior to data collection, the review team consulted with officers of the Ministry of Environment and Tourism and General Agency for Specialized Inspection, and identified the key individuals responsible for environmental issues related to mining at the national and provincial level (within the agencies and their subsidiaries). Based on this, the review covered all public officers (nationally, and provincially) responsible for environmental issues related to mining (and employed by the agencies at the time of review). For

⁷ <http://www.mne.mn/mn/1029>

⁸ [http://home.inspection.gov.mn/beta/upload/files/MERGEJILIIN%20HYNALT%202017\(1\).pdf](http://home.inspection.gov.mn/beta/upload/files/MERGEJILIIN%20HYNALT%202017(1).pdf)

instance, public servants included officers of the Ministry of Environment and Tourism, General Agency for Specialized Inspection, provincial branches of both agencies, officers of State Protected Area Administrations, officers of River Basin Administrations and local soum-based environmental inspectors. Overall, data was collected from a total of 65 public servants.

- ✓ **Users.** Users were divided into two main groups; private individuals and institutional users. For both groups, IRIM planned to include the users of services of the above-mentioned two public agencies. However, the number of user-respondents was found to be inadequate to reach the target sample size. Accordingly, communities in the mine-impacted area were added to the sample. 'Institutional users' included companies providing environmental impact assessment services, environmental NGOs and civil society organizations. 'Individual users' included herders living in the mine-impacted areas, local community members, and disadvantaged people (including: poor and marginalized people, and disabled persons).

Data collection methods

Data for the review was collected using three tools; derived from the '*User's Guide*' developed by UNDP and Folke Bernadotte Academy, and from the document review/analyses process. The '*User's Guide*' provided three main tools, including:

- ✓ formal mapping,
- ✓ agency staff survey, and
- ✓ user survey.

These tools were translated into Mongolian, to get feedback and comments from relevant officers of UNDP, the Ministry of Environment and Tourism and General Agency for Specialized Inspection. Details on each of survey tool are as follows.

✓ **Formal Mapping**

Formal mapping was intended to develop the general picture of the regulatory framework of the existing laws on environmental issues in the mining sector. Using formal mapping, the review team collected data from environmental inspectors and law officers (of the Ministry of Environment and Tourism and General Agency for Specialized Inspection) including the laws and other documents that regulate the issues stated in the six principles of the rule of law.

✓ **Agency Staff Survey/Questionnaire from Public Servants**

The agency staff survey was aimed at determining if laws and other legislative documents (which the public servants comply with in performing their duties) reflected the six principles of rule of law. The agency survey was also used to investigate the opinions of public servants.

✓ **User Survey/Questionnaire from Clients**

The user survey was aimed at clarifying the opinions of users as to whether the Ministry of Environment and Tourism and General Agency for Specialized Inspection deliver services in

compliance with the aforementioned six principles. The user survey involved 147 users of services of the two public agencies.

✓ **Document Review**

The review team evaluated how extensively the rule of law principles were incorporated and reflected in the legal and regulatory framework for environmental issues (in the mining sector) and how these principles were adhered to. This was accomplished through a review of 18 laws and legal documents (which regulate administrative and environmental affairs) and by consultation with law officers and environmental inspectors of the respective agencies.

Data collection

Formal mapping data was collected from designated representatives of Ministry of Environment and Tourism and General Agency for Specialized Inspection during 19 November to 18 December 2016. Field data collection from public agencies' staff and service users was undertaken in:

- Ulaanbaatar,
- Tsetserleg city and Tsenkher soum (Arkhangai aimag)
- Dalanzadgad city and Tsogttsetsii (Umnugobi aimag)

The field work took place during 28 December 2016 and 18 January 2017.

Limitations of the review

Issues/topics that were not evaluated - as they were beyond the scope of this review - included:

- ✓ Institutional analyses of public administration agencies (coincidence of functions, advantages and disadvantages of structure, staff workload, and human resource management);
- ✓ Key functional areas of public administration agencies (inspection functions and processes, licensing and permitting, providing professional and technical guidance to subsidiary agencies);
- ✓ Cause and consequences of the critical issues (issues in exploration, mining and environmental rehabilitation, environmental degradation, and responsibility/sanctions mechanisms).
- ✓ General Responses only, due to Structural Changes in the Public Agencies. As a result of the 2016 Parliamentary Election, many officers of the Ministry of Environment and Tourism and General Agency for Specialized Inspection were newly-recruited officers. The review required the collection of responses from officers that had worked in the agency for at least six months. But in some cases ministries and agencies had no such officer to respond to the survey. Newly-appointed officers were not fully aware of their work, so they provided some general answers only, and failed to provide complete responses on some in-depth issues, in some cases.
- ✓ Failure to Reach Target Group due to Lack of Access to Information on Users/clients. Public agencies had no full registry of organizations and individuals that (currently or previously) received their services. Or, they refused to disclose such information due to

confidentiality restrictions. Both resulted in obstacles in the review's coverage of the target groups. In addition, the number of users of agencies' services was limited, so the review covered extended groups including local citizens living in mine impact areas. However, the mine impacted area community had limited knowledge of the functions and operations of Ministry of Environment and Tourism and General Agency for Specialized Inspection. In some cases, they did not know whether such agencies operated in local rural areas.

2. SUMMARY REVIEW OF THE SECTOR

This chapter describes the summary findings regarding the extent to which the six principles of the rule of law (legality, accessibility, right to be heard, transparency, right to appeal and accountability) are incorporated into the legislation on regulating environmental issues caused by the mining sector. It also describes the summary findings regarding legislation that coordinates the two policy and inspection agencies—MoET and GASI—and the current extent to which this legislation is implemented and adhered to.

2.1 PRINCIPLE OF LEGALITY

The principle requires that public administrative agencies abide by the law, and that all their decisions and the contents of their laws have a basis in law. We analyzed whether the legal environment created for MoET and GASI for adhering to rule of law principles and the decisions that they make are legitimate (complaint with the law and realistic).

Mongolia first introduced a regulatory framework on environmental issues in the mining sector in 1995. Since then, the issue has been regulated by a set of environmental laws, first adopted in 1995 and amended in 2012. *“Adoption of this set of laws served as the first step we took towards environmental protection. It created the legal framework enabling community-based environmental management, increasing the participation of the public and NGOs, introducing environmental strategic assessments and environmental audit and laying the foundation for a green economy.”*⁹

Currently, 33 laws and 14 international treaties and conventions that Mongolia either joined as a party or formally ratified, are legally binding. In terms of general content, the legislation may be divided into four categories:

- 1) environmental protection laws
- 2) mining sector laws
- 3) procedural laws on enforcement of environmental inspections
- 4) laws on taxes, fees and charges.

Of these laws, 18 are directly relevant to environmental issues in the mining sector. According to this legislation, four major government departments, including MoMHI, the MRPA (under MoMHI) and GASI, are responsible for the implementation of environmental regulations in the mining sector.¹⁰ In terms of the enforcement of this legislation, MoET has issued 91 administrative acts since 1995 and GASI has issued 7 resolutions and 6 decrees since 2003.^{11, 12, 13} Meanwhile, the Law on State Supervision and Inspections (LSSI) serves as the key law around state inspections and sets forth the rights of, and operational guarantees for, the inspection agencies and state inspectors.

⁹ Interview with N.Batsuuri, State Secretary of Ministry of Environment and Tourism
<http://mongolia.panda.org/?205753/--->

¹⁰ <http://mram.gov.mn/wp-content/uploads/2015/04/21.pdf>

¹¹ <http://www.mne.mn/files/page1647/photos/BOAJYAM.ZHHTSH.JAGSAALT.2016.11.01.pdf>

¹² <http://home.inspection.gov.mn/news/265/single/422>

¹³ <http://home.inspection.gov.mn/news/265/single/422>

In addition to this sector-specific legislation, a brand new fundamental law, the General Administrative Law (GAL), was adopted guaranteeing the rule of law in relations between the government and its citizens. It also regulates general and procedural affairs within the public administration sector. Finally, the law limits the opportunities of administrative agencies to commit unlawful acts and make illegal decisions. The GAL came into effect on 1 July 2016.

Content of the GAL

This law:

- is solely focused on safeguarding citizens' rights and legitimate interests and standardizes the basic interactions between administrative agencies and citizens.
- regulates relations between government agencies, obliging the public administration to provide transparent, quick and efficient services to citizens.
- contains clauses that any decisions made by public administrators must consider the opinions of citizens whose legitimate interests might be violated by the decisions. In addition, the law sets forth the right of participants to access legal and professional assistance and advice.
- clearly states the timelines and formats for informing relevant stakeholders about administrative acts.
- sets out the rights of citizens and legal entities to appeal the decisions made by the public administration.
- states that any administrative actions performed by government that violate the rights and interests of citizens and legal entities shall be subject to indemnification of losses and compensation of damages incurred.
- serves as a substantive law regulating the activities of all government agencies (if we consider all laws on a spectrum between "substantive" and "procedural" laws). The administrative agencies responsible for the enforcement of environmental mining legislation shall apply the substantive law unless the sector is otherwise regulated by another standalone sector-specific law.

For the self-assessment, two laws were selected that regulate relations between the public administration and citizens: the Law on the Resolution of Petitions and Complaints Issued by Citizens to Government Organizations and Officials (LRPCICGOO) (1995) and the Law on Information Transparency and the Right to Information (LITRI) (2011).

- **The rights, actions and duties of MoET and GASI in the mining sector are clearly regulated by relevant laws. This means that the condition that the decisions made by these agencies must be legally binding has been met.**

The set of environmental laws sets forth the rights and duties of the public administration and local institutions participating in environmental processes. For instance, it describes the roles of the State Great Khural, cabinet, governors of provinces, Ulaanbaatar, districts and soums, citizens' representative khurals and bagh community meetings. In addition, it sets forth the regulations for establishing river basin councils and for establishing councils for specially protected areas.

The rights and duties of public administration agencies were identified based on several cases related to reviewing and approving environmental management plans for mining companies and terminating licenses for consulting companies to undertake environmental impact assessments. As a result, MoET developed regulations including: the Regulations for Terminating Operations, the Regulations for Licensing for Environmental Audits, the Regulations for Developing and Approving Environmental Management Plans and the Regulations on Reviewing the Special Account Transactions for Environmental Protection and Rehabilitation Guarantees.

The legal environment is sufficient for ensuring, for example, the legality of administrative acts, administrative rules and administrative contracts, which are the outcomes of administrative processes. In other words, provisions regarding decision making and requirements regarding the content of decisions are sufficient. In particular, participation rights of stakeholders, consideration of stakeholders' views, identification of issues, collection of evidence and organization of hearings are clearly specified. Moreover, requirements regarding drafting acts, methods of amending and terminating acts, as well as methods of disseminating information about the acts, resolving issues and the scope of the rights of governors to implement acts are clearly specified.

However, our review of the rule of law indicates that the following should be remedied:

➤ **There is an unstable legal environment.**

The Law on Minerals (LM), which is the key document regulating the mining sector, has been amended 18 times since it was adopted in 2008, which is evidence that the legal environment remains unstable.

➤ **Some regulations that are required by law have not been issued.**

In the 18 laws covering environmental issues in the mining sector, there are requirements that relevant authorities adopt 46 regulations and sets of instructions. Of these, there are six that have not been issued yet. The majority of these six regulations are required by the LM. They are:

- regulations on post-mine closure rehabilitation, which must be jointly approved by the Minister of Environment and Tourism and the Minister of Mining and Heavy Industry (required in the LM and the LEP)
- requirements on concentrator plants and their operational requirements, which must be approved by the Minister of Mining and Heavy Industry (required in the LM)
- regulations about a Mineral Resources Database, which must be approved by the Minister of Mining and Heavy Industry (required in the LM)
- regulations for publicizing mineral resources and reserves identified as a result of exploration, which must be approved by the Minister of Mining and Heavy Industry (required in the LM)
- regulations on collecting, packaging, storing, transporting, disposing of and recycling toxic/dangerous waste and regulations on licensing citizens and legal entities to do the work listed above, which must be approved by Cabinet (required in the Law on Waste)
- regulations for charging fees for household waste water, which must be approved by Cabinet (required in the Law on Water Pollution Fees).

In addition, MoET and GASI have approved three other regulations, which are not implicitly stated in the aforementioned legislation. They are:

- regulations on requirements for landfill facilities, disposal of waste, centralized waste collection points and operational procedures for citizens and legal entities' operating facilities (approved by resolution #404 of the Minister of Environment, 2006)
- regulations on compliance with a hygiene zones regime for headwater areas and water sources (approved by joint resolution #A/230 and A/127 of the Minister of Environment and Green Development and the Minister of Construction and Urban Development, 2015)
- regulations for the temporary and permanent closure of mines (approved by decree #309 of the Chairman of GASI, 2003)

➤ **There are redundant and contradictory clauses in the legislation.**

The Mongolian National Mining Association did an analysis of the LM and other relevant legislation in 2011. As a result it detected 52 overlapping clauses and 36 contradictory clauses and gaps. The 18 laws covering environmental issues in the mining sector were found to contain the following contradictions and redundancies, for example:

- Article 9 of the LRPCICGOO permits that complaints and petitions may be lodged orally. Contrary to this, Article 11 of the LITRI requires that complaints and petitions be lodged in writing.
- Article 9 of the GAL provides general regulations on appealing administrative decisions while Article 2 of the LRPCICGOO regulates the complaint process. These two articles seem to be overlapping. To date, it is unclear which law shall be applied in what circumstance, and sector laws have no further information on this issue.
- Due to poor coordination between laws and the lack of detailed regulations developed under the framework of the laws, MoET, GASI and MoMHI often have insufficient information in terms of coordinating their activities and timing their inspections and regulatory work.

➤ **There are some sections of laws that should be updated or amended to include more details.**

- The legislation we studied requires eight provisions to be added and contains ten sections that need to be clarified and more details provided (see Annexes 3 and 4).
- The GAL should include details on citizens' participation and access to rights at all stages of the decision-making process, from developing draft administrative decisions to finalizing the decisions.
- The LRPCICGOO lacks provisions detailing how the complaints and petitions made by citizens to a government agency must be responded to by the relevant government agencies. In other words, it lacks the procedures to ensure that a decision made after review of a complaint or petition is made independently and without external influence, so that the citizen's' rights are guaranteed.

➤ **There is unclear terminology in some of the laws.**

Clause 8.4.8 of the Law on Environmental Impact Assessments (LEIA) requires getting consent and comments from the administration of the area where the project will be implemented. However, it is unclear what “administration” refers to, in terms of agency or public servant.

Article 5.1 of the GAL defines administrative agencies as being all central and local agencies that perform the executive duties of the government. As a result, companies implementing projects or undertaking environmental assessments understand the term “administration”, as stated in Article 8.4.8 of the LEIA, differently. Such unclear regulations on collecting comments from local administration create significant workloads, difficulties and bureaucracy for companies implementing projects.

Article 1.3 of the Law on Administrative and Territorial Units and Their Management (LATUTM) authorizes soum and district governors to implement decisions made by soum or district Citizens' Representative Khurals regarding protecting natural resources and using resources (in response to applications from citizens and legal entities). Meanwhile, Article 5 of the LEIA merely says “local administration”, without naming a specific agency. It should therefore be changed so that it is consistent with the content of the LATUTM.

➤ **Sector specific laws must be made consistent to fit with the GAL.**

Powers of administrative agencies, set forth in Articles 15–18 of the LEP, should be enforced in accordance with the regulations in the GAL which in turn state that decisions should be made in accordance with administrative acts, administrative norms acts, administrative contracts and internal administrative acts. There is an urgent need to determine if the decision-making processes outlined in the sector-specific laws (and their relevant requirements) are regulated by the GAL, and identify those that are not subject to the GAL and therefore require additional regulation.

One type of administrative process that is regulated by the LM and the Law on Business Licensing is licensing (business, exploration and mining licensing) including allocation, suspension and termination. In other words, licensing is regulated by standalone laws that provide more detailed regulations.

2.2 PRINCIPLE OF ACCESSIBILITY

This principle means that everyone should have access to public administration and that there is a duty for public authorities to accept and deal with different groups of citizens' requests and questions properly. This principle also requires practical access for both women and men, which means that there are appropriate opening hours and easy means of communication. For example, it means that agencies should use language that can be understood by the general public.

➤ **The principle of accessibility is regulated in a relatively clear way in the GAL and the LRPCICGOO.**

According to these laws, complaints and petitions may be lodged orally, in writing, electronically, via phone, during live broadcasts of radio and television programs and through hotlines in either the formal language of the state or other languages (for ethnic minorities). These laws also describe the actions to be taken in relation to complaints and petitions that either fail to meet requirements or are not relevant to the addressee agency. As stated in provision 2 of Article 13, government agencies and officers shall transfer complaints and petitions that are beyond their scope and do not need to be formally publicized, to responsible persons or agencies within three days.

The GAL, and its regulatory provisions on decision-making processes and the involvement of community in those processes and hearings fully comply with the principle of “accessibility”. For instance, provision 4 of Article 13 sets forth the right of persons with disabilities to participate in the decision making process through the use of a sign language or other interpreter.

➤ **Some other laws lack regulation on the principle of accessibility.**

The Principle of accessibility could be regulated in more detail by the LITRAI, which covers the transparency of government information provision and ensures citizens’ rights to access information. However, there is nothing on ethnic minorities and foreign citizens having access to information in their native languages and no provisions on the rights of people with disabilities.

➤ **Other laws provide relatively limited regulation on the principle due to the purpose of these laws.**

The accessibility of government agencies is limited by the Law on Licensing and the LM to license holders and citizens and legal entities applying for licenses. There are many regulatory requirements for license holders to protect the environment. Articles 32 and 45–50 of the LEP outline this principle by requiring community participation in environmental protection and implementation of natural resources management. However, there are no other provisions that define the principle of accessibility in the LEP because of its particular objectives.

➤ **Laws in the environmental sector contain regulations on the principle of accessibility.**

According to the LEIA, the company implementing a project, as well as the consulting company making an assessment, are obliged to disseminate the environmental impact assessment to the residents of the impact area, and to post the assessment in the public domain. In addition, the Law on Air and the Law on Water have sufficient provisions on the transparency and accessibility of information on issues. For instance, Article 8.1.8 of the Law on Air requires that data on air pollution in cities, villages and settlement areas must be provided to citizens on a daily basis. Article 12.3 clearly states the in the event that the amount of toxic substances in the air exceeds the permissible level, respective agencies shall immediately inform the public and provide health-related advice.

➤ **The rules and regulations of MoET and GASI reflect the principle of accessibility to a certain extent.**

MoET and GASI’s rules and regulations are reflective of the principle of accessibility. For instance, MoET implements regulations on enabling third-party participation regarding environmental

issues from the mining sector. Section 2.2 of the regulations requires that a cumulative impact assessment collects comments from the community, organizes open discussions, and includes the findings of the discussions in the final report. Section 2.4.1 states that local government shall take measures to disclose information on projects to be implemented in the area. In other words, third party participation is relatively well regulated at the legislative level.

➤ **No tangible, effective work is carried out to ensure that the actions and policies of government agencies are transparent and accessible to citizens.**

There are no appropriate activities focusing on enabling citizens to comment on the legislation, providing information on rights to participation or providing citizens with other necessary information. For example, if companies operate in local special protection areas, this leads to conflicts between the company and the community. This issue is regulated by the “Regulations on taking land into local special protection”, which was approved by Decree #7 of the Minister of the Environment (2000). Section 4.4 of these regulations states: “In the case that an accumulation of minerals with importance is found as a result of exploration in a locally protected area, and it is proved by experts that the use of such resources will be necessary for the country’s development, the central state administrative agency responsible for the mineral sector and the relevant Citizens’ Representative Khural may release the area, partly or wholly, through consultation and negotiation with the local state administrative agency”. The local governor and Citizens’ Representative Khural must present the decision to citizens and provide necessary information, but as they often do not do so, this fuels the conflict.

Although MoET, the MRPA and the Agency for Land Management, Geodesy and Cartography administer spatial data in local protected areas, these three agencies do not have a unified database, which results in differences in data and problems in overlaying the data, which then serves as grounds for potential conflict.¹⁴

Therefore, it is important to establish a unified database of the local protected areas in order to enable soum governors to perform the duty of informing citizens about the basis for removing protection from land.

2.3 PRINCIPLE OF RIGHT TO BE HEARD

“Right to be heard” means that public authorities must listen to an individual before making a decision that affects his or her rights or interests. It also means that a person should have an opportunity to submit facts, arguments or evidence before a decision is made. The right to be

¹⁴ Report on connecting local specially protected areas to GIS, 2008, WWF

heard means that public authorities must inform the people concerned of their decisions. It also means that public authorities have a duty to make a decision within a reasonable time.

➤ **There is a sufficient legal environment for ensuring that citizens have a right to be heard.**

There is a large volume of legislation, including the LM (2006), the LEIA (2012), the Law on Law Making (2015), the Law on Public Hearing (2015), the GAL (2015) and the Regulations for Community Engagement in Environmental Impact Assessments (2014). These regulate the provision of information to the public regarding environmental impacts from mining and ensure public participation. These laws state that before any decisions on mining environmental impacts are made, information in the public interest must be disclosed, government and mining companies must explain their policies, views and intended actions to interested groups, and comments and proposals must be heard.

➤ **The GAL and the Law on Public Hearing (both adopted in 2015) represented significant progress on guaranteeing the rights of citizens to be heard within the legal environment.**

Article 15 of the GAL sets forth the right of parties in administrative decision making, as well as other rights such as access to information and the provision of necessary evidence and documents. Moreover, the law contains detailed regulations on giving a voice to people whose interests may be violated by administrative decisions or acts, prior to making that decision or approving that act (Article 26). It also contains regulations on conducting hearings for this purpose (Article 27).

The Law on Public Hearing sets forth guidance on how to organize public hearings on different areas including legislative processes, oversight, fiscal oversight, position appointments, administrative norm making and planning, as well as how to organize local hearings. In order to oversee and evaluate the operations of agencies and high ranking officers with a duty to enforce administrative norms acts, a general oversight hearing shall be held. The participants have the right to comment, make proposals and offer conclusions on the grounds and rules set by the law and have access to the final decisions.

➤ **Legal documents providing detailed regulations covering the mining sector reflect public participation in decision making in a much clearer manner compared with other legislation.**

MoET adopted and complies with the General Regulations for Establishing and Operating the River Basin Council (2013) and Regulations for Community Engagement in Environmental Impact Assessments (2014), which focus on ensuring the rights of citizens to be heard.

The General Regulations for Establishing and Operating the River Basin Council set forth that a Community Council shall be established and shall have obligations to ensure stakeholder participation in the planning and implementation of a river basin integrated water resource management plan. It also requires that the Community Council provides oversight of the activities

of the River Basin Council in order to ensure the equal, accountable and collaborative participation of a range of stakeholders in ensuring the appropriate use of water resources and rehabilitation.

The Regulations for Community Engagement in Environmental Impact Assessments provide detailed regulations on a range of issues. These include obligations for central and local administrative agencies in charge of environmental issues to:

- disclose policy documents on community participation and to post the regulations, instructions and guidelines for environmental impact assessments in the public domain
- regulate the process of community engagement and participation in developing strategic environmental assessments, cumulative impact assessments and detailed and general environmental impact assessments
- organize open discussions and incorporate comments from citizens into impact assessments.

Article 5 of the LSSI sets forth the opportunity for communities to be involved in state inspections. In accordance with this article, GASI established a Community Council for Risk Management, which consists of representatives of NGOs. The Council plays an important role in ensuring public engagement in the operations of GASI. However, recently it has been unclear whether the Council exists or not, because there is no clear information available about its activities.

In terms of laws governing other sectors, and other specialized legislation, the right to be heard is regulated to a limited extent depending on designated objectives. For instance, the Licensing Law and the LM generally limit the right to information to license holders. However, there are several clauses related to transparency of information.

- **There need to be regulations introduced necessitating that the government informs relevant people in cases where new information or evidence is discovered regarding previously resolved issues.**

Laws that regulate environmental and administrative matters in the mining sector do not have any provisions or clauses obligating government agencies to inform relevant parties in cases where new information or evidence is discovered regarding previously resolved issues. Instead, the GAL contains a clause (Article 28) that no hearing occur. This statement impedes the exercise of access to information rights and agencies' duty to provide information. Therefore, detailed clauses regarding these issues should be included in the LITRI, LRPCICGOO and the GAL.

- **In theory, citizens' right to participate is reflected in the legislation, however in reality, there are no details on how to ensure this right.**

If Mongolia's fundamental environmental laws and sector specific laws are reviewed as a whole, citizens' right to participation in environmental protection and natural resource management is included in these laws in very general terms and without any implementation mechanisms. Although progress is being made in providing environmental information, key elements of participation—such as consultation, active engagement, oversight and accountability—are not included comprehensively. There is no detailed regulation and implementation processes are not set forth. In particular, citizens' participation and environmental rights are limited to only giving

comments, undertaking reviews and making petitions. These appear to be merely symbolic rights, as the laws and administrative decisions fail to provide guarantees for the enforcement and implementation of these rights.¹⁵

➤ **Citizens have no clear knowledge or understanding of their rights regarding access to information and engagement.**

At present citizens have insufficient legal education, and still do not recognize that providing input and comments on draft laws and having their input incorporated into the legislation helps them to address the challenges they encounter. In other words, the culture of citizens' engagement and their understanding of democracy are not fully mature.¹⁶

➤ **In the case that Mongolia becomes a party to the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, legal environment enabling citizens' rights to access information about the environment and to participate in decision-making will be strengthened.**

Discussions on whether Mongolia will become a signatory to the Aarhus Convention have been held since 2012, but no progress has been made so far.

2.4 PRINCIPLE OF TRANSPARENCY

Transparency is the principle of openness of activities of public administrative agencies and public servants. Administrative agencies are required to provide the laws and administrative documents that govern their area of competence upon requests by citizens. In a democratic society, the right to obtain information is limited only by legal public interests and personal privacy protection.

➤ **The law guarantees transparency of information by administrative agencies and the right to receive information.**

Section 17, Article 16 of the Constitution of Mongolia states that "(citizens) have the right to seek and receive information except that which the state and its bodies are legally bound to protect as secret". As of February 2016, about one quarter (105 laws) of 459 laws currently in force in Mongolia have clauses that regulate citizens' participation.¹⁷

The LITRI was adopted in 2011 and became the principle law ensuring the right to receive information. The law specifically describes the time limits and responsibilities for reviewing and answering petitions and complaints. Administrative agencies in charge of implementing mining and environmental laws and regulations follow this law when providing citizens with information, creating databases and protecting the environment.

¹⁵ "Legal environment for citizens' participations and assessment", 2013

¹⁶ <http://khanlex.mn/wp-content/uploads/2015/04/f>

¹⁷ Legal environment and assessment of citizens' involvement", 2013

<http://irgeniioroltsoo.mn/wp-content/uploads/2016/06/20160516-mwla-report-mon.pdf>

The principal laws requiring the transparency of administrative agencies' activities are: the LITRI, the Law on Budget Transparency, the Law on State Secrets, the List of State Secrets and the Law on Personal Confidentiality. The main principle of these laws is that all information except those protected as secret by law, is publicly accessible and administrative agencies are required to provide interested persons with their requested information.

Furthermore, the transparency principle in administrative decisions is set forth in the GAL, transparency of state supervision and monitoring processes is set forth in the LSSI, and transparency of resolving petitions and complaints is set forth in the LSSI and in the Law on Resolving Administrative Cases in Court (LRACC).

Moreover, Article 48.10 of the LM, Article 36.1 of the Law on Petroleum and Article 28.6.4 of the Law on Nuclear Energy contain articles supporting transparency in extractive industries and promote the principle of public information disclosure.

The 2012 government resolution on Measures for Extractive Industries Transparency set up a national council to organize and oversee the Extractive Industries Transparency Initiative (EITI). The council includes representatives from environmental civil society organizations. The EITI requires public disclosure of:

- the issuance, ownership and transfer of mineral exploration and mining licenses
- investment agreements for strategic mineral deposits
- petroleum field production sharing agreements including their implementation and pre-production agreements
- environmental impact evaluations
- environmental protection processes and results
- total expenditure on such activities.

➤ **There are conflicts and discrepancies between different clauses in legislation about citizens' rights to receive information.**

On the other hand, citizens and legal entities are required to submit written requests in order to receive information, the administrative agency can reject and return such requests if they fail to meet legal requirements. In other words, in such cases there is no regulation that encourages assistance by the administrative agency.

On the other hand, Article 9 of the LITRI contains information about petitions and complaints made in oral form, thus creating conflict between laws. This can be resolved by making appropriate amendments to the LITRI.

➤ **Some clauses in the Law on Organizational Confidentiality still hinder the rights of citizens to receive information.**

Environmental NGOs and citizens cannot obtain and/or monitor detailed environmental assessment reports related to special mining permits because of the absence of proper legal regulations and limitations set by the Law on Archives and the Law on Organizational

Confidentiality. For example, Section 6.7, Article 25 of the Law on Archives states that documents of a personal nature and documents stored by agreements in state archives can be used by third parties only with the consent of document owners and holders. If the documents are state or other such secrets, they shall be made publicly available after 30 years. Section 2, Article 4 of the Law on Organizational Confidentiality is often used by MoET as a reason to deny access to documents such as environmental assessment reports.

➤ **Administrative agencies use internal rules to conceal and limit legally public information at their discretion.**

There are cases when administrative agencies used their internal rules in order to conceal or limit information that should have been legally available to the public. For example, internal rules established by some ministries and agencies require a requester to come in person in order to access environmental impact assessments, special permit data and cadastral mapping documents. Immediate action is required to rectify this, as it prevents documents from being available and creates additional burdens for applicants, especially for those living in countryside areas far outside of Ulaanbaatar.

➤ **Transparency regulations must be further improved and broadened.**

Different laws have different transparency principles in different sectors. For example the LEP states that there should be a transparent environmental database and the operations of management cooperatives should be transparent.

However, there are still opportunities for further improvement of the transparency principle in the LEP and other mining-related environmental laws in order to cover wider areas of activity and to make them more effective and precise. They could include, for example, more detailed regulation on transparency in public environmental monitoring and the issuance of licenses and permissions by administrative agencies. Examples include the 2009 Law on Prohibition of Mineral Exploration and Mining Operations at Headwaters of Rivers, Protected Zones of Water Reservoirs and Forested Areas. Although this law mentions public transparency of information and ensuring transparency through NGO review, it lacks detailed articles or supporting rules and regulations on how to ensure this transparency.

The Law on Air, the Law on Chemical Poisonous and Dangerous Substances and other similar laws also lack explicit provisions clearly describing public transparency and disclosure of information. However, it is considered that this gap can be filled by the requirements in the LITRI.

➤ **There needs to be broader information dissemination and availability to the public.**

Most laws do not state how information should be disseminated to the public. According to some laws, databases—for example a database for waste, a database for poisons and other dangerous substances—are a medium for public information dissemination. However, it is important that such databases are made publically available.

➤ **Transparency in legislation is merely symbolic in nature.**

Aside from the GAL, transparency in legislation is symbolic; there are no clear procedural regulations that ensure the implementation of transparency principles so that administrative agencies are transparent.

Therefore, some sections of laws on the transparency of administrative activities, information access and availability cannot be implemented in reality and are therefore not useful.

➤ **MoET and GASI do not sufficiently ensure transparency.**

Information about transparency in laws, and about agencies, can be found in a single legal database (www.legalinfo.mn) and on the websites of MoET (www.mne.mn) and GASI (www.inspection.gov.mn).

These resources provide the public with an opportunity to access detailed information on laws that have been grouped into categories. However, MoET and GASI fail to meet Article 4 of the LITRI which states that:

- 'regular update' means updating certain information not less than once every 14 days
- 'update each case' means renewing certain information within three days of the information being amended, modified or changed in full".

For example, the Laws, Regulations and Rules page under the Transparency section on MoET's website lists only one regulation, which is the Rules for Usage of Work Time approved by Resolution A/169 of the Ministry's State Secretary in 2006. According to Section 1.4, Article 7 of the LTRI, the Ministry should have uploaded all currently implemented laws.

Moreover, the webpage covering the duties of the ministry officials under the Human Resource Transparency section contains completely irrelevant information.

The List and Regulations of Administrative Normative Acts under the Legal section had missing or incomplete acts between 1998 and 2016. For example, the number of published versus the total number of regulations approved by MoET during these years was as follows:

- 1 out of 7 in 1998
- 3 out of 6 in 1999
- 2 out of 7 in 2009
- 2 out of 7 in 2010
- 8 out of 12 in 2013
- 1 out of 10 in 2014
- 0 published in 2000, 2001, 2003, 2005 or 2007.

MoET is required to provide the public with environmental information according to Article 15 of the LEP and Article 57 of the LM and it regularly delivers environmental impact related information (environmental and general impact assessments) through its website.

The transparency of information provided by the Ministry is inconsistent because public servants are not fulfilling their duties, and have weak oversight. Therefore, internal monitoring needs to be improved in order to increase public servants' skills and ensure that they fulfill their duties.

The Transparency section of GASI's website did not include activity reports for 2015 and 2017 or an activity plan for 2017. A webpage called Decisions Made by the General Inspector under the Legal section had no information whatsoever. The General Decisions section listed only 7 regulations approved in 2003–2011. From this we can conclude that the agency either did not approve any regulations or rules since 2011 or did not upload those that were approved, thereby violating the LITRI.

The website also did not have any information on what petitions and complaints the agency received, how they were resolved and how many of them were taken to court. Creating a related database will be a step toward ensuring the transparency and availability of this information.

➤ **Citizens have access to companies' profiles through administrative agencies.**

Related laws require legal entities operating in the mining sector to disclose necessary information to administrative agencies. For example, Section 57.4, Article 57 of the LM states that “Government agencies in charge of environmental, geological and mining issues shall publicize and disseminate electronic copies of information on environmental impact assessments and environmental protection plans and report information about hazardous chemicals and other substances that may negatively affect human health and the environment.”

This allows access by the public to mining environmental impact related information through the websites of administrative agencies. For example, people can receive environmental impact assessment information from the Environmental Impact Database Section of MoET's website—www.mne.mn.

Service fees paid by a citizen or legal entity for receiving information from an administrative agency is set by law and shall not exceed costs associated with the provision of the information such as copying and postal delivery costs. In accordance with Government Resolution number 54 (2013), the government approved the Regulations on Paying, Discounting and Waiving Service Fees for Providing Information to a Citizen or Legal Entity.

2.5 PRINCIPLE OF RIGHT TO APPEAL

Right to appeal allows the subject of an administrative decision to be reimbursed for their losses through an agency's internal monitoring and resolution process or through the General Administrative Court. This right encompasses informing parties affected by administrative agency decisions about those decisions and their rationale and providing information about where and how complaints can be filed.

➤ **Right to appeal by citizens is guaranteed by law.**

This civil right is administered by the Constitution of Mongolia, LRPCICGOO (1995), LRACC 2002, LSSI (2005), GAL (2015) and other sector laws. These laws guarantee that citizens have the right to make a petition or complaint and also outline the requirements and responsibilities of administrative agencies and officials with regard to these petitions and complaints.

Article 9 of the GAL outlines the general rules for filing complaints with regard to administrative acts and limits the resolution time to 30 days. Article 10 of this law states that a citizen or legal entity has a right to claim reimbursement for losses caused by illegal actions or inaction during a citizen's communication with an administrative agency.

If a citizen or legal entity files a complaint about an administrative agency to its higher ranking body or another competent body and does not succeed (or if there is no such higher ranking or competent body and the legal provisions allow submission of that complaint directly to court), then the case can be taken to court. Mongolia has an administrative court that is administered as per the LRACC and that specializes in protecting the legal interests and rights of citizens or legal entities that have been violated or may be violated as a result of illegal administrative decisions.

Environmental laws covering the mining sector have articles guaranteeing the right to appeal illegal decisions, actions or inaction by administrative agencies. Thus, Section 3, Article 10 of the Law on Special Protected Land Areas (1997) states that "A citizen, legal entity or organization can file a complaint about area protection or the implementation of environmental laws or regulations to court, a state inspector or an appropriate governor." Section 2, Article 37 of the LM states that "A license holder may not commence exploration operations without first obtaining written approval from the relevant environmental agency or commence mining operations without the permission of the Commission as set forth in Article 35.4 of this law. In the case of a dispute arising out of these matters, a complaint may be lodged with specialized inspection agency." Since the LM does not specifically describe the complainant, it can be interpreted that citizens have the right to appeal.

In the case that a state specialized inspector violates rules or professional ethics during inspection work, the person being inspected has the right to appeal to a relevant official from the inspection agency or the ethics commission at the central inspection agency (in this case—GASI). Measures for responding to the complaint are undertaken as per the Rules for Preventing Ethics Violations by State Specialized Inspectors and the Code of Ethics Commission of GASI.

➤ **Fees related to filing complaints and rights to representation are clearly set forth in law.**

A citizen filing a complaint is not bound to make any payments or fees for resolving his/her complaint, and is only required to pay state service fees at the initial court stage according to Section 1.1, Article 5 of the Law on State Service Fees. Should the complaint be found to have merit, the state fees can be reimbursed to the payer.

The LRACC allows a person who filed a complaint in court about an administrative decision to be represented by others at court. Section 1, Article 27 of this law states that a representative may attend the resolution stage of a case if a complainant deems it necessary to be represented by a legally capable person.

However, based on our review of the rule of law principles, the following changes need to be made.

➤ **Legal provisions about the right to appeal are duplicated.**

General rules for filing a complaint are set forth in Article 9 of the GAL and in Article 2 of the LITRI. Since it is unclear which of the two laws must be used in various cases, duplication and discrepancies between the two should be eliminated.

- **There is an absence of legal provisions covering cases in which a complaint is resolved by the agency against which the complaint was made.**

According to Section 1, Article 93 of the GAL, in cases where there is no higher ranking or competent body for an agency being complained about, such an agency shall resolve the complaint itself, in accordance with the processes in Section 1, Article 14 of the LSSI. However, there are no legal provisions outlining the procedures to be followed or on verification of the independence of the decision. Thus, provisions regulating these areas should be created.

- **When it is not clearly defined which agency should resolve an issue, it is often merely circulated between different agencies without being resolved.**

Section 2, Article 13 of the LITRI states that petitions and complaints that were not publicly reported and that are beyond the capacity of an agency to respond to shall be transferred to relevant bodies within 3 days. However, the absence of clearly defined transfer procedures or rules on reporting back results creates a risk for citizens.

Resolution rate of complaints

In 2015, the State Great Khural's Permanent Commission on Complaints (PCC) received 124 complaints related to the environment, green development and tourism, almost half of which (52 per cent) concerned environment protection, proper usage and rehabilitation.¹⁸

During the 2016 autumn session, the PCC received 1,874 petitions and complaints from 17,232 citizens (1,324 petitions and complaints or 70.6 per cent were from Ulaanbaatar and 550 petitions and complaints or 29.3 per cent were from the countryside) with environment related petitions and complaints prevailing.

Therefore, the committee issued Resolution 5 on Environmental protection in December 2016 with directives for the Government of Mongolia. These directives included the development of proposed legal amendments to tighten the penalties for environmental crimes, improved control over technologies used by companies working at the Orkhon riverhead, and the improvement of coordination of responsibilities of relevant government bodies and officials.

➤ **MoET and GASI resolved petitions and complaints within due time limits.**

The MoET website contains electronic copies of the 2014 and 2015 reports about resolved petitions and complaints addressed to it, the National Agency for Meteorology and Environmental Monitoring (NAMEM) and their officials. According to the 2015 report, MoET and NAMEM received 182 and 104 direct petitions and complaints respectively (286 in total). 91.7 per cent or 258 of these complaints had been resolved and 9.4 per cent or 26 of them were currently under review without breaching due time limits. Of the 158 petitions and complaints that were received through the government's "1111" center, all were responded to by relevant departments and divisions. Out of the total number of petitions and complaints, 227 (79.3 per cent) were petitions and requests and 40 (14 per cent) were complaints.¹⁹

GASI received 4,141 petitions and complaints in the first half of 2015. Of these, 89.7 per cent of them were responded to. There were 30 mining related disputes resolved in the Supreme Court and the appeals court 2012–2014. Of these, 15 were related to issuing permission for special use of land or were related to administrative agencies' actions with regard to the transfer of special permissions.²⁰

Negative impacts on humans and both domestic and wild animals caused by sudden holes appearing in the land and erosion, and dangerous mining waste as a result of mining operations have drastically increased in the last few years. Increased cases of abnormal coughing and eye and nose discharge have been recorded among herders living in non-direct impact mining shaft areas.

The internal organs of domestic animals have mutated, therefore, herders have stopped using them for food. Buyers are reluctant to buy the skins or wool of animals from these areas, or even if they do buy, it is at a significant discount if they discover that animals were from near mining areas. Thus, herders complain that their economic well-being is being threatened.

From an interview with a representative of an environmental protection NGO.

¹⁸ Corruption Risk Assessment in the Mining Sector of Mongolia, 2016

¹⁹ <http://www.mne.mn/mn/1573>

²⁰ <http://www.judcouncil.mn/ins/main/50--2015-.html>

➤ **The principal of the right to file a petition or complaint is still being violated.**

Issues raised in previous studies about the right to file a petition or complaint are still being recorded. These include officials creating unnecessary bureaucracy by not explaining clearly how a petition or a complaint can be filed or by simply not accepting documents, stating that they are too busy. On other hand, citizens do not know to whom to address their petitions and complaints, cannot explain their issues in a clear manner, have to take time off from their work, do not have time to deliver their petitions and complaints in person and cannot review whether the decisions are legal or not.²¹

Survey results from 2011 regarding petitions and complaints made by citizens to administrative agencies and officials revealed that 45 per cent of citizens did not know to whom to file their petitions and complaints. Moreover, 68 per cent of respondents said that they did not know that the relevant government agency must clearly state a reason for its decision. Environment protection organizations often do not keep their decision making process transparent to their workers or inform citizens and legal entities about the reasons for their decisions.²²

2.6 PRINCIPLE OF ACCOUNTABILITY

Accountability creates the conditions necessary for ensuring that administrative agencies and public servants take responsibility for their wrongdoings and for the improvement of their activities. Mechanisms such as discipline processes, internal monitoring, audits, ethics commissions and independent external reviews are used to improve responsibility.

As a key economic sector, mining should be free of corruption and bureaucracy and should be highly socially responsible. Therefore, the transparency of environment-related legislation and the activities of stakeholders, administrative agencies and mining companies must be strongly encouraged and supported and their accountability and responsibility improved.

Irresponsible activities, poor environmental management and insufficient rehabilitation after mining has resulted in the deterioration of the environment and has had negative effects on water availability, air and soil quality and biological diversity. The total nationwide cost of the damage to the natural environment is estimated to be 1.16 trillion MNT, with the damage caused to legally protected areas estimated to be 672,012.1 MNT.²³

➤ **There are legal requirements regarding public servants' accountability for wrongdoing.**

All regulations for ensuring accountability for administrative actions are set forth in the GAL and in sector-specific laws under their "Responsibility" sections. For example, Article 105 of the GAL

²¹ [http://forum.mn/forum_topics/Monitoring/2010/Erh per cent20zuin per cent20soyol per cent20Final.pdf](http://forum.mn/forum_topics/Monitoring/2010/Erh%20per%20cent20zuin%20per%20cent20soyol%20Final.pdf)

²² http://www.globeinter.org.mn/images/upld/1190533863monitoring_tor.pdf

²³ http://www.mn-nhrc.org/uploads/info_sheet.pdf

and Article 21 of the LRPCICGOO include provisions for charging and attaining recompense from a person who makes an illegal decision, causes a loss to a citizen, or violates the legal interests of a complainant.

Liability for administrative agencies and officials who violate citizens' right to receive information is clearly set forth in Article 25 of the LITRI.

All environment-related laws and regulations implemented in the mining sector have liability-related articles. As such, the following articles all state that officials who violate laws are liable to legal penalties set forth in the Law on Public service, the Criminal Code and the Law on Violations:

- Article 58 of the LEP
- Article 19 of Law on Natural Environment Impact Assessments
- Article 6 of the Law on the Prohibition of Mineral Exploration and Mining Operations at Headwaters of Rivers, Protected Zones of Water Reservoirs and Forested Areas
- Article 31 of the Law on Air
- Article 33 of the Law on Water.

Article 25 of the LITRI and Articles 105–107 of the GAL cover legal liability for non-transparency in line with Government Resolution 222 (2012)—Measures for Providing Transparency in the Extractive Industry.

➤ **Administrative agencies have approved and are enforcing laws to ensure the upholding of norms and responsibilities.**

MoET and GASl are currently using the following laws to ensure that public servants behave ethically:

- the Law on the Public Service (LPS)
- the Law on Regulating Public and Personal Interests in the Public Service and Preventing Conflict of Interests (LRPPIPSPCI)
- Ethical Rules of Public Administration Officials, approved by Government Resolution 288 (2010)
- Organizational Procedures for the Implementation of Ethical Rules for Public Administration Officials and the Resolution of Ethical Violations, approved by the Council of Public Service's Resolution 129 (2010)
- Internal Labor Procedures, approved by the GASl Director's Resolution 173 (2010)
- Rules to Prevent Ethical Violations of State Specialized Inspectors, approved by the GASl Director's Resolution 253 (2013)
- GASl's Ethical Commission Working Procedures.

GASl's Ethical Commission is in charge of implementing and educating public servants about ethical norms, and preventing and investigating ethical violations.

➤ **Despite the general provisions about punishing guilty public servants, the penalty implementation mechanisms are unclear.**

If laws have clearly stated provisions about punishing guilty citizens or legal entities as well as about appealing decisions, there are cases where a citizen or legal entity deems that the penalty

imposed by the administrative agency or official was illegal or unfair. However, in these cases there are no clear, effective mechanisms to hold officials who have done the wrong thing accountable (except in cases when illegal administrative acts are annulled by relevant authorities). Article 15 of the LSSI has detailed statements about how guilty people and legal entities should be held responsible, however the statements about how guilty officials should be held responsible are too general. Thus, the accountability system for officials may be less effective than for citizens and legal entities.

➤ **There are insufficient regulations for monitoring accountability.**

It is unclear whether guilty people are held responsible at all or if penalties are effective in reality. The common shortcoming in the legislation is that it mentions only the scale, type of penalty and who should implement that penalty, without stating the procedural regulations on how to oversee administration of the penalty. For example, Article 33 of the Law on Water, Article 23 of the Law on Waste and Article 19 of the LEIA state that penalties are assigned by judges, state inspectors and governors of soums, districts, bags and khorooos. However, there are no provisions regarding which regulations should be used to determine penalties and no provisions regarding who will oversee the administration of the penalty.

Article 8 of the Rules to Prevent Ethical Violations of State Specialized Inspectors have no clearly defined disciplinary penalties for guilty inspectors and also lack procedures for monitoring the administration of the penalty. They merely have a general statement that penalties shall be administered in accordance with the Law on the Public Service. Therefore, it would be appropriate to include more detailed provisions into relevant legislation.

➤ **Internal monitoring and independent external review requirements of administrative agencies are clearly stated.**

Administrative agencies conduct internal monitoring, analysis and evaluation in accordance with Article 7 of the LSSI and Government Resolution 311 (2011)—General Procedures to Organize Internal Monitoring of Entities and Organizations. Section 4.1, Article 1 of these procedures states that the Prime Minister of Mongolia is responsible for approving the procedures for internal monitoring to be used in ministries, agencies and other organizations and entities under his/her responsibility unless stated otherwise in law.

Legal provisions regarding independent assessment and analysis of administrative agencies' activities are laid out in the Law on Audit and the Auditing Procedures for Financial Statements (2004) and the Procedures to Review and Approve Contractual Audit Reports (2003) both approved by the National Audit Authority (NAA). These procedures outline the independent monitoring and assessment to be carried out by independent organizations. The NAA also conducts audits and reviews of each agency each year.

➤ **Corruption risk still exists in administrative agencies.**

As mentioned in the 2014 Effect of Corruption on National Security study released by the State Great Khural's Permanent Commission on Security and Foreign Policy, out of ten economic sectors, the mining sector was ranked 6th, scoring 5.3 per cent. According to The Asia Foundation's Determining Public Awareness Levels of Corruption study²⁴, the administrative agency in charge of mining was selected as the second most corrupt organization. Mining companies are greater exposed to corruption risks when dealing with taxation and specialized inspection agencies as shown in the results of a study on the causes of, and conditions underlying, corruption during engagement between the private and public sectors.

Case study—what happened in Tsenkher, Arkhangai aimag?

Mining operations in Orkhon bag (the smallest administrative unit) of Tsenkher soum in Arkhangai aimag violated the principles of nature conservation, liberty, human rights and law and order guaranteed in the Constitution of Mongolia. As a result, local herders were displaced from the pastureland that they had lived on for dozens of years because of changes and degradation caused by lack of water and grassland.

P.Nasanbat, a herder from Orkhon bagh, used to pasture his livestock in Budant and the Uliin river. However, he is now pasturing his animals around Shar Zurain dale which is located in wetlands. The water in the Ulii river, which was the main drinking water source, was polluted due to mining operations and can now not be used as drinking water by either people or livestock. As a result, local herders moved to Baits brook near where there are springs in Khar Khushuut and Tasarkhai Ekh. This is a particularly urgent issue not only for Nasanbat, but also for local herders in Orkhon bagh, Tsenkher soum.

This situation has worsened since 2012 with clear negative impacts for local residents and herders. By 2012, 22 mining operation licenses had been distributed. This aimag has the highest number of special mining licenses that have been granted, particularly gold mining licenses. As of September 2016, there are still 16 gold mining companies operating.

Government Resolution 120 (2015) approved the Regulations on Reclamation and Taking Related Action on Specially Licensed Fields or Operations in Ordinary Protected Water Reservoir Zones and on Terminating Mining Licenses Granted in Headwater Zones. This resolution allowed mining companies to resume mining operations only in areas where previous companies had undertaken mining. The relevant procedures should be transparent and require signing contracts with MoET, provincial GASI and the Local Governor subsequent to the completion of feasibility studies, an annual mining plan and an environmental impact assessment. However, the gold mining companies did not follow these procedures.

In total, 14 of 16 of the entities operated without the required documents such as feasibility studies, mining plans, and environmental impact assessments. In particular, "Mongol Gazar" LLC had been extracting gold at Shireet vale since 1999 without any required documentation. In

²⁴ <https://asiafoundation.org/resources/pdfs/MonSPEAK.pdf>

addition, the company had signed contracts with 14 other businesses to mine in the licensed area. Its negative impacts on the environment are excessive. If local citizens had not complained to the Parliament of Mongolia and Ministries regularly regarding environmental degradation, this situation would likely not have been noticed by the media and forgotten. This is an example of the time it takes for government agencies to take action in response to citizen complaints. It is also an example of public servants not following the relevant laws.

Citizens and herders in Tsenkher soum believe that it is necessary to stop the operations of gold mining companies digging big holes in the Orkhon valley. I have heard that the companies started their operations having committed to rehabilitating the land. But none have done this. I think they will not do it in the future either. Citizens and herders in the 53 soums along the Orkhon river are facing pollution problems. But the companies said that they are not responsible for the pollution. They said that it is because of heavy rain that the water color changed. If this is so, why are other rivers running normally, with live fish in them? The companies left us no areas for livestock grazing. They took everything. If the state exists, the permits given to the companies should be terminated.

N.Damdinpurev, Herder, Orkhon bagh

According to the legislation, Citizens Representative Meetings and Governors are obliged to protect the environment, prevent environmental degradation, protect environmental and state assets by compensating for the damage that has occurred and provide the local citizens with a healthy and secure living environment. However, they did not fulfill their duties and responsibilities.

There was an agreement between the administration of Tsenkher soum, Arkhangai aimag, the speaker of the Citizens' Representative Khural, and Mongol Gazar LLC regarding the payment of over 400 million MNT to the local budget fund. This is the reason why there were no complaints until now. According to the law, the payments for land rehabilitation and tax should be placed in the state budget not the local budget. This collected money was kept in a commercial bank and not the state bank. I hope that the state will investigate as per the relevant laws and regulations.

*Excerpt from a speech by a public servant representative,—
<http://home.inspection.gov.mn/news/250/single/150>*

A working group consisting of delegated members of parliament, MoET, MoMHI, GASI and NGOs and supervised by the Minister in Charge of Environmental Issues worked in the field and took appropriate actions to mitigate the problems, fulfill legislative requirements and respond to the guilty actions. This intensive working group was established by Ministerial Resolution A/36 dated 2016.

The working group was led by a Minister of MoET. It organized discussions with citizens and business entities with mining operations in the area to discuss how to solve the environmental

degradation issues. Furthermore, the working group decided that the contracts of all mining companies operating illegally without any of the required documentation should be terminated.

The working group took actions to enforce rehabilitation by the mining companies, reduce the Orkhon river pollution, construct an embankment preventing wastewater discharge to the river and re-grant permits to companies who corrected the negative outcomes of their actions. However, during the investigation, 2–3 companies resumed mining without permission on several occasions.²⁵

The Office of the General Prosecutor of Mongolia is currently investigating whether to impose penalties on Mongol Gazar LLC and other companies that polluted the Orkhon River.

Although the principles of the rule of law are already incorporated into the legislation that governs the activities of government agencies responsible for environmental protection in the mining sector, they are ineffective and not adhered to in practice.

²⁵ Report by the intensive working group established by Minister of MoET.

3. PUBLIC SERVANT AND SERVICE USER QUESTIONNAIRE FINDINGS

In the previous chapter of the review report we reviewed the rule of law principles and their practical implementation within the legal frameworks of MoET and GASI. The purpose of this was to analyze the laws and regulations of the mining industry's environmental governance.

In this chapter, we summarize the results of the questionnaire, prepared in accordance with the UNDP and Folke Bernadotte Academy review methodology indicated in Chapter 1.2. In total there were 65 questionnaires filled out by representatives of MoET and GASI (including local office representatives), aimag and soum governors' administration officers, and soum environmental inspectors. In addition, 147 were collected from representatives of environmental impact assessment enterprises, environmental NGOs, herders and poor and vulnerable people living within mining affected regions.

The purpose of this questionnaire was to analyze the knowledge of public servants and service users about the six principles of the rule of law. These are "legality", "accessibility", "right to be heard", "transparency", "right to appeal" and "accountability". It was also to analyze the reflection of these principles in the legal frameworks of agencies that uphold them.

3.1 PRINCIPLE OF LEGALITY

We asked public servants to analyze whether the principle of "legality" was reflected in the laws that regulate government agency operations, and we asked service users to analyze whether government services fully reflect the principle. Respondents gave their agreement with each statement by attributing a score of between 1 and 4 (1—not at all, 2—small extent, 3—large extent, 4—very large extent).

According to the quantitative analysis, public servants gave the principle of legality an average score of 3.2, while service users gave a relatively low score of 2.7 points.

Table 1 Public servants' analysis of legality

#	Variables	Average score
1.	Conflict of interest: You have instructions on how to deal with situations where there is a conflict of interest that can lead to negative environmental impact.	3.8
2.	Equal treatment: There are clear mechanisms within the agency to provide for the equal treatment of people of different sex, ethnicity, religion, tribe, family or political affiliation or social status.	3.7
3.	Powers, mandates and responsibilities: You find that the rules defining the powers and mandate of the agency and your responsibilities are understandable.	3.6
4.	Updates of laws: 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.	3.5
5.	Vertical coordination: You find that there are clear rules establishing coordination between central and local levels of government (vertical coordination) in areas linked to the environmental impact of the mining sector.	3.3
6.	Horizontal coordination: You find that there are clear rules establishing coordination between agencies (horizontal coordination) working in areas linked to the environmental impact of the mining sector.	3.2
7.	Powers and mandates of other agencies: 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.	3.1
8.	Overlapping powers and mandates: The powers and mandates of these other agencies and your agency are complementary to each other and do not overlap.	3.0
9.	Insufficient guidance on law: There are no cases where the law is unable to provide guidance during decision making processes.	2.8
10.	Training on laws: You receive training on new legislative instruments in your area of work that are significant for mitigating environmental impact of the mining sector.	2.7
11.	Gaps and inconsistencies: You do not encounter situations where the law provides insufficient or conflicting guidance on how to make administrative decisions that can potentially have an environmental impact.	2.4

Table 2 Service users' analysis of legality

#	Variables	Average score
1.	Role in minimizing environmental impact: You think the agency has responsibility for minimizing environmental impact of the mining sector.	3.1
2.	Equal treatment: You think that the agency staff treat people or groups equally regardless of gender, age or ethnic, tribal or political affiliation.	2.8
3.	Abiding by the law: You think that the agency staff generally follow the law when performing their functions.	2.7
4.	Specification of the agency: You think it is clear which public agencies are responsible for dealing with the environmental impact of the mining sector.	2.6
5.	Scope of powers: You think that it is clear what the agency can do and are allowed to do in relation to mining operations.	2.5
6.	Professionalism of the agency: You think that the agency staff are professional in providing services and understand their duties according to the law.	2.3

Based on the qualitative and quantitative information gathered in the questionnaires, we highlight the following key findings.

- **Although public servants have access to many sources of information regarding laws, a lack of special training on how to apply them in the workplace creates a risk that they apply the laws based only on their own personal understanding of them.**

In analyzing the “legality” principle, public servants concluded the training they receive regarding their acts lower than other variables (2.7). Lack of training may have been linked to the comparatively average scores given by public servants regarding the guidance provided in the legislation about decision making processes (2.8) and perceived gaps and inconsistencies in the legislation (2.4). Service users assessed public servants’ professionalism as low (2.3) due to public servants’ low levels of knowledge regarding the law and inability to resolve issues.

There is no training or awareness about laws. Although the law gives a general direction, the lack of regulations and information creates a significant issue. We are forced to search for this information from online sources.

We are enrolled in one training session per year at most. Trainings are rare. We have no time to attend training courses. There is no interest from management to enroll us. We only attend professional training and not legal training.

In my experience, an incorrect decision was made due to poor understanding of the law. Later I was audited by the prosecutors and charged by the inspectors.

Interviews with local public servants

Although public servants have access to many sources of information regarding laws, there is a lack of special training on how to use them in the workplace. For example, there are many sources of information such as government web pages, the Unified System of Legal Information (www.legalinfo.mn), Mongolian State Great Khural’s weekly Government Information and the Supreme Court’s online and printed information. Unfortunately, public servants lack practical training on how to use newly enacted or amended laws in their work. For example, one out of every three public servants participating in the survey (30.8 per cent) did not attend any training on law in the past year. Although some agencies have experience organizing training courses, training on environmental issues caused by mining and on relevant regulations were not mentioned. Due to poor training, there is a risk that some public servants apply laws based only on their own understanding of them.

On the other hand, although the rights and duties of government agencies in the mining industry are clearly stated, there are no laws outlining how to use their powers. Also, the inconsistent capacity of public servants leads to a risk of varying implementation of laws.

- **Structures, powers, mandates and responsibilities of government agencies are clearly stated in the laws, but because of service users’ poor knowledge of them, they are often confused about who can resolve their problems.**
- **Government agencies insufficiently promote their operations and have poor public-oriented activities.**

Public servants gave a positive score of 3.6 points regarding central and local governments’ powers, mandates and responsibilities as outlined in the key laws including the package of

Environmental laws, LM, LPS and the Law on Government Agency Legality. Therefore there is a perception that there is minimal overlap of duties among agencies operating in the mining and environmental sectors. The duties of workers such as GASl and MoET employees are clearly stated in documentation.^{26 27 28}

Relevant agencies fulfilled their duties at the policy level. However operating inspections are poor. Although there are detailed plans to decrease environmental impacts, implementation is very slow and performance is poor. Enforcement instead of compliance is important; the government agencies do not promote adherence to law by citizens.

Interview with a service user representative

Citizens believe that environmental inspectors only grant permission for getting trees from forests for household use. Citizens do not know about any other duties, or that the inspector can resolve their issues.

Interview with a local citizen representative

When a service user approaches a government agency for issue resolution, they face challenges such as public servants lacking knowledge about the laws and their duties, instability, and poor performance of the officials in charge.

There are instances of hiring someone regardless of their qualifications. This causes issues where public servants are unable to do their jobs properly and hinder good services from being provided. Although they may know what their duties are, they do not behave professionally. Citizens have poor knowledge about the duties of public servants due to a lack of information provision via television.

Party affiliation is strong. Services are unequally distributed depending on party affiliation. Older people in particular are ignored. There used to be open days for government agencies to listen to citizens' opinions, but not anymore. Herders and citizens are not usually included, and their participation levels are low as well.

Interviews with service users

When a citizen is affected by a negative environmental impact, engaging with local government often results in problems. For example, officials often have limited knowledge on how to resolve citizens' issues, or refuse to deal with the problem and cannot direct them to the appropriate agency. This further reduces the motivation and participation of citizens, and leads to negative perceptions about being able to resolve their issues by communicating with the mining company.

Although service users know that agencies have a duty to decrease their environmental impacts, they have limited knowledge about their detailed regulations and functions. For example, they responded that they do not know about the functions and authorities of all agencies (2.5) and the agency in charge of mining related environmental impact issues is unclear (2.6). In particular,

²⁶ <http://home.inspection.gov.mn/news/260/single/459>

²⁷ <http://www.mne.mn/mn/1589>

²⁸ <http://www.mne.mn/mn/1391>

citizens in mining areas do not know about the agencies in charge of mining related environmental impact issues affecting them.

➤ **Unclear laws and poor regulation leads to problems, such as illegal decision making and delays in resolving issues.**

Public servants stated that legal uncertainty and conflicts between different legal documents arise relating to environmental pollution, damage assessment and rehabilitation issues. When asked about an example, public servants gave the following answers.

After we have detected a violation during our inspection, we have no authority to penalize, and no opportunities to resolve an identified issue on the spot. We face challenges, such as having a professional agency assess the damages in order to penalize companies for land degradation and pollution.

The Natural Resource Usage Fee Law exempts fees on water used by households. However, it is uncertain if water used for commercial purposes can be exempted. This has created several disputes.

Interview with public servants representing the Environment and Tourism Agency

Furthermore, public servants did not know about organizational structures and active mechanisms to allow the resolution of conflicts between legal documents and legal uncertainties. This may cause risks of further illegal decision making and activities. In some rare cases, public servants stated that their poor knowledge about laws cause conflicts and unclear situations

➤ **Insufficient collaboration among agencies undermines the effects of audit and inspection.**

Many service users agree (2.7) that government agencies operate in accordance with the law. Although, they may operate according to the law, they have the disadvantages of operating slowly and unprofessionally in their duties. When a decision involves many parties, the case is likely to be dropped or delayed.

Parliament and government issue decrees on collaboration regarding environmental issues and mining inspections. Agencies collaborate within the scope of these decrees.

There is no other documentation between agencies besides the co-signed partnership agreement. Although it is clearly required in the laws, communication and collaboration is poorly executed in practice.

There are no laws or regulations regulating collaboration and coordination. GASI, MoET, soum environmental state inspectors, watershed councils, police and other agencies have poor coordination.

Interviews with public servants

Similarly, government officials also stated that agencies have poor collaboration (3.1). For example, in 2011 MoET and GASI developed a collaboration plan that included ten tasks, such

as improving legal frameworks, conducting joint inspections and promoting laws, standards, regulations and guidelines through training and seminars. But the government officials stated in the questionnaire that there have been insufficient activities directed towards the public since then. This is an example of poor inter-government agency collaboration and communication. Therefore, in May of 2016 Parliament’s Standing Committee ordered the state to focus on improving collaboration between government agencies and officials.

Government agencies have insufficient resources to conduct regular inspections and exchange information sufficiently. This causes issues to be dropped and citizens and companies to disregard legal decisions and secretly continue engaging in illegal activities.

Ministries operate in accordance with their rules and policies. However, mining companies most likely do not fulfill their requirements. There are regular inspections in our local region, but mining operations resume after the inspectors leave.

Interviews with local citizens

3.2 PRINCIPLE OF ACCESSIBILITY

In the quantitative analysis, public servants gave the “accessibility” principle an average score of 3.4 points, while service users gave a relatively low score of 3.0 points.

Table 3 Public servants’ analysis of accessibility

#	Variables	Average score
1.	Equal treatment: Stakeholders have equal access to information and services provided by the agency regardless of sex, ethnicity, religion, or tribal, family or political affiliation or other social status.	4.0
2.	Time limit for responding to queries: There are clear targets for maximum time to respond to stakeholder queries that relate to the potential environmental impact of the mining sector.	3.8
3.	Cost of service: You have clear instructions on the charges, if any, for services provided by the agency.	3.7
4.	Time available for service: 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.	3.3
5.	Redirecting petitions: You have instructions on how to assist stakeholders in cases of obvious mistakes (for example, queries sent to the wrong agency).	3.3
6.	Language of service: It is possible to handle queries in other languages than the official one (for example, in a minority language).	2.6

Table 4 Service users’ analysis of accessibility

#	Variables	Average score
1.	Cost of service: You think that the cost of the agency services is affordable.	3.5
2.	Openness: You think the agency is accessible in terms of being able to visit and communication with it.	3.2
3.	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 or tribal, family or political affiliation or other social status.	3.2
4.	Agency structure: You think it is easy to access the services of the agency.	3.0
5.	Navigating the administrative set-up: You think it is easy to understand which unit(s) in the agency has/have responsibility for addressing the environmental impact of mining.	2.7
6.	Language of communication: You think it is possible to communicate with the agency in other languages than the official one.	2.6

The following findings regarding the “accessibility” principle were made based on the quantitative results and additional qualitative information of the survey of public servants and service users.

- **Generally, accessibility to government agency services for citizens and legal entities is enshrined in law.**
- **Public servants’ impressions of the laws regarding equal accessibility to state services, deadlines for responding to requests and complaints and service fees are quite positive.**

On average, public servants’ perceptions of the regulation of equal access to services and equal treatment of service users (4.0), time limits for responding to queries (3.8) and service fees (3.7) were generally positive. These variables received high scores due to provisions in laws such as the LSSI, Public Servants’ Code of Ethics derived from the LSSI, LRPCICGOO, etc. Also, public servants mentioned agencies’ internal rules on equal and swift services for citizens.

Public Servants' Code of Ethics

Four—Ethical values

4.1.3. *Within the scope of the equal accessibility principle: public servants must contribute to the agency to ensure equal and unbiased communication to other government agencies and service users.*

4.1.5. *Within the scope of the public service principle: public servants must politely deliver accessible, swift and quality state services to the public, and to earn their trust.*

<http://www.legalinfo.mn/annex/details/2744?lawid=2367>

Law on Resolution of Petitions and Complaints Issued by Citizens to Government Agencies and Officials

Article 16—Response period for complaints and petitions

1. *A decision must be made 30 days after receiving the complaint or petition. A manager of the agency can extend the response period by 30 more days if required. The complainant must be notified of the extension.*

2. *Petitions, including petitions, must be replied to within 90 days.*

<http://www.legalinfo.mn/law/details/294>

The Law on Stamp Duty regulates the amount of the fees that citizens or legal entities must pay in exchange for government agencies' services. Article 21 of the law regulates the fees for requesting environmental operating licenses, and article 39 regulates the fees for requesting land ownership, possession, land use and subsoil use.

Service users are knowledgeable about the laws, regulations and rules regulating government agency services. For this reason, the average scores regarding the accessibility principle were relatively high. In particular, service users were positive about service accessibility (3.2), agency openness (3.2) and cost of services (3.5).

When you call a government agency regarding an issue, they will usually connect you to the person in charge. However, it is effective to go and meet with them.

An interview with a service user

Service users also mentioned that there are many options for communicating and receiving services, such as personal meetings, phone calls, email communication, etc. They also mentioned that other free services are available to everyone.

➤ **MoET and GASI have followed best practice in receiving requests and complaints in order to increase accessibility.**

Separate agencies for receiving complaints and requests, such as MoET's One Stop Service and GASI's Consultation and Information Center have been established. GASI officials use a list which defines irrelevant issues for state inspectors.

- **There have been instances of inability to resolve requests and complaints—which include issues involving inter-industry parties and complaints that require the collection of evidence—within the legal timeframes.**

According to Article 16 of the LRPCICGOO, the deadline for replies to requests and complaints from citizens is 30 days and for requests including petitions is 90 days. In some cases, due to the request or complaint's contents, addressing the whole issue within the reply period is problematic. For example, if the issue requires multiple parties, evidence, proof or a reply based on analysis and evaluation, then the chances of resolving the issue within the legal period are low.

- **Laws and provisions regulating government agencies' resolution of complaints and requests in other languages are conflicting.**

A big percentage of public servants participating in the assessment stated that it is impossible to resolve complaints and requests written in other languages. There are conflicting legal provisions regulating official state languages. Articles 5 and 9 of the LRPCICGOO regulate appealing, expressing opinions and the state resolution process of complaints and requests filed by foreign citizens and minorities. However Article 6, Clause 6.1.1 of the Law on the Mongolian Language states that government agency activities and official records shall be in Mongolian. Public servants have no definitive solution for these conflicting clauses.

This creates a situation where foreign citizens and minorities have their complaints and requests translated or are unable directly comprehend government agencies' official responses.

- **Although the right to access a government agency is guaranteed, there are limited opportunities for people to personally meet with public servants. In addition, confusing structures, organization and work functions, and limited human resources create bureaucracy.**

Surveyed local citizens listed issues such as no resolution to their problems, no response due to specialists being out of the office, confusing agency structures and functions and limited human resource availability. Translation barriers arose when communicating with agencies in a second language.

3.3 PRINCIPLE OF THE RIGHT TO BE HEARD

This section discusses the incorporation of the “right to be heard” or the “right to express opinions and participate” principles in legislation, and the results of the questionnaire of public servants and service users regarding this principle.

In the questionnaires, public servants gave the right to be heard principle an average score of 3.0 points, while service users gave a relatively low score of 2.7 points. This suggests that although the right to be heard principle is included in the legislation, it is not reflected in the services being provided to citizens.

Table 5 Public servants' analysis of the right to be heard

#	Variables	Average score
1.	Awareness of the right to participate: 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.	3.4
2.	Hearing stakeholders: You have established procedures for listening to a stakeholder before making a decision that has an environmental impact on that stakeholder's geographic area.	3.2
3.	Timelines for decisions: You have clear instructions on time limits for making decisions that have mining-related environmental impacts (whether they are positive or negative).	3.2
4.	Stakeholder participation: You have established procedures to ensure the participation of stakeholders, as established by the laws and other normative instruments.	3.2
5.	Sourcing external expertise: There are established procedures for using outside expertise to assess potential environmental impacts before making a decision.	3.2
6.	Awareness of the right to be heard: 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.	3.1
7.	Stakeholder communication: You have established procedures for communicating with a concerned person, group or company.	3.0
8.	Taking stakeholder considerations into account: 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.	3.0
9.	Distilling complex environmental and mining issues: You have procedures for ensuring that complex issues related to the environmental impact of mining are communicated to stakeholders in a manner that makes it more likely they can participate.	2.9
10.	Verbal communication: You have established procedures for listening to stakeholders orally or through interviews before making a decision.	2.6
11.	Timelines for decisions: You don't encounter situations where it is difficult to follow time limits for making decisions that have mining-related environmental impacts.	2.3

Table 6 Service users' analysis of the right to be heard

#	Variables	Average score
1.	Hearing concerned persons: You think the agency listens to your views and arguments before they make a decision that has an environmental impact which can affect you.	3.3
2.	Awareness of right to be heard: You are familiar with your right to be heard in matters concerning the environmental impact of mining operations.	3.3
3.	Timelines for decisions: You think that there are time limits for when the agency must make decisions in cases related to the environmental impact of the mining sector.	3.2
4.	Proactive inclusion in decision-making: You think the agency will proactively inform you of your right to be heard and participate in decision-making processes about mining operations with a potential environmental impact if you are not aware of your rights.	3.0
5.	Equal treatment: You think that the agency gives you equal access to be heard and participate in decision-making regardless of your sex, age, ethnicity, religion or tribal, family or political affiliation or other social status.	2.8
6.	Awareness of right to participate: You are familiar with your right to participate in matters concerning the environmental impact of mining operations.	2.8
7.	Timelines for decisions: You think that the agency follows time limits when making decisions about things that raise concerns over environmental impact.	2.6
8.	Definition of concerned persons: You think that you are affected by the environmental impact of mining. Therefore you are considered as a concerned person or group by the agency.	2.3
9.	How to exercise the right to participate: You are familiar with the procedures for exercising your right to participate.	2.2
10.	Redirecting petitions: You think the agency would assist you in cases of obvious mistakes, such as if you send an inquiry to the wrong agency.	2.2
11.	How to exercise the right to be heard: You are familiar with the procedures for exercising your right to be heard.	1.9

The following findings regarding the right to be heard principle were made based on the quantitative results and additional qualitative information from the questionnaire.

➤ **Public servants and service users have sufficient knowledge regarding laws regulating citizens’ right to express opinions and participate in decision making.**

Public servants stated that they have sufficient knowledge about the laws regulating citizens’ right to be heard (3.4) and that there are established procedures for stakeholder participation (3.2) in general and sector laws including the GAL, LITRI, LM, LEIA and the environmental package of laws. Service users stated that they have good awareness of the right to be heard (3.3), there are timelines for decisions (3.2), and were also relatively positive about proactively being included in decision-making (3.0). Specifically, environmental assessment companies and NGOs have greater knowledge than public. Therefore, companies and NGOs are more likely to participate in mining-related environmental issues than the public. The public acquires information from public information channels, word of mouth from locals and other citizens. In particular, local citizens receive information from soum and bagh meetings, assemblies and public presentations. Several citizens stated that they were informed about their right to express opinions and participate via meetings and assemblies organized by mining companies.

Generally people are aware of their right to express opinions and to participate. However, they do not know who to speak to. Uninformed people do not know how to resolve an issue or who to refer their issue to.

Citizens are blamed by mining companies for expressing their opinions. Their children often work for the mining companies and they can be fired for their parents speaking out.

Although citizens want to acquire information, they do not know who to speak to. Government agencies do not meet and listen to the public, thus we acquire information through word of mouth. We do not know exactly how the environment is being polluted due to lack of information.

Interviews with service users

- **Although government agencies and citizens have general knowledge about the law, knowledge about implementation of specific articles, clauses and regulations is lacking.**

Public servants are able to name the laws that grant citizens the right to participate (3.2), require public servants to consider citizens in decision making (3.2) and make decisions in a timely manner (3.2). However, they aren't able to name the specific articles and clauses nor the guidelines developed regarding the laws. For example, in the questionnaires, public servants never mentioned the processes for administrative decisions section in Article 3 of the GAL that includes the specific clauses on the processes for listening to parties. Neither did they mention the General Regulations for Hearings or the Regulations for Community Engagement in Environmental Impact Assessments related to the Law on Public Hearings.

This is possibly due to poor training and awareness of public servants about legislation and regulations and due to lack of action in trying to improve implementation of the laws. Public servants' low levels of knowledge regarding informing and providing services to the public possibly negatively affects the exercise of citizens' right to express their opinions and participate. For example, there is minimal knowledge about citizens', communities' and private entities' rights and duties, including their right to be heard listed in the LITRI, LM, Law on Environmental Rehabilitation Operations (LERO).

- **Activities to raise awareness about laws among citizens are insufficient.**

The Integrated Legal Information System (www.legalinfo.mn) and the websites of various implementing agencies contain all the laws regarding peoples' right to be heard and participate. However, due to poorly developed infrastructure in local regions, local residents have limited information resources and insufficient knowledge, capacity and opportunities to gather and use information. In this regard, citizens' knowledge about how to exercise their right to express opinions, obtain information and participate is quite poor. This indicates that there is a necessity for government agencies to conduct awareness activities for citizens to increase their knowledge about, and comply with and assert their rights according to, laws.

- **Citizens do not know about the duties and responsibilities of agencies responsible for resolving mining-industry related environmental-protection issues.**

Citizens do not know about the agencies that receive and resolve requests and complaints about mining industry related environmental issues. Local citizens especially do not know which agencies to approach regarding mining related environmental issues. They either approach their

closest administrative agency, such as their soum governor’s office, or do not approach anyone at all. Even if they do approach their local administration office, there are obstacles such as the public servant not directing the issue to the proper authorities or failing to process their request. This poses a significant barrier for citizens and reduces the likelihood of them filing complaints and making requests in the future.

Public servants gave relatively low average scores to being able to always achieve timelines for decisions, having established procedures for oral communication and having procedures ensuring that complex issues can be communicated to stakeholders.

There are instances of waiting for inspection-related laboratory results and having insufficient time due to laboratories being far away from the area. Other reasons for delays include absences of the inspecting agency, the small budgets of local government agencies and inability to purchase fuel.

Although the parties’ opinions are considered to some extent, they are not fully considered. And although agencies may receive public opinions, they do not reflect these in their decisions. Also, ministries bypass citizens when implementing decisions. There are many forums and discussions organized, however the participation of citizens is low.

Interviews with public servants

The timelines and procedures outlined above are specifically stated in Article 16 of the LRPCICGOO—Reply Periods for Request and Complaint Resolution, Chapter 3 of the GAL—Administrative Decision Making Processes and Chapter 9 of the GAL—Regulations for Filing Complaints. However, public servants encounter obstacles such as being unable to resolve difficult issues in the legally mandated time periods, lack of participation by stakeholders, and poor decision making even after obtaining enough information.

- **Although public servants listen to citizens’ opinions and allow their participation, often they only pretend to listen or disregard their opinions altogether, which reduces citizens’ desire to participate in the process.**

Citizens from local regions with active mining express their opinions regarding mining related environmental issues through printed media, protests, assemblies, marches and in the media. Unfortunately, uncertainty about how government agencies reflect citizens’ opinions in their operations creates public mistrust. This creates a risk of negative attitudes leading to public inactivity in response to issues.

3.4 PRINCIPLE OF TRANSPARENCY

Public servants analyzed the implementation of the “transparency” principle through 11 questions, and service users analyzed how well the transparency principle is reflected in government agencies’ services. Respondents gave their agreement with each statement by attributing a score of between 1 and 4 (1—not at all, 2—small extent, 3—large extent, 4—very large extent).

Table 7 Public servants' analysis of transparency

#	Variables	Average score
1.	Recording and archiving: You have established procedures for recording and archiving data.	3.9
2.	Equal treatment: You have instructions and there are established practices on how to ensure that access to information is consistent for different groups of stakeholders, including women and men, different ethnic groups, people, companies, civil society organizations, etc.	3.6
3.	Integrity and confidentiality: You have instructions and established practices on how to handle integrity and privacy of information.	3.6
4.	Responding to information requests: There are clear instructions and established practices on how to respond to a stakeholder who seeks information on laws, standards and procedures that guide the work of the agency.	3.5
5.	Proactive information provision: Your agency has established procedures on providing information and data related to environmental impacts to the public proactively, on a regular and timely basis, even in the absence of a request.	3.5
6.	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.	3.4
7.	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.	3.4

Table 8 Service users' analysis of transparency

#	Variables	Average score
1.	Equal treatment and equal access to information: You think that you get equal access to information from the agency regardless of your sex, ethnicity, religion, or tribal, family or political affiliation or other social status.	3.2
2.	Access to information: You can get information on the laws, standards and procedures that guide the work of the agency in relation to the environmental impact of mining activities.	3.1
3.	Privacy and integrity: You do not think that the agency will give out sensitive or private information.	3
4.	Ability to get information: You think you can get information from the agency on any specific case related to environmental impacts of mining that concern you.	2.8
5.	Specification of public agency: It is clear to you which public agency houses information on cases addressing environmental concerns related to mining.	2.4
6.	Proactive versus reactive provision of information: This information is readily available and proactively shared with stakeholders including local communities (as opposed to only being available upon request).	2.3
7.	Access to information on specific cases on mining environmental issues: You think you can get information on specific cases related to the environmental impact of mining.	2.3

The following findings regarding the transparency principle were made based on the results of quantitative and qualitative information gathered through the questionnaire with public servants and service users.

➤ **Public servants and service users have knowledge about laws ensuring transparency.**

Public servants gave the variables regarding this principle relatively high scores. For example, the average score for having procedures for recording and archiving was 3.9, on ensuring equal treatment was 3.6, on ensuring integrity and confidentiality was 3.6, on responding to information requests was 3.5 and on proactive information provision was 3.5.

Public servants answered that regulation of information transparency is reflected in the LITRI, LEP, LM and LEIA. However they did not mention laws that ensure transparency such as the LSSI and the Government's Resolution on Undertaking Actions in Accordance with the EITI. In 2013, in accordance with Government Resolution 153 which provided guidelines for operating the One Stop Service, government agencies introduced One Stop Service centers. In line with this resolution, MoET also established a One Stop Service center and GASI established a Consultation and Information Center. This was proven by surveys to have significantly improved information transparency. MoET's 2015 and 2016 implementation plan includes monthly operational reporting to the public. In line with this plan, MoET has delivered its monthly reports to citizens via the internet. The results of our questionnaire found that public servants are very positive about these standardized operations.

Similarly, service users answered quite positively regarding equal treatment and equal access to information (3.2), access to information on laws, standards and procedures (3.1) and agency management of privacy and integrity (3.0). Respondents from mining companies and companies authorized to undertake detailed environmental assessments demonstrated good knowledge about the legislation. They also knew better which agencies to approach information compared with the public. It was also stated that when a company requests information from a government agency on mining related environmental impacts via email or petition, if the information is not confidential, then the information is provided to the company.

➤ **Public servants do not do enough to provide the public with a constant stream of information on environmental impacts from mining.**

From our analysis of the transparency principle, the average scores given by service users for the opportunities they have to obtain information on laws and standards, and the responses they receive to requests for information on mining related environmental issues were relatively low.

According to the questionnaires completed by public servants, this is due to agencies' delivery of information via One Stop Service centers and digital channels. Detailed information on mining can also be found on the website of the EITI. On top of creating an opportunity for transparent and fast delivery of mining related environmental impact information, this public transparency has also decreased the workload of officials.

However, there is a lack of knowledge regarding laws regulating the delivery of information regarding mining related environmental impact to stakeholders. From our questionnaires, it is apparent that most public servants were unable to share experiences of transparently sharing information with stakeholders.

There is a regulation requiring that the public is provided with information. If private entities require information regarding themselves, this information should be provided to them directly. Information is

provided to the public through various media. In accordance with the LITR, government agencies must supply information in response to requests.

After an inspection of Javkhlant well, the information was delivered to the citizens who filed complaints.

I do not remember the names of the two or three regulations passed in accordance with the Law on Water.

Interviews with public servants

➤ **Government agencies' methods of resolving mining related environmental impact issues are not transparent.**

In our questionnaire, proactive versus reactive provision of information (2.3), access to information on specific cases on mining environmental issues (2.3), specification of government agency (2.4) and ability to get information (2.8) all had low scores.

Obtaining information in regions without internet is difficult.

We only receive information through word of mouth. Although the citizens want to obtain information, they do not know where to get it from.

Interview with service users.

Large workloads for public servants, bureaucracy, and staff changes due to elections negatively affect a public servants' ability to specialize. Most surveyed private entities stated that these factors prolong service timelines.

Our questionnaire found that citizens know their rights to obtain information, however they do not know which agency to approach for what information. Furthermore, local citizens living in regions with no internet have difficulty obtaining information. We found that these people obtain information from unofficial sources such as from soum environmental inspectors and through word of mouth.

➤ **Government agencies do not actively provide citizens with information on mining related environmental impacts.**

According to the service users who completed our questionnaire, government agencies provide minimal information to the public. Private entities who received sufficient information, obtained it by voluntarily requesting mining related environmental impact information. As stated in Section 2.11 of the Regulations for Community Engagement in Environmental Impact Assessments, Bagh and Khoroo Citizens' Great Khurals, mining companies, soum and district governors, and aimag and Ulaanbaatar environment departments are responsible for ensuring the transparency of the environmental assessment reports. However, service users expressed concerns about officials in charge of disclosing environmental impact assessment reports to the public not fulfilling their duties.

Public servants know about laws regulating information transparency to a certain extent. However they were not able to name the specific administrative procedures and regulations sitting under these laws. Also, there are few examples of proactive disclosure of information to the public.

According to the questionnaires, mining and environmental impact assessment companies not only know about their right to obtain information, but also know the precise laws that govern this right. However, while local citizens, who make up most of the service users, know that they have a right to obtain information, they do not know who to approach or how to obtain it. Citizens who received information mostly obtain public information through printed media.

3.5 PRINCIPLE OF THE RIGHT TO APPEAL

From the quantitative analysis, public servants gave the “right to appeal” principle an average score of 3.7 points, while service users gave a relatively low score of 2.7 points. This suggests that although the laws may incorporate the principle, service users have a conflicting perception regarding the services they receive.

Table 9 Public servants’ analysis of the right to appeal

#	Variables	Average score
1.	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).	3.7
2	Communicating decisions: You have clear instructions on how a stakeholder should be informed about a decision.	3.5
3.	Appealing a decision: You have instructions on how to advise a stakeholder who wants to appeal against a decision by your agency.	3.5

Table 10 Service users’ analysis of the right to appeal

#	Variables	Average score
1	Appealing a decision: You think you can appeal decisions by the agency if they have a negative environmental impact that will affect you.	3.5
2	Formulating decisions: You think the agency must explain the reasons behind their decisions in cases that are related to the environmental impact of the mining sector.	3.4
3	Counsel: You think there are other public agencies who 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.	2.7
4	Fair review of appeal: You think the agency would review their own decisions related to the environmental impact of mining in a fair and objective way.	2.6
5	Cost of appeal: You think that you can appeal the agency’s decision at a reasonable cost.	2.6
6	Feedback: You think the agency will inform you if and when they have made a decision with a potential environmental impact that concerns you.	2.3
7	Proactive awareness-raising of the right to appeal: You think the agency would advise you on how to appeal a mining-related decision that they have taken and which could lead to negative environmental impact.	2.1

The following findings regarding the right to appeal principle were made based on quantitative and qualitative information gathered through our questionnaire completed by public servants and service users.

➤ **Public servants have sufficient knowledge about the laws regulating their right to appeal.**

Citizens’ and legal entities’ right to appeal is covered in the GAL, LRACC, LITRI, LSSI, LRPCICGOO, LEP and LM. From the questionnaires, public servants only mentioned the GAL, LSSI, LRPCICGOO, LEP and Law on Water. Also, public servants did know about the decision making period for complaints and petitions as stated in Chapter 9 of the GAL.

However, public servants did not know about Article 99, Clause 1 of the GAL, which states that after an administrative action has been approved, the citizen filing the complaint must be handed a written notification and this documented within five days.

Article 5, Clause 3 of the LSSI states that when a situation occurs that directly or indirectly creates significant harm affecting human life, health or the environments people live in, an inspection can be conducted bypassing the regulations stated in Clause 5.2 of the LSSI. This can occur only after approval is granted by an official government agency in charge of special investigations and emergency situations. However, public servants stated that companies file complaints that they have not received an official notification when a specialized inspection agency conducts a non-scheduled inspection.

➤ **Service users believe that they do have the opportunity to express their complaints regarding mining related environmental issues.**

Service users answered positively regarding agencies’ explanation of decisions (3.4) and their (service users’) ability to appeal a decision (3.5). This suggests that they are familiar with who they need to approach to appeal a decision. However most surveyed service users had no experience of filing an appeal.

➤ **There is often an insufficient basis and inadequate explanation for administrative decisions, and no reporting on the decision.**

Entities authorized to undertake mining and environmental impact assessments stated that MoET and GASI should articulate their rationale and the basis for making their decisions regarding mining related environmental issues. Providing a justification would demonstrate these agencies' accountability.

It is necessary to receive explanations. We need to know what is not working.

I know that we can operate in accordance with the law if they explain the precise legal basis for their decisions.

They must give an explanation for their decisions and their bases to the citizens, because their decisions destroy herders' pastureland and negatively affect human rights.

Interview with service users

In the questionnaires, citizens, especially local citizens living in mining affected regions, strongly expressed their opinions that all mining related decisions should be explained to them. However, Article 44 of the GAL states that a stakeholder must file an oral or written petition in order to receive an explanation of their rights and duties as outlined in the administrative laws. This means that legally, agencies only need to explain their mining related environmental impact assessment decisions in response to official requests.

Local citizens stated that government agencies are irresponsible when it comes to obtaining public opinions or informing the public about the region's environmental decisions.

There is no prior notification; a bunch of equipment came in one morning and destroyed our summer camping lands.

Sudden decisions are made without any forewarning. Information is scarce, it is never disclosed.

Interviews with service users

➤ **When citizens and legal entities do not receive a resolution after filing a complaint about illegal operations to higher authorities or authorized entities, they do not know they can file a claim to the court. They do not believe higher authorities will justly resolve their complaints.**

Service users' analysis of the variables within this principle were relatively low, on average. Agencies' proactive awareness-raising of peoples' right to appeal (2.1), service users' belief that they would receive feedback from agencies (2.2), their belief that would receive a fair, objective review at a reasonable cost (both 2.6) and their belief that they would receive fair counsel from other agencies (2.7) all received relatively low scores.

The average of the score for proactive awareness-raising of the right to appeal was the lowest among service users (2.1). Survey respondents expressed doubts that government agencies would advise on how to file complaints if their mining related decisions negatively impacted the

environment. Out of many examples provided by citizens during the interviews, one was about a mining company that owned licenses to land used by herders as a winter camp. Although the local citizens appealed the decision, many were not able to reacquire their land for their winter camps.

I do not think that government agencies will fairly review their decisions based on a complaint. If it potentially affects the agency staff they will not review the decision, and will only protect themselves. But I hope they deal with their shortcomings.

Interviews with service users

3.6 PRINCIPLE OF ACCOUNTABILITY

This section discusses the results of the questionnaire completed by public servants and service users regarding the implementation of the “accountability” principle.

Table 11 Public servants’ analysis of accountability

#	Variables	Average score
1.	Ethical codes: You are familiar with the ethical code(s) of the agency	3.8
2.	Internal accountability system: Your agency has an established mechanism for holding staff accountable for their decisions.	3.8
3.	Oversight bodies: Your work is influenced by decisions and instructions from oversight agencies.	3.6
4.	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.	3.6
5.	Corruption: You have no knowledge of a situation when someone in your agency was not offered a bribe related to the environmental impact of a mining operation.	3.6
6.	Accountability for environmental impact: When assessing accountability for grievances and damages, the accountability mechanisms in your agency consider environmental damage (current or potential).	3.4
7.	Corruption: You think a civil servant at the agency could accept a bribe without being detected and punished.	3.4
8.	Dealing with complaints: You have instructions for how to deal with complaints against the agency or its staff.	3.4
9.	Other practices reducing accountability: You do not have knowledge of practices by civil servants at the agency which reduce the level of accountability.	2.8

Table 12 Service users’ analysis of accountability

#	Variables	Average score
1.	Impunity: You think a civil servant at the agency could not accept a bribe without being detected and punished.	3.2
2.	Sector-wide practices: You do not think there are corrupt practices in the mining sector in general which lead to negative effects on the environment.	3
3.	Violation of law: You think civil servants at the agency know how to deal with situations where another civil servant is suspected of breaking the law.	2.9
4.	Corruption: You do not think civil servants at the agency are offered bribes.	2.7
5.	Oversight bodies: You think oversight agencies have influence over the work of the agency.	2.7
6.	Priority areas of oversight bodies: You think oversight agencies influence the work of the agency with the aim of reducing the environmental impact of mining.	2.5
7.	Dealing with complaints: You think complaints against the agency that relate to the environmental impact of mining operations are taken seriously and dealt with accordingly.	2.5

From the quantitative analysis, public servants gave the accountability principle an average score of 3.5 points, while service users gave a relatively low score of 2.6 points.

➤ **Information about accountability laws and measures is sufficient among public servants.**

The average scores for public servants’ analysis of the accountability principle variables were relatively high. Scores were high regarding their familiarity with ethical codes (3.8), their agency’s internal accountability systems (3.8), not being aware of offers of bribes (3.6), knowledge of what to do when there are legal violations (3.6) and being influenced by the decisions of oversight agencies (3.6).

In the questionnaires, public servants mentioned the GAL, LEP, LSSI and the Law on Anti-Corruption as regulating accountability. Furthermore, the public service’s Code of Ethics and internal labor policies were mentioned as well. However, specific rules and regulations under these laws were not mentioned. Still, the survey results show that public servants know about the laws regulating their reporting and accountability duties.

In the questionnaires, ethical codes and internal reporting systems were scored positively. The results also suggested that public servants have good knowledge about relevant laws and activities for improving public service ethics. Public servants stated that ethics committees review all ethical misconduct complaints received through government contact points. Also, if public servants act irresponsibly or make wrong decisions due to negligence, their salary is cut and disciplinary action taken. The Civil Service Council’s Resolution 129, Appendix 1 (2010) contains guidelines for implementing the public service’s code of ethics and carrying out punishments for ethical violations. The examples above suggest that there is sufficient knowledge among public servants about the ethics committees required in subsection 2 of the Civil Service Council’s guidelines.

➤ **There are clear reasons why the accountability of public servants has decreased.**

Most public servants expressed their concerns regarding changes of management for political reasons, insufficient succession planning and poor internal organization and management.

The management always changes. They change based on the political climate and there is no succession planning. If officials are responsible for a large area, they have a big workload.

The salaries are insufficient and there are no bonuses.

Interviews with public servants

Employees of specialized inspection agencies mentioned issues such as some officials having a large workload because they are responsible for a large area, and the response times of central or local agencies being slow. They also mentioned that time management and legal knowledge of the workforce is lacking and there is inconsistent training. Moreover, they stated that insufficient salaries and inadequate vacations and pensions negatively affect accountability. Therefore, it is important to assess the appropriateness of the structures, organization, functions, collaboration and workloads of officials in government agencies.

From the questionnaires, it seems necessary to undertake a detailed evaluation of the adequacy of public servants' contracts. In other words, there is a necessity to determine whether the contents and scope of the contracts are sufficient to allow public servants to manage mining issues. There is also a necessity to identify whether it is possible to improve the services provided by public servants by making other amendments to their contracts. Doing this will help public servants to undertake their work legally and free from undue influences such as bribery and will allow their work to be fairly analyzed.

➤ **Service users agree that bribery exists in the mining industry.**

The average scores of service users regarding the accountability principle were relatively low. Low average scores were received for: service users' belief that agencies take complaints seriously (2.5), the priority areas of oversight bodies (2.5), their belief that oversight bodies influence the work of agencies (2.7) and that public servants are not offered bribes (2.7).

Service users believe that there is corruption in the mining industry. They noted that negative environmental impacts are often due to corruption in the mining industry.

The questionnaires highlighted a number of other issues including mining companies not undertaking rehabilitation in local regions, license issuing without the approval of Citizens' Great Khurals and too many special licenses being approved for a single person. Also, due to improper mining operations, local citizens stated that the trees in Orkhon bagh were gone and the local river was flowing red.

Public servants have sufficient knowledge about administrative laws and activities regulating accountability. However, the questionnaires suggested that there are many factors still weakening accountability. Service users stated that issues of mining-related negative environmental impacts are caused by corruption in the industry. Therefore, from the service users' analysis of this

principle, we can conclude that government agencies and regulatory laws regarding mining need to better hold mining companies accountable and ensure their transparency.

Service users have little faith in government's ability to ensure accountability i.e. sanction wrongdoing and deal with complaints.

4. GENERAL CONCLUSIONS AND RECOMMENDATIONS

The principles of legality, accessibility, the right to be heard, transparency, the right to appeal and accountability are well-reflected in the laws and regulations regarding environmental protection from mining. However, most of the principles are reflected in general laws including the GAL, LSSI, LRPCICGOO and the LEP rather than in environment-specific laws. This is because of the strength of the administrative legal system.

The principles in these general laws should be reflected in environment-sector specific laws and regulations and incorporate sector specific goals and features which will help make the environment-sector laws clearer and more effective. For instance, the LEP is a general law regulating legislation on environmental issues; it is a piece of administrative law.

The purpose of the LEP is to outline the actions that should be taken to achieve its own objectives. It does strongly emphasize rights and responsibilities, but does not contain sufficient provisions about procedures to ensure that these rights and responsibilities are executed.

Our review found that although rule of law principles 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 not enough coordination between general and sector-specific laws. Moreover, there is a lack of knowledge among public servants and citizens, negative attitudes towards laws and inappropriate public sector structures, management and responsibilities. Based on our review we made the following conclusions and recommendations on environmental regulation in the mining sector.

4.1 LEGALITY

MoET and GASI's activities, rights and responsibilities regarding environmental protection in the mining sector are clearly enshrined in the relevant laws and regulations which provides a solid base for legal decision-making and activities. However, the legal environment is unstable, and regulations and rules which are required to be established under the laws have not been. Some sections of laws conflict with other laws and regulations. To date, six of the 46 sets of regulations and instructions required in the 18 laws covered in our review have not been established. Similarly, there are eight legal provisions that need to be added to legislation and ten revisions that need to be made to make laws clearer and more detailed.

It is necessary to ensure that environmental laws are consistent with the GAL. This is because the GAL is the fundamental law that regulates both general and procedural communications between citizens and government agencies and incorporates rule of law principles into these communications. In other words, there is a necessity to review whether the guidelines on decision making in the environment-sector laws can be regulated by the GAL. If not, more detailed regulations are required.

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.

Few activities aimed at the public by government agencies, poor promotion of these activities and weak collaboration between agencies have negative impacts like weakening the effectiveness of investigations and citizens not knowing how to solve their issues.

Recommendations

- Approve regulations on collecting, packaging, temporarily storing, transporting, removing, recycling and keeping hazardous waste and granting permits to individuals and legal entities as reflected in Article 6.1.6 of the Law on Waste.
- Approve regulations on rehabilitation after the closure of mines as reflected in Article 9.4 of the LEIA and Article 10.1.4 of the LM.
- Approve regulations on wastewater fees for household wastewater discharges as reflected in Article 4.5 of the Law on Water Pollution Fees.
- Change the term “local administrations” which is used in Article 8.4.8 of the LEIA and does not make it clear to which level of administration is being referred, to make it consistent with the LATUTM.
- Determine whether it is possible to ensure that the decision making procedures and their requirements reflected in environmental mining sector laws can be made consistent with the GAL. In other words, environmental laws in the mining sector should be made consistent with the context and principles of the GAL. For instance, Articles 15–18 of the LEP outline the authority of administrative agencies. It should be determined whether this authority can be regulated by the guidelines on administrative actions, administrative agreements, internal administrative orders and administrative norms in the GAL.
- Establish mechanisms to provide regular legal training conducted by the Ministry of Justice, the heads of relevant government agencies or the working groups that worked on the laws. For example, GASI should organize training for all of its inspectors.

4.2 ACCESSIBILITY

There are differences between the ways accessibility principles are reflected in laws. For instance, there are relatively clear provisions in the GAL, LRPCICGOO and environmental laws. However, there are no particular regulations in the LITRI in terms of the rights of national minorities, foreign citizens or disabled persons regarding information in their languages.

Legal provisions are conflicting regarding the resolution of applications or complaints lodged with government agencies in languages other than the official language (Mongolian). Unclear organizational structures and job descriptions and insufficient human resources lead to red tape and therefore these are issues that require further attention.

No effective actions are taken to ensure accessibility to government agencies and administrative decisions for the general public. Thus, government agencies should organize training for relevant groups about their operations and services—such as licensing or issuing permits—in order to improve accessibility.

Recommendations

- Organize regular awareness raising training for relevant users about government agency operations and services, for example on licensing or issuing permits.
- Take systematic measures to improve community knowledge on environmental protection rights through regular information disclosure to the general public (and in particular local communities) about the agencies in charge of environmental issues. This will ensure people's timely reporting of any environmental issues to the appropriate agency.
- Create optimal communication channels to improve citizen's accessibility to legal and environmental information.

4.3 RIGHT TO BE HEARD

The legal provisions ensuring citizens' voting rights are adequate and voting rights are stipulated in the GAL and the Public Hearing Law passed in 2015.

But citizens' right to participation is merely symbolic and there is a lack of clear regulations. At the same time, people have a poor understanding about their rights regarding access to information and participation. Due to their poor legal knowledge, people are not well aware that commenting on draft laws is an important way of responding to and resolving issues. In other words, democratic concepts and participatory cultures are still developing, and this has an adverse impact on the realization of the principle of the right to be heard.

The general public is not aware of the duties and responsibilities of agencies involved in and responsible for mining related environmental protection. Although there is some progress in terms of listening to people's opinions, public servants often do not genuinely listen, or reflect them in their decision making. This diminishes citizens' willingness to participate and be actively involved in decision making.

Thus, people's rights to access information and participate in environmental decision making should be promoted by Mongolia becoming a party to the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

Recommendations

- Add provisions to the Law on Information Transparency and Right to Information, Law on the Settlement of Complaints Lodged by Citizens with Government Agencies or Public Servants and General Administration Law to clearly regulate the obligations to inform stakeholders regarding any new information or evidence discovered regarding matters that have already been resolved by a government agency.
- Become a party to the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters without delay.
- Add provisions to the Regulations on Ensuring Public Engagement in Environmental Impact Assessments related to:
 - o conducting surveys among citizens living in areas impacted by mining

- ensuring that there is a minimum percentage of bagh or khoroo citizens or householders who must be engaged with at public meetings on mining-related environmental protection issues.
- Clarify the rights and obligations of citizens specified in the LEP regarding environmental protection.
- Ensure community participation in inspections through activation of the Public Risk Management Council at GASI.

4.4 TRANSPARENCY

Although information and operational transparency of government agencies and citizens' right to information are enshrined in the legislation, the legal provisions are symbolic in nature. Aside from the GAL, the relevant laws only require agencies "to be transparent", which is a common weakness among them. They lack the procedural regulations that would actually ensure the transparency of administrative agencies.

In addition, the results of our questionnaire 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 who apply internal rules and MoET and GASI do not comply well with their responsibility to ensure information transparency.

Citizens are not provided with information on how government agencies deal with environmental impacts caused by mining.

Recommendations

- Identify who should monitor information disclosure by government agencies and how they should do it and add specific provisions to the LITRI in terms of penalties to be imposed for failing to disclose information transparently.
- Resolve the conflict between Article 11 of the LITRI and Article 9 of the LRPCICGOO regarding the form that petitions and complaints can be received in.
- Develop a database containing information about licenses provided to, and reviews of private entities by, government agencies in charge of mining and environmental issues.
- Create an integrated national database of local protected areas.
- MoET and GASI should post relevant information in an easy-to-understand or accessible form on their websites and information boards on a regular basis. This information should include laws and action plans on preventing bribery.
- Create a system where the outcomes of cooperation agreements and negotiations between government agencies are transparent and open to the community.
- Develop a database which registers the matters that are reflected in citizen and entity petitions or complaints, how they are resolved and how many of them are referred to court.
- Improve the capacity of public servants to ensure information transparency and strengthen internal monitoring in order to ensure compliance of the duties set forth in laws.

4.5 RIGHT TO APPEAL

Mongolian legislation clearly enshrines citizens' right to appeal, requirements for making petitions or complaints, and the duties and responsibilities of government agencies and public servants in respect to complaints.

Although citizens' right to appeal is protected in relevant laws, there is a need to ensure its protection by eradicating overlap between laws and implementing required regulations. At present, complaint resolution procedures in the LRPCICGOO and the GAL overlap.

If a complaint is reviewed and resolved by the agency to which it has been lodged, there are no precise legal regulations thereon. There are cases where community complaints remain unresolved between a number of government or administrative agencies because there is no specific agency to deal with the matter contained in the complaint. This issue is associated with the fact that there are no legal regulations on how to resolve the matter.

If a citizen or legal entity is not successful, even though they have lodged a complaint to a higher body or authority regarding an illegal act by an administrative agency, it is stated in law that a citizen or entity may refer the matter directly to a court. If there is not a higher level body or administrative agency in charge of resolving the complaint a claim may be lodged directly to court, however, the majority of our survey participants did not know about this right.

Recommendations

- Add provisions to the LRPCICGOO that state that if the content of complaint lodged by a citizen or legal entity is not relevant to the functions of an agency to which the complaint is addressed, the complaint must be assigned to the relevant agency and the complainant must be informed. These provisions should include what measures should be taken if a complaint is not assigned in a timely manner, who whether a complaint is assigned to a different agency and the full rights of the agency to which the complaint is assigned.
- Add provisions to the LRPCICGOO outlining how administrative agencies can resolve complaints they have received by themselves. These provisions should include information such as what kind of procedural actions should be taken and how to ensure that decisions are unbiased and independent.
- Eradicate overlap and inconsistencies between the complaint lodging procedures in the LRPCICGOO and the GAL. Currently, it is not clear which law should be applied in different cases. Align the complaint lodging procedures in the LRPCICGOO to that of the GAL.
- Organize effective training and advocacy to promote awareness about, and exercise of, citizens' right to regularly lodge complaints and petitions.

4.6 ACCOUNTABILITY

The legal environment regarding holding public servants accountable for incorrect decisions, enforcing public service ethics and ensuring responsibility is taken is sound and the laws enforced. The system of internal investigation and auditing of government agencies is also regulated by legislation. Although there are mechanisms for holding people and organizations

that have done the wrong thing accountable, it is unclear whether they will actually be held accountable and whether the mechanisms are effective.

One general shortcoming of the laws is that while the types and sizes of penalties, as well as responsibility for determining liability, are outlined in the laws, there are a lack of guidelines on which regulations to use regarding imposing the penalties and who is responsible for overseeing the imposition of them.

Our survey found that there is still a risk of corruption among government agencies.

The political environment, the rotation of public servants and managers and unstable employment at government agencies are weakening the accountability of government agencies.

Transparency, responsibility, reporting by mining companies, stakeholders and government agencies, and the laws and regulations covering environmental protection in the mining industry need to be improved.

Recommendations

- Specify which regulations regarding penalties should be used and how the implementation of those regulations can be overseen.
- Insert additional provisions into the laws and regulations that specify procedures for determining the type and size of penalties to be imposed on public servants who commit wrongdoings and the procedures for overseeing the imposition of those penalties.
- Evaluate the contracts of public servants and their performance against their contracts.

Annex 1: List of reviewed documents

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Annex 2: List of reviewed laws

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2. Law on Administrative Violations—<http://www.legalinfo.mn/law/details/280?lawid=280>
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<http://www.legalinfo.mn/law/details/11703?lawid=11703>
4. Law on Information Transparency and the Right to Information—
<http://www.legalinfo.mn/law/details/374?lawid=374>
5. Government Resolution to Undertake Actions in Accordance with the Extractive Industries Transparency Initiative—<http://www.legalinfo.mn/law/details/8791?lawid=8791>
6. Law on the Resolution of Petitions and Complaints issued by Citizens to Government Agencies and Officials—<http://www.legalinfo.mn/law/details/294?lawid=294>
7. Law on State Supervision and Inspection—<http://www.legalinfo.mn/law/details/500>
8. Law on Environmental—<http://www.legalinfo.mn/law/details/8935>
9. Law on Environmental Impact —<http://www.legalinfo.mn/law/details/8665?lawid=8665>
10. Law on Minerals—<http://www.legalinfo.mn/law/details/63?lawid=63>
11. Law on Subsoil—<http://www.legalinfo.mn/law/details/218>
12. Law on the Prohibition of Mineral Exploration and Mining Operations at Headwaters of Rivers, Protected Zones of Water Reservoirs and Forested Areas—
<http://www.legalinfo.mn/law/details/224>
13. Law on Air—<http://www.legalinfo.mn/law/details/8669>
14. Law on Law on Chemical Poisonous and Dangerous Substances—
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15. Law on Water—<http://www.legalinfo.mn/law/details/8683>
16. Law on Waste—<http://www.legalinfo.mn/law/details/8666>
17. Law on Business Licensing—<http://www.legalinfo.mn/law/details/34/>
18. Law on Public Hearing <http://www.legalinfo.mn/law/details/11225>

Annex 3: List of legal revisions and clarifications necessary

Laws	Revisions and clarifications	
LEP and the relevant package of laws on environmental protection	1.	Determine whether the requirements in these laws regarding administrative agencies' decision making procedures are consistent with the GAL. If not, then the inconsistent requirements need to be identified.
	2.	Provisions on transparency should be broadened and should include more detail than the provisions in the current laws.
	3.	The rights and responsibilities of the public regarding environmental protection should be clarified.
Law on Resolution of Petitions and Complaints issued by Citizens to Government Agencies and Officials	4.	Add some provisions stating that if the content of a complaint lodged by a citizen or legal entity is not relevant to the functions of the agency to which the complaint is addressed, the complaint must be assigned to the relevant agency and the complainant informed. These provisions should contain information on, for instance, the measures to be taken if a complaint is not assigned in timely manner, who controls if the complaint is assigned and the full rights of the agency to which the complaint is assigned.
	5.	Remove overlap and inconsistencies between this law and the GAL regarding the lodging of complaints.
	6.	Add provisions that clearly regulate the resolution of citizens' complaints (lodged with lawful justification against any administrative agency) by the administrative agency against which the complaint was lodged. These provisions should cover relevant procedures, notification to the complainant about the final decision, and ways of ensuring an independent, non-biased decision.
All of the 18 laws reviewed in this project	7.	At present there is a lack of procedural regulation in these laws. Therefore, provisions regarding accountability—in particular what regulations should be in force and who should oversee them—need to be revised and clarified.
	8.	Amend and clarify the provisions that cover penalties for public servants who do the wrong thing, including the types of penalties and procedures for oversight.
Law on Special Protected Areas	9.	Clarify what the penalties are for people who commit illegal activities and increase the severity of the penalties.
Law on Natural Resources Use Fee	10.	Add provisions related to exemptions from drinking water fees for legal entities using water for commercial purposes.

Annex 4: List of provisions that need to be added to legislation

Laws	Provisions	
Law on Resolution of Petitions and Complaints issued by Citizens to Government Agencies and Officials	1.	Add provisions regarding accepting complaints containing important issues even though they do not necessarily fulfill the complaint-making requirements.
Law on Information Transparency and the Right to Information	2.	Remove inconsistencies between the Law on Resolution of Petitions and Complaints issued by Citizens to Government Agencies and Officials and the Law on Information Transparency and the Right to Information by removing the prohibition against making complaints verbally.
	3.	Identify who will be responsible for reviewing the transparency of government agencies and how they will do it. Also, add specific provisions regarding the penalties to be imposed for lack of transparency.
Law on the Resolution of Petitions and Complaints issued by Citizens to Government Agencies and Officials	4.	Add provisions allowing foreign citizens or national minorities to have their complaints or petitions to government agencies dealt with in their own language.
Law on the Mongolian language		
Law on Information Transparency and the Right to Information	5.	Add provisions to clearly outline agencies' obligations to inform complainants when new information or evidence is discovered regarding a matter which had been resolved by a government agency.
GAL		
Law on Information Transparency and the Right to Information		
GAL	6.	Add provisions regarding information transparency and public involvement throughout the entire process—from drafting the initial decision to finalizing that decision.
Public Radio and Television Law	7.	Add provisions stating that one of the main activities of national public radio and television is to broadcast information about newly approved and existing laws and about citizens' right to be provided with information.
Regulations for Community Engagement in Environmental Impact Assessments	8.	Add provisions stating a minimum percentage of bagh or khoroo citizens or householders who must be engaged with at public meetings on mining-related environmental protection issues.

Annex 5: Questionnaire for formal mapping

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

	Principle 1: Legality	Yes-1 No-2	Specify
1	Hierarchy of laws and regulations across the mining cycle: Is there a clear hierarchy between the laws and regulations governing and coordinating environmental issues in mining?		
2	Horizontal coordination: 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	Vertical coordination: Are laws and regulations coordinated and clearly distinguished between national, regional, and local levels for each stage of the mining cycle?		
4	Coverage of laws: Do the laws and regulations include provisions on assessment, contracting, licensing, monitoring, compliance, enforcement, sanctions, etc?		
5	Updates of laws: 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.		
6	Unlawful decisions: Can unlawful administrative decisions by civil servants be withdrawn?		

7	Administrative discretion: Are there laws or other normative instruments on how civil servants decide in matters of administrative discretion?		
8	Conflict of interest: Are there laws or other normative instruments on conflict of interest?		
9	Equal treatment: 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?		
	Principle 2: Accessibility	Yes-1 No-2	Specify
10	Initiating the process: 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?		
11	Third party petitions: 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.)?		
12	Access by different groups: 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 [name of agency]?		
13	Service hours: Do laws or other normative instruments specify that [name of the agency] has to be open to the public during a certain period of time?		
14	Format of communication: Do laws or other normative instruments require proper (e.g. appropriate, clear and understandable) use of language when [name of the agency] communicates with citizens, companies and other stakeholders?		
15	Format of petitions: Do laws or other normative instruments require [name of 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?		
16	Service Fees: Are there fees and other administrative costs related to the service provision of [name of agency]?		
17	Cost of Services: Are there laws or other normative instruments stating that costs for administrative services at the [name of the agency] have to be reasonable, e.g. covering only expenses?		
18	Language of Petition: Do laws or other normative instruments allow for requests or petitions made to the [name of the agency] in a minority language? If so, please state which minority languages.		
19	Redirecting petitions: Do laws or other normative instruments require [name of the agency] to assist stakeholders ²⁹ in cases of obvious mistakes (e.g. when a request is sent to the wrong agency)?		

²⁹ Defined as persons, groups or companies who are, in their own view, affected by a mining operation.

	Principle 3: Right to be heard and to participate	Yes-1 No-2	Specify
20	Laws and regulations: 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.		
21	Definition of concerned persons: 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.		
22	Proactive communication of new information: Are there laws or other normative instruments providing a duty for the [name of agency] to inform concerned stakeholders about new facts and evidence relevant to their case?		
23	Communicating with concerned stakeholders: Are there laws or other normative instruments regulating <i>how</i> 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?		
24	Verbal communication: Are there established procedures allowing stakeholders to communicate orally with the [name of the agency] about environmental issues at any stage of the mining cycle?		
25	Public Hearings: 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 that are involved in the hearing.		
26	Participation of concerned stakeholders: Are there laws or other normative instruments regulating how the [name of the agency] should ensure the participation of stakeholders?		
27	Minority languages: Are there laws or other normative instruments ensuring that consultations/hearings led by the [name of the agency] can be done in minority languages? If so, please list which languages.		
28	Timelines for decisions: Are there laws or other normative instruments stipulating maximum timelines for when the [name of the agency] must take a decision about an environmental issue that has been raised in relation to mining?		
29	Burden of proof/evidence: 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 [name of the agency] and can cause environmental impact related to mining?		
30	Recording of procedures: Are there laws or other normative instruments to guide the recording of administrative procedures of the [name of the agency]?		

	Principle 4: Transparency and Access to Information	Yes-1 No-2	Specify
31	Open access to legal framework: 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 ³⁰ ? Please list key legal instruments ensuring access to information on the legal framework.		
32	Access to environmental information: Are there laws or other instruments ensuring the access to environmental information? Please list these legal instruments.		
33	Existence of laws: Are there laws or other instruments that ensure access to information concerning laws, standards and procedures governing the work of the [name of the agency]? Please list these legal instruments.		
34	Housing of information on environmental impact: Do laws or other instruments specify which public agencies shall hold information related to environmental impact of the mining sector? Please list the agency/ies.		
35	Proactive v. reactive information provision: Do laws or other instruments require public agencies to proactively make this information available, or upon request?		
36	Proactive v. reactive information provision by the private sector: Do laws or other instruments require private companies to proactively make information on environmental impact of their operations available to the [name of the agency], or only upon request?		
37	Format of request for information: 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 can be submitted in.		
38	Format of provided information: 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 minority language if needed)		
39	Cost of information: Are there any fees or other costs involved in gaining access to the above information?		
40	Confidentiality of information: Are there laws or other normative instruments concerning restrictions on access to information that concerns the privacy and integrity of persons?		
41	Recording and archiving: Are there laws or other normative instruments requiring the [name of 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.		

³⁰ Such as mining negotiations, contracting and license; environmental impact assessment; environmental management plan—including water recycling, land rehabilitation, relocation and compensation, biodiversity offset; mine closure, monitoring, compliance, enforcement, and sanctions

Principle 5: Right to appeal (Such as appeal by citizens of approval of EIA or issuance of a mining license; appeal by affected citizens of denial of compensation; appeal by companies of denial of a license or sanctions considered unfounded)		Yes-1 No-2	Specify
42	Appealing a decision: Are there laws or other normative instruments defining who has the right to appeal a decision by the [name of the agency]? If yes, please list both the legal instruments and the stakeholders who have the right to appeal.		
43	Formulating decisions: Are there laws or other normative instruments on how the [name of the agency] should formulate its decisions (e.g. precise, adequate and understandable)?		
44	Notification of decisions: Are there laws or other normative instruments on when the [name of the agency] has to notify its decision to a concerned stakeholder (e.g. without undue delay)?		
45	Duty to inform: Are there laws or other normative instruments providing a duty for the [name of the agency] to inform concerned stakeholder about new facts added to their case?		
46	First instance of appeals: Are appeals of the agency's decisions first reviewed by the [name of the agency] itself?		
47	Appeals court: Is there a separate system of courts or tribunals dealing with appeals of the [name of the agency] decisions?		
48	Administrative appeals: Are administrative appeals procedures at the [name of the agency] conducted in written form?		
49	Oral hearing: Are there laws or other normative instruments allowing for a stakeholder to request an oral hearing when appealing a decision by the [name of the agency]?		
50	Representation in appeal: Are there laws or other normative instruments allowing a stakeholder to be represented by counsel if he or she wishes in the appeals procedure?		
51	Costs of appeal: Are there any fees or other costs required of the stakeholder appealing the [name of the agency]'s decision?		
Principle 6: Accountability		Yes-1 No-2	Specify
52	Ethical code: Are there ethical codes, charters or similar instruments guiding the work of civil servants at the [name of the agency]?		
53	Internal evaluation: Are there rules and regulations requiring <i>internal</i> evaluation and review (performance, audit, etc.) of the [name of the agency] applicable to each stage of the mining cycle?		
54	Evaluation by independent body: Are there laws or other normative instruments on evaluation and review (performance, audit, etc.) of the [name of the agency] by an independent body applicable to each stage of the mining cycle?		
55	Liability for wrongful decisions: Are there laws or other normative instruments on the liability of the [name of the agency] or individuals for wrongful decisions leading to negative environmental impact from mining operations? If yes, please list these legal instruments.		

56	Oversight bodies: Is there a national human rights institution, ombudsman, anti-corruption or similar body to which stakeholders may submit complaints on violations of rights or discriminatory performance of the [name of the agency] which may cause negative environmental impact? If yes, please list these oversight bodies.		
57	Corruption: 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 [name of the agency]? If yes, please list the most relevant laws and other instruments.		

Annex 6: Questionnaire for public servants

Researcher's information

		Name	Date
1.	Location		
2.	Researcher		
3.	Content checking		

1. Age of respondent:	
a. ____ years	b. Declined to answer

2. Gender	
a. Female	b. Male

3. Education:	
1. Secondary school 2. TVET 3. Tertiary /Bachelor degree/ 4. Tertiary /Master degree or above/	

4. Name of the organization	
a. Organization
b. Location

5. Position:	
a. Permanent	b. Contract (short term)

6. Years at the agency:	
..... yearsmonths	

7. Additional background variables	
Phone number: 	

Principle 1: Legality Please indicate to what extend: 1-Not at all 2-Small extend 3-Large extend 4-Very large extend 5-Don't know	Answer (please specify the answer)
1. Powers, mandates and responsibilities: You find that the rules defining the powers and mandate of the [name of the agency] and your responsibilities are understandable.	
2. Insufficient guidance on law: There are no cases where the law is unable to provide guidance during decision making processes.	
3. Powers and mandates of other agencies: You find that the rules defining the powers and mandate of other agencies (working on or in areas linked to environmental impact of the mining sector) at the central and local levels are understandable.	
4. Overlapping powers and mandates: The powers and mandates of these other agencies and your agency are complementary to each other and do not overlap.	
5. Horizontal coordination: You find that there are clear rules establishing coordination between agencies (horizontal) working in areas linked to environmental impact of the mining sector.	
6. Vertical coordination: You find that there are clear rules establishing coordination between central and local level of government (vertical) in areas linked to environmental impact of the mining sector.	
7. Gaps and inconsistencies: You encounter situations where the law provides insufficient or conflicting guidance on how to make administrative decisions that can potentially have an environmental impact.	
8. Updates of laws: You have easy access to the latest laws, regulations and instructions in your area of work which are significant for regulating environmental impact of the mining sector.	
9. Training on laws: You receive training on the new legislative instruments in your area of work that are significant for mitigating environmental impact of the mining sector.	
10. Conflict of interest: You have instructions on how to deal with situations where there is a conflict of interest that can lead to negative environmental impact.	
11. Equal treatment: 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 [name of the agency].	
12. Additional respondent comments on legality: 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 environmental impact of the mining sector.	
Principle 2: Accessibility	Answer (Please specify the answer)

13. Time limit for responding to queries: There are clear targets for maximum time to respond to stakeholder queries that relate to potential environmental impact of the mining sector. If yes, please list the maximum time.	
14. Time available for service: 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.	
15. Language of service: It is possible to handle queries in other languages than the official (for example, in a minority language). If yes, please list the languages.	
16. Redirecting petitions: You have instructions on how to assist stakeholders in cases of obvious mistakes (for example, queries sent to the wrong agency).	
17. Cost of service: You have clear instructions on the charges, if any, for services provided by the [name of the agency].	
18. Equal treatment: Stakeholders have equal access to information and services provided by the [name of the agency] regardless of sex/ethnicity/ religion/ tribe or family affiliation/political affiliation or other social status.	
19. Additional respondent comments on accessibility:	
Principle 3: Right to be heard and participate	Answer (Please specify the answer)
20. Awareness of the right to be heard: 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.	
21. Awareness of the right to participate: 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.	
22. Hearing stakeholders: You have established procedures for hearing a stakeholder before taking a decision that has an environmental impact on that stakeholder's geographic area.	
23. Stakeholder participation: You have established procedures to ensure the participation of stakeholders, as established by the laws and other normative instruments.	
24. Distilling complex environmental and mining issues: You have procedures for ensuring that complex issues related to the environmental impact of mining are communicated to stakeholders in a manner that makes it more likely they can participate.	
25. Taking stakeholder considerations into account: 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.	

26. Stakeholder communication: You have established procedures for communicating with a concerned person, group or company.	
27. Verbal communication: You have established procedures for hearing stakeholders orally or through interviews before taking a decision.	
28. Sourcing external expertise: There are established procedures for using outside expertise to assess potential environmental impact before taking a decision.	
29. Timelines for decisions: You have clear instructions on time limits for when decisions that affect, positively or negatively, the environmental impact of mining must be taken.	
30. Timelines for decisions: You encounter situations where it is difficult to follow time limits on when decisions related to the environmental impact of mining must be taken.	
31. Additional respondent comments on the right to be heard and participate:	
Principle 4: Transparency	Answer (Please specify the answer)
32. 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.	
33. 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 [name of the agency].	
34. 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.	
35. 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 ³¹ .	
36. 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 channeling such information to the public.	
37. Integrity and confidentiality: You have instructions and established practices on how to handle integrity and privacy of information.	

³¹ 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; mine closure, monitoring, compliance, enforcement, and sanctions

38. Recording and archiving: You have established procedures for recording and archiving data.	
39. Additional respondent comments on transparency:	
Principle 5: Right to Appeal	Answer (Please specify the answer)
40. Formulating decisions: You have clear instructions on what an administrative decision that relates to environmental impact of mining shall include (for example, reasoning, indication of remedies and more).	
41. Communicating decisions: You have clear instructions on how a stakeholder should be informed about a decision.	
42. Appealing a decision: You have instructions on how to advise a stakeholder who wants to appeal against a decision by your agency.	
43. Additional respondent comments on the right to appeal:	
Principle 6: Accountability	Answer (Please specify the answer)
44. Ethical codes: You are familiar with the ethical code(s) of the [name of the agency].	
45. Oversight bodies: Your work is influenced by decisions and instructions from oversight agencies.	
46. Internal accountability system: Your agency has an established mechanism for holding staff accountable for their decisions.	
47. Accountability for environmental impact: When assessing accountability for grievances and damages, the accountability mechanisms in your agency consider <i>environmental</i> damage (current or potential).	
48. Violation of law: You have clear instructions on what to do when you suspect that someone within the [name of the agency] has violated the law, causing potential negative social or environmental impact while performing his/her official functions.	
49. Corruption: You have knowledge of situations when someone in your agency was offered a bribe related to the environmental impact of a mining operation.	
50. Corruption: You think a civil servant at the [name of the agency] could accept a bribe without being detected and punished.	
51. Other practices reducing accountability: You have knowledge of practices by civil servants at the [name of the agency] which reduces the level of accountability? If yes, please list the different practices.	

52. Dealing with complaints: You have instructions for how to deal with complaints against [name of the agency] or its staff.	
53. Additional respondent comments on accountability:	

Annex 7: Questionnaire for service users

Researcher's information

		Name	Date
1.	Location		
2.	Researcher		
3.	Content checking		

1. Respondent group

1. Mining companies
2. Environmental impact assessment companies
3. NGOs for environmental protection
4. Cooperation for environmental protection
5. Community members
6. Herders
7. People with disabilities
8. Poor and marginalized
9. Local governors (Citizens' representative khurals, soum/bag governors)

2. Age of respondent:

- a. ____ years
- b. Declined to answer

3. Gender

- | | |
|-----------|---------|
| a. Female | b. Male |
|-----------|---------|

4. Education:

- | | | | |
|-------------------|---------------------|---------|-------------------------------|
| 1. Primary school | 2. Secondary school | 3. TVET | 4. Tertiary /Bachelor degree/ |
|-------------------|---------------------|---------|-------------------------------|

5. Name of the organization

- | | |
|-----------------|-------|
| a. Organization | |
| b. Location | |

6. Have you been in contact with [name of agency]?

- | | |
|--------|-------|
| a. Yes | b. No |
|--------|-------|

7. [If yes on question 6] when was the last time you were in contact with [name of agency]?

..... yearsmonths ago

8. [If yes on question 6] what was the reason to contact with [name of agency]?

Please specify.

1.
2.

9. Additional information

Phone number:

Principle 1: Legality Please indicate to what extend: 1-Not at all 2-Small extend 3-Large extend 4-Very large extend 5- Don't know	Answer (please specify the answer)
1. Specification of the agency: You think it is clear which public agencies are responsible for dealing with environmental impact related to the mining sector.	
2. Scope of powers: You think that it is clear what the [name of the agency] can do and are allowed to do in relation to mining operations.	
3. Role in minimizing environmental impact: You think the [name of the agency] has a responsibility for minimizing environmental impact of the mining sector.	
4. Abiding by the law: You think [name of the agency] staff generally follow the law when performing their functions.	
5. Professionalism of the agency: You think [name of the agency] staff are professional in providing services and understand their duties according to the law.	
6. Equal treatment: You think that [name of the agency] staff treat persons or groups differently depending on gender, age, ethnic, tribal or political affiliation.	
7. Additional respondent comments on legality:	
Principle 2: Accessibility	Answer (please specify the answer)
8. Agency structure: You think it is easy to access the services of [name of the agency].	
9. Navigating the administrative set-up: You think it is easy to understand which unit(s) in the [name of the agency] has responsibility for addressing the environmental impact of mining.	
10. Openness: You think [name of the agency and relevant unit within the agency] is accessible in terms of visiting and communication.	
11. Language of communication: You think it is possible to communicate with [name of the agency] in other languages than the official one.	
12. Cost of service: You think that the cost of [name of the agency] services are affordable.	
13. Equal access to services: You think that different groups of citizens have equal access to the services provided by [name of the agency], regardless of their sex/age/ethnicity/religion/ tribe or family affiliation/political affiliation or other social status.	
14. Additional respondent comments on accessibility:	

Principle 3: Right to be heard and participate	Answer (please specify the answer)
15. Awareness of Right to be Heard: You are familiar with your right to be heard in matters concerning environmental impact of mining operations.	
16. Awareness of Right to Participate: You are familiar with your right to participate in matters concerning environmental impact of mining operations.	
17. How to exercise the Right to be heard: You are familiar with the procedures for exercising your right to be heard.	
18. How to exercise the Right to Participate: You are familiar with the procedures for exercising your right to participate.	
19. Proactive inclusion in decision-making: You think the [name of the agency] will proactively inform you of your right to be heard and participate in decision-making process on mining operations with a potential environmental impact if you are not aware of your rights.	
20. Hearing concerned persons: You think [name of the agency] listens to your views and arguments before they take a decision that has an environmental impact which can affect you.	
21. Definition of concerned persons: You think that you are affected by the environmental impact of mining, but you are not considered as a concerned person or group by [name of the agency].	
22. Redirecting petitions: You think [name of the agency] would assist you in cases of obvious mistakes, such as if you send an inquiry to the wrong agency.	
23. Timelines for decisions: You think that there are time limits for when [name of the agency] must take decisions in cases related to environmental impact of the mining sector.	
24. Timelines for decisions: You think that [name of the agency] follows time limits when taking decisions affecting cases that raise concerns over environmental impact.	
25. Equal treatment: You think that [name of 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.	
26. Additional respondent comments on the right to be heard and participate:	
Principle 4: Transparency	Answer (please specify the answer)

27. Access to information: You can get information on the laws, standards and procedures that guide the work of [name of the agency] in relation to environmental impact of mining activities.	
28. Proactive v. reactive provision of information: You can get this information only upon request (as opposed to the information being readily available and proactively shared with stakeholders, including local communities).	
29. Access to information on specific cases on mining environmental issues: You think you can get information on specific cases related to environmental impact of mining ³² .	
30. Specification of public agency: It is clear to you which public agency houses information on cases addressing environmental concerns related to mining.	
31. Ability to get information: You think you can get information from [name of the agency] on any specific case related to environmental impact of mining which concerns you.	
32. Privacy and integrity: You think [name of the agency] will give out sensitive or private information.	
33. Equal treatment: You think that you get equal access to information from [name of the agency] regardless of your sex/age/ethnicity/religion/ tribe or family affiliation/political affiliation or other social status.	
34. Additional respondent comments on transparency:	
Principle 5: Right to appeal	Answer (please specify the answer)
35. Formulating decisions: You think [name of the agency] must explain the reasons behind their decisions in cases that are related to environmental impact of the mining sector.	
36. Feedback: You think [name of the agency] will inform you if and when they have taken a decision that with a potential environmental impact that concerns you.	
37. Appealing a decision: You think you can appeal decisions by [name of the agency] if they have a negative environmental impact that will affect you.	
38. Proactive awareness-raising of the right to appeal: You think [name of the agency] would advise you on how to appeal a mining-related decision that they have taken and which could lead to negative environmental impact.	

³² 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; mine closure, monitoring, compliance, enforcement, and sanctions.

39. Counsel: You think there are other public agencies who would advise you on how to appeal a decision by [name of the agency] if there is a risk that the decision will have negative impact on the environment.	
40. Fair review of appeal: You think [name of the agency] would review their own decisions related to the environmental impact of mining in a fair and objective way.	
41. Cost of appeal: You think that you can appeal [the name of the agency]'s decision at a reasonable cost.	
42. Additional respondent comments on the right to appeal:	
Principle 6: Accountability	Answer (please specify the answer)
43. Sector-wide practices: You think there are corrupt practices ³³ in the mining sector in general which lead to negative effects on the environment.	
44. Corruption: You think civil servants at [name of the agency] are offered bribes.	
45. Impunity: You think a civil servant at [name of the agency] could accept a bribe without being detected and punished.	
46. Oversight bodies: You think oversight agencies (e.g. Ombudsman, National Human Rights Institutions, etc.) have influence over the work of [name of the agency].	
47. Priority areas of oversight bodies: You think oversight agencies (e.g. Ombudsman, National Human Rights Institutions, etc.) influence the work of [name of the agency] with the aim of reducing the environmental impact of mining.	
48. Violation of law: You think civil servants at [name of the agency] know how to deal with situations where another civil servant is suspected of breaking the law.	
49. Dealing with complaints: You think complaints against [name of the agency] that relate to environmental impact of mining operations are taken seriously and dealt with accordingly.	
50. Additional respondent comments on accountability:	

³³ Including but not Such as is appropriation of funds or other forms of corruption.