

## **MINING**

### ***PROGRESS AND ACHIEVEMENTS***

#### **Policy and regulations**

##### *The features of the law on mining and mineral industry*

1. The “Mineral Law” was first issued in 1997, and since that time it was revised in July 8, 2006 and amended in July 16, 2009. The Mineral Law regulates the relations between mining minerals sectors activities and environment and socio-economic sectors. The procedures and regulations accompanied this law are being improved and the general public and private sector actors have been submitting many proposals and feedbacks to amend the law. In terms of relevant legislations, the new standards on restoration of mining sites (2008) and “Guideline and methodology to identify ecological and economic damages resulted from adverse environmental impact of mineral resource exploration and exploitation” (Resolution No. 207 by the MNET) etc have been reinforced as new.

2. The Law on Land (2002) regulates the ownership, use, and protection of state-owned land. The “special needs” lands such as state strictly protected area, hay making area where mining activities are prohibited by the decision of local administration of an aimag, city, district and soum are clearly indicated. In some cases, some prospective exploration and mining licenses and active mines are found to be within special needs lands; and some licenses could be issued even before the land is reserved for special needs officially, which makes the issues more complicated. Despite these complications, with an aim to give a priority importance to the decision of local authority and local community, local Citizens` Representatives Meeting is entitled to a right to evaluate the implementation of the annual plan on land use and protection, and in case of unsatisfactory fulfillment, to make a requirement on stopping the activities and on law implementation.

3. Legal documents on environmental impact assessment in mining sector, natural resources use, conservation of environment, biodiversity; water, air, soil are relatively well developed, and MNET, other line ministries and local authorities are working to improve the interconnection of the laws and inter sector coordination and monitoring system on implementation of the laws. Mongolia approved the Law on Nuclear Power in 2009 and the issues related to uranium mining and processing are regulated by this law.

4. Also, the State Great Khural passed the Law on “Prohibition of mining exploration and exploitation in river catchment area, water and forest reserves” on July 16, 2009 which created a legal framework to stop license issuance in ecologically sensitive areas and to cancel previously issued licenses with a provision of compensation to license holders. The Government is, in cooperation with relevant environmental organizations, working to develop regulations, procedures and guidelines for establishing the borders of these areas where mining exploration and exploitation activities are prohibited. As a result of the proper implementation of this law, the life charging eco-system can be rescued before it degrades.

##### *Fiscal policies for investment and decreasing market fluctuations*

5. A significant proportion of the mining sector contribution to the GDP growth, a large extent, recovers the declines in other sectors. Royalty rate was 7.5% for hard rock and placer gold mine and 2.5% for the rest of minerals before the Mineral law amendment of 2006. Today it is 2.5% for coal and other common minerals and 5% for the rest of minerals.

6. Mongolia approved a **Law on Development Fund of Mongolia** with an aim to prevent from the market fluctuations and to ensure sustainable development, and revenues from wind fall tax are generated in this fund and placed at the Central Bank. The income collected in the fund was used to overcome domestic crisis and for investment and other welfare programs, which was a beneficial action during the economic crisis.

7. Recently the State Great Khural approved the Law on Human Development Fund and decided to provide each citizen of the country with certain share out of royalty income from mining exploitations in deposits. Also some part of the fund will serve as a reserve for investment stability and commodity price risk. In case the market price exceed the price set by the Budget Law, the profit resulted from the price difference shall be generated into this fund and will be used to prevent from possible future price fluctuations.

*Regulations and mechanisms for implementation of the laws and monitoring*

8. Not only the central Government, but also local authorities are obliged to carry out legal monitoring and ensure the legal enforcement through Minerals Law, Law on Environmental Impact Assessment, Law on Environmental Protection, Law on Land and the Law on Underground Land. The law implementation is monitored and controlled by 1) State Specialized Inspection Agency and specialized inspectors in aimags and soums; 2) Sector ministries and directly appointed local authorities and officials; and 3) Joint monitoring of aimag and local administration.

9. Civil society is one of the means to ensure monitoring of proper implementation of mining law and other regulations. And it consists of the representatives of professional organizations, associations and private entities. Also, Open Society Forum, other civil society organizations and local environmental movements monitor law implementation in the mining sector.

*Guidelines for micro, small and medium scale mining*

10. In order to reduce negative impact of the artisanal miners and develop small and medium sized enterprises in the sector, the Government approved a midterm program for micro or artisanal mining, which aims to reduce negative impacts of the artisanal mining activities and develop small scale enterprises. It was the first step to introduce artisanal mining cooperative to the small scale miners and to create a legal environment. In order to reduce the negative impact of mercury sodium cyanide, the use of these chemicals was banned, which caused an urgent demand to develop a new strategy for micro-mining in the near future.

11. Two draft versions of Law on Micro Mining have been prepared. The first one was submitted by the Government and Members of Parliament, it focuses on creating employment opportunities for people, reducing poverty, protecting human health and reducing negative impact to the nature and environment. Another version, developed

by the Ministry of Mineral Resource and Energy with support of Sustainable Artisanal Mining (SAM) project, is under public review since July 2009.

*Public and stakeholder consultation and participation in decision-making related to mining*

12. The head of the Citizens' representatives of the Aimag and capital, and Citizens' council of soum and district have an obligation to send their approval or rejection for the mineral exploration license request within 30 days, which is an important factor to reflect locals' feedback in decision making related to mining. It is stated that public consultations to be held during the technical and economic feasibility studies, EIA, and investment agreement process, which is another vital step to listen to the voice of local people. The MNET is working to create a database of EIA and to make it open for the public.

13. Local residents now have a right to select and appoint their representatives who may carry out monitoring on negative impact from mining on environment and restoration activities, and have opportunity to control the mining activities through the local authorities. But, when companies do not provide an opportunity for civil representatives to carry out monitoring or make refusal decision, the local public can not take monitoring. Therefore, it is required to develop an incentive for companies to be more open and active on this issue.

*Public governance and transparency in the mining sector*

14. The [Mongolian Civil Society Coalition for Extractive Industries Transparencies Initiative](#) has been supporting public participation and discussions since October 2006. The Extractive Industries Transparency Initiative (EITI) is a main factor to improve the governance of mining revenues. The Government has an obligation to inform transparently to the general public about issuance, transition and cancellation of special mining permission, and any interested body has a possibility to get introduced with the special permission, cadastral registration. Also MNET has an obligation to distribute information on mining EIA, environmental protection plan and utilization of toxics in electronic way to the public. The Mineral Law states that any mining company shall transparently inform about their sold products and tax payment within the first quarter of the following year, which creates a basic condition to ensure transparency and civil society organizations provide a possibility to monitor the implementation of the law provisions.

**Mining best practices**

*Environmental Impact Assessment and monitoring of all phases of mining operation (exploration, project development, mine operation, and mine closure)*

15. The consent procedures under the Law of Environmental Impact Assessment and Mineral laws require that a exploration license applicant is obliged to do a detailed environmental impact assessment, to prepare an environmental protection plan and environmental monitoring program, which reflect that the expected impacts of proposed activity does not exceed carrying capacity of the ecosystem, and to propose restoration and rehabilitation measures to reduce the impact.

16. According to the EIA Law and other regulations, MNET screens all business proposals submitted by state organizations, entities and individuals in terms of review of possible impacts to the environment. A detailed EIA is carried out by the specialized private companies that possess a permission license issued by the MNET. With current structure of EIA, relevant state organizations are able to take a control over all phases of mining operation. On the project development phase, MNET screens and revises all detailed EIA reports of project proposals and State Specialized Inspection Agency monitors mine operations and mine closure.

17. Currently, detailed EIA reports are not publicly accessible, however, with support from the World Bank, an activity to make all previous reports accessible to the public by establishing a web based database is being implemented.

18. There are few good starts that some mining entities pay attention in making not only technical but also biological restoration. The companies named “Altandornod Mongolia”, “Monpolimet” in Zaamar soum, Tuv aimag, organized demonstration training involving 8 aimags, and MNET and SSIA organize this training on annual basis.

#### *Partnership of Private sector and Government on Development of Sustainable Mining*

19. The State great Khural started to develop a strategic paper aimed at accelerating economic growth through export-oriented, private sector driven economic development and endorsed a State Policy Paper on Public-Private Partnership on October 15, 2009. The PPP policy highlights 1) private sector led economic development; 2) improve budget efficiency, and enhance regulatory framework for private sector; 3) strengthen public-private partnership through improved delivery of social services and infrastructure with private investment.

20. The Government is working with a strategy to increase State ownership percentage on mining industry and to support private sector through establishing new state-owned companies such as Erdenes MGL etc. In connection with the PPP policy, a draft law on Concession has been developed and is being discussed by the public and stakeholders.

21. With an aim to improve the public and private sector partnership and to make mining transparent to the general public, the Government has been operating [Mongolian Extractive Industries Transparencies Initiative](#) under the Prime Minister`s supervision since 2006.

22. The Ministry of Mineral Resources and Energy, in cooperation with the State Authority on Mineral Resources and Oil and Swiss Development Agency, has been implementing “Sustainable Artisanal Mining project” since 2005. The scope of this project includes activities to adopt environmentally friendly technologies and best practices in the micro-mining sector, provide on site trainings, and develop legal regulations, organize trainings for artisanal miners on environmental management and rehabilitation,

#### *Disaster Response Plans and Preparedness at the local level*

23. Activities to develop disaster and mine risk assessments guidelines are at their early stage in Mongolia. Although, the law states that professional organizations shall develop organizational and local risk assessments, detailed regulations and guidelines on selection of risk assessment organizations

have not developed yet, and the emergency management departments in urban and rural areas are working toward it.

24. The National Emergency Management Agency is responsible to develop Disaster Response Plan at both national and local levels and to provide professional support to state organizations and companies in developing disaster plan. They are working actively according to the regulation about informing and cooperating with aimag, city and national emergency committee. Moreover, consulting companies and NGOs such as Environmental consulting company Environ LLC, Environment and Security center NGO and the JEMR Consulting LLC have started disaster risk assessments in Mongolia.

*Risk assessment of mining activities*

25. Although, mining companies are responsible to carry out a risk assessment in their mining, it is not being followed. Only few internationally invested bigger mining companies started to in doing risk assessment, which is a good example for other companies. An objective is set to make all mining companies comply with this provision of regulations

*Restoration of eco-system degradation and provide compensation to the communities of adversely affected areas*

26. Issues about carrying out assessment on human and eco-system affected by mining activities, restoration of degraded nature and establishing compensation fee are at their early stage of development in Mongolia. Any violations are investigated by SSIA and local authorities and government organizations in line with law and measures to stop the mining activities and even close the mine are taken.

27. But in very few cases, compensation fee for the damages established by court was paid and no incident that local people who adversely affected by mining activities were given compensation was registered, which shows that the legal regulations, procedures and guidelines, assessment methodologies are not developed yet. A Law on Compensation fee for damages caused by adverse affects on environment is under discussion.

*Technological, institutional and social initiatives to protect the health of mining workers*

29. The Ministry of Social Welfare and Labor conducted occupational safety and health survey in cooperation with ILO and produced [National Occupational Safety and Health Profile of Mongolia](#) and the State Great Khural, upon public review, approved the Law on Occupational Safety in 2008. Since enforcement of the law, general requirements in workplaces and implementation management, structure and organization, as well liabilities in case of breach became clear for all employers and employees. All concerned citizens and entities now obey the requirements of standards on technology and labor safety. The article 44 of the law stipulates obligations of mining companies on protection of health of mining workers and states that specialized inspection agencies and local health professionals are obliged to monitor implementation of this law.

*Mine Closure Planning (Land use plans & site restoration, safety, closure, waste dam and piling, waste water management, off-site infrastructure, community socio-economic programs and employees)*

29. The Mineral law regulates mine-closure activities and environmental protection plan. The law says “the rights and obligations of a license holder expire upon the termination of the license, except for their obligations regarding environmental restoration and mine closure” (Article 53.3). During mining closure period, mining site should be restored to make it safe and after this the site shall be handed over for public use. And possible risks shall be identified on map and warning signs should be marked and then the site shall be given back to the local authorities.

30. Mine closure plan reflects the issues such as providing local workers who worked for the mine with other workplaces, transfer, further sustainable development socio-economic means, hand over built infrastructure to the local community, carrying out environmental restoration, and handing over mine site etc, but in the reality, the implementation of this plan is not implemented well.

31. The Mineral Law provides the local authorities with and possibility to participate in decision making process. When license holder hands over partially or fully the mine site, aimag, soum and district Citizens` Representatives Khural shall review the fulfillment of environmental protection plan and the Governor shall issue a description for mine closure.

32. Currently in Mongolia there are very few mines that were closed according to the mine closure plan stated in the law. There were cases, some companies left the mine site without doing restoration after extraction of the minerals resources, and it has been regulated that the MNET and SSIA shall carry out joint monitoring on restoration and developing integrated report.

### ***CURRENT EMERGING ISSUES, CHALLENGES AND TRENDS***

33. Although efforts is being made to implement damage assessment procedures through establishing legal regulations on payments for causing negative impacts to environment and estimating chemical and physical effects of those impacts, lack of national capacity and relevant experience retards the effort.

34. Government faces considerable constraints in creating legal framework for micro-mining enterprises. Increasing workplaces to replace current artisanal miners duty is a challenge due to the inadequate social welfare policy and country's socio-economic circumstances.

35. The EIA law stipulates consultations with local citizens during mining EIA process to incorporate their views for further decision making. However, there is no clear mechanism how to incorporate public feedback and no control on how the feedback is reflected. The existing regulations need to be revised to make clear about mechanisms and regulations to incorporate public voice in the decision making process and to cancel non-transparent decision making.

36. According to EITI and the World Bank's Governance Indicators, public monitoring on corruption in Mongolia has been increased substantially since 2001. This observation case in Mongolia is increasing more than in other countries as to reduce corruptions as an obstacle to growth. Also, Mongolia's ranking according to the latest *World Bank Governance Indicators* (2008) has also fallen down relative to other countries as compared to 2007 rankings, which urges to intensify the activities to be implemented in this area.

37. The passage of the anti-corruption legislation, the implementation of the Asset and Income Declaration requirements for senior government officials and Parliamentarians, and the adoption of the [Extractive Industries Transparency Initiative \(EITI\)](#) with the support by the World Bank, are significant achievements by the Government of Mongolia. However, much remains to be done, and the Government

should continue to strengthen its public sector governance capacity and implement the anti-corruption law effectively, and promote transparency in government-business interactions.

38. In connection with the approval of the Law on prohibition of mining exploration and exploitation in river catchment area, water and forest reserves by the State Great Khural, it is required to develop complex coherent legislative solution on liability, pollution penalty fee issues in order to improve the protection of the river catchment area and water and forest reserve areas.

39. There are several practices of mining companies on technical and biological restoration. But compared to the 350 mining companies that possess licenses, this is not satisfactory. Only few profitable bigger companies such as Erdenet, Ivanhoe Mines and Boroo gold mines have done rehabilitation, while other companies are on their first stage of restoration. 200 companies out of them never paid any tax and 70 of them paid only up to one million tugriqs. This case shows an effect of regulation that those companies working on prospecting, make reporting about the expenses within 5 years after the start of mine activities. Therefore it is required to improve local monitoring on mining companies and enhance national integrated monitoring system.

### **Potential ways for improvement**

40. It is required to stop illegal actions of artisanal miners through creation and provision of alternative workplaces to the artisanal miners.

41. Improve the protection of river catchment area, water and forest reserves areas, implement restoration measures in damaged areas, take a measure to cancel all the licenses given in those areas and solve the issue to provide compensation from the Government to the companies that had their licenses cancelled.

42. Create a legal basis where no less than 15% of the mining income to be used for conservation and natural resources restoration activities, and negotiate at international level about following international integrated policy on this.

43. As mentioned above, it is needed to implement the recommendations given by the UN Office of Coordination of Humanitarian Affairs and UNEP to this programme, organize experts who will be responsible in taking measures in case of mining and chemicals disaster and providing trainings on labor safety and neutralization activities. Organize methodological training to the specialists and workers of laboratories that check mercury and sodium cyanide content in the environment and biological objects. Also it is required to develop medical guidelines and rules on how to diagnose and treat sharp and gradual poisoning with mercury and sodium cyanide, and provide necessary trainings to medical staff. Build national capacity in carrying out risk assessment of chemicals used in mining that can affect environment and human health.

44. It is needed to build capacity of the disaster study center under National Emergency Management Agency in terms of risk assessment of mining and chemicals. In collaboration with the Disaster Study Center, Mongolian University of Science and Technology should prepare students on mine accident rescue and risk assessment for future demands on mining industry. Enhance first aid groups at the bigger industries and mines for further professional development and support representative-fire officers from NEMA at the industries.

45. Make the report of EIA transparent to the general public and create an legal mechanism to consider feedback and proposal from local community and stakeholders in decision making of detailed EIA.

46. Develop and implement a methodology to provide and calculate compensation to local residents of the areas adversely affected by mining exploration and exploitation activities. Especially, it is required to carry our research on vegetation cover degradation caused by soil and pasture degradation, soil erosion and dust, by region by region. Evaluate the cost of natural resources scarcity and imply compensation. Assess the risks on biodiversity and protect.

47. Implement programs and training to strengthen national capacity to evaluate negative impact from mining development to urban development and society.

48. The provision on mining risk assessment is not fully reflected to the Law on Disaster Prevention, the Law on Minerals and other related regulations. Therefore the Government should pay more attention to reflect the provision into respective legislative documents.