Step 02

Participatory Planning For Extractives from Exploration to Closure

In this second step, relevant departments and levels of government and affected populations should come together to plan where mining should and should not be carried out in the country. Integrated land use planning is a political and administrative process to guide the orderly and sustainable use of land that avoids decision-making in isolation by considering different present and future uses of land together and addressing trade-offs explicitly and early.[139] By making this a participatory that includes the wide range of stakeholders using or potentially using the land – women farmers, local communities, local businesses, environmental groups – governments are not only giving people a voice in determining the kind of social and natural environment they want to see develop, but are also providing for a potentially deeper and longer-lasting legitimacy to dealing with a challenge often at the heart of conflicts around mining operations.

Primary Target Audience

- → Land Use Authorities (at different levels of government – national, regional, local)
- → Mining Authorities
- → Environmental Authorities

Additional Targets

- → Social Authorities
- → Human Rights Authorities
- → Local Government

Summary of Step 2: Planning

KEY ACTIONS IN THIS STEP	KEY MESSAGES
A **Use Participatory & Integrating Land Use Planning Approaches to Help Identify Appropriate Areas for Mining**	Integrated and participatory land use planning seeks to balance out the different uses of land from the earliest stages of planning mining developments, including after mine closure, so that land is used sustainably. By being explicit about the need to manage competing interests, and explicitly including ESHR issues as relevant considerations, governments, together with stakeholders, can start to address relevant trade-offs openly and early and build in appropriate design considerations from the start of mine planning.

139 J. Southalan, Mining Law and Policy – International Perspectives, p. 73 (2011).

B Integrate Indigenous Peoples' Rights When Planning Mining in Indigenous Peoples' Territories

As a result of mining operations in many areas of the world, indigenous peoples (IPs) have experienced widespread negative impacts, including environmental degradation and limitations of their social and cultural life and of their possibilities for economic survival. Protecting and respecting IP rights starts from the land use planning stage in considering IPs' rights to land and natural resources that engages IP communities in a process of meaningful, free, prior and informed consent (FPIC) that lays the groundwork for more sustainable relationships with the government and eventually any mining companies.[140]

C Integrate Women's Rights When Planning Land Use

Women may be more adversely affected by land use changes and may have fewer options to defend their often weak or non-existent land tenure or access rights. An inclusive land use planning process first consults with women about their views on potential land use planning changes and considers the differentiated control, access and use of land by women and the potential differentiated impacts on women.

D Use Strategic Assessment Tools to Understand the Bigger Picture

A Strategic Environmental Assessment (SEA) or Strategic Environmental and Social Assessment (SESA) is a tool to assess the potential ESHR impacts of potential programmes and plans (such as plans to develop or reform the mining sector) already at the planning stage. Given the often extensive and well-documented ESHR impacts of mining and the conflicts this can create with local communities, a SESA for the mining sector, if done well, provides early opportunities to understand stakeholders' concerns and to respond to them in planning and permitting subsequent mining operations, paving the way for more sustainable solutions from the design stage.

E Address Misalignments between Sectoral and Territorial Planning

Where sectoral mine planning and licensing do not involve coordination with the territorial/regional development plans and regional/local authorities where mining will take place, a clash of objectives for territorial/regional land use can arise. Governments should establish mechanisms to ensure vertical coherence in overall land use planning for mining between central – regional and local governments.

F Include Planning for Closure as Part of the Land Use Planning Process

Land use planning should already consider whether the long-term land uses of the surrounding areas are capable of replacing the mine's contributions once the planned mine is closed. This is the first step in planning for mine closure from the beginning of the mining cycle.

140 UN General Assembly, "Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya", Summary of activities: Progress report on study on extractive industries, A/HRC/21/47 (6 July 2012)

A Use Participatory & Integrating Land Use Planning to Help Identify Appropriate Areas for Mining

Land use planning is a vital tool for managing competing interests and mitigating conflict over scarce natural resources and, therefore, economic, socio-cultural, environmental and institutional considerations should be included in the analysis. This means excluding mining from environmental or socially sensitive areas and areas important for other uses, such as long-term food security, but also reserving mineral-rich areas and allocating other economic activities to non-mineral-rich territories. Regional and local government should be involved in land use planning for mining to participate in balancing competing land uses and environmental and social concerns in the region under their jurisdiction and planning infrastructure and economic linkages.

Integrated Planning

Have the land use planning authorities coordinated with the mining authorities to help assess the balance of the economic opportunities of mineral development with environmental and social considerations and competing use of natural resources in national and regional planning processes?[141]

- Do the authorities have the following in place for integrated land use planning?
  - → An accurate picture of current land use, ownership and rights, including formal legal title and rights to use, and customary ownership and use
  - → Updated geological information to feed into the land use planning process
  - → Projections on future potential and expected land use, considering future changes in demography, climate and other factors that affect the relative competition among users for the resource
    - → For example, an area may currently appear suitable for mining, given the area's current socio-environmental context, but future climate changes with a negative effect on ground water supplies may change that, especially in a context of rapid population growth.
  - → A good understanding of other competing uses for land and water and the impacts that mining can have on them, particular direct and indirect impacts on agriculture, which is often a major source of livelihoods in many countries
- Do they have policies and procedures for reconciling conflicting objectives on land use and conflict proposed uses?
  - → See Box 29 on competing uses for land and water and Box 30 for an example from Portugal.
- While ideally land use planning should cover the entire country, it may be necessary to start with priority areas and build expertise, data systems (such as for land and mining cadastres) and institutional cooperation over time.
  - → The increasing availability of web-based GIS tools may make the mechanics of developing more comprehensive databases easier and cheaper while recognizing that addressing the political economy of vested interests who want to maintain the status quo of opaque information on the distribution of land and mineral resources will often be far harder than technical fixes to promote transparency.

141 See for example https://www.min-guide.eu/project-results

Excluded Areas for Mining

Do the land use planning authorities have a clear idea of what areas should be excluded from mining consideration?

- Have the land use authorities developed criteria or a process to ensure that mining is not sited in the heart of a designated conservation or other legally protected areas and close to residential or food-producing areas or areas with high biodiversity values or providing ecosystem services or that are important for livelihoods?
- **Excluded areas**: Have the authorities mapped out what areas of the country should be off-limits to mining? This would include:
  - → An environmentally protected area under the government's international commitments (such as an IUCN Protected Area)[142] or under national law
  - → A culturally protected area under international or national law (such a designated UNESCO World Heritage Site)[143]
- **Sensitive areas**: Have the authorities mapped out sensitive areas of the country where industrial projects such as mining should be limited or require more detailed engagement and assessment? This would include areas that:
  - → Provide important ecosystem services, such as major water reservoir or river heads
    - → For the mining sector, early and explicit consideration of potential impacts on biodiversity and ecosystem services, including water, in particular, in the land use planning process can help eliminate cumulative conflicts that could span the whole mining cycle.
  - → Host indigenous populations (see Key Action 2 below)
  - → Host particularly vulnerable local communities who rely on the land and water resources for their livelihoods
  - → Are a significant source of the region or country's food security
  - → Are residential/urban areas, at risk of mining-induced resettlement

Cumulative Impacts

Does the integrated land use planning process consider cumulative impacts of a series of mining operations (or other industrial activities) in a particular region or subregion?

- Contemporary EIA laws often require consideration of cumulative impacts – does the country's EIA law cover these?
  - → **Cumulative impacts**: Cumulative impacts are the successive, incremental and combined environmental and social impacts (including those on human rights) from multiple projects or multiple activities located in the same region or affecting the same resource (e.g., a watershed or an air shed).[144] They can be greater than the sum of each individual project's impact.
- Issues to consider:
  - → Managing cumulative impacts across a series of mining operations is challenging. Recognizing the possibility of such impacts and addressing them as part of the planning process is a good start. (See Box 31 for a brief explanation of cumulative impacts in the mining sector.)
  - → There can be environmental, social and human rights cumulative impacts.[145] For example, the compounding effects of multiple mine closures create a 'reverse' cumulative impact caused by the cessation of activities. (See Step 7 on Closure and Step 8 on Post-closure.)

142 IUCN, "Protected Areas Categories", https://www.iucn.org/theme/protected-areas/about/protected-areas-categories

143 World heritage Convention, http://whc.unesco.org/en/list

144 D. Franks, D. Brereton and D. Moran, "Cumulative Social Impacts," in Vanclay and Esteves (eds.), New Directions in Social Impact Assessment: Conceptual and Methodological Advances, (2011). They are sometimes also referred to as 'collective impacts'. See also, D. Franks, D. Brereton, C. Moran, T. Sarker, and T. Cohen, "Cumulative Impacts - A Good Practice Guide for the Australian Coal Mining Industry." (2010) Centre for Social Responsibility in Mining & Centre for Water in the Minerals Industry, Sustainable Minerals Institute, The University of Queensland. Australian Coal Association Research Program.

145 For an example of this analysis in the oil & gas sector, see, MCRB, "Sector Wide Impact Assessment of the Oil & Gas Sector in Myanmar," (2014), chapter on cumulative impacts, http://www.myanmar-responsiblebusiness.org/pdf/SWIA/Oil-Gas/15-Cumulative-Level-Impacts.pdf

Shared Infrastructure

Does the integrated land use planning process consider opportunities for developing shared use of infrastructure needed for mining?

- Does the integrated land use planning consider the opportunities to develop shared infrastructure when considering potential areas for mining? Does it also consider the wider ESHR impacts of the infrastructure?
  - → Traditionally, mining companies have adopted an 'enclave approach' to infrastructure development,[146] creating basic infrastructure to ensure that they have the power and transportation services needed to serve their operations. But this misses the opportunity to leverage extractive industry-related investment to fill broader infrastructure gaps through the use of shared infrastructure.
  - → Better integration between mines' investment plans and governments' infrastructure plans to enable shared use of mining-related infrastructure, including rail, ports, power, water, internet and telecommunications, is also a way to turn natural resources into long-term assets that will support sustainable and inclusive growth.[147]

Participatory Land Use Planning

Has the government opened the land use planning process to public participation?

- Is there a process in place to involve stakeholders and regional governments in the land use planning process?
  - → To ensure that the consultation is participatory, authorities should seek to include a wide range of stakeholders impacted by potential changes in land use – including women (for example, women farmers), youth, indigenous communities and vulnerable community members, such as the disabled and their representatives.
  - → Recognizing that local communities are not always the best advocates for protection of environmental values, as they may be more interested in job opportunities from potential mining projects, it is important to encourage participation from a wide range of groups and interests early in the process so that competing views and interests are brought out into the open early and can be discussed and addressed as part of the planning process.
- Are consultation processes accompanied by relevant information?
  - → There should be full and balanced information about potential positive and negative impacts that can help set realistic expectations for local communities, in particular about the kinds of benefits they may receive (jobs, budget allocations, community investment, infrastructure, etc.) and the kind of negative impacts (on the environment, on health, on social capital, etc.) that may occur. Providing one-sided information that addresses only the benefits risks creating longer-term conflict as the more permanent impacts of mining in local communities unfold. A realistic aim for land use planning should be for acceptable coexistence.
  - → As planning discussions can become quite technical, using a range of mediums, including through maps and visual aids, can highlight potential future changes in a way that makes sense to stakeholders.
- **The IGF Mining Policy Framework** (see Boxes 4 and 9 for more explanation on the IGF Mining Policy Framework) recommends:
  - → Ongoing generation of baseline geological, topographical and other information for national land use planning
  - → Making that information available to individuals, communities and other civil society actors with equal access to ensure that consultations between different parties can take place on an equal footing.[148]

146 See CCSI, Leveraging Mining-Related Infrastructure Investments for Development, http://ccsi.columbia.edu/work/projects/leveraging-infrastructure-investments-for-development/

147 Nicolas Maennling et al., "A Framework to Approach Shared Use of Mining-Related Infrastructure," (March 2014), http://ccsi.columbia.edu/files/2014/05/Case-Study_Mozambique-March-2014.pdf

148 IGF, Mining Policy Framework, Legal and Policy Framework chapter, p. 7, http://igfmining.org/mining-policy-framework/

Box 29

Considering Competing Uses for Water – Mining & Agriculture

Mining not only directly displaces agriculture from land, but it can also indirectly affect agriculture that remains in the surrounding areas as a result of mining's impact on water. The water dependency of agriculture makes it among the sectors that may be most severely affected by mining. Among the effects of mining on water for agriculture are:

- Reduced quantity for irrigation and to enhance soil moisture
- Negative effects on water volume (e.g., through sinking ground water levels)
- Negative effects on water quality (e.g., directly by contamination of water or indirectly though sinking ground water levels such that lower levels cause the inflow of substances, such as salt, that harm drinking water)
- Spatial distribution of the water (e.g., when dams or other direct regulation of the water flow changes waterways or, indirectly, by other changes in land use, such as deforestation, that may diminish the availability of water)
- Changes in water flow across the year, accidental flows such as those due to errors or accidents in the water regulatory activities (e.g., dam breaks or above-normal release of water from dams, e.g., due to heavy precipitation)

Box 30

An Example Of Integrated Mining & Land Use Planning in Portugal

The Portuguese Mining Authority's land use planning policy and related laws apply the principle of parity and co-existence of mineral resources next to other natural resource uses (i.e., mining land uses compared to other land use types, such as forestry or agriculture).[149] The Mining Authority participates in the land use planning management system at three levels (national, regional and municipal) and ensures that plans properly cover mining and quarrying activities as well as other potential uses.

Box 31

Cumulative Impacts in the Mining Sector

Each project (i.e., different projects or different phases of the same project) adds incremental impacts to other existing, planned or reasonably predictable future projects and developments, leading to an accumulation of impacts. Environmental and social impacts from one project alone are not always significant. Instead:

- The building up of smaller impacts over time, or within the same physical footprint, has a cumulative effect. Sometimes, a series of smaller events can trigger a much bigger environmental or social response if a tipping point is reached, changing the situation abruptly (for example, where there is a rapid influx of people seeking jobs at, or in the vicinity of, newly established projects (the 'boomtown effect').
- They can also be triggered by poorly designed policies that prompt companies to make the same mistakes over and over again.[150]

More recent approaches to managing cumulative impacts rely on the ongoing management of impacts from a cumulative perspective over the whole life cycle of projects.[151]

149 http://www.dgeg.pt. For a further summary, see: A. Endl, E. Thomas Mulholland & G. Berger, "Minerals policy governance in Europe: good practice examples in EU Member States," (December 2016), http://www.min-guide.eu/sites/default/files/project_result/MIN-GUIDE_D2 2 policy governance frameworks_final.pdf

150 IFC, "Good Practice Handbook on Good Practice Handbook, Cumulative Impact Assessment and Management: Guidance for the Private Sector in Emerging Markets," (2013), http://www.ifc.org/wps/wcm/connect/3aebf50041c11f8383ba8700caa2aa08/IFC_GoodPracticeHandbook_CumulativeImpactAssessment.pdf?MOD=AJPERES

151 D. Franks, D. Brereton and D. Moran, "Cumulative Social Impacts," in Vanclay and Esteves (eds.), New Directions in Social Impact Assessment: Conceptual and Methodological Advances, (2011), pp. 640-647. They are sometimes also referred to as 'collective impacts'.

Box 32

Considering Competing Uses for Water – Mining & Agriculture

Effective planning tools that use geospatial technology (GIS) and community engagement can assist in the design of infrastructure corridors that are sensitive to environmental and social factors; they also enable the active participation of impacted communities. Case studies of the East Kutai and South Konaw regions in Indonesia conducted by the Centre for Social Responsibility in Mining at the University of Queensland and the Bandung institute of Technology in 2015 used a framework for community engagement in mineral infrastructure planning. Local communities were asked:

- To identify current and future infrastructure needs
- To select appropriate social and environmental factors for the planning process, via surveys and focus groups
- To collect data through participatory mapping exercise
- To develop and debate scenarios for infrastructure corridor development

Data selected by the community respondents for GIS mapping identified: population settlements, community agriculture, plantation crops (e.g., cocoa), water bodies, protected areas, mining concessions and existing sea ports, roads and airports.

B Integrate Indigenous Peoples' Rights When Planning Mining in Indigenous Peoples' Territories

The ILO Convention 169[152] and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)[153] reaffirm IPs' rights to self-governance, ownership and control of their lands, territories and natural resources; to cultural integrity; to their own models of development; and to free prior and informed consent (FPIC). For governments with IP populations that are planning mining operations, protecting IPs' rights in the context of natural resource extraction and the sustainable use of natural resources starts at this planning stage.

A continuous, open and meaningful engagement of governments and IP communities constitutes the *sine qua non* for FPIC to fulfil its purpose of enabling IPs to set their own priorities and strategies for development. While FPIC is a concept in international law associated with the protection of IP rights, there recently has been a growing movement to apply FPIC to a wider set of marginalized and vulnerable local communities who are also land-dependent, such as small-scale farmers.[154]

152 http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312314

153 http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

154 See, for example, http://beta.fpic.info/en/and Oxfam Community Consent Index https://www.oxfam.org/en/research/community-consent-index-2015

Recognizing IPs & Their Territories

Does the government recognize any IPs within its borders? Does the government have policy or laws on the protection of IPs?

- Does the government recognize that it has IPs in its territories? Does it have specific criteria that must be met before groups are recognized as IPs under national law and entitled to specific rights or can IPs self-identify?
  - → Self-identification as IPs is the starting basis for identifying IPs according to international law.
- Does it have policies or laws on IPs? Has the government recognized and demarcated IP lands, resources and territories that are traditionally owned or under customary use even where IPs may not possess legal title to these lands as defined by national law?
  - → A broader framework of IP rights starts with the recognition of IPs, their rights to determine their own development path within the state's broader framework of development and a demarcation of their territories. There is also a wider set of safeguards, including recognition of IP rights to provide free, prior and informed consent (FPIC), the use of impact assessments, prevention and mitigation measures, benefit-sharing and compensation schemes that should accompany any mining in indigenous areas. (See Box 33 for a further explanation of FPIC.)
    - → In order to respect and promote their own models of development, wherever possible, priority should be given to indigenous-owned enterprises.[155] Some governments specifically designate indigenous mining zones where only indigenous communities may mine.

Engaging with IP – Putting FPIC into Practice

Does the government engage with IPs to obtain their free, prior and informed consent (FPIC) before designating any areas for potential mining activities?

- Does the government actively reach out to IP communities when planning land use changes that may affect IP lands – such as designating mining areas? Does it have a legal requirement or other procedure in place to work with IP communities to obtain FPIC for use of their territories or resources?
  - → The process of agreeing on FPIC is likely to be more productive on all sides if the process takes a long-term approach, rather than just viewing it as a one-off, early consultation – an 'all-or-nothing' approach.
  - → The process of reaching FPIC can include, for example, agreeing on how often IPs should be consulted as part of land use planning and then, if mining is proposed in IP territory, on how often they will be consulted during the project lifecycle if a project is agreed and whether the outcome of each consultation should be binding.
  - → The process should involve IPs' representative bodies and organizations (e.g., councils of elders or village councils) and provide sufficient time for IP decision-making processes, while also providing opportunities for meaningful participation from those who may be excluded from traditional structures – such as women and youth.[156]
  - → There should be sufficient information in an understandable format (which may mean translating relevant info into indigenous languages) to be able to make informed decisions about whether, and under what conditions, mining could be authorized. Impartial, accurate and up-to-date information is key – lack of information and misunderstandings between actors are common sources of conflict with IP populations. IPs are likely to lack a technical understanding of the mining sector. IP or-

155 UN General Assembly, "Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya", Summary of activities: Progress report on study on extractive industries, A/HRC/21/47 (6 July 2012)

156 Jiménez, A., Cortobius, M., Kjellén, M., Working with indigenous peoples in rural water and sanitation: Recommendations for an intercultural approach (2014). Stockholm: SIWI. http://watergovernance.org/resources/working-with-indigenous-peoples-in-rural-water-and-sanitation

ganizations may require technical advice and operational support. In order to help build trust, governments may consider providing resources to IP communities to hire experts, allowing the communities to choose their own experts, rather than having to accept a government- or company-provided expert.

- → The government must also be prepared to deal with the more fundamental circumstance, including reconsidering mining development, where IPs boycott consultations to demonstrate a lack of agreement with the process.
- → Where there is agreement, FPIC can and should lead to long-lasting agreements based on genuine partnerships between the government and IPs, but that may also include mining companies.[157]

Box 33

Examples of Legal Protection & Processes around FPIC

Some governments have gone quite far in recognizing IP rights, with a group of countries enshrining the protection of IP rights in national law.[158] At the other end of the spectrum, many countries do not accept that they have any IPs in their territory. In between, there is an often uneasy set of relationships between the national governments, local governments, mining companies and IPs that has resulted in quite widespread conflicts around mining in indigenous areas.[159]

In Latin America, Peru adopted a Law on Prior Consultation in 2011. According to Peru's Vice-Ministry of Intercultural Affairs, as of 2014, two processes of consultation had been completed, 13 were being implemented and another was about to be initiated.[160] In Colombia, the Ministry of Interior has established its own process for consultation with pre-consultation, consultation and post-consultation phases[161] and so far has conducted over 5,000 consultation processes with IPs based on constitutional jurisprudence. In Mexico, the National Commission for the Development of Indigenous Peoples (CDI) reports over 30 consultation processes with IPs, although these consultations do not deal with natural resource extraction specifically.[162]

Many African States do not recognize the concept of 'indigenous peoples', arguing that all Africans are indigenous. Nonetheless, the Economic Community of West African States (ECOWAS) in 2009 issued a Directive on Mining, which included the principle of FPIC to apply to all communities in Africa. This is particularly relevant on the African continent, where there are many land-based communities, but few officially recognized indigenous groups. Some governments, such as the Government of Kenya, has specifically recognized marginalized groups in their constitutions and has adopted a recent land law that provides for protection of community land but allows the law to be overridden in the national interest for mining projects.[163]

157 UN General Assembly, "Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya", Summary of activities: Progress report on study on extractive industries, A/HRC/21/47 (6 July 2012)

158 For example, the Colombian Ley (Law) 70/1993 seeks to protect the rights of Afro-Colombian communities in land policy. The Colombian Constitutional Court declared Law 1382 on mining code reform unconstitutional because it had not been consulted with indigenous peoples and Afro-American communities.

159 Jiménez, A., Molina, M. F. & Le Deunff, H., Indigenous peoples and industry water users: Mapping the conflicts worldwide. Aquatic Procedia, (2015), pp. 69 – 80.

160 For further information see the Consulta Previa (Ministerio de Cultura) website: http://consultaprevia.cultura.gob.pe/

161 For more information, see: https://goo.gl/yF03cJ

162 For further details, see the Comisión Nacional para el Desarrollo de los Pueblos Indígenas website: http://www.gob.mx/cdi

163 Institute for Human Rights and Business, "Human Rights in Kenya's Extractive Sector: Exploring the Terrain," (2016), Chapter 2, Sections 2.3.1 and 2.4.1. https://www.ihrb.org/uploads/reports/IHRB,_Human_Rights_in_Kenyas_Extractive_Sector_-_Exploring_the_Terrain,_Dec_2016.pdf

C Integrate Women's Rights When Planning Land Use

Women play a vital role in the rural economy as food producers, water and fuel gatherers, agricultural workers and unpaid caregivers, yet many women have no rights to the land that they tend and rely on to support their families. In some places, women have a claim to land only through a male relative and, even where there is formal recognition of equal tenure rights for women, as a matter of practice women continue to be excluded from property rights or allocated land of poorer quality/productivity or closer to mining sites. Women's decision-making authority may be particularly limited because land is still viewed in many countries as the domain of men and male decision-making and this gender bias often locks women into a cycle of vulnerability and poverty.

Meaningful Participation of Women

Does the land use planning process involve separate consultations with diverse groups of women and women's organizations?

- Are the land use planning authorities alert to the barriers that women can face in consultation and ready to organize consultations that respond to these concerns?
  - → Separate consultations can ensure that women have a safe space to express their opinions and to provide information about potential impacts and opportunities that could result from land use choices. This should be the case particularly if they find that participation and discussions at consultations are male-dominated.
  - → Those organizing consultations should be alert to the barriers women face to participating from time constraints, childcare responsibilities, safety and access considerations, to cultural norms and biases, to risks of social isolation and discrimination against participants.
  - → Participation is often understood by government authorities as 'being there' or 'taking part' without questioning the quality of the participation. For example, if 50 percent of participants are women and if they do not say anything or if what they say is considered to have limited value or ignored, then participation is missing out on vital priorities and perspectives that could ensure the sustainability of outcomes and new approaches should be tried to engaging women.
  - → Meaningful participation of women must ensure that diverse groups of women are included in consultations. Not all women share the same economic and social concerns and care must be taken not to include only politically connected, elite or influential women from the community. Women from various backgrounds – including the poorest and most vulnerable in the community – should be included to ensure that diverse perspectives and priorities are included.

Gender-responsive Land Use Planning

Does the land use planning process take into account the potentially specific impacts on women?

- The process should specifically take account of the potentially differentiated impacts on women if land use is changed, for example:
  - → Women may be particularly dependent on land-based livelihoods that would be eliminated by land use changes. For example, some land use changes may mean smaller plots and/or land that is further away and not easily accessible to women.

- → Women may be less likely to be literate and less mobile due to traditional societal limitations and expectations and thus unable to participate in new livelihoods opportunities without additional support.
- → Given the traditionally low level of women employed in mining, this is unlikely to provide substitute occupations for women who are land-dependent.

D Use Strategic Assessment Tools to Understand the Bigger Picture

A Strategic Environmental Assessment (SEA)[164] and Strategic Environmental and Social Assessment (SESA)[165] have different characteristics,[166] but both seek to provide an impact assessment approach at a more strategic level by looking at a proposed plan or programme in a sector to identify the likely significant effects on the environment and society, including human rights. The processes can help ensure that: (i) key information is introduced into considerations early on, including the interests and concerns of major stakeholders around ESHR issues that might otherwise not be considered as part of an economic planning exercise for the mining sector; and (ii) assessments for the sector carefully analyse broader impacts and the trade-offs, such as competition with agriculture, depletion of ground water, etc., at a very early stage in order to prevent costly mistakes by alerting decision makers to potentially unsustainable development options.[167]

Consider an SESA

Has the government considered conducting an SEA or SESA?

- Useful trigger points for carrying out an SESA include:
  - → Planned changes to the mining policy or major laws
  - → Major revisions of land use plans or revisions of the land or mining cadastre
  - → Mining in new regions of the county
  - → Up-scaling of mining activities in light of new discoveries
- SESAs can:
  - → Increase attention to environmental and social priorities associated with mining development
  - → Strengthen environmental and social constituencies
  - → Improve social accountability by making the mining policy process more transparent
  - → Enhance sector capacity for managing environmental and socio-political risks associated with mining sector development[168]
  - → Help identify the appropriate sequencing of mining, deciding when to mine in what areas

164 See the early OECD Guidance on Strategic Environmental Assessments http://www.oecd.org/dac/environment-development/strategicenvironmentalassessment.htm. SEAs are used by numerous countries and the EU. See the European Union approach to Strategic Environmental Assessments: http://ec.europa.eu/environment/eia/sea-legalcontext.htm

165 See the World Bank Guidance – Mining Sector Strategic Environmental and Social Assessment (SESA) (2010), http://documents.worldbank.org/curated/en/286421468182666050/pdf/536070BRI0ENV01Box345621B001PUBLIC1.pdf

166 SESA is a type of strategic environmental assessment (SEA) at the policy level where social assessment is given an equal footing with environmental assessment. SESAs have been used in particular by the World Bank and UNDP.

167 OECD, "Strategic Environmental Assessment in Development Practice: A Review of Recent Experience," (2012), http://www.oecd-ilibrary.org/development/strategic-environmental-assessment-in-development-practice_9789264166745-en

168 See the World Bank Guidance – Mining Sector Strategic Environmental and Social Assessment (SESA) (2010), http://documents.worldbank.org/curated/en/286421468182666050/pdf/536070BRI0ENV01Box345621B001PUBLIC1.pdf

- Has the Ministry of Mining considered that, where SEAs or SESAs are absent, the public often attempts to conduct policy battles further down the road at the project level often as part of the EIA process? This can create frustrations both for project developers who are not well placed to address wider concerns about the mining governance framework and for those with concerns who have no other outlet to express wider concerns with the mining sector and its governance.
  - → A consultation process at this strategic stage that involves a wide set of stakeholders in an active discussion where choices are discussed and wider trade-offs justified, is likely to build a more sustainable approach to future mining operations and to better protect the environment and stakeholder rights.
  - → Understanding and communicating options for involvement in the different levels of decision-making (SESA as compared to an ESIA for a particular project) and opportunities for the public to participate in the different levels of decision-making are important.[169]
  - → Wider, open consultation with a range of stakeholders at an early stage can also help create appropriate political economy drivers that helps government agencies avoid policy capture of the sector by political elites or powerful interest groups that can happen when decisions are made behind closed doors.

Involve Government Actors

Has the government involved relevant ministries and authorities, including relevant regional/local authorities where mining is likely to take place in the SESA consultation process?

- As the idea of an SEA/SESA is to look at the wider impacts of the sector, it is important to engage a wider set of ministries and regional/local authorities from the beginning of the process to promote better:
  - → Integration of key objectives from other sectors or ministries – such as health and environmental protection objectives;
  - → Intersectoral coordination among the different agencies that intervene
  - → Programme buy-in by local authorities and communities
  - → Clarify which institutional gaps are most critical in leading to environmental degradation and social exclusion in mining

Public Participation

Has the government encouraged active engagement of the public and civil society in the SESA process?

- As this is should be a national level consultation, has the mining authority considered:
  - → There needs to be broad, proactive public dissemination of notifications and relevant information that is in an understandable format for a wide range of stakeholders – ranging from expert analysis to more general public information
  - → It may be useful to employ different methods to convey information about the sector to demonstrate the importance of geological resources to the broader public and, in particular, to local communities.
  - → It is very important that the process be inclusive so that different voices are heard at this early, strategic stage. This means reaching out to organizations representing women, youth, IP and minority populations to ensure that their perspectives are heard and that participatory rights are respected.

169 UNEP, "Putting Principle 10 Into Action: Implementation Guide for the UNEP Bali Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters," pp. 12-13, (2015), http://wedocs.unep.org/handle/20.500.11822/11201

- This is the type of participation in which civil society organizations (CSOs) may play a particularly important role to 'translate' strategic options so that they can be better understood by their constituents.
- These early consultations on mining strategy through an SEA/SESA process should establish a framework and relationships for long-term policy dialogue that continues throughout implementation.

Box 34

SESA of the Mining Sector in Kenya

UNDP supported the Government of Kenya (through the National Environment Management Authority (NEMA), the Ministry of Environment and Forestry, the Ministry of Petroleum and Mining, the Kenya National Commission on Human Rights, and the Council of Governors) to carry out a Strategic Environmental Social Assessment (SESA) of the mining sector. The purpose of the policy SESA was to assess ways in which the governance and in particular the environmental administration of the mining sector as recently amended through the Mining and Minerals Policy (2016), the Mining Act (2016) and the subsidiary mining regulations (2017) are likely to affect the environment, social and human rights impacts of the sector at both the national and community levels. The aim of the SESA was to identify opportunities for managing environmental and social risks and strengthening social accountability. Kenya's Environmental Management and Coordination Act (1999) (amended in 2015) and its subsidiary regulations, the Environmental (Impact Assessment and Audit) Regulations (2003) include a legal obligation on the NEMA to monitor the implementation of the recommendations of the SESA. To complement the SESA and to help communities that host large-scale mining operations better understand mining and their rights, UNDP has helped develop 'Community guide to lage scale mining in Kenya' document that provides useful information about community engagement requirements at each stage of the mining lifecycle, identifying the issues about which they should be engaged or consulted. The information can help communities to know what to expect, from whom and how they can be involved. It explains requirements of Kenya's Mining Law (2016), the subsequent mining regulations and other relevant environmental and land laws.

E Address Misalignments between Sectoral and Regional/Territorial Planning

In many countries, there is a lack of alignment between sectoral policies (mining policy) and regional/territorial policies and plans. These misalignments can lead to an overall impact on governance in the territories: if regional or local authorities have no say, this can affect their ability to maintain their legitimacy with their communities, as the communities believe that the authorities cannot address local concerns and are thus complicit in the impacts of mining; by the same token, if local authorities can halt mining operations on their own authority, this can override expectations or even contractual obligations created by the mining ministry. (See Box 35 for an example from Colombia.)

Coherence Between Sectoral and Territorial Planning

Does the government have a process for vertical coherence – coordinating sectoral mining plans with territorial plans?

- Are the regional government authorities in charge of planning the use of their territories consulted in the mining planning process about authorizing mining in their territories? Do they have a say in the final decision?
- Is there a process for balancing out different land uses in the territories/regions? Which ministry has the final say?
- Are regional governments notified when mining exploration or operations permits are given in their territories?

Vertical Coherence with Other Authorities

Do the relevant authorities covering ESHR issues (environmental authorities, gender ministries, etc.) have regional offices in the main regions where mining takes place?

- Are they consulted about mining plans in their territories? Do they have a say in the final decision?

Box 35

Misalignment Between Mining Planning and Territorial Planning – An Example from Colombia

Planning the use of subsoil resources as a process independent of territorial planning has not only been a constant source of conflicts between communities and authorities, but has also brought uncertainty and complications to mining investment in Colombia. The Sector-Wide Impact Assessment on Human Rights in the Mining Sector (SWIA) in Colombia, carried out by Centro Regional de Empresas y Emprendimientos Responsables (CREER) in 2016,[170] drew attention to this situation due to its implications for the collective rights of the communities in these territories and to the long-term viability of mining activities in the country.
Since the 2016 Colombian Constitutional Court[171] decision demanding that the State and mining authorities ensure the principles of coordination and concurrence with the territorial planning when granting mining titles and licenses, some consultations have led to rejection of mining in some municipalities and the termination of licensed projects.

In April 2017, a public consultation conducted by the municipality of Cajamarca halted the largest gold project – still only in the feasibility stage – in Colombia. This AngloGold Ashanti project, known as 'La Colosa', was in its seventh year and had already cost hundreds of millions dollars for exploration work.[172] Yet, in all those years, the company had never had a structured dialogue with the communities and with the mediation of legitimate government authorities. Nor had the mining and environmental authorities had discussions with communities based on evidence of impacts from exploration. Instead, the binding consultation was driven more by information based on other mining projects in Colombia and elsewhere, activism and understandable fears. This experience highlights the importance of having clear mechanisms for mineral management that adequately include the visions and expectations of the communities living in the territories where mining is expected to take place.

F Include Planning for Closure as part of the Land Use Planning Process

Mineral resources are non-renewable and all extractive projects come to an end. This reality should be discussed widely and planned for from the outset. Land use plans should already consider whether the long-term land uses of the surrounding areas are capable of replacing the economic activities/contributions once the mine(s) is closed.[173] Mine restoration plans should be incorporated within these wider land use plans, including the cessation and transfer of mining facilities and property (e.g., water storage reservoirs and mine buildings) to the local community. (See Step 7 on Closure and Step 8 on Post-Closure.)

170 Centro Regional de Empresas y Emprendimientos Responsables, "Sector Wide Impact Assessment on Human Rights: Mining Unseen," See (in Spanish) Las Evaluaciones Integrales Sectoriales de Impactos (EISI) (2016), http://creer-ihrb.org/proyectos-eisi/

171 See ruling T-445/16 of the Colombian Constitutional Court stating that municipalities have the right to regulate the use of lands 'suelos', even if this entails banning mining activities that so far had been under the jurisdiction of the national mining authority.

172 BNAmericas, "AngloGold Ashanti suspends Colombia's US$2bn La Colosa project", (April 2017), https://www.bnamericas.com/en/news/mining/anglogold-ashanti-suspends-colombias-us2bn-la-colosa-project

173 J. Southalan, Mining Law and Policy – International Perspectives, p. 73 (2011).