PARTICIPATION IN MINING RELATED DECISION MAKING
REPORT
PARTICIPATION IN MINING RELATED DECISION MAKING

Project: Give people a voice! Strengthen public participation in mining Investment planning to ensure the health of people, livestock and the environment of Mongolia.

Client: WWF (Mongolia)
Contractor: Green Focus

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EXECUTIVE SUMMARY

If mineral exploitation is conducted responsibly the mining sector can make significant contributions to poverty reduction and sustainable development in Mongolia. If it is conducted irresponsibly it can lead to corruption, conflict, civil unrest and environmental degradation. The challenge is to put the systems and standards in place to ensure that the former objectives are achieved. These systems must ensure that mineral wealth is exploited using the best available environmental and social safeguards, ensuring rights are protected and the equitable distribution of the benefits that accrue.

Resource rich countries, such as Mongolia, have a great opportunity to harness their natural resource wealth for the benefit of all of the people in the country. This is an opportunity no government will ignore, although a strong anti-mining lobby exists.

Although often seemingly in conflict with mining developments, it is not incompatible for WWF, a conservation organization, to support the development of a well governed minerals sector. Conservation organizations will not achieve their conservation goals in a situation where mining activities are poorly managed.

A successfully managed minerals sector will ensure that the benefits of mining outweigh the costs. Governments will ensure that mining only occurs where it is acceptable. They will ensure it will not take place in areas that are too ecologically or culturally sensitive or where potential negative impacts on human welfare and ecological integrity cannot be reliably predicted so that they can be effectively managed. In some cases, when weighed up against other opportunities, mining projects may be rejected.

Such decisions about mineral exploitation cannot be made by a small sector of society. Everyone has the right to engage in such decision-making. This is the subject of this report. Its objective is to encourage mining decisions to be made in a transparent and inclusive way. The geographic focus of the report is in two aimags - Khentii and Uvs- where livestock communities are dominant, communities that are often marginalized and always vulnerable.

The report provides an introduction to numerous international initiatives that have been developed to help improve the performance of the mining sector and the participation of citizens in its decision-making. These provide a benchmark against which Mongolia’s current performance can be gauged. Many of these initiatives are involved in Mongolia as a pilot case for the implementation of their Guidelines and in some of them Mongolia is an international leader.
Following a history of mining activity and legislation in Mongolia, details are provided about Mongolia’s current legislation and the phases and regulations associated with obtaining mining and exploration licenses, although mindful that Mongolia is going through a major review of its minerals legislation at this time (2017).

From an international perspective, some of the most commonly observed challenges regarding Environmental Impact Assessment procedures and public participation in these processes are highlighted.

The rights and responsibilities of stakeholders to participate in mining decision-making and their roles are explained. The participation of community administrations, citizens, civil society organizations and license holders are also covered.

The legal obstacles are identified and issues that are not currently regulated by law are identified. However, given the failure in most resource rich countries to sufficiently implement their laws the report attempts to provide a diagnosis of the Mongolian situation with particular reference to Environmental Impact assessment (EIA), cooperation agreements, compensation, involuntary resettlement, information provision and transparency etc. Some recommendations are provided for improving cooperation between local community, local administration and license holders.

Specific attention is given to the assigned study areas and their associated mines of Khotgor, Bukhmurun, Uvs aimag and Gutain Davaa, Batshireet, Khentii aimag.

**THE AARHUS CONVENTION**

“The right to live in a healthy environment as well as the duty to protect it for present and future generations requires that “citizens must have access to information, be entitled to participate in decision-making and have access to justice in environmental matters” (www.unece.org/pp/documents)
### Abbreviations/ Acronyms

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<th>Abbreviation</th>
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<tr>
<td>ADB</td>
<td>Asian Development Bank</td>
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<tr>
<td>ASM</td>
<td>Artisanal and Small-scale Mining (also known as ‘ninja’ mining in Mongolia)</td>
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<tr>
<td>CAO</td>
<td>Clients Advisor Ombudsman (Office of the CAO of the IFC)</td>
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<td>CAP</td>
<td>Community Action/Agreement Plan</td>
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<td>COMMDEV</td>
<td>Community Development Initiative of the IFC.</td>
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<td>CRH</td>
<td>(Mongolian) Citizens Representative Hural.</td>
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<td>CSO</td>
<td>Civil Society Organisation</td>
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<td>CSR</td>
<td>Corporate Social Responsibility</td>
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<td>DEIA</td>
<td>(Mongolian) Detailed Environmental Impact Assessment</td>
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<tr>
<td>EB</td>
<td>Equator Banks</td>
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<td>EBRD</td>
<td>European Bank for Reconstruction and Development.</td>
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<td>EHS</td>
<td>World Bank Group’s Environmental, Health and Safety Guidelines</td>
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<td>EIA</td>
<td>Environmental Impact Assessment.</td>
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<tr>
<td>EMP</td>
<td>Environmental Management Plan.</td>
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<tr>
<td>EIR</td>
<td>Environmental Impact Report (or sometimes called Statement)</td>
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<td>ESIA</td>
<td>Environmental and Social Impact Assessment (aka EIA).</td>
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<td>EITI</td>
<td>Extractive Industries Transparency Initiative.</td>
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<td>ESS</td>
<td>Environmental and Social Safeguard Policies.</td>
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<td>ETA</td>
<td>(Mongolian) Environment and Tourism Agency</td>
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<td>FDI</td>
<td>Foreign Direct Investment</td>
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<td>GEIA</td>
<td>(Mongolian) General Environmental Impact Assessment.</td>
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<td>GoM</td>
<td>Government of Mongolia</td>
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<td>HSE</td>
<td>Health, Safety &amp; Environment</td>
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<td>IAIA</td>
<td>International Association for Impact Assessment</td>
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<td>ICMM</td>
<td>International Council on Mining and Metals.</td>
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<td>IAPs</td>
<td>Interested and Affected Parties.</td>
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<tr>
<td>Abbreviation</td>
<td>Description</td>
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<tr>
<td>IFC</td>
<td>International Finance Corporation, the Private sector section of the World Bank Group.</td>
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<td>IFIs</td>
<td>International Financial Institutions</td>
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<tr>
<td>IGF</td>
<td>The Inter-Governmental Forum on Mining, Minerals and Metals and Sustainable Development.</td>
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<td>LEP</td>
<td>(Mongolian) Law on Environmental Protection.</td>
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<td>MET</td>
<td>(Mongolian) Ministry of Environment and Tourism</td>
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<td>MEITI</td>
<td>(Mongolian) Extractive Industries Initiative</td>
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<td>MLM</td>
<td>Mineral Law of Mongolia.</td>
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<td>MoM</td>
<td>(Mongolian) Ministry of Mining</td>
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<td>MRAM</td>
<td>Mineral Resources Authority of Mongolia</td>
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<td>MRPAM</td>
<td>Mineral Resources and Petroleum Authority of Mongolia</td>
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<td>MSISTAP</td>
<td>(Mongolian) Mining Sector Institutional Strengthening Technical Assistance Project</td>
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<td>NRGI</td>
<td>The Natural Resources Governance Initiative.</td>
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<tr>
<td>PPP</td>
<td>Plans, Policies, and Programmes</td>
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<td>PS</td>
<td>Performance Standards.</td>
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<td>SEA</td>
<td>Strategic Environmental Assessment</td>
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<tr>
<td>SESA</td>
<td>Strategic Environmental and Social Assessment. (World Bank term for SEA)</td>
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<tr>
<td>SIA</td>
<td>Social Impact Assessment</td>
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<tr>
<td>UNESCAP</td>
<td>United Nations Economic and Social Commission for Asia and Pacific</td>
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<tr>
<td>UNECE</td>
<td>United Nations Economic Commission for Europe.</td>
</tr>
<tr>
<td>WB</td>
<td>World Bank</td>
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<td>WWF</td>
<td>World Wide Fund for Nature</td>
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MONGOLIAN TERMINOLOGY

- **Aimag** - Largest sub national administrative and spatial unit (equivalent to a province)
- **Bagh** - Smallest administrative unit (sub - district of a **soum**) (Equivalent to a village or settlement)
- **Soum** - Administrative subunit of an **aimag** (equivalent to a district)
- **Khural/Hural** - A representative group of citizens. An official meeting or parliament and all administrative units have hural to discuss and decide the issues. Locally elected body of citizens (at aimag and soum levels)
- **Khentii** - One of the study area **aimags** situated in the north east of Mongolia. - (spelt variously as Xentii, Hentii etc).
- **Uvs** - One of the study area **aimags** situated in the North west of Mongolia.

DEFINITIONS

- **Artisanal and small-scale mining (ASM)** - Mining activities with low levels of automation and technology and intense use of labour, on a scale below that of industrial mining, often conducted informally as a source of livelihood.
- **Community Development** - Is the process of increasing the strength and effectiveness of communities, improving people’s quality of life and enabling people to participate in decision making to achieve greater long term control over their lives (ICMM)
- **Community Agreements** - Voluntary Agreements between companies and communities to help ensure that community development initiatives achieve positive results.
- **Dorbets (also known in English as the Derbet)** is the second largest subgroup of Mongol people. It was formerly one of the major tribes of the Four Oirat confederation in the 15th-18th centuries. The Dörbets are distributed among the western provinces of Mongolia, and in a small portion in Heilongjianf, China In modern-day Mongolia, the Dörbets are centered in Uvs province.
> Financial Surety/Assurance - Financial instruments used to ensure later availability of funds for a specific purpose.

> Environmental Impact Assessment/Environmental and Social Impact Assessment - A process used to predict the environmental consequences of proposed major development project. The perception that some EIAs were primarily focused on the natural environment led to the development of Social Impact Assessment and the explicit inclusion of ‘social’ in the title - EISA. An EIA should, however, adopt an holistic definition of ‘environment’ incorporating the consideration of social impacts as well as natural environmental ones.

> Environmental Management Plan - A plan put in place to manage the impacts of a development throughout its life cycle. The impacts having been identified in the EIA Report.

> Equator Banks - 90 financial institutions in 37 countries have adopted the Equator Principles, a risk management framework for determining, assessing and managing environmental and social risk in projects. The EPs are primarily intended to provide a minimum standard for due diligence to support responsible risk decision-making.

> Free, Prior and Informed Consent (FPIC) - The principle that specific groups (such as indigenous peoples), based on their defined rights and claims, have the right to give or withhold their consent to proposed projects that may affect them. Controversy persists as to whether communities have a right to exercise consent over mining investment decisions or rather should be limited to Free, Prior and Informed consultation. For indigenous peoples, FPIC is established as a right under international law.

> Gap Analysis - A technique to determine what steps need to be taken in order to move from a current state to a desired, future state. Also called need-gap analysis, needs analysis, and needs assessment.

> Grievance Mechanism - A formal, non-judicial process through which people and groups can raise grievances and resolve or prevent disputes.

> Interested and Affected Parties - Stakeholder affected directly or indirectly by positive and negative impacts of a project and those, who have an interest in the project but are not affected by it.

> Mine site - All land and infrastructure assets related to a specific mineral deposit under exploration or exploitation, and the area of land occupied by the mining operation.

> Mitigate- Reduce or make an impact less severe.

> Mitigation Hierarchy - An approach to addressing negative impacts via a hierarchy of prioritised steps that typically include, in order of priority, avoidance, minimisation and repair.
**Post-closure** - The phase of a mine’s lifecycle that typically follows cessation of mining operations, decommissioning of infrastructure, and rehabilitation of land, during which management of the mine site is largely limited to monitoring residual effects on the environment and local communities.

**Social license** - is commonly viewed as existing when a development project has the acceptance of a project by local communities.

**Strategic Environmental Assessment** - The environmental and social assessment of policies plans and programmes- as distinct from projects.

**Stakeholder Engagement** - a two-way information exchange and dialogue process leading to a co-operative effort by all interested and affected parties (proponents, government officials, communities etc.) to generate better quality and more generally accepted decisions than if they had worked independently.

**Tailings** - Non-marketable ground rock and process effluents that are generated in a mine processing plant. The composition of tailings is directly dependent on the composition of the ore and the process of mineral extraction used on the ore.

**Tailings dam** - A surface structure in which slurry tailings from the mine processing plant are retained and managed. Tailings dams are generally constructed as conventional dam.

**Tri-sector partnering** - Voluntary partnerships involving business, governments and civil society that may present a successful approach for the development of communities.
ACKNOWLEDGEMENTS

The Project Team would like to thank the WWF-Mongolia for their support throughout the development of the present report by provision of information and advice. The Team would also like to thank the local government officials in selected two areas (Batshireet and Binder soums of Khentii aimag and Bukhmurun soum of Uvs aimag) for their support as well as all other organizations and individuals that freely shared their experiences and expertise to inform the development of this report. and the supporting reference paper.

Additional thanks for their advice and support must also go to Catherine Arnold (UK Ambassador to Mongolia), Markus Raddy and Stefanie Lang (WWF Germany), Ross Hamilton (Head of Sustainability, ICMM, London), Oyunbileg Purev (Project Manager, ASI Australia-Mongolia Extractives Programme), Patience Singo (SAM project, Mongolia), Weiju Lv, (WWF China), Nara Ghazaryan and Robert Carreau (Lydian international, Armenia), Lizzie Parsons (China Programme Lead, Global Witness), Patrick Mallon (Field Director, Business in the Community), Eero Yrjo-Koskinen (V. Chairman, Network for Sustainable Mining, Finland) Bruce Harvey (Director, Resolution - Social License Solutions, Australia and Advisor on community development at Oyu Tolgoi.), Sharyn Tsolem (Coordinator - Mongolia Extractives Industries Transparency Initiative Secretariat), Batbold Otgonbayar (Senior Advisor on Sustainable Development/Deputy Programme Director, Integrated Mineral Resource Initiative, GIZ, Mongolia), Dr. Margaret Wachenfeld (Snr Research Fellow and Director Legal Affairs, Institute for Human Rights and Human and Business, London), Jill Shankleman (EIA /public participation expert who worked on the Oyu Tolgoi project for the IFC's Ombudsman office), Luc Zandvleit (Community Development Expert), Askhar Bakyei (Post graduate legal student at the University of Dundee) and Sefton Darby (who works on the eiti project in Mongolia and has undertaken survey work for them in Khentii aimag).

The Project Team comprised five national experts of the Mongolian consultancy firm Green Focus, Messrs Erdene Dorjsuren, Nyamdorj Alimaa, Odgerel Tserendorj, Tsetsenbileg Burenbayar and Ariunbold Dogmidsang, Mungunchimeg Sanjmyatav (WWF Mongolia, Project Coordinator) and one independent international advisor, Jonathan Hobbs.
GOALS AND OBJECTIVES

Mongolia is a sparsely populated country with most people living in rural areas as livestock herders- sometimes nomadically. Their direct dependence on natural resources for their livelihoods makes them particularly vulnerable to the risks and potential negative impacts of mining projects - especially poorly planned and managed ones.

Under the European Union’s Instrument for Democracy and Human Rights (EIDHR) - Country-Based Support Schemes (CBSS) this study has been conducted for the project “Give people a voice! - Strengthen public participation in mining investment planning to ensure the health of people, livestock and the environment of Mongolia”. The project started in September 2016

The objectives of this two-year project are:
To improve the participation of Mongolian citizens in decision making as a means of protecting their right to a healthy and productive environment,

To advocate greater public awareness of the rights of Mongolians to participate in mining related decision-making processes and to

To help build the capacity of Mongolian environmental CSOs and improve the coordination between them.

The focus of this study, and the principle vehicle for achieving better participation in mining decision making, is Environmental Impact Assessment (EIA). However, it is also important to note that public participation is not limited to the project appraisal stage that is addressed by EIA. Participation should be initiated at the policy development stage. This has now been recognized in Mongolia’s national legislation. Mongolia’s latest EIA law has introduced requirements for participation in Strategic Environmental Assessment (SEA).

Participation must also continue after the EIA (i.e. project planning) stage and throughout the life cycle of a mining project from exploration to closure.

A further objective of this project is to make recommendations for the development and implementation of ‘dialogue platforms’ in the study areas in order to facilitate on-going community participation. This builds on work being undertaken in Mongolia by the Mongolian EITI (who are establishing similar platforms to increase transparency) and the broader work on Community Development Agreements which Mongolia is pioneering. The GOM has recently produced a guiding template for these tri-sector dialogues.
METHODOLOGY

Two regions, the Khotgor area of Bukhmurun soum in Uvs aimag and the Gutain Davaa area in Batshireet/Binder soums in Khentii province, were selected as study areas for this project.

The activities undertaken in these study areas have included consultations and awareness raising workshops with relevant interested and affected parties (including representatives of herder communities, NGOs, local and national government officials and some mining companies). Interviews were also conducted with consultants licensed to carry out EIAs, environmental auditing and community engagement.

A parallel process involved reviewing international initiatives and interviewing their representatives as well as those of investment and development agencies and companies operating in Mongolia. International experts that have been involved in Mongolian mining projects were also interviewed. This helped ascertain the latest developments in ensuring more effective community participation in mining policy and project decision-making internationally and some of the experiences in Mongolia and elsewhere.

The international context and benchmarks of current and developing international good practice in public participation in mining projects provided a measure against which a gap analysis could be undertaken for the Mongolian situation. A report entitled “International Experiences and Emerging Good Practice in Community Engagement and Development in Mining Investments - Lessons for Mongolia” (Hobbs, March 2017) was prepared for this purpose. This has informed this consolidated report and its recommendations.

The Project Team worked in Bukhmurun soum, Uvs aimag and Batshireet and Binder soums of Khentii aimag in January 20-24, 2017, January 31 to February 1 and in February 13-16, 2017. This ensured familiarization with the local situation and issues of significance to the communities concerned.

In assessing the prevailing legal situation, the Project Team aimed to define the rights and responsibilities of all stakeholders in mining decision making and to define the obstacles faced by them to effectively engage.

Mindful that having legislation in place is no guarantee of implementation, the Team also attempted to identify areas that are not currently regulated by law or where, if laws exist, are insufficiently enforced.
### METHODOLOGY

#### DESK REVIEWS
- Familiarization and analysis with all relevant laws, regulations and procedures;
- Familiarization and analysis with relevant EIA, EMP and Cooperation Agreements;
- Review of Mongolian reports, policies and programmes.
- Review of international initiatives addressing the need for more effective communication of communities in mining investments.

#### SITUATION ANALYSIS: SITE VISITS
- Visits to mining operation sites
- Assessment of rehabilitation of the mining impacted areas
- Assessment of local area within mining impact zones
- Assessment of herders' livelihoods and land use practices.

#### SITUATION ANALYSIS: COMMUNITY BASED INTERVIEWS.
- Meeting and information sharing with local administrations, relevant local specialists and CRH representatives;
- Meetings with local communities, including herders, to solicit their opinions on the significant issues of concern to them in connection with the environmental and social impacts of mining projects (potential or actual) and to ascertain their attitudes, awareness, access to information and capacity to influence mining projects;
- Meetings with the mine administration and employees to listen to their opinions and experiences with community engagement.
- Interviews in Ulaan Baatar with leaders of international mining initiatives currently addressing the need for better governance of mining investments in Mongolia - including the engagement of communities.

#### SITUATION ANALYSIS: INTERVIEWS WITH EXPERTS (ULAAN BATAAR AND INTERNATIONALLY)
- WWF (Mongolia)
- Administration of the Mongolian National Mining Association
- Management of Aivuuntes LLC
- Project team of German Technical Cooperation Society
- Leader of “Onon Ulz River” movement.
- Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ)
- Natural Resources Governance Institute.
- Mongolian Extractives Industries Transparency Initiative
- The UK Embassy.
- The Human Rights Institute, London
- Telephone calls with numerous experts engaged in relevant Mongolian projects.

#### MEETINGS IN UVS AIMAG.
- Aimag government officials
- Relevant specialists of the aimag authorities
- Managerial personnel and specialists of Bukhmurun soum
- Representatives of the CRH of Bukhmurun soum
- Managerial personnel of Khotgor LLC
- Herders of Bukhmurun soum and Khar Alt bagh
- Citizens and CSOs of Bukhmurun soum
  (56 People attended)

#### MEETINGS IN KHENTII AIMAG.
- Aimag government officials
- Relevant specialists of the aimag
- Managerial personnel of Batshireet soum
- Representatives of CRH of Batshireet and Binder soums
- Herders of Onon bagh, Batshireet Soum
  (87 People attended).
Mining can have significant economic, social and environmental consequences at national, regional and local levels. It can have both beneficial and detrimental impacts. The goal of mining must be to contribute to a nation’s economy, growth and development in a way that ensures a net benefit for both human welfare and environment. This must be achieved in a responsible way that ensures the avoidance or minimization of negative impacts and the maximization of positive outcomes. Too often in the past mining projects have undermined sustainable development rather than supported it.

The success of any mining venture will be totally dependent upon the goodwill of the community in which it operates. Now a cliche perhaps, but international standards dictate that a new mine proposal must obtain a community’s ‘social license to operate’ before it proceeds. A point of controversy exists as to whether or not a community hosting a mine should have the power of prior, informed consent over a mining investment. However, there is no controversy, about the view that communities must be consulted about such investments.

A modern mine must be aligned to the needs and goals of the host community. The development of Community Development Agreements (CDAs) that ensure an open consultative process throughout the life of a mine has been a major development in this regard and Mongolia is one of the pioneering countries in progressing model Agreements. Mines can provide direct and indirect employment opportunities, skills transfer, improved health, education and social services, enhanced infrastructure and communications and new business development opportunities driven by targeted procurement policies. An informed and sensitive approach to a community’s culture, traditions, livelihoods and natural resources is imperative - concept now enshrined in mining best practice as 'shared resource stewardship'.

However, just as there are examples of good practice, so examples of bad practice prevail. Conflicts between miners and communities have obstructed, delayed and even led to the cancellation of mining contracts and threats to the security of mine personnel. Some companies and their shareholders have experienced financial and reputational penalties as a result.

A root cause of these conflicts has been the failure of both mining companies and national governments to adequately ensure an on-going dialogue with local communities about mining developments and the company’s commitments to community development. This results in misinformation, delays, misunderstanding, lack of trust, frustrations and frequent adversarial relations.

For these reasons, the impacts and risks of mine investments on local communities has been an area of increasing attention for mining companies, development agencies, NGOs and governments. Many international organizations have undertaken research, shared experiences and developed good practice guidelines, case studies and tool kits advising how to more effectively engage with communities in mining decision making.
Mineral exploitation has been taking place over many centuries in Mongolia. However, large-scale mining is a relatively new development starting in the 20th century. The first legislation regulating the exploration and exploitation of minerals in Mongolia dates from 1913. Between 1904-1920 Russian, German and French investments led to nearly ten tons of gold being extracted from the country’s mines.

After the People’s Revolution of 1924 the first Mongolian constitution was adopted and a rudimentary Mining Regulation stated that the land and its minerals were state property.


As Mongolia has converted from a socialist country to a multi-party democracy and market economy, the mining sector has rapidly developed as a key sector in the Mongolian economy and supported the country through a period of structural reforms and the high unemployment, inflation and poverty that characterized the country after the collapse of the Soviet bloc (90% of Mongolia’s trade and investment at that time).

Over the past 20 years Mongolia’s mineral wealth has facilitated an economic boom. For a time, Mongolia had the highest economic growth rates in the world as foreign direct investment (FDI) grew significantly (The inflow of FDI has grown almost 19 times in the last two decades) in contrast to other sectors. In recent years (2011) the sector has accounted for about 30% of Mongolia’s Gross Domestic Product (GDP) and 30% of government revenues (Hogan Lovells, 2012). According to Ernst and Young (2012) between 1990 and 2010 nearly 70% of total FDI went into oil, gas and mining exploration and development.

With such rapid economic growth came significant environmental and social challenges. The Minerals Law covers license holders’ environmental obligations but these were considered inadequate and poorly enforced. The government had attempted to resolve these issues on an ad hoc basis by, for example, increasing water fees, adopting the 2009 ‘Long Name Law’ and introducing an obligation on mining license holders to pay a deposit for ‘environmental restoration bonds’.

A 2012 review replaced 18 environmental laws with 8 laws and introduced 2 entirely new laws. The review attempted to reduce duplication, improve the quality of the legislation,
improve economic efficiency, introduce international standards in environmental auditing and ‘the polluter pays principle’ and, importantly for this study, increase public participation in decision-making.

The mining boom has not had universal support in Mongolia. Dissatisfaction has existed about alleged corruption and the unequal sharing of the benefits, the negative social and environmental impacts and the disruption of traditional livelihoods caused by mining. The principle of national ownership also appeared to be under threat as foreign investors gained increasing control over Mongolia’s mineral wealth. Some regions that have seen the major part of mining investments have also seen conflicts arising - especially over water resources.

Characteristically for minerals dependent countries the bonanza times have now become just a memory. Economic growth has slowed significantly in recent years. Foreign investment has gone down dramatically since 2014 from USD 4.7 billion in 2011 to USD 232 million in 2015, a drop of 95 percent. This has left domestic companies in the majority and contributed to foreign sell offs - such as the huge Erdenet copper/molybdenum mine once a joint Russian/Mongolia venture now a wholly Mongolian owned venture.

The government is working to stimulate economic growth while ensuring that it meets its commitments to national and international sustainability goals, including the United Nations Sustainable Development Goals.

As with many countries this economic decline can be attributed, in part, to China’s economic slowdown and the commodity price collapse. Mongolia’s trade dependency upon China makes it extremely vulnerable to the economic climate in that country. About 90% of Mongolia’s imports and exports are conducted with China, the majority of the exports being copper and coal.

Poorly developed infrastructure, and the GoM’s ‘love-hate’ relationship with foreign investors in recent years have also contributed to the slowdown. The on-going disputes between the government and Rio Tinto over the profit sharing arrangements, ownership structures etc at the Oyu Tolgoi gold and copper mine has exacerbated this situation and has contributed to greater caution by potential investors in Mongolia’s mining sector.

However, mining is cyclical by nature and an economic recovery can be stimulated by many things. In July, 2017 the copper price surged to its highest level for 2 years. Mongolia has started to benefit from the sanctions imposed by China on North Korea that has forced them to seek alternative sources of coal. The development of the China-led mega infrastructure ‘Belt and Road’ initiative also promises to stimulate some recovery for Mongolia’s mining sector.

According to B. Baatartsogt, Head of the Mineral Resources and Petroleum Authority, attempts to revive mineral exploration in Mongolia have led to the issuing of exploration permits on 41.4 million hectares of land, or 26.4% of Mongolian territory. Permits for 31.2 million hectares will be issued under application, while those on the remaining 10.2 million
hectares are being decided under a current selection process. (Mongolia Mining Weekly, 25 June, 2017)

The key reserves of interest remain coal, copper, and gold. Geopolitics work in favour of the ore deposits in the South because of their close proximity to the main market and ports of China. The Oyu Tolgoi mine in South Gobi, is only a few hundred km from the border and the Tavan Tolgoi and Ovoot Tolgoi coal mines even closer. However even mines in the north have their exit routes towards China and Russia. The Boroo and Gatsuurt gold mines, for example, are located north of Ulaan Baatar and the Nuurst Khotgor coal mine (one of the largest coal reserves in Asia and the world) is an open-pit mine about 120 kilometres west of Ulaangom in Uvs. and this will not be a major obstacle to any significant minerals deposits found in the study areas aimags.

| 85%  | Export Copper concentrate, iron ore, coal raw petroleum and others |
| 64%  | Used for Mining extraction, concentration, heavy industry |
| 71%  | Industrial products sourced from mining sector |
| 20%  | GDP consists of mining products |

Source: Ministry of Mining and Heavy Industry, 2017

Pictures 1 and 2: Mongolian Copper for Export (Erdenet Mining Corporation), (Pictures courtesy Oyunbileg Purev.)
Globally the mining sector has had a very poor track record for their lack of environmental and social safeguards. The past 20 years has seen many initiatives trying to improve this situation. Almost without exception, these international initiatives have included an emphasis on the importance of the engagement of communities in decision-making. Some stress this as a fundamental human right.

A comprehensive reference paper entitled ‘International experiences and emerging good practice in community engagement and development in mining investments - lessons for Mongolia’ (March 2017) serves as a core reference for this consolidated report. The paper reviews some of the standards developed by multi stakeholder dialogues, professional bodies, international financial institutions, the private sector etc.

It is difficult for communities to comprehend just how different modern mining practice can now be compared to earlier experiences. While certainly not universal, modern mines operate to strict environmental and social standards.

**MODERN MINING STANDARDS ARE INFLUENCED BY THREE MAIN FACTORS:**

**The minimum standards put in place by National policy and legislation:** The enactment of more rigorous national legislation by governments, the custodians of a nation’s natural resources, sets out the host country’s *bottom line* of the *minimum* standards with which a mining investor must comply. This presents governments with the challenge of how to ensure a favourable investment climate for mining companies, while also protecting the rights of the people, the productivity of other economic sectors and the integrity of the regions eco -systems.

**The comprehensive environmental and social performance standards** that are now imposed on borrowers by international financial institutions (in the case of Mongolia primarily the International Finance Corporation (IFC) and the European Bank for Reconstruction and Development (EBRD)) as well as other private investors - such as the Equator Banks. These institutions set the good practice standards that the companies in which they invest must comply. These standards tend towards best practice in environmental and social performance and invariably include rigorous requirements for community engagement. They are usually more stringent than the compliance requirements of national legislation. Proactive companies also ensure that the systems and tools are in place to ease the access to finance and community approval. (See Anglo American 2010 and 2012 and their Socio-Economic Assessment Tool (SEAT))
The aspirational standards being developed by many international agencies. International best practice standards have been detailed in numerous Guidelines (150 were identified in a recent WWF survey). These are usually crafted by international development agencies, multi stakeholder think tanks, professional bodies and mining companies’ associations - the latter being concerned about the poor reputation that the sector has had in the past and the increasing difficulty in acquiring new mining sites because of this. These international initiatives may, for now, be aspirational. However, over time they influence national governments, companies and international financial institutions and have a tendency to slowly move from voluntary requirements to becoming the regulatory norm.

Taken together these influences set the standards against which the performance of mining companies and their host governments can be measured.

Some mining companies see legal compliance as sufficient whereas leading multinational companies set the bar much higher and go ‘beyond compliance’. The latter act as an influence on domestic companies’ standards. Major foreign mining investments help set new standards of environmental and social performance for others to follow. It is probable that in the current Mongolian situation of falling FDI this influence is reducing.

On the other hand, it is possible to see the current slow investment period as a ‘window of opportunity’. The challenge is to ensure that sufficient environmental and social standards and public participation mechanisms are put in place for the economic up-turn and increased mining activity when it returns.

CASE STUDY: AMULSAR GOLD MINE, ARMENIA.

The Amulsar gold mine in Armenia is being developed by Canadian company Lydian International. During the permit process for the mine ten iterations of the project EIA were drafted as new information emerged or mine design changes became necessary. This illustrates that the EIA process must be iterative. About 35 subject specific action plans are now being implemented by Lydian to manage the issues identified in the EIA. Many of these measures were as a consequence of the conditions imposed on the company by the financial institutions investing in the mine. Audits of these plans are regularly carried out for government and investors in the project. An expert Independent International Advisory Panel has been established to monitor and advise on all aspects of the mine’s development and to provide assurances to the communities, the general public, government and the company that best practices are being effectively followed. In addition to this the mine has opened offices in neighbouring communities and the capital, Yerevan. These are open 24 hours a day, 7 days a week for anyone to come for information, raise grievances or express opinions about developments to mine staff. This type of progress has changed the face of modern mining.
Over the past 5 years many of the more significant international initiatives referred to above have moved from merely providing Guidelines to developing programmes and methodologies for their practical implementation.

Faced with the challenges of ensuring equitable and sustainable development outcomes from the exploitation of its mineral wealth, Mongolia is actively involved in applying some of these standards at the national and local levels. Most noticeably this includes the Mongolian Extractives Industries Transparency Initiative (MEITI) and the Natural Resources Governance Institute (NRGI).

Since 2014 the MEITI have been engaged in implementing the EITI through a community outreach programme, including the establishment of local MEITI Councils in 21 aimags (and 14 soums).

The NRGI, together with the Open Society Initiative, have organised civil society capacity development programmes based on another international initiative, the Natural Resources Charter Benchmarking Framework. Numerous other agencies have provided training and advisory support for government officials etc, both in Mongolia and overseas. This has helped build the much-needed local professional capacity in government, communities and the professional services sector.

In 2016 the GOM invited The Inter-Governmental Forum on Mining, Minerals and Metals and Sustainable Development (IGF) to perform an assessment of its minerals policies and laws to help identify gaps and ensure that laws reflect international best practice, with a focus on achieving sustainable development objectives. The IGF also reviewed the country’s implementation capacity and organised capacity building workshops.

The IGF has developed a generic ‘Mining Policy Framework’ (MPF). To help guide its 50 plus member countries (of which Mongolia is one) in their mining policy formulation. (IGF. 2013). In 2017 the IGF published its review of the Mongolian policy environment benchmarked against the IGF Mining Policy Framework. It found numerous anomalies and inconsistencies and areas that are not sufficiently covered by regulations. The IGF Report (IGF June, 2017) provides a roadmap for dealing with important issues identified in their report, such as mine closure and financial benefit optimization.

The assessment also identified several major strengths of Mongolia’s mining sector in its report. It singled out the recently approved Model Community Development Agreement for
special praise and recognised it as a good practice example of how to promote integration of benefits of mining into aimags and soums. (IGF 2017).

Mongolia has been a pioneer in the development of formalizing relationships between mining companies and communities largely due to the experiences at Rio Tinto’s Oyu Tolgoi mine. A CDA between mining companies, local government and communities is now a legal requirement in Mongolia. From 2018 extraction license owners’ permits will only be issued if an Agreement is in force. A database on CDAs will be established and their progress will be monitored.

In their consultations with stakeholders, the IGF found that the increasingly frequent use of multi-stakeholder councils at the aimag and soum levels as a well-supported and favourable development. These Councils are mechanisms to discuss and manage concerns related to the mining developments similar to CDAs.

The level of open and transparent data on tax and royalty flows, and increasingly contracts and licences, largely a result of Mongolia’s decade of experience implementing the EITI, was also cited as a major strength in Mongolia.

Amongst the gaps the IGF study identified in its report were:

- A lack of management of large-volume and high-risk mine wastes, including, but not limited to, their impact on water resources.
- A lack of government capacity to audit complex tax returns and to deal with transfer pricing, beneficial ownership and related issues.
- A lack of clear criteria regarding which deposits should be classified as “mineral deposits of strategic importance.”
- A lack of clarity and transparency regarding how revenues are distributed to and utilized at the aimag and soum levels. (IGF 2017).

The priority actions needed to improve Mongolia’s management of mineral wealth were identified as:

- Improved legal and regulatory frameworks for the assessment, review and management of mining projects;
- Strengthened capacity for effective implementation of assessment, review, and management of mining projects;
- Enhanced corporate governance, environmental and social management systems within all mining companies;
- Increased awareness and involvement of local civil society and local consultants in processes such as the assessment, review, monitoring and management of mining activities.

(IGF June, 2017)
Historically mining investments worldwide have been planned and operated with little public consultation or involvement. Mining projects were imposed on communities because of their ‘national or strategic importance’. They often operated as enclaves divorced from the communities impacted by them and contributing little to the development of those communities. Any community benefits were often coincidental consequences of mining operations rather than targeted actions to contribute to the sustainable development of the communities that hosted their activities. Instead these communities frequently experienced negative impacts from mines and these undermined their development potential.

Environmental and social costs were dismissed as externalities by mine management i.e. to the account of society generally, rather than internalised into the costs of mining operations. Mine planning and operation were frequently associated with community conflicts and post mining left a legacy of degradation, orphaned sites and dereliction that reduced, if not destroyed, their livelihoods.

Contrary to expectations nations, regions and communities whose mineral resource endowments were being exploited were not always thriving economically but instead were characterised by corruption, conflict, enduring poverty, inflation, disrupted livelihoods, infringements upon rights, involuntary resettlement, influxes of itinerant workers with different values and customs and environmental degradation.

Mongolia is no stranger to such experiences and this shapes peoples’ perceptions of mining projects today - although, as indicated, standards have changed markedly at least amongst the multi-national mining companies. This is evident in the study area aimags - especially Uvs which has a longer history of mining activity.

One of the key challenges is now to ensure that communities benefit from the presence of a mining investment in their region and are not disadvantaged by it. The benefits accruing to local communities from mining must be maximized in a sustainable way and the negative impacts must be either avoided or minimized.

As the International Finance Corporation observes, ‘stakeholder engagement is the basis for building strong, constructive and responsive relationships that are essential for the successful management of a (mining) project’s environmental and social impacts’. Meaningful participation in proposals that affect the lives and livelihoods of local communities is a fundamental human right.
EIA is the most common entry point at which communities engage in mine project planning. However, in practice, EIA procedures are not realizing their full potential as platforms for communities to express their views and influence mining decision-making.

A) PERSISTENT POOR PRACTICES IN COMMUNITY ENGAGEMENT IN MINING PROJECTS

In the process of addressing the need for effective planning in mining decision making in Mongolia, and the study areas in particular, it is important to understand some of the failings experienced elsewhere in the world.

These include:

- **Defining Communities**: A deeper understanding is needed of the complexity behind the term ‘community’ so that the diversity and variety of opinions, interests and priorities of people living in communities affected by projects is better recognized and incorporated into project planning and execution. A community is not a homogenous entity.

- **Lack of Inclusivity**: EIAs frequently fail to engage all relevant people in dialogue - especially the marginalised and the vulnerable in communities. Some EIA processes have also been criticized by communities for paying too much attention to the views of self-appointed guardians of communities’ interests (NGOs) - views that may be contrary to the desires of the community themselves.

- **Stage of Decision-making Process**: Too often community engagement is left until the project approval stage (ie during an EIA process). However, by the time an EIA is undertaken, considerable investments and key strategic decisions have already been made. A community’s opportunity to influence whether or not a proposal should go ahead at the EIA stage (or after) is therefore limited because at this stage a project is effectively a fait accompli.

**Case study: Mine closure by Community Conflicts, Papua New Guinea**

An exception to this rule is the much-quoted case of Panguna mine in Bouganville, Papua New Guinea (PNG) where a community succeeded in having a copper mining license terminated on environmental grounds even though the mine was well established. The conflict initiated a civil war (the mine was part owned by the PNG government and led to cessation demands). Community leaders alleged that the mine had devastating environmental consequences for the island (including pollution of the Jaba river and extinction of the flying fox (Pteropus vampyrus) on the island.

- **Participation limited to Obtaining permits.** Although critically important, disproportionate attention is given to community engagement at the EIA (project approval) stage. Preparing the Environmental Report (or Statement) may be perceived as the end of the participation opportunity. Community engagement may be intensive at this stage to ensure approvals are obtained. However, community
engagement is not a one-off exercise it is part of an on-going, iterative process throughout the life cycle of a project. EIA lays the foundations for later monitoring and necessary adjustments during project implementation and operation that will be equally important for the public to engage in but community engagement is imperative throughout the implementation of the EMP.

- **Institutional Deficit:** Governments, companies and the local consultants working for them do not have sufficient capacity to implement (including facilitation of public participation in) EIA procedures.

- **Enforcement of the regulations and conditions identified in the approval process,** is often ineffective and sanctions for failing to comply with procedures are no big deterrent to a mining company intent on irresponsible behaviours. Delays are costly to project proponents so they sometimes proceed (illegally) before approvals have been secured.

- **New Actors:** During high commodity prices, new actors enter the mining sector and may not be as familiar with the importance of community engagement as those companies who are subject to the conditional funding provided by IFIs. In contrast, low commodity prices see a drop of interest by leading mining companies (with higher environmental standards) and the market is left to others who may not have the same business standards.

- **Corruption:** As with most systems requiring permits, EIA procedures are particularly susceptible to corrupt practices. This leads to further mistrust amongst communities because details of licenses agreements etc. are purposely made opaque for self-serving reasons.

- **Lack of Impartiality:** It is usual for the proponent of a project to be responsible for the commissioning of the consultants who facilitate the EIA process. The risk is therefore that some will favour advocacy of the proposal rather than a balanced and impartial analysis of its potential positive and negative impacts.

- **Asymmetry of Information:** The project proponent is likely to have access to expertise (including legal) that is far beyond the technical capacity of that possessed by community representatives. A community will lack - especially a remote herder community- information about a project, and its potential consequences. There is little understanding in communities of the information that they can demand of governments, investors and other stakeholders involved in new large-scale mining investments. This results in a failure to hold key actors to account.

- **Lack of Integrated Approaches.** EIA procedures should be a balanced consideration of environmental, social and economic factors. However, EIAs are criticised for overly focussing on the natural environment. This has led to the need for the explicit incorporation of social impacts and more effective public consultation as part of that (eg SIA). The risk of addressing one facet of sustainability in isolation...
is that the outcome may be good for that sector (the environment) but create future problems for other sectors (social and/or economic).

Failure to Evaluate the Nature of Impacts. Impacts can be multi-dimensional. EIA processes have frequently only focused on the direct, negative impacts on communities and their environs. This leads to management programmes that are limited to avoiding and mitigating negative impacts or ‘doing no harm’. The more balanced and integrated approach, that sustainability requires, would include a consideration of the potential for investments to ‘do good’ as well. EIA’s also frequently fail to identify the indirect, synergistic and accumulative impacts that may pose threats and opportunities to communities beyond the immediate environment of the mine (e.g. via water courses). Impacts that are either reversible or non-reversible also need to be explained.

A lack of Meaningful Participation. Several international initiatives refer to the typology of public participation (Arnstein, 1969). This suggests that a common failing of community engagement is that it is treated with tokenism or as lip-service and, therefore, has no real impact on decision making. Simply ‘informing’ and ‘one-way communications’ are not genuine participation.

Limited Interpretation of CSR/Social Investment. Company’s CSR programmes (offered to off-set the negative impacts of a project) have often been limited to philanthropy, charity or hand-outs to communities. They take little account of the community’s own priorities. These fail for several reasons including because they are initiated and led by the mining company itself (and thus lack community ownership) and increase the dependency of the community upon the mining company rather than looking beyond the life of the mine when the community will need to be self-sufficient. They are also dependent upon the skills of outsiders with little local involvement in the community and may be dependent upon technology, resources or knowledge that is not available to local communities.

Failure to adequately consider alternatives: Any developer must provide the reasons for choosing a particular course for a project and outline alternatives. In many cases project opponents have argued that investors have failed to consider and assess more environmentally favourable alternatives and authorities fail to ask for further alternatives to be assessed.

6) EMERGING GOOD PRACTICE FOR COMMUNITY ENGAGEMENT IN MINING PROJECTS

In the process of addressing the need for effective participation in mining decision making in Mongolia and the study areas it is important to take note of some of the positive indicators of success emerging elsewhere in the world.

In order to ensure that mining investments are beneficial rather than detrimental to the needs and goals of local communities the following fundamental ‘good practice’ requirements can be identified from the review of international initiatives:
PARTICIPATION IN MINING RELATED DECISION MAKING

Early Engagement: To be effective and informed community engagement should be as early as possible in the process before key decisions are irreversible. It must be initiated during policy formulation and progress through to the projects (that will put policies into practice). Engagement should be initiated long before the formulation of a project appraisal (an EIA) i.e. when a government is deciding on whether or not to open an area to mineral exploration. If left too late in the process the chances for a ‘no go for mining’ option diminishes. Mongolia has recognised this need in its EIA legislation by introducing the need for Strategic Environmental Assessment (SEA).

Contract Transparency: Citizens have the right to know the terms of agreements made between governments and companies about the exploitation of natural resources. These terms are contained in licenses, contracts, investment agreements, legislation and regulations. Whereas the latter two are usually open to public scrutiny, contracts have not been. Some elements of contracts may be of commercial sensitivity but extending disclosure to contracts and license details is rapidly becoming the norm. Over half of the EITI implementing countries are now engaged in contract disclosure. The Mongolia Extractive Industries Transparency Initiative (MEITI) has increased the accessibility of information about Mongolia’s extractive industries, spurring the publication of key contracts such as those signed with Rio Tinto in 2009 for the Oyu Tolgoi copper gold project. More than 1,800 companies hold mining licenses in Mongolia but to date only 12 contracts have been opened to public scrutiny. The Natural Resource Governance Institute (NRGI) and the Open Society Forum have organized training for civil society groups in Mongolia to help them better analyse and monitor often complicated extractives contracts. Some of the course participants have already monitored specific mining projects in their communities.

Inclusivity: Stakeholder analysis is needed because communities are heterogeneous. Different groups within communities have different values, access to power etc. Effective Engagement will include a diverse range of individuals whose interests cover the full spectrum of a community and its expectations. Community dynamics must be understood in order to prevent or mitigate community conflicts that might occur. Cooperation, convergence and consensus need to be promoted. Stakeholder analysis should lead to a stakeholder engagement plan. This should ensure the inclusion of the vulnerable and marginalised in the community and demonstrate that the representatives of the community’s views and interests have broad acceptance and credibility within the community and that they will communicate effectively with others.

Effective Engagement: Is measured by an organisation’s responsiveness to its stakeholders’ and how accountable it is to them. It is achieved through partnerships that are built on trust. It must consist of a two-way dialogue and involve frequent feed-back mechanisms to assure the community that their concerns and interests have been taken into account and have been acted upon. This reassures them that they have had a meaningful influence on decision-making.
Full Disclosure and Dissemination: Effective community engagement requires full and transparent information disclosure and consultation with communities on matters that directly affect them. (IFC, 2012). It is now a basic requirement for a project proponent to provide means for effective engagement with affected communities on material issues and ensure that relevant environmental and social information is disclosed and disseminated in a way that is timely, understandable, culturally appropriate and accessible. This will help address the asymmetry of information.

Consent vs. Consultation: The subject of some controversy, Free Prior Informed Consent (FPIC) is currently limited (under international law) to indigenous peoples. This states that indigenous peoples must be given the opportunity to approve or reject a (mining) project prior to the commencement of all activities. The controversy exists over the concern that communities (or elements within them) should have the power of veto over projects that may be of national importance. However, the status quo in good practice is for communities to have the right to consultation but not consent. A practical reason for this preference is that, although consent is easy to commit to in policies, the principle lacks detailed implementation guidance. Some companies have committed to ‘consent’ (e.g. Angkor Gold in Cambodia) of non-indigenous communities but have yet to be tested on this principle in practice. (Oxfam 2015).

From Community Engagement to Development: Community Engagement should be an on-going, systematic, iterative process. It should begin prior to mine planning (see above) and continue as a sustained process throughout the life of a mine into post-mining and legacy activities. This has led some international initiatives to focus on the importance of going beyond community engagement to community development. (e.g. ICM/MICM’s “Community Development Toolkit” updated 2012, ‘Enduring Value’, Australia 2006 etc)). Community Development is a deeper process than participation. It is designed to increase the capacity of communities to engage in dialogue and decision-making and have greater control over their lives and livelihoods. This calls for long-term, multi stakeholder partnerships to progress a mine’s social and economic contribution to the community. Community Engagement and Development are distinct but overlapping processes. Engagement can be undertaken without necessarily including a commitment to Development (for example in the EIA process). Much guidance exists on how to develop tri-sector partnerships (community, government and mine developers) in mining communities.
Community Development Requirements.
Dialogue
Collaboration
Strengthened Institutional and Individual Capacity.
Partnerships

Effective Community Development Agreements Requirements:
Shared Objectives
Shared Work plan
Funding Arrangements
Decision Making Principles
A Grievance Mechanism to Resolve Differences
Communication Procedures Among Partners
Procedures for Monitoring and Measuring the Impact of the Partnership.
Capacity Development of Partners.
Strategies for Dealing with Succession and Staff turnover.
Exit Strategies.

Community Cooperation/Development Agreements: A Communities’ monitoring role is likely to become more significant with the new requirement under Mongolian law that all mining license holders should enter into Cooperation Agreements with local governments. These Agreements tend to include the types of obligations (e.g. environmental protection, local development/infrastructure support, job creation) in which local communities are particularly interested, and which they are well placed to monitor. The Mongolian government has developed a model Cooperation Agreement, but local governments have limited capacity to negotiate and enforce these agreements. (Source: pers comm: Dorjdari Namkhaijantsan, Mongolia Manager, NRGI)

Grievance Mechanisms. Communities concerns and grievances about a mining company’s environmental and social performance can be addressed and resolved through grievance mechanisms. This process will help avoid protracted disputes. One of the best examples of a platform for dialogue and grievance mechanisms is the ‘Network for Sustainable Mining’ (Kaivosvastuu) established in 2012 in Finland.

‘Resource Stewardship’: involves a programme of actions to ensure that resource inputs to a process (e.g. water, chemicals, energy etc.) are being used efficiently and with an understanding of, and concern for, the impacts and implications for others resource users in the area. This is a way of maximising the community benefits of the resources that a mine and its neighbours depend upon. The mine operator is a temporary custodian of community assets and thus is responsible to ensure that there is no net loss to those assets during and after the life of the mine. A greater degree of ‘stewardship’ is increasingly expected during mining operations. An example is ‘water stewardship’ which is about mine management understanding the risks that they and their neighbouring resource users face from water scarcity,
excess or pollution, and taking action to help ensure water is managed sustainably as a shared resource. Stewardship goes beyond being an efficient water user. It is about the private sector collaborating with all stakeholders to protect shared freshwater resources.

**Beyond CSR:** Community Participation should include the identification and implementation of local development opportunities that mining investors can help the community realise. This could involve increasing local procurement or ensure multiple and shared use of the mining company’s infrastructure etc. The opportunities should relate to the community’s goals and normally build on existing community structures rather than replace them. The company’s contribution to supporting social and economic development of the host community is long term, it will address community priorities, institutional governance and capacity and will be delivered in partnerships of mutual respect and understanding.

**Indicators of Success:** The measurement of success should not be based on compliance with procedural outputs (e.g. the production of a report) but with the verifiable outcomes achieved by the process.

Increasingly, mining companies are recognizing that building long term relationships with those affected by their mining activities can improve the identification and management of risks, as well as facilitate the long-term viability of their operations. Meaningful engagement that is proactive, inclusive, accountable, and transparent is more likely to result in optimal outcomes for both communities and mining companies.

Mining companies’ investments should enable communities to grow independently of a mine over the long term. A mine will have a life span of only a few decades. Active measures are needed to ensure that the sustainability of local livelihoods is strengthened not undermined during the years of mine planning and operation.
Mining projects that occur in remote regions are shaped by the policies of the country. It is important to understand these legal contexts in assessing the situation in the study areas.

A) MINING POLICIES AND LAWS OF MONGOLIA

Ten Main Laws currently govern the Extractives/Mineral sector of Mongolia.

- Nuclear Energy Law (2009)
- Petroleum Law (2014)
- Petroleum Products Law (2005)
- The Law to Prohibit Mineral Exploration and Mining Operations at Headwaters of Rivers, Protected Zones of Water Reservoirs and Forested Areas (otherwise known as the “Long Name Law”! (2009)
- Common Minerals Law (2014)
- Law of Mongolia Procedures on Compliance with the Nuclear Energy Law.
- Law of Mongolia Procedure on Compliance with the “Long Name Law”.
- Law of control on Explosives and Accessories and Explosives Circulation (2013)

In 2014 the Mongolian parliament adopted a Minerals Sector Policy that set the framework for much needed amendments to the existing Mining Law and other laws relating to natural resources. The State Minerals Policy (2014-2025) lays out a vision for responsible mining, with the goal of providing sufficient social and economic benefits from mining, while also achieving Mongolia’s national plans to implement the UN Sustainable Development Goals.

However, this policy falls far short of other international guiding documents that frame the future role of mining in a nation’s sustainable development.

Case study: The African Mining Vision

The Africa Mining Vision (AMV) is a policy framework that was adopted by the African Union in 2009 to ensure that Africa utilizes its mineral resources strategically for broad-based, inclusive development. “The AMV advocates thinking outside the “mining box”.

It is not just a question of improving mining regimes by making sure that tax revenues from mining are optimized and that the income is well spent - although that is clearly important. Rather it’s a question of integrating mining much better into development policies at local, national and regional levels. That means thinking about how mining can
PARTICIPATION IN MINING RELATED DECISION MAKING

contribute better to local development by making sure workers and communities see real benefits from large-scale industrial mining and that their environment is protected. It also means making sure that nations are able to negotiate contracts with mining multinationals that generate fair resource rents and stipulate local inputs for operations, and at regional level, it means integrating mining into industrial and trade policy. Most of all it’s a question of opening out mining’s enclave status so that Africa can move from its historic status as an exporter of cheap raw materials to manufacturer and supplier of knowledge-based services” UNECA.

The AMV was developed over several years with diverse stakeholder and expert inputs, it sets out a road map towards more sustainable mining in Africa and is now being translated into specific country Mining Visions.

Perhaps the closes Mongolia has got to such a visionary framework is the World Bank sponsored Strategic Environmental and Social Assessment of the Mining Sector in Mongolia. (World Bank 2014). It is, however, unclear how influential this has been in shaping Mongolia’s mining future.

Some contradictions and ambiguities exist in the laws intended to implement Mongolia’s mining policy. So, in March 2017 the Ministries of Mining and Heavy Industry and Justice and Internal Affairs published a new draft, overarching Mongolian Mining Law for consultation.

The current law has a focus on regulating license issues but omits adequate attention to construction, extraction and beneficiation, rehabilitation and closure. The draft law aims to improve the mining framework to better regulate activities throughout the mining life cycle, It is also intended bring greater coordination, policy coherence, and definitional clarity to the currently confused and overly bureaucratic mining policy environment. Issues related to the workers’ health and safety and mining closure are addressed differently in the Minerals law and the EIA law.

It is believed by government that greater transparency and responsibility in the new mining system will ensure consistency with international standards and will improve public understanding and trust in the sector, while protecting the environment and creating better relations between communities and investors. The expected system will increase public participation in mining decision making to a level closer to international best practice. “Ensuring affected community participation in environmental protection …. will strengthen the understanding and trust among state, investors and local communities. A new mining closure structure link to the financial guarantee mechanism will reduce the risk of any land affected by mining operations being left without rehabilitation;” (2017 Presentation “Brief Introduction on the draft law on mining” by J. Ganbaatar (Director of Mining Policy, Ministry of Mining and Heavy Industry).

Earlier attempts to streamline the mineral laws in 2013 were handicapped by divergent views. However, the 2014 Minerals Sector Policy emerged as the first comprehensive policy for the mining sector).
The opportunity to comment on the draft law will be open until March 2018. It is important that marginalized communities - such as rural herder communities be encouraged to participate in these policy deliberations. Too often participation of communities has been left to the later stages when projects give practical shape to mining policies.

International experience has shown that participation at the project, rather than policy, stage reduces the opportunities for communities to influence strategic choices about mining - especially if the community has objections to a mine. The chances of stopping a mine development are seriously reduced at the project stage when a company has made considerable investments in exploration, mine planning, environmental assessments etc. At this stage, the usual recourse for communities is limited to advocating mitigation measures to reduce the impacts of a mine project. Conflicts between communities, government and mining companies are almost inevitable if communities want to discuss a ‘no mine’ option once a project has taken shape.

### Б) ENVIRONMENTAL POLICIES AND LAWS OF MONGOLIA

At the same time as the review of the mining policy and legislation of Mongolia all environmentally - related laws are also being reviewed to remove any contradictions, gaps and ambiguities with minerals legislation. The full list of environmental laws that will be scrutinized are currently under consideration.

As mentioned earlier, Mongolia’s Environmental laws have been through a similar exercise already when 30 laws were streamlined down to 18 in 2012. “This led to the present clear and systematically prepared set of well rated environmental laws”. (Editorial comment in ‘Mongolian Mining Journal’, July 2017).

The revisions included the introduction of the ‘polluter pays principle’ and increased the risks and liabilities for mining companies to pay compensation for environmental damages. The amount of compensation was made dependent upon the resource damaged. An ‘intrinsic value’ was assigned to critical resources. This concept is a rudimentary, but nonetheless innovative, step towards a system of natural capital valuation and ‘payments for ecosystem services’.

The calculation of intrinsic values was to depend on regional differences. For example, water resources in the Gobi would have a higher rating than in an aimag where water is abundant. The level of compensation was to be calculated by an independent assessor.

In addition to a new environmental audit provision the EIA Law was also revised. This ensured that a mining proponent must inform the local community and other stakeholders about proposed Environmental Management Plans (EMPs) to mitigate impacts and include a restoration and closure management plan 3 years before actual closure.

Some concerns were expressed to the Project Team that some projects that are purportedly rehabilitating mining sites are really actually engaged in additional mining.
All respondents to interviews carried out in Ulaanbaatar stressed that a lot of the language of the environmental legislation remains vague (for example, with concerns over the subjectivity of concepts such as intrinsic value) and that the nascent Mongolian environmental profession lacks the technical capacity necessary for undertaking the EIAs, environmental audits, value calculations, monitoring and inspections etc. Innovative concepts such as the ‘environmental bond’ were especially singled out as being good in theory but a different matter in practice.

In May, 2017 the United Nations Economic Commission for Europe (UNECE) in cooperation with the United Nations Economic and Social Commission for Asia Pacific (UNESCAP), initiated an Environmental Performance Review (EPR) of Mongolia. The EPR will evaluate the country’s efforts to abate air pollution, improve water management, reduce waste, conserve biodiversity and combat desertification. It will also focus on Mongolia’s progress in ‘greening’ its economy, in particular the forestry and health sectors but also the mining sector. In addition, progress on environmental education and risk management of natural and technological hazards will also be considered. The results of this review will help identify capacity needs.

**Case Study: Centerra Gatsuurt Gold Mine.**

Centerra Gold has not been able to develop its placer, open pit Gatsuurt gold mine in Mongolia due to its proximity to the Gatsuurt River and forested areas. In 2015 the Mongolian government designated Gatsuurt a strategic asset. This required government ownership and gave it exemption from certain restrictions. However, despite this exemption, government-owned sites will still likely impose the same conditions contained within the restrictions from the Law on Water Resources and Forests (Long Form: Law on Prohibiting Mineral Exploration and Extraction Near Water Sources, Protected Areas and Forests and known as the “Long Name Law.”).

Exploration and development of the Gatsuurt Deposit had been suspended in 2010 but Centerra received approval to continue with the project in early February 2016. During the suspension Mongolia citizens (artisanal miners) illegally entered restricted areas and mined the deposit.

The tensions over the mining of Gatsuurt stems from the possible damage or destruction of tombs, possible contamination of water resources, lack of community investment and the concern that the Mongolian people will not benefit from the mine.

Canadian and Mongolian groups have brought violations of key provisions of the OECD “Guidelines for Multi National Enterprises” by Centerra Gold to the attention of the Canadian National Contact Point for the OECD Guidelines. In 2015 protests and hunger strikes were organised by the groups Upright Blue Mongols and the Save Noyon Uul Mountain Movement. This aimed to prevent changes to the environmental legislation, the “Long Name Law” (2009) that indicates that companies would have to rehabilitate and replenish the land after mining was finished—a standard in most mining and exploration agreements. Past pressures from the civic NGO group, United Movement for Mongolian Rivers and Lakes (UMMRL) are likely to resurface when the mine restarts its operations.
It has been suggested that to mitigate the effects of the protests, the government should work with local and community leaders to lessen the effects of the exploration on herders by developing **Community Agreements** as part of the contract.

*Source: Jon Springer, Mongolia’s Endless Legal Flexibility, FEB 25, 2015, Forbes.*

### Legal Reforms:

<table>
<thead>
<tr>
<th>Policy</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Policy on the Mineral sector (2014/01/15)</td>
<td>• Improve the competitiveness and development of the mining sector, encourage the transparent and responsible mining industry based on private sectors.</td>
</tr>
<tr>
<td>Investment law (2013/10/03)</td>
<td>• Provide sustainable investment environments (stabilize the investment) • Non-discrimination between foreign and domestic investors.</td>
</tr>
<tr>
<td>Amendment in Minerals law (1) (2014/01/24)</td>
<td>• Royalty fee is 2.5%, when gold sells to the Central Bank or commercial banks. • Current royalty rate will apply when export the Gold.</td>
</tr>
<tr>
<td>Law of Mongolian on common – occurrence mineral resource (2014/01/09)</td>
<td>• The rights of an issuance of the special license transferred to the province and local authority; • The area will be allocated without competitive tender; • Royalty rate is 2.5%.</td>
</tr>
<tr>
<td>Law of Mongolia on exemptions from custom and VAT taxes (2013/06/07)</td>
<td>• No VAT and customs until 2018 for the equipment of oil, shale and coal processing projects.</td>
</tr>
<tr>
<td>Law on border ports (2013/12/26)</td>
<td>• Improved border point management • Better port regulation allows to accelerate trade and reduce bureaucracy</td>
</tr>
<tr>
<td>Amendment in Minerals law (2) 2014.07.02</td>
<td>• Main principles are not to restrict the investors’ right and basic principles of the Law dated on 2006.</td>
</tr>
<tr>
<td>Petroleum Law 2017.07.02</td>
<td>• Intensify the explorations of conventional and unconventional oil.</td>
</tr>
</tbody>
</table>

**Compliance with the regulations of the “law with the long name”**

• Continuation of operations stated in the license agreement prior to the law being issued.

*Source: Presentation of Jigjid Rentsendoo, State Secretary of Mining, 2014*
As the mining sector has developed in importance for Mongolia’s economy, local communities’ dependent on natural resources for their livelihoods have been increasingly vulnerable to the negative impacts that mining can cause in terms of land degradation and water pollution. Effective government institutions and citizens’ participation in environmental decisions are therefore crucial to prevent conflict, safeguard natural resources, and ensure sustainable economic growth.

An appreciation of the history of Mongolia’s mining history is important to help understand current attitudes towards the mining sector in Mongolia. Many peoples’ perceptions of mining standards, particularly in rural areas, have been shaped by the experiences of the past and the legacies of derelict land and ecosystem degradation that remain to this day. The environmental, social, health and safety standards of USSR, Chinese and sole local origin mining projects in the past fell far short of the expectations of modern mining practice. Opportunities for citizens to participate in decisions about mining project plans were limited if not non-existent.

The post 1990 increase of mining investments by national and international companies brought many new actors to Mongolia’s mining scene. Not all of these have been responsible operators in terms of environmental and social standards. However, many of the large mining concerns had no option to operate responsibly because of the conditions imposed by their investors. Pastoral nomadic life-styles dominated in the rural areas, as they still do, and these were considered to be under threat in several places. Environmental problems such as soil erosion, river pollution and dust have been attributed to some new mining developments as well as those from the past. Competition over access to resources or disturbances by increased traffic also caused concerns in some areas. The situation was compounded by the rise in numbers of artisanal miners who found mining to be a poverty coping mechanism during the structural reforms that caused unemployment.

In addition, the GoM did not have the capacity to successfully manage the new challenges that such a high number of mining operations, spread throughout the country, brought. Government institutions including the Ministry of Environment and the inspection agencies, failed to carry out adequate environmental monitoring and law enforcement.
Case study: The Asia Foundation, Mongolia.
Working with Communities to Mitigate the Impacts of mining Operations.

Since 2006, The Asia Foundation has been implementing an environmental programme in Mongolia to help address emerging challenges of “balancing economic growth with environmental sustainability, by practicing responsible mining principles, protecting water sources, increasing conservation through empowering local communities and facilitating the cooperation of stakeholders”. Central to the Foundation’s environmental work is the promotion of dialogue between public, private, and civil society sectors to effectively engage different parties with different interests to reach a common goal - to contribute to local sustainable development.

The Asia Foundation’s Engaging Stakeholders for Environmental Conservation (ESEC) project began in 2010 and works to address the key challenges that Mongolia faces in protecting its natural resources and communities from the adverse effects of mining.

The goal of the ESEC project is to establish responsible use of water and soil resources through dialogues that promote a long-term, collaborative process among citizens, local governments, and mining companies. ESEC supports the establishment of Multi-stakeholder Engagement Councils and mechanisms to encourage responsible resource use, and promotes effective communication among government authorities. ESEC was implemented in 50 soums of 15 aimags during 2010 - 2013.

Successes have included:

1. Increased citizens’ active participation in environmental conservation through the establishment of local environmental monitoring groups in 39 soums.
2. Water quality and soil to improve environmental protection.
3. Reduced conflicts and tensions through Local Multi-stakeholder Councils — a platform for discussion and negotiation between local government, communities, and mining companies — in 31 soums.
4. Created a knowledge base through development of 16 manuals and guidebooks to increase understanding of responsible mining, stakeholder engagement, and sustainable resource use.
5. Developed a model ASM reclamation site on two hectares of an abandoned artisanal mining site in Uyanga Soum of Uvurkhangai aimag, in collaboration with local artisanal miners, the soum government, and a local environmental NGO.
6. Trained local government officials (environmental inspectors, water guardians, water engineers) and soum secondary school teachers in simple, low-cost methods of monitoring.

Based on the success of ESEC I, a second phase of the program (ESEC II) was launched in 2013 to address the environmental impacts of artisanal and small-scale mining (ASM).

Source: www.asiafoundation.org
In semi-arid areas like the South Gobi, the extreme dust generated from poorly planned dirt roads built for mining operations is allegedly compromising the health of local people, as well as their horses, goats, sheep, yaks and camels. The creation of these roads, which cart truckloads of minerals to neighbouring China and run through areas where many animals graze, also leads to high degradation of pasturelands.

Source: Rachel Stern, Deutsche Welle, 2014

Case study: Oyu Tolgoi and Herders complaints to IFC’s CAO.

In October 2012, a complaint was lodged with the Compliance Advisor Ombudsman (CAO) - the independent recourse mechanism for complaints by people affected by IFC projects’ - by local herders (with the support of OT Watch, a national NGO, and Gobi Soil, a local Khanbogd’based NGO.) They claimed to have been affected by the Oyu Tolgoi copper/gold project in the Southern Gobi. The complainants were concerned about the project’s use of land and water, which they claimed disrupts their nomadic way of life, and puts in jeopardy their indigenous culture and livelihood. The complainants contended that they had not been compensated or relocated appropriately, and they questioned the project’s due diligence, particularly around the issue of sustainable use of water in this arid area.

In February 2013, a second complaint was filed by nomadic herders and community members who reside and conduct livelihood activities close to the project site. The complainants’ main concern was the Undai River diversion component of the project. The complainants contended that the river diversion jeopardizes their traditional nomadic lifestyles and livelihoods. They were specifically worried that the diversion would lead to several water systems drying up, deteriorated pastureland yields, diminished water supply to unique stands of elm trees and a cultural impact to what they view as a sacred river.

Local herders elected a team to represent them in a single dispute resolution process for both CAO Oyu Tolgoi complaints. The complainants and OT agreed to work with the CAO Ombudsman/Dispute Resolution team to try to resolve the issues raised in the complaint using a collaborative approach. This led to the formation, in 2015, of a Tripartite Council (TPC) comprising representatives of herders, the mine, and a local government (Soum).

Various interim agreements have been reached on topics such as access to information, tours/inspections of the mine site for herders, access to grazing land inside the OT project site and on using joint fact-finding (JFF) to address some project impacts.

In 2016 a study was carried out to facilitate the resolution of complaints lodged by Khanbogd soum herders with the CAO. The purpose of the study was to map independently and objectively the changes over the last decade in livelihood and socio-economic conditions of Khanbogd soum herder households, based on information from diverse sources, and subsequently to determine which changes were caused by, or attributable to the Oyu Tolgoi mining operations.
In addition, the study aimed to assess the adequacy of the OT’s compensation programmes, accumulative impacts on regional water and pasture resources due to Undai, Khaliv and Dugat River diversions, and impacts from OT tailings’ storage facility. A Multi-Disciplinary Team and Independent Experts’ Panel carried submitted the final report to the TPC of Khanbogd Soum in January, 2017. The studies were led by JSL consulting who have looked at issues related to pasture and water; changes in, and sustainability of, traditional herding; the adequacy of compensation of herders by OT; impacts on the Undai and Haliv Dugat rivers and consequences for herders, and the integrity of the tailing storage facility and the impacts of any leakage in the Haliv Dugat river.

“Overall, the studies have found that there are some impacts of OT on herders that have not been fully understood before, and thus not fully compensated. We also found that due to gaps in initial baseline monitoring and the concurrence of a range of changes in herding in Khanbogd soum not related to OT, some critical concerns of herders, particularly relating to impacts of OT on herder water, cannot be definitively resolved. There are improvements to be made in monitoring and communications that we consider will, if implemented, lead over time to improved trust between OT and herders. In addition, given that the soum is committed to successful coexistence between mining and herding, and there are multiple pressures on pastures including from increasing herd sizes, it is essential that measures to manage pasture and water across the soum level are implemented. We also recommend that OT sponsor development of additional wells in areas where there is unused pasture to recognize that OT cannot demonstrate that its activities have not damaged herder water resources.” Jill Shankleman and Troy Sternberg of the Independent Review Panel. 2017

Case study: Oyu Tolgoi’s role in the genesis of Community Development Agreements. (Source JSL (2017) Consulting, Oxford, UK)
This chapter provides further information on the mining laws and regulations of Mongolia. It includes a review of the regulation of licensing procedures and relevant requirements for exploration and mining operation as well as participation opportunities for stakeholders in this process.

As mentioned earlier the mining law of Mongolia is currently undergoing a major review and a consultation process is underway. This review reflects the current circumstances only.

**MINERAL RESOURCES EXPLORATION AND MINING ACTIVITIES**

*Legal regulations for exploration activities*: Mineral resource exploration and mining activities are to be conducted on the basis of special licenses. The issuance, extension, cancellation or termination of exploration licenses are directly governed by the Law on Special Licenses for Business entities and Law on Mineral Resources, respectively.

In addition, the selection of bidders and issuing licenses are regulated by the Procedure adopted as an annex to the Mining Minister’s Resolution #10 of 2015.

**Mineral Exploration:**

As of 2017, according to the Ministry of Mining and Heavy Industry, there are 2,046 exploration license holders in Mongolia. The pie chart below shows the distribution of national, foreign and joint company exploration license holders. This data shows that 1,662 or 81% of license holders are national investors.

“Mineral exploration” means geological and exploration surveys conducted on and under the earth’s surface to identify the location, quality and quantity of mineral concentrations and determine the technical and commercial feasibility of mining.

According to the current MLM regulations, an initial exploration license is issued for three years, and subsequently it may be extended three times for three years each.

1 Mineral Law of Mongolia, Clause 4.1.6

**Table**: Distribution of national, foreign and joint company exploration license, Mongolia.

<table>
<thead>
<tr>
<th>Type</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>National</td>
<td>166,81%</td>
</tr>
<tr>
<td>Foreign</td>
<td>273,13%</td>
</tr>
<tr>
<td>Joint</td>
<td>111,6%</td>
</tr>
</tbody>
</table>
The exploration area shall be a tetragon in shape and its borders shall be straight lines overlapping with directions along longitude and latitude. No part of the requested exploration area shall overlap with a reserve area or a special purpose territory\(^2\).

The size of an exploration area shall be greater than twenty-five (25) hectares and shall not exceed one hundred fifty thousand (150 000) hectares\(^3\).

**Mining Activity:**

“Mineral mining” means the entire range of activities that include separating and extracting minerals from land surface and subsoil, ore stockpile, waste or tailings, increasing the concentration of its usable contents, producing products, marketing those products and other activities related therewith\(^4\).

Only the exploration license holder is entitled to apply for a mining license in the exploration licensed area. If the exploration license has expired and the exploration license holder fails to submit an application for a mining license, the mining license for the area shall be granted through a tender\(^5\).

The mining license for the area explored and the reserve determined through State budget funding, shall be granted through a tender\(^6\).

A mining license is issued for 30 years. The license and mining area is registered in the license and cartographic license registries as well as cadastral system.

The mining license holder is entitled to extend the term of the mining license for all kinds of minerals other than radioactive minerals for 20 years depending on minerals reserve.

The mining area shall have shape of rectangle with borders that are straight lines, not less than 500 meters in length, oriented north-south and east-west.

**Table:** *Total area which of exploration and mining license.*

<table>
<thead>
<tr>
<th>#</th>
<th>Type of Mining Area</th>
<th>Area size, million/ha</th>
<th>Percentage for overall country territory</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Mining licensed area</td>
<td>1.3</td>
<td>0.8%</td>
</tr>
<tr>
<td>2</td>
<td>Exploration licensed area</td>
<td>11.4</td>
<td>7.3%</td>
</tr>
</tbody>
</table>

**Requirements for obtaining a license.**

“License” means a document, which is issued to a citizen, profit or non-profit organizations by the relevant authority, granting the right to conduct a definite type of business activity for the period and under the terms and conditions as set forth in applicable law;

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2 Mineral Law of Mongolia, Clauses 17.2.1 and 17.2.2
3 Mineral Law of Mongolia, Clause 7.4
4 Mineral Law of Mongolia, Clause 4.1.7
5 Mineral Law of Mongolia, Clause 24.1
6 Mineral Law of Mongolia, Clause 26.9
PARTICIPATION IN MINING RELATED DECISION MAKING

The mining company should apply for the mining license to conduct a mining operation if economically viable minerals, ore, and/or construction materials are found.

**Submitting application** - The legal entity shall submit their application for mining of minerals to the MRPAM in accordance with the approved form.

**The following should be attached to the application:**
- Indication of the mining area. It shall have straight line borders, not less than 500 meters in length, oriented north-south and east-west.
- A map with the name of the *aimag, soum*, district or place where activities shall be conducted must be attached.
- An official reference letter where the applicant’s full name, address, telephone, e-mail, and name of decision maker are indicated.
- A document that certifies that whether the applicant is a tax payer, or not.
- A map as indicated with the name of the *aimag, soum*, district, where the exploration area is located;
- A document showing that the applicant has paid the service fee set forth in law;
- The resolution of the Mineral Resources and Petroleum Authority
- Verification of the full performance of the duties regarding an *Environmental Protection Plan* during exploration work;

**An Environmental Impact Assessment.**

**Application review**
After accepting applications requesting a mining license, MRPAM shall register the application and attached documents, review whether the application letter and the attached documents are meeting the requirements specified by law, and clarify whether the mining area requested by the exploration license holder’s lies within the boundaries of its initial exploration licensed area;

**Final decision.**
MRPAM shall make a decision within twenty business days and inform the applicant. In case of rejection, the agency must provide the reasons and legal basis in written notice to the applicant.

**Fee for successful applicants.**
The successful applicant shall pay the first year’s license fee within 10 days after the receipt of the notice.

The mining license fee shall be 21,750 MNT per each hectare within the mining area, but for areas designed for limestone, coal and domestic use minerals it shall be 7,250 MNT per each hectare.

**Issuance of License.**
MRPAM shall issue a mining license for a thirty-year period within three business days after the payment is made for the first year’s license fee. Then the MRPAM shall register the license, the area in the license and license cartographic records.
Notification Letter.
The MRPAM shall officially inform the state central administrative organization in charge of nature and environment, the state central administrative organization in charge of taxation, the aimag, soum and district Governors and professional inspection agency about the license, where the licensed area is located and publish an official notice in daily newspaper within seven business days following the issuance of a mining license.
Factors identified as causing conflicts between communities, government and communities:

- Local communities and government officials have a poor knowledge about mining activities;
- Historically mining has caused environmental degradation.
- Mistrust: Some political and social groups have been accused of misleading the population to gain extra political influence.
- Nationalization of some mines has caused an increase in corruption and lower environmental standards;
- Poorly drafted and frequently revised legislation has caused uncertain conditions for investors;
- Some mining companies do not sufficiently collaborate or provide for public participation - either because they are unaware of the need to or decide not to do so.

Local administration participation:
If an exploration license is issued in accordance with the MLM, then MRPAM should send a written notification letter to the aimag or metropolis Governor. As soon as the Governor of the aimag, soum or metropolis receives the notification letter on issuance of exploration license, the governor shall obtain the opinions from the relevant CRH. The Governor shall accordingly respond to MRPAM within 30 days and in case of failure to submit the response within due date, it will be considered as permitted and the MRPAM will issue the license. Citizens are entitled to express their opinion through CRH within this 30 days, and may conduct polls how the planned mining operation is associated with their local Environmental Protection Plan. The Governor of the aimag, soum or metropolis may reject the application in the response to MRPAM based on the legal grounds specified in MLM. Clause 6-38 of MLM, specifies that the license holder must develop an Environmental Management Plan (EMP) prior to issuance of a license. If a special license holder fails to perform works specified in the EMP, the Governor shall have the right to spend the money deposited in the Special Fund for Environmental Protection and Rehabilitation and the license holder is obliged to pay additional costs associated with these activities with any non-complaint conditions. Representatives of the CRH must keep in constant communication with their constituencies and transfer their proposals, comments and complaints to competent authorities, and provide the responses back to citizens in a timely manner.

Local participation in obtaining a mining license:
According to the Law on Administrative and Territorial Unit and their Governance (clause 29.1.3.e), governors of the aimag, soum, and metropolis are authorized to submit proposals regarding the issuance of exploration and mining licenses. However, the regulation of
 submission of proposals on mining licenses is not yet legally arranged, which creates unclear conditions on this matter. The Governor and local government are to submit their proposals as specified in clause 7.3 of LEIA: “The project implementer shall apply for a ‘general’ EIA to the state central administrative organization in charge of nature and environment or the aimag or metropolis governor’s office, whichever is applicable according to the classification annexed to the law, by submitting a brief description of the project, the feasibility study, the engineering design and drawings, baseline description of the proposed project environment, a written opinion of the relevant soum and district governor and other related documents”. According to this provision, proposals of the soum and district Governor are to be submitted to the state central administration in charge of environmental issues. Therefore, it is possible for Governors to include their comments and proposals in an EIA during this stage or prior to conducting DEIA. Although it is not directly specified in law, the applicant must submit the document approving that the license holder performed their duties under the EMP in the process of exploration works to obtain a mining license. Thus, the Governors have an opportunity to submit their proposals, opinions and conclusions made by the local authority of specialized inspection etc. to the competent authority responsible for issuing licenses. /Annex 2: Conclusion of a Working Group on Environmental Management Plan and Rehabilitation Works Performance/

The “Regulation for submitting proposals regarding applications requesting a mineral license” has been approved in some local areas. This is a positive development that can be introduced in other areas. In this way, if the regulation for community participation in decision making processes is implemented generally, it will open the possibility for participation of local communities in decision making relating to the issuing of exploration licenses at the soum level.

Table: Participation of Citizens and Civil Society Organizations

<table>
<thead>
<tr>
<th>Activity</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Apply for EIA prior to obtaining a mining license</td>
<td>In order to have EIA conducted, Feasibility Studies, Cartographic Draft, Reference certifying the present environmental status of the project area and proposal of the Soum or District Governor shall be submitted to the State Central Administration in charge of nature and environmental issues</td>
</tr>
<tr>
<td>Develop reference or submit evidence certifying that duties under agreement are fully performed in accordance with Environmental Management Plan to obtain a mining license</td>
<td>Monitor how license holder performs duties regarding environmental rehabilitation, human health protection, and accumulation of fees to local budget;</td>
</tr>
</tbody>
</table>
Obtaining a Mining License

Community Participation:
Any entity submitting an application requesting a mining license in Mongolia must have a detailed EIA (DEIA) carried out and it is a legal requirement to ensure the participation of local communities in an EIA process. It is important that all local citizens are aware of their duties to engage in the EIA process.¹

Applications for a license for the use of natural resource extraction (petroleum and minerals) and an approval for any other projects are subject to a prior general environmental impact assessment².

The project proponent shall apply to undertake a GEIA to the state central administrative organization in charge of nature and environment or the aimag and capital city governor’s office, whichever is applicable according to the classification annexed to this law, by submitting a brief description of the project, the feasibility study, the engineering design and drawings, baseline description of the proposed project environment, a written opinion of the relevant soum and district governor and other related documents.³ If it is stated in the GEIA conclusion that a Detailed EIA will be required, then it must be conducted. International best practice suggests that any mining project, because of the nature of the activity, will have to undertake a DEIA.

It is the responsibility of the project proponent undertaking the DEIA to organize, at the report preparation stage, consultations with and formally seek comments from the local authority, the community that is likely to be affected by the project and local residents living in the area where the proposed project is going to be implemented.⁴

It is international best practice for the government to undertake a screening exercise in EIA procedures to determine whether or not a proposal should be subject to an EIA - and, if so, what level of detail. It is usually a two-tiered process. Mining projects are invariably required to undertake a Detailed EIA process - although in some cases exploration permits may be considered on the basis of a preliminary EIA. It is also universally accepted that a detailed EIA must include participation of interested and affected parties.

Citizens have an opportunity to reflect their opinions in the process of conducting an EIA. This is an important part of the ‘scoping process’ involved in EIAs.

Invariably it is international practice to undertake a scoping exercise to identify the issues and impacts that are of importance and will influence the TORs for the EIA. In some cases, ‘significance’ can be determined scientifically, but in others the significance may be local in nature and thus relies on the local community to raise their concerns. There are many examples of EIAs where the local community, who know the area better than anyone else, have raised issues that would have otherwise been missed by the EIA TOR drafters.

¹ According to Mongolian law an EIA shall consist of the following two assessments:
  General Environmental Impact Assessment (GEIA)
  Detailed Environmental Impact Assessment (DEIA)
 ² Law on Environmental Impact Assessment, Clause 7.2
 ³ Law on Environmental Impact Assessment, Clause 18.4
 ⁴ Law on Environmental Impact Assessment, Clause 18.4
As presented in the diagram below, the MRPAM should receive the recommendations of the local authorities prior to providing a mining exploration license to an applicant. If the local authorities reject it, the MRPAM will refuse the license.

**Table: Decision making process involved in EIA in Mongolia.**

**CIVIL PARTICIPATION**

Legal entity which is developing detailed environmental impact assessment to organize, at the report preparation stage, consultations with and formally seek proposals from the local authority and community that is likely to be impacted by the project and residents living in the area where the proposed project is going to be implemented.

- **START HERE**
  - Business entity holding an effective exploration license which found economically viable minerals and metallurgical resources

- **As specified in MLM, entity shall have EIA**

- **Business entity shall apply requesting a license to MRPAM**

- **MRPAM shall ensure whether the application is correct and complete, whether duties regarding the environmental protection are performed, whether EIA is approved by competent authority**
  - **Agree**
  - **Refuse**

- **MRPAM shall decide within 20 business days**

- **Entity shall pay the fee for the first year within 10 days, and be issued a mining license for the term of 30 years by MRPAM**

- **If the local authorities will reject, it will serve as basis for the MRPAM to refuse the license**

**Participation of Interested and Affected Parties**

In international best practice, it is common to distinguish between ‘Interested and Affected Parties’ (IAPs). This identifies those people in the community that are potentially directly or indirectly impacted by the proposal and those who have an interest in the proposal but are not necessarily directly impacted by it. The reasons for this are that in many cases ‘interested parties’ (usually NGOs) have attempted to influence decisions in a way that was contrary to those people potentially directly affected in the communities. There are many examples where communities have been in conflict with those from outside the community who claimed to represent them, when in fact they had no such mandate.

**Case Study: Cambodia.**

A recent Okvao Gold Mine EIA identified the following categories of people to engage with:

- Most affected populations (MAPs), representing those living in and around the proposed mine site (some of whom would be displaced by the project),
- Upstream affected populations (UAPs), representing those living in the upper parts of a river that passes through the site,
- Downstream affected populations (DAPs), representing those living in the lower parts of the catchment area and
- Local and government authorities at sub-national (i.e. commune, district, provincial) and national levels, as well as relevant non-governmental organizations.
- Environmental and Social Impact Assessment of the Okvao Gold Mine proposal, Cambodia, 2017)
In Mongolian Environmental law NGOs have the right to participate in EIA processes. However, the rights and obligations of NGOs are stipulated differently compared with the rights and duties of citizens. In the Law on Environmental Protection, NGOs are authorized to conduct inspections to monitor legal compliance and detect any violations. However, this authority is not indicated in the Mining law. This inconsistency leads to a lack of implementation. NGOs rights to engage in environmental decisions and operations are limited to highlighting breaches in law. In the Laws on Nuclear Energy, Forests, etc it is specified that NGOs are entitled to demand the better utilization and conservation of natural resources in addition raising any legal violations. In addition, the Laws on Environmental Protection and on Forests enables citizens to voluntarily establish partnerships for environmental protection as well as possess and use some natural resources.

**Picture:** Community Engagement MEITI style! ([www.eiti.mn](http://www.eiti.mn))

International Best Practice dictates that a mining company should undertake a *stakeholder analysis* to ascertain the legitimate participants in an EIA consultation. They are usually required by investors to ensure that the marginalised and the vulnerable are targeted to ensure their inclusion. The analysis should be based on an investigation of traditional social structures, social institutions, values, and culture of the communities in the project area. An EIA should also indicate a stakeholder engagement plan throughout the life of the project.
Introduction
This project focuses on the soums within the Uvs and Kentii aimags as study areas. These are currently not major mining growth regions of Mongolia. However, the existence of historic mining activity, and the development of some current mining projects are indicative of the potential mineral wealth of the regions.

Specific mine sites selected for investigation in these regions were the Khotgor coal mines of Bukhmurun soum of Uvs aimag and the gold mines in Gutain Davaa of the Batshireet soum.

Allocation of Licenses in the Study Areas
According to the Mongolian EITI, Khentii aimag has 287 licenses owned by 223 companies (7.49% of the total aimag area being under licence) and Uvs has 228 licenses owned by 162 companies (10.23% of the aimag area being under license). However, within these aimags - (Khentii) Batshireet has only 7 and Binder 6 (dominated by gold) representing less than 1% in Batshireet and 2.24% in Binder of the total soum area, and (Uvs) Bukmurun (also known as Boxmoran) has 14 licenses and 8 license holders (dominated by coal mining). (10.23% of total area). Although the majority of these will be exploration options. 
(Source: The computerised mining cadastre system, MEITI updated January 2017)

Herder communities predominate in the study area soums and it is important to ensure that they have the capacity to engage effectively in mineral exploration and planning activities. WWF Mongolia has identified the Altai Sayan and Amur river as priority eco-regions in need of enhanced protection for conservation purposes. In addition to the systems themselves, these regions host some critically important species - including the snow leopard (Panthera uncia), the saiga antelope (Saiga tatrica) and other steppe ungulates. The regions include the migration routes of the saiga and other antelopes that traverse these regions. Clearly any mining developments or related infrastructure in these regions will need to take these attributes into account.

Khentii aimag.
Khentii aimag, situated in the north-east of Mongolia, is named after the Khentii mountains. The region has special cultural significance because it is the assumed birth and resting place of Genghis Khan/Chinggis Khan/Temujin. The Burkhan Khaldun mountain is found in the Khan Khentii Strictly Protected Area and is considered sacred and thus off-limits to mining developments.
The Onon river originates in the Khentii mountains and feeds into the Shilka—Amur drainage system, one of the world’s ten longest rivers, measuring 2,874 km.

Both of the study area soums, Batshireet and Binder, have extensive forest resources and citizens have livelihoods directly dependent on natural resource use.

The Batshireet soum, the second largest in area in Khentii at 7,018 sq. kms, had a population of 2,086 in 2010 which was a decline of nearly 500 to the 1994 level. This recovered by 2016 when the soum had a total of 766 households and 2,312 population in 2016\(^1\). Population decline or stagnation is generally true of all soums in Khentii except Omnodelger that has seen a growth of about 1,000.

Binder soum is located in the forested steppe region. In 2016 households and 4,004 population in the soum - a drop from 4,184 in 1994.

**Mining in Khentii**

Within the study area the existing Gutain gold mine is located in the headwaters of the Onon river straddling the Batshireet and Binder soums. Mining operations are conducted within the territory of Batshireet soum. The hard rock deposit, located on the peak of Gutain Davaa, is partly within the territory of Binder soum.

**Local Khentii Community Attitudes to Mining**

According to information provided by the Batshireet local government, a total of five mining licenses have been issued within the territory of the soum and two of them are ‘alluvial’ and one is a ‘hard rock’ mine deposits.

A mining exploitation permit was issued in 2015 to Gutain Davaa, a Mongolian mining company with Canadian investment. The company has had an exploration license since 2003, and had registered 3,174 tons of gold reserve of Gutain deposit to the Professional Council on Minerals. The local community of the Onon bagh in Batshireet soum and Bayangol bagh of the Binder soum live within 20 km radius from the Gutain Davaa.

In 2012, the “Long-Named Law” (Law on Prohibiting Mineral Exploration and Extraction Near Water Sources, Protected Areas and Forests) made the deposit and surrounding area unavailable for mining operations, as they were intersected by a forest reserve.

However, in 2015 the adoption of the Long Named Law’s implementation measures changed the situation and the area was no longer considered intersecting with any protected areas. Therefore, the license was deemed to have been issued legally by Minister of Mining R. Jigjid. Accordingly, the company is to extract 1.3 tons of gold within 5 years of operation, providing 205 jobs, paying 22.5 billion MNT of taxes and making a profit of 30 billion MNT.

In an apparent case of an EIA attempting to justify a decision already made, Minister Jigjid announced that an EIA would be conducted by the company. He indicated that if the assessment results indicate that the mining operations will harm the ecosystem, the

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\(^1\) Local statistical information 2016
license will be cancelled. “For these reasons, I responsibly state that the mining permits have not been illegally issued to Gutain Davaa”, said R. Jigjid. (Source: Montsame 2015)

Indicative of the opposition to mining in the region the NGO “Delkhiin Mongol Green Union” then organized a ‘political sit in strike’ at Khentii aimag’s Batshireet and Binder soums and at the Mongolian parliament protesting against the issuance of the mining license. (Source: Newsletter of BDSec Joint Stock Company, “Weekly Market Update”, Ulaan Baatar 2015)

A difference of opinion exists between the two soums’ authorities. Batshireet soum authorities support responsible and legal mining, whereas Binder soum authorities, community and CSOs oppose mining operations. This raises the question of whose interests Delkin Mongol were representing? The Onon river crosses through the territory of Binder soum, thus local citizens have concerns about the risk of pollution of the Onon and its tributaries due to mining operations. Other soums, through which the Onon river passes, are also reported to oppose mining, concerned about the risks to their water resources.

A further concern is the high risk that artisanal miners may move in to mine the Gutain Davaa gold deposit. Characteristically artisanal mining has low levels of environmental and social safeguards.

**Table:** Size of area used by mining companies.

<table>
<thead>
<tr>
<th>License No.</th>
<th>Soum/Bag</th>
<th>License type</th>
<th>License holder</th>
<th>Area name</th>
<th>Area size, ha</th>
<th>Mineral type</th>
<th>Date of issue</th>
<th>Date of expiry</th>
</tr>
</thead>
<tbody>
<tr>
<td>MV-002247</td>
<td>Batshireet</td>
<td>A</td>
<td>Aivuuntes LLC</td>
<td>Gutai</td>
<td>286.32</td>
<td>Gold</td>
<td>2000.04.28</td>
<td>2030.04.28</td>
</tr>
<tr>
<td>MV-002810</td>
<td>Batshireet, Binder</td>
<td>A</td>
<td>U&amp;B LLC</td>
<td>Gutain Davaa</td>
<td>341.79</td>
<td>Gold</td>
<td>2000.12.15</td>
<td>2030.12.15</td>
</tr>
<tr>
<td>MV-006505</td>
<td>Batshireet, Umnudelger</td>
<td>A</td>
<td>Altaikhan-gai burd LLC</td>
<td>Saikhan river</td>
<td>473.05</td>
<td>Gold</td>
<td>2003.10.31</td>
<td>2033.10.31</td>
</tr>
</tbody>
</table>

**Table:** Livelihood sources for residents of Batshireet and Binder soums

<table>
<thead>
<tr>
<th>Forest</th>
<th>Natural resources and by products</th>
<th>Animal husbandry</th>
<th>Horticulture</th>
</tr>
</thead>
<tbody>
<tr>
<td>Production of timbers,</td>
<td>Gatherings nuts</td>
<td>Meat preparation</td>
<td>Grains, Potatoes vegetables</td>
</tr>
<tr>
<td>Production of wood and wooden items</td>
<td>Gathering fruits and berries</td>
<td>Leather, cashmere</td>
<td></td>
</tr>
<tr>
<td>Forest cleaning</td>
<td>Gathering medicinal herbs</td>
<td>Milk and dairy products</td>
<td></td>
</tr>
<tr>
<td>Preparation of woods for fuel</td>
<td>Making hays</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Fishing</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Uvs aimag**

Uvs aimag is located in the west of Mongolia, 1,336 kilometres from Ulaanbaatar. The province is named after Mongolia’s biggest lake, Uvs Lake. In 2003 part of the steppe in this province received World Heritage Site protection - the *Ubsunur Hollow*. Here the world’s most northern desert meets the Northern Hemisphere’s most southerly tundra zone.

Bukhumuran (Bökhmörön) soum is situated in the Achit Nuur lake depression. The Eastern
PARTICIPATION IN MINING RELATED DECISION MAKING

part of the soum is in Kharkhiraa-Türgen mountains south west of Üüreg Lake. Bukhumuran soum’s population has declined by about 200 between 2003-2014 when it reached 2,093.

Mining in Uvs
In contrast to the study area soums of Khentii, Bukhumuran soum has witnessed significant mining operations. The Nuurst Khotgor coking coal mine is located in the eastern part of the Bukhumuran soum. It opened in 1963 and is located about 80 km west of the Uvs Province capital Ulaangom and 25 km south of Üüreg Lake.

The mine has coal reserves amounting to 109 million tons of coking coal, one of the largest coal reserves in Asia and the world. The mine has an annual production capacity of 1 million tons of coal.[1] Originally the mine was state owned, but was privatized in 2001. In 2010 Korea Coal Corporation acquired 51% of the business.

Bukhmurun soum was selected as a study area because it is included in the range of the snow leopard (Panthera uncia) and ibex (Capra sibirica spp), argali (Ovis ammon spp) and gazelle (Procapra gutturosa). Environmental management of the coal mine was very limited until 2000. The soum also has natural attractions with unique formations, cultural sites and monuments. Emergence of local environmental community groups have positively influenced an increase in the numbers of wildlife. Trophy hunting is ongoing in the area raising local revenues.

There are three coal mining companies are operating in the Second bagh (Khar Altat) territory of this soum. Khotgor LLC. is operating since 1963, Erchim LLC. is established in 2009, Khotgor shanaga LLC. is started in 2011.
Map: Bukhmurun soum

The map based on the local communities drawing
Local Community Attitudes to Mining

Uvs has experience serious anti-mining protests over the past decade and this has had an ethnicity facet. The main protests occurred in Bukhumuran *soum* in 2011/2012 and were reputedly some of the most well-organized, and supported local protests against mineral exploration Mongolia has experienced.

One reason for this is thought to be because local people in Bukhumuran were networked with Dörbets in Ulaanbaatar, Darhan and Erdenet (who have power and prestige). A popular Mongolian singer, Javkhlan, went to Buhumuran in support of the protesters. Members of Khokh Mongol (a social movement active at the time) also accompanied him (the movement leaders were primarily, if not all, Dörbets). (Lauren Bonilla - pers comm).

Another notable example of community conflicts with extractives companies relates to the blocking of a Canadian oil company’s exploration activities (Mongolia Minerals Corporation, incorporated in Calgary Canada) in the *aimag* due to local community protests (although the declining price of oil may also have contributed to the decision of the company to cease exploration). (Mongolian Mining Journal, May 2017 p 31).

More recently some herder communities in *soums* in Uvs *aimag* have been defining their relationship and level of cooperation with mining companies. This is building on the pioneering tri-sector work between Rio Tinto (a company that champions Community Development Agreements) and communities in Umnugobi *aimag*. As mentioned earlier, such Community Agreements will be a legal requirement for both Uvs and Khentii in 2018. In May, 2017 the Uvs local government organized a public consultation on mining with the support of the GIZ Integrated Minerals Resources Initiative Project. About 150 people participated from local government, civil society, artisanal mining communities, mining companies and suppliers.

Reportedly the Local Governor announced during this meeting in 2017 that, without a common and mutual understanding between local communities and mining companies there will be *no future mining allowed in Uvs aimag*. This is a move towards giving local communities the right to free, prior informed *consent* over mining projects.

There is some interest in diversifying the *aimag*’s economy beyond mining to enterprises such as agriculture, and especially production of sea-buckthorn (Hippophae is a genus of sea buckthorns, deciduous shrubs in the family Elaeagnaceae).
Citizens participation in EIA process

- The definitional ambiguities in Mongolia’s legislation is a significant handicap to effective implementation of the intent of the laws of Mongolia. Terms such as ‘participation’ can have many interpretations. International Guidance has long existed to try and ensure that when participation takes place it is, in fact, effective and meaningful and not tokenism. Communities must have the opportunity to influence decisions - not simply be informed about project details. The diversity of investors in Mongolia’s mining sector suggest that there will be (and has been) the full range of interpretations of participation. The lack of influence of international finance institutions (that require strict adherence to participation standards by mining companies) in the study areas suggest that effective participation will be limited.

- The Project Team reviewed Draft EIA reports from both project study areas. It was found that these reports have resolutions apparently agreed at local bagh meetings. However, the resolutions only indicate whether the bagh meetings had accepted the recommendations that were discussed at the meeting or not. They fail to record the residents’ comments or the reasons behind grievances etc in the DEIA report.

**Batshireet and Binder soums of Khentii aimag**

- According to the local authorities there are currently no mining companies operating in the soum territory because they have complications related to their feasibility studies and EIA procedures. The site visit revealed partially abandoned mine workings - one of which was locked off from public access.

- The soum government officials expressed their concern that there has been a lack of coordination between soum and aimag about mining engagement and a lack of consensus exists. It is important that engagement be coordinated in discussions with mining companies.

- In common with all communities hosting mining activities, there will be winners and losers and thus divergent opinions. The soum residents and herders have a generally negative attitude towards mining - this can be partly explained by a lack of information about them and understanding of modern standards expected from a mining company. They claim this attitude is due to the environmental destruction and socially damaging consequences of historic mining activities. In contrast, the business community think that, if the mining operations are conducted according to environmentally and socially acceptable standards, it could benefit local prosperity. The need is to ensure opinions are based on facts.
Communities need to be informed about all activities that may be of significance to them that will be initiated by a mine. In the study area soums it was indicated that the mining companies provide very limited information when they develop EIAs yet they push to get their consent. The Onon bagh citizens of Batshireet soum were vociferous in their concerns about their experiences with EIA procedures. Yet mining companies have not informed the communities how their proposals and comments are reflected in the EIA reports. The implication of this is that there is a lack of professionalism in those undertaking the EIAs on behalf of the mining companies.

Bukhmurun soum of Uvs aimag

Consultants working on behalf of mining companies do not fully enable local community participation in EIA developments process in this region either. The local community participation in the EIA process has been very limited. The communities understanding about the EIA process and their rights to participate are also partial as is their knowledge on mining activities. 96.9% of the survey respondents answered that they do not have any knowledge about EIA and only 2.2 % responded that they have been involved in EIA public consultations.¹

The clearest message from all stakeholder representatives is that information and education of all involved (local authorities, communities and consultants working on behalf of mining companies is most urgently needed. Citizens, in particular, have very low levels of understanding of the mining industry and of the potential negative impacts as well as the benefits that development might bring.

Basic introductions to modern industrial mining as well as a deeper understanding of the mine project life cycle (including the ebb and flow of investments, construction activities, employment, profits, (planning for closure) is needed at all levels in Uvs (and Khentii), from herders to civil society centred on the aimag capitals, to local state authorities and inspectors, and the aimag administrations and consultants engaged in EIAs.

The optimal way to deliver such knowledge and training suggested by civil society representatives was in-person training, ideally by going from all to all on the basis of written materials that can then be explained by trainers. There are also some possibilities to target younger audiences through social media.

The interest of companies undertaking public consultations is to get approval from communities for their plans. Local communities doubt that their comments and concerns are fed into the EIA documents.² This is therefore in contravention of the EIA Law - which requires that project sponsors must include minutes of meetings with local communities about the proposal. The EIA Law provides strict sanctions for non-compliance with its provisions and these include termination of a proponent’s activities if an EIA process is not adequate. This will include confiscation of any revenues from such activities that may have been gained to date. It also includes revocation of a mining license for failure

¹ KAP survey 2017
² Project quality survey findings
to adopt an EMP, for non-compliance with such plan or for failure to submit compliance reports.

During the group discussion undertaken by the study team, the communities requested to have a workshop on Cooperation Agreements and EMPs as well as creating a new mechanism responsible to strengthen tripartite collaboration among local government authorities, mining companies and local communities.

Batshireet and Binder soums of the Khentii aimag

No Cooperation Agreements have been developed by the mining companies operating or planning to operate in these soums. Moreover, local authorities do not have sufficient information and knowledge about the Cooperation Agreement processes and were unaware of the governments recommended template.

Example: Public Announcement on Draft Community Development Agreements Template

Local community representatives were not included in the committee that was responsible for evaluation and monitoring of Cooperation Agreements. This may be
because this study area is not considered a particularly high-profile mining area. Any community contributions by mining companies have been voluntary.

**Bukhmurun soum of Uvs aimag**

The Khotgor mining company has concluded a Cooperation Agreement with the local government according to the template approved by Government and the local community representatives were included in this process and their opinions were reflected in the Agreement terms.

However, they encountered difficulties selecting local community representatives for the process of approval, monitoring and evaluation of the Agreement. Contrary to the spirit of the CDA mechanism concerns were expressed that community participation was only to approve of the Agreement - not engage in its implementation.

Concerns were expressed that inputs provided by the *soum* were not consistent with *aimag* development policies and programmes. The *soum* and *aimag* in puts were inconsistent and differences existed about what to include in the Cooperation Agreement with mining companies.

A further concern was expressed that, although 53 people work in the Khotgor mine, they come from a *bagh* in the Bayan-Ulgii *aimag* not the Bukhmurun *soum*, where residents also need employment opportunities. This illustrates how a mine development can contribute to inter regional conflicts and these can be very serious when they have ethnicity under tones.

Another concern was with the new roads were created by mining company traffic adding to the numerous roads already developed by others - a rural Mongolia characteristic. This has increased pasture degradation through dust. The “One Road” policy, which is jointly implemented by the local government and mining companies, has consolidated these roads into one road in 2015 and helped improve the situation - an example of how a mining company can catalyse new standards and ensure a net positive result.

**Compensation and Relocation**

There are no clear cases of relocation activities in the project study areas. A Knowledge Attitude Practice survey discovered that 98.9% of the local community do not have any knowledge about potential resettlement and compensation. Therefore, the local community cannot protect their rights if they’re these are violated because of mining operations as they do not have sufficient knowledge about their rights related to the mining activities.

As a form of compensation for the disturbances of mining operations, Khotgor LLC, provides 2 tons of coal to every household in the *soum* without any charge. The company also covers transportation cost to students who are from the households in the impact zone.

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3 Project quality survey findings
Information Transparency

It is the conclusion of this study team that information dissemination and disclosure in the project areas are not sufficient and information delivered to communities is not always true and accurate. This can be attributed to many factors; Mining companies may be unwilling to divulge information, Consultants working on behalf of companies may lack the skills in effective communication, Local communities and authorities may lack the capacity to understand the information provided etc.

“Concerns about transparency of licensing and mining operations also centred on a lack of education. Without a deeper understanding of the workings of a mining industry, civil society representatives mentioned that attempts to press government officials for information have almost inevitably been blocked in part because the lack of precision in questions, and a lack of understanding of parts of government officials why transparency is an element in more inclusive and sustainable development. Civil society and business representatives in particular lamented the lack of willingness to provide information on the part of provincial and local officials.”

Source: Julian Dierkes, University of British Colombia, 2015 blog

However, transparency is a fundamental requirement in mining decision making community, without it any community engagement is either ineffective or totally flawed and conflicts are almost inevitable.

It is now international best practice for operational mining companies to ensure numerous means for communities to engage with mine developments and convey any grievances they may have.

Case study: Armenia. The Amulsar mine in Armenia has established a liaison office in all of the communities in close proximity to the proposed mine as well as the capital city, Yerevan. This is permanently staffed and comprises detailed information on every aspect of the mine, even though it is still only under construction.

In Mongolia, the main information source for local communities are local meetings organized by local authorities. However, scattered herder communities present special challenges in terms of communications. They are often live great distances from the centres and may not be easily notified about meetings thus they do not always have information about mining developments.

It is also clear from the tables below (4.1 and 4.2) that Local Authorities are not sufficiently communicating the information that they are given. Yet communities must be informed about developments (Table 4,3)

Clause 2.11 of the Procedure for Ensuring Participation in EIA, specifies that “It is the responsibility of the project implementer, soum and district governor, bagh and khoroo CRH and Environmental Agency to ensure the transparency and disclosure of an approved
DEIA report. However, neither local authorities or communities have sufficient knowledge about this clause, therefore it is not well implemented.

If legal knowledge is provided both to local authorities and community, the collaboration with mining companies and local community participation in decision making in mining operations will improve.

**Chart 4.1. Extent of Local Community’s Information about their local mining operations. (N=454)**

- 77.1% have no information.
- 48% have insufficient information.
- 29.1% have general information.
- 22.2% have sufficient information.

54.9% have general knowledge, while 15.9% have sufficient information which demonstrates the difference and inequality of information (asymmetry) extent between local government officials and community. Thus, local government officials should provide accurate and true information to local community and needs to work closely.

**Chart 4.2. Extent of Local government official’s information about local mining operations. (N=71)**

- 54.9% have general information.
- 19.7% have no information.
- 15.5% have sufficient information.
- 9.9% have insufficient information.

**Chart 4.3. The local community interest to participate in mining decision making (N=454)**

- 41.8% will participate actively.
- 29.3% will participate in general.
- 19.7% will participate if have time.
- 7.5% can’t say now.
- 2.7% are busy thus will not participate.
The local community interest to participate in mining related decision making is high if they receive relevant information, because over 70.3% of the survey respondents answered they will actively participate.

**The following areas are the Key information sharing areas**
Local government, Citizens hall, Older house, shops and information boards in streets. Public sports areas, school sports hall, shops, information board in streets and cultural centres for youths and communal water points for herders.

**Table 4.3: The approaches of mining companies use for cooperation with local community**
(By local community answers, N=454)

<table>
<thead>
<tr>
<th>№</th>
<th>Selected measures</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Invited to meetings</td>
<td>16.5</td>
</tr>
<tr>
<td>2</td>
<td>Visits to households</td>
<td>4.6</td>
</tr>
<tr>
<td>3</td>
<td>Gets comments by written form</td>
<td>3.7</td>
</tr>
<tr>
<td>4</td>
<td>Regularly provides possibility to participate</td>
<td>0.2</td>
</tr>
<tr>
<td>5</td>
<td>Informs about EIA and rehabilitation activities</td>
<td>1.0</td>
</tr>
<tr>
<td>6</td>
<td>Consult and reflect on the provided comments in decision making process.</td>
<td>4.0</td>
</tr>
<tr>
<td>7</td>
<td>Do not provide opportunity to participate</td>
<td>70.0</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>100.0</td>
</tr>
</tbody>
</table>

70% of the community groups interviewed indicated that mining companies do not provide them with opportunities for cooperation. There are only a few occasions when mining companies have invited local communities to meetings, made visits to their households, invite comments by written form, regularly provide the possibility to participate and seek comments in decision making processes.

The bagh meeting is the nearest and culturally accepted information dissemination opportunity in a soum. Bagh community meetings are held 2-3 times a month in the Bukhmurun soum. Around 60-80 people participate in these meetings and they are invited by phone calls 3-7 days prior to the meeting date. Whereas Batshireet soum organizes bagh meetings on a monthly basis. This type of meeting should be used for the extensive distribution of information.

**Mine Closure and Rehabilitation**
“Another strong message was that mine closure is one of the most difficult topics for officials as well as residents to grapple with. It is unclear to most residents what exactly successful rehabilitation might look like and the financial tools that would make this possible also remain very murky. This even though mine closure is a topic that has been addressed by several development projects, including some targeting ofUvs. A very interesting suggestion from a civil society representative was the notion of involving herders in reclamation projects.”

*Source: Julian Dierkes, University of British Colombia, 2015 blog.*
Legal Gap Analysis
The Project Team has followed four phases to identify legal gaps:

- **Determine important key relations**
- **Identify key laws and regulations that coordinates the relations**
- **Conduct comparative analysis with other laws and regulations to select clauses**
- **Identify gaps**

Four Phases of Investigation

**Phase I. Determine important relations:**

*The assessment team has targeted the following key stakeholders of project selected areas to determine key relations:*
- Local community and aimag and soum government officials;
- CSOs; (community herder groups, forest user groups and NGOs)
- Mining companies;
- International Agencies: Projects with similar activities;

**Methods used:**
- Focus group discussion, individual interviews and quotations.
- Over 30 days were spent in local areas and 454 individuals were covered in social survey. As result of these interviews and following five key relations were determined.
- This chapter has focused on the following two aspects which could be caused by interrelations between mining companies and local stakeholders.

**Cooperation Possibilities; Potential adverse impact of mining activities on human rights issues.**

EIA processes and Cooperation Agreements provide the most effective cooperation possibility within the current laws and regulations framework for improving relationships. Corresponding legal gaps between regulations and implementation are identified. During mining and exploration procedures 1) Compensation; 2) Land release and 3) Information transparency issues could affect human rights issue.

**Phase II. Identify Key laws and regulations that coordinate the relations:**

*All the relevant laws, regulations and other documents were identified and reviewed:*

**Laws of Mongolia:**
- Law on Minerals/Mongolian Law on Minerals
- Law on Royalties
- Law on Environmental Impact Assessment
- Law on Environmental Protection
- Law on Petroleum
- Law on Subsoil
- Law on Administrative and Territorial Units of Mongolia and Their Governance
- Constitution of Mongolia
- Law on Information Transparency and Right to Information
- Law on Public Hearing
- Law on Organizational Confidentiality
- Law on Forest
- Law on Buffer Zone
- Law on Special Protected Area
- Law on Commonly Spread Mineral Resources
- Law on Water Pollution fee
- Law on Development policy planning
- Law on Nuclear Energy

**Regulations including:**
- Regulation on Environmental Strategic and Accumulated Impacts;
- Regulation on Monitoring the Transactions through Accounts for Environmental Protection;
- Regulation on Development, Review, and Reporting of EMP;
- Regulation on Engaging Public Participation in EIA and;
- Methodology on EIA Development and;
- Regulations on Commission, Accreditation, Review, Adoption and Reporting of EIA etc.,
- EIA reports, plans
- Detailed Environmental Impact Assessment Report - Khetiim aimag, Batshireet soum, Baruun Gutai Gold Deposit (EIA is performed by “Ashid Anand” LLC- 2015)
- Report for additional disclosure for detailed EIA in Nuurs Khotgor Deposit located in Bukmurun soum, Uvs aimag (detailed assessment is conducted by ECOTON LLC -UB-2014)
- Environmental Management Plan -Khentii aimag, Batshireet soum, Baruun Gutai Gold Deposit (EIA is performed by “Ashid Anand” LLC- 2015)

**Directly relevant laws and regulations to the key relations were selected as result of this revision. They include:**
- Law on Minerals/Mongolian Law on Minerals
- Law on Environmental Impact Assessment
- Law on Environmental Protection
- Law on Administrative and Territorial Units of Mongolia and Their Governance
- Law on Information Transparency and Right to Information
- Law on Public Hearing
- Law on Organizational Confidentiality
- Law on Commonly Spread Mineral Resources
- Regulation on Environmental Strategic and Accumulated Impacts;
- Regulation on Monitoring the Transactions through Accounts for Environmental Protection;
- Regulation on Development, Review, and Reporting of EMP;
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Regulations including:
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- Regulation on Engaging Public Participation in EIA and;
- Methodology on EIA Development and;
- Regulations on Commission, Accreditation, Review, Adoption and Reporting of EIA etc.,

Phase III. Comparative analysis with other laws and regulations:

The assessment focused on comparing the selected laws and regulations and the most relevant clauses within the associated laws and regulations.

Phase IV. The team has detected conflicts among the clauses and assessed problems in implementation and compliance of these clauses.

Environmental Impact Assessment
An analysis was undertaken of the Mongolian laws associated with public participation in mining related decision making, namely in the relevant clauses of the Law on Environmental Impact Assessment and in the Regulation on Engaging Public Participation in EIA.

The Mongolian EIA system was established in 1993-1994, when the “EIA improvement” project was initiated by the Asian Development Bank. In 1998, the Mongolian law on EIA was enacted and after that all related legislation and guidelines were established. The Parliament of Mongolia passed an amended Law on Environmental Impact Assessment in 2012. As every mining activity has some impact on the environment, the new amendments, as well as the unchanged provisions of the law, are relevant to the mining industry.

The negative attitude towards mining in Mongolia is not helped by the EIA Law referring primarily to impacts as negative. There is little in the legislation beyond general statements to suggest that an EIA process should balance the positive implications of a proposal with the negative to arrive at an informed recommendation. EIA is not only about mitigating negative impacts but is also about enhancing positive opportunities presented by mining.

International best practice in EIA invariably calls for an integrated and balanced consideration of economic, social and ecological factors and an assessment of potential positive and negative impacts throughout the mine’s life cycle. Where trade-offs may be necessary these must be explicitly indicated. This is required to ensure an adequately informed decision can be made by decision makers.
An assessment of the negative impacts will involve a progression through the mitigation hierarchy from avoidance, minimisation, restoration and, for residual impacts, off-sets as a last resort.

In Mongolia, an EIA shall consist of two assessments: general environmental impact assessment (GEIA) and detailed environmental impact assessment (DEIA)\(^4\).

This parallels general international practice of a screening procedure indicating two EIA streams - a rapid or ‘light touch’ EIA for a project likely to have less environmental impacts than one requiring a comprehensive EIA process. A screening process proceeds the decision as to whether or not a rapid (General) EIA will suffice. Most countries list developments that require which level of assessment. In some cases, it may emerge that a project originally submitted for a ‘light touch’ (general) EIA is discovered to be sensitive enough to warrant a full (detailed) EIA. However, mining projects are invariably listed as those that will require a detailed EIA from the outset.

Consultants licensed by MET, carry out the DEIA within an indicated period in accordance with purpose and directions specified in BEIA and the project proponent shall select a consultant that will conduct an EIA at their own expense. Mongolia has few consultants with the capacity to undertake effective EIAs.

International best practice in middle income and developing countries is for international consultants to undertake the EIA with a counterpart local consultant to help build this capacity need.

Prior to commencement of any activities negative (sic) impacts on the environment and human health must be identified through employing EIA methodologies. Based on the results, a DEIA defines mitigation, prevention, elimination measures of these adverse impacts. Although legislation and practice vary around the world, best practice as defined by the Convention on Bio-diversity, defines an EIA as “a process of evaluating the likely environmental impacts of a proposed project or development, taking into account inter-related socio-economic, cultural and human-health impacts, both beneficial and adverse.

**DEIA report:** A professionally licensed consultancy must prepare a DEIA based on GEIA results. The report shall consist of field research, documents and assessment expert recommendations. Four copies of the report shall be delivered to the MET, where the project is planned to be implemented, the Governor’s office of the soum or district where the project is planned to be implemented and one copy will remain with the project proponent.

It is the responsibility of the legal entity performing the DEIA to organize, at the report preparation stage, consultations with the community and formally seek comments from the local authority, the community that is likely to be affected by the project and local residents living in the area where the proposed project is going to be implemented.

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\(^4\) Law on Environmental Impact Assessment, Clause 7.1
In Mongolia a DEIA report must include the following:

- Baseline environmental conditions in the project area;
- Potential negative impacts, and their magnitude, extent, consequences etc;
- Recommendations for measures to mitigate and eliminate significant potential impacts;
- Recommendations for methods and technology that reduce potential pollution that is expected from project and use of environmentally-friendly methods and technology for the project;
- Risk assessment of impacts on human health and environment of the proposed project;
- Mine closure activities, objectives, scope and indicators of rehabilitation and ex-situ (offset) conservation measures for petroleum, mining and radioactive minerals projects;
- Objectives, scope and indicators of an EMP as an integral part of the EIA;
- Meetings’ minutes and proposals for consultations made with the Local authority and General Community Meeting of the administrative area that will be impacted by the proposed project and;
- Other issues relevant to the historic and cultural sites and special nature of the project.

In Mongolia the Environmental Management Plan (EMP) and Monitoring Programme must be approved by the MNET and must be inspected by representatives of the Khural and inspectors of local government /aimag, soum and district.

This broadly follows best international professional practice for an EIA as described by, amongst many others, the International Association for Impact Assessment, The Environmental Law Alliance etc as:

- Identify the issues and impacts likely to be important and draft the TORs for the EIA.
- Provide a description of the proposed mine (including mine type, mine layout and facilities, technologies to be used in processing, infrastructure needs (eg roads, electricity transmission/distribution lines, water supplies, waste and tailings disposal plans, eventual closure plans, and resettlement needs etc)
- Alternatives - Indications of the most environmentally benign options for technologies etc. (eg for lay out, technology choices, processing methods, waste disposal options etc).
- Describe the consequences of a NO GO option for the project ie the status quo and the benefits anticipated from the project.
- Undertake a Baseline study of environmental, social and economic conditions (air quality, water quality, biodiversity, ecosystems services, local socio-economic conditions, assets of cultural value etc).
- Impact Analysis: Evaluate potential impacts (using the appropriate methodology that would indicate: impacts that are positive or negative, long or short term, reversible or irreversible, simple or accumulative etc). Projection of impacts (on water resources, air quality, soil quality, wildlife and habitats, livelihoods, social

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5 Law on Environmental Impact Assessment, Clause 8.4;
values, cultural values, public health and safety). These need to be indicated throughout the life-cycle of the project from planning through to closure).

- Impact Management: Describe the measures to avoid, mitigate, rehabilitate or offset negative impacts and enhance positive impacts as well as emergency preparedness and contingency measures).
- Evaluate the significance of impacts to determine the relative importance and acceptability of residual negative impacts that cannot be mitigated.
- Translate mitigation commitments into a draft Environmental Management Plan, monitoring plan, closure plan and Action Plans on specific topics (e.g., Biodiversity Action Plan, pollution prevention measures etc)
- Clearly document the findings, EMP proposals and process followed into an Environmental Impact Report (for public scrutiny and comment).

(Throughout this process ensure the process is transparent, forms of financial assurance, community engagement process, participative, inter disciplinary, credible, balanced etc)

Gap Analysis:

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<tbody>
<tr>
<td>GAP#1</td>
<td>Regulation on Engaging in Public Participation in EIA</td>
<td>Clause 2.5.3: “fully reflect citizens proposals by conducting meetings and using participatory assessment methodology”</td>
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</tbody>
</table>

**International practice:**
Principle 10 of the Rio Declaration (1992) reinforced by the UN Economic Commission for Europe’s (1998) Aarhus Convention on “Access to Information, Public Participation in Decision making and access to justice in Environmental matters” outlines 3 essential elements to ensure meaningful public engagement: access to information, opportunity to participate in the decision-making process and effective access to administrative and judicial proceedings”.

**Gaps**
Onon bagh Governor of Batshireet soum indicated that an EIA licensed company arrived at the bagh meeting and introduced the EIA. Comments were collected. Then the bagh meeting participants voted whether they supported the EIA or not. The consequent majority decision of those at the meeting approved the EIA.

However, the report did not include all comments or proposals of bagh khural participants, nor were a sufficiently representative participation of the community members sufficiently represented.

Participants were left with the impression that the purpose of the bagh meeting was only to provide resolution and ‘rubber stamp’ the EIA.

It was not clearly specified how the community’s views would be reflected, and how citizens proposals will be taken into consideration in the EIA process.

**Gaps with good practice.**
International experience indicates that this token approach to participation is not unusual public participation. Failure to record (or correctly record) the views expressed in ESIA
Participation in Mining Related Decision Making

Consultations deviate from international best practice in numerous ways and it calls into question the competence and integrity of the consultants. Participation must be inclusive and ensure all members of the community have the opportunity to comment. Marginalised members of the community must especially be included.

Minutes of all consultations and meetings must be comprehensive and record all opinions expressed, indicating if they have been included or not and justifying the decision.

The review of the EI Report by government should identify this as an inherent failure of the process and require a fuller Report. Under most systems all eia documents must be made available for public review at a public place. This is to ensure that, inter alia, citizens can make sure their views have been taken into account and not misrepresented.

<table>
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<tr>
<th>GAP#2</th>
<th>Regulation on Engaging in Public Participation in EIA</th>
<th>Clause 2.5.4 “to assess direct and indirect impacts of the project through discussion, meetings and surveys, and pay attention to reflect livelihood and social issues of the citizens”.</th>
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</table>

No Guidance is provided to determine the community under direct or indirect impact or legitimate interested parties. The 'impact zone' tends to be arbitrarily determined. This makes it difficult to enforce this regulation effectively.

Stakeholder analysis is now an integral part of good international practice. This will help determine who are the interested and affected parties (see the Cambodian example).

There is little evidence that a rigorous stakeholder analysis, social impact assessment or a livelihoods assessment was ever carried out in the study areas in connection with mining developments.

In fact, there are indications that the partial consultations that have taken place in the study areas have detrimentally affected social cohesion:

"Mining companies take comments and proposals only from Batshireet soum residents but do not consider ours. Although the mine site is located in Batshireet soum territory, the river under pollution risk crosses our soum. Therefore, our soum community and livestock are at a higher risk to any pollution of the river by the mine.”

From an interview of Local herder from Binder soum of Khentii aimag"

Local community and local government officials do not have sufficient knowledge about the clause requiring attention to be paid to “reflect livelihood and social issues of the citizens under direct or indirect impact of the mine”

International guidance now determines that an ecosystem services assessment should be undertaken as part of an EIA process to determine the dependence and vulnerability of people potentially adversely affected by projects.

It is also unclear how to define “pay attention”. Thus, a mining company does not effectively have any responsibilities if it does not support livelihood and social issues of the citizens under direct or indirect impact of the mine.
<table>
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<tr>
<th>GAP#3</th>
<th>Regulation on Engaging in Public Participation in EIA</th>
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<td>Clause 2.6: “The project implementer shall clearly introduce the project concepts, its positive and negative impacts, and measures of mitigating negative impacts to citizens who may be affected by the project, and may provide documents that are necessary to ensure public participation.”</td>
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<td>This clause does not clearly specify what are the documents needs to be presented to ensure public participation. It stated like “may”, thus it does not require the project implementers to do this measure as an obliged responsibility. The clause just opens possibility present documents or may not.</td>
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<td>“We give many proposals to DEIA but none of them been decided. We never get any response. Khar Yamaat bagh resident of Bukhmurun soum, Uvs aimag”</td>
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<td>This clause is confusing because both mining company, local community and government do not have any idea what set of documents need to be provided to ensure public participation.</td>
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<td>International good practice gives many practical guidelines on the topics that need to be described by the company before an impact appraisal can be undertaken. These include, but are not limited to,: nature of mining (open pit, shaft etc). location and lay out, processing measures and chemicals to be used, characteristics of then mined materials (eg acid generating potential?), waste management proposals. Rehabilitation proposals, possible relocation needs etc and infrastructure. Importantly, the project description must include a list of feasible alternatives (and why the most environmentally benign option has not been chosen , if it has not) the ‘status quo’ or ‘No Go’ option.</td>
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<tr>
<th>GAP#4</th>
<th>Regulation on Engaging in Public Participation in EIA</th>
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<td>Clause 2.7 of the regulation specifies that the “Business entity that is entitled to conduct an assessment shall jointly with the project implementer develop DEIA report and EMP. After completion of these documents, they shall conduct public discussions about the assessment report. The combined public proposals shall be submitted to the Khoroo and bagh meetings of the given area within 15 days”.</td>
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<td>Law on Administrative and Territorial Units of Mongolia</td>
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<td>Clause 23.2: “...Regular session of bagh or khoroo public meeting not less than three times for a year”,</td>
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<td>Clause 23.3 stipulates that “Irregular sessions of the Hural shall be conducted based on the request of at least two thirds of the Representatives of Hural or decisions made by Presidiums”.</td>
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<td>Making decision within 15 days causes problems because it is a complicated process to have a meeting requested by at least two thirds of the Representatives of Hural.</td>
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<td>Moreover, the Public meeting of the bagh does not make any decisions it only provides proposals. It is not clear in the regulation how to reflect proposals, whether and how these proposals are accepted or what kind of decision shall be made etc.</td>
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<td>International best practice suggests appropriate time should be allowed to enable people to participate. There are no definitive rules on this - but European law normally stipulates at least 30 days. Clearly 15 days is inadequate in Mongolia where distances are great, communities dispersed and web based communications not universal.</td>
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For mining projects the decision-making responsibility often rests with regional or national authorities because mineral wealth is usually regarded as a national asset and often of national strategic importance. Local authorities should be empowered to make recommendations.

### GAP#5 Law on EIA

8.6 The project implementer shall bear the costs associated with the conduct of the detailed environmental impact assessment.

Ever since the early days of the introduction of EIA in the 1960’s/1970s there have been concerns expressed about the impartiality of consultants employed by the project proponent and the impartiality that can be expected from them when they’re being paid by the project proponent.

It has often been suggested that an independent fund should be established to accumulate some proportion of expenditures required for conducting an EIA. In this way, the entity that is responsible for conducting an EIA shall be able to operate more independently. In short, this will ensure the neutrality of the EIA consultants as facilitators rather than advocates of the proposal.

All detailed assessment reports in Mongolia are discussed and approved by the same professional council. This Council is overloaded with its responsibilities resulting in delays. It is necessary to establish more sub-councils with participation of social and health specialists to reduce this workload. By establishing such a structure, it would improve the quality of report reviews as well as efficiencies.

Internationally a phenomenon known as ‘institutional deficit’ is common especially in developing countries. This means that the review capacity of government officials is in need of greater development. Delays in reviewing EI Reports are common and costly.

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**Overall solution:**

The regulation on Engaging Public Participation in EIA does not have sufficient clauses regarding mechanism for ensuring effective public participation, assessing the views on proposals by stakeholders, and measures to be taken in case of rejection of such proposals.

In the EIA law, it is specified that “If a licensed entity, which conducted a detailed Environmental Impact Assessment has been determined that it has been incorrectly developed, the license of the EIA right will be cancelled and the entity shall pay fine the amount equivalent to 25-30 times the minimum wage”.

However, the highlighted violation indicated in this clause does not include if the licensed entity fails to collect and record all citizens proposals, and does not reflect these in the EIA document/Report. Thus, there is a need to clarify this clause to improve of regulation of law on protecting civil interest.

Internationally, many countries would de-list consultants who contravene the law by fraudulent use of information etc. The challenge is to determine if such measures were fraud or incompetence.
Cooperation Agreements/ Community Development Agreements.
The assessment aims to study legal opportunities that will ensure equal and inclusive involvement of stakeholders in making Cooperation Agreements as well as to assess the relevant implementation of the regulating clauses and obstacles hindering the implementation.

The analysis focused on clauses 42.1, 42.2 and 42.3 and 9.1.10 of MLM. Especially, clause 9.1.10 of MLM provides government to adopt the Cooperation Agreement template. Based on this clause, the Agreement's template was developed and approved by the Government resolution # 179 in 2016.

A License holder shall conclude a Cooperation Agreement and work in cooperation with local government and communities on environmental protection, infrastructure development and increased employment opportunities.

Gap Analysis

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<td>GAP#1</td>
<td>MLM</td>
<td>Clause 42.2: “A license holder in cooperation with the local administrative body may organize public consultation on issues specified in Article 42.1”.</td>
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This clause does not obligate license holders to organize public discussion prior to signing an Agreement, thus license holders do not organize public consultations at a sufficient level.

This was confirmed by interviews made with citizens and local administrations of Bukhmurun soum, Uvs aimag and Batshireet and Binder soums of Khentii aimag. This is a common failing.

Mongolia is leading the development of formal Community Development Agreements. Experiences with Rio Tinto at Oyu Tolgoi have escalated the interest in these mechanisms. Rio Tinto have championed the concept in several countries and are bringing those experiences to Oyu Tolgoi. It is unlikely that many all companies operating in Mongolia are yet familiar with the concept in spite of government efforts and there is need for greater advocacy in this regard.

| GAP#2 | Agreements template approved by the Government resolution # 179 in 2016. | Article 2.1.3: “It is the Governor’s responsibility to organize meetings and discussions about the Agreement performance, select projects and activities out of all projects which are approved by the aimag (soum and district) CRH in negotiation with the license holder and inform local community”. |

This clause of the Agreement template does not legally regulate what kind of document shall confirm the selected projects and activities. It was observed during the study area meetings, however, that, Agreements do not necessarily include selected joint projects. It is unclear if this action is considered as a violation of the template approved by the Government,

In the template, it is indicated that parties can approve joint projects in an annex to the Agreement. However, there are no annexes mentioned in the regulation.
PARTICIPATION IN MINING RELATED DECISION MAKING

Overall Solutions:

Establish a working group with participation of representatives from license holders, local government and communities aimed to develop joint projects and programmes for Cooperation Agreement as well as monitor and evaluate the Agreement implementation.

Develop a specific regulation regarding the distribution of information about license holders’ operations and Agreement implementation status and ensure the proper compliance of such regulation.

The forging of CDAs is going through a learning period. International guidance exists in documents such as the Community Development Tool Kit published by the International Council on Mining and Metals (ICMM) provides a suite of tools on Community Development, relationship tools, planning tools, assessment tools, Management tools and monitoring and evaluation tools for Community Development Agreements.

Compensation

The issue of adequate and fair compensation is a universal agenda item. It ranges from clear cases of negatively impacted lives and livelihoods to more general issues about the distribution of revenues from mining activity. In the latter case, there is often much debate about whether communities that host mining projects should be entitled to extra compensation for the negatives impacts they endure (hypothecation). This is controversial because they also gain positive impacts and opportunities form a mine’s presence and if they were to get inordinate shares of the revenues it would cause an imbalance in national development with regions with no mining activity lagging behind.

According to the clause 41.1 of MLM, if a license holder has caused damage to wells, winter premises, private and public houses, other type of structures and historical and cultural heritage in the process of exploration or mining operations, such damages, with any necessary costs associated with resettlement or relocation, shall be wholly compensated to the owner by the license holder.

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<td>GAP#1</td>
<td>MLM</td>
<td>Clause 41.1: “License holders shall fully compensate owners and users of private and public residential dwellings, wells, winter huts, other structures, and historic and cultural landmarks for the damages caused by exploration or mining operations, including, if necessary, relocation costs”.</td>
</tr>
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</table>

As defined in this clause, the license holder is obliged to pay compensation if damage is caused to others in the process of conducting exploration and/or mining activities.

A claimant must have a certificate of ownership or possess proof of legal ownership or is a user of the damaged property. If so they are then entitled to claim compensation.

This clause is limited to damages caused to “winter huts, other structures, and historic and cultural landmarks”. However, the main complaints for herders who are engaging in traditional nomadic livestock husbandry are made in connection with their health, loss of pasture, dust, and access to water resources where these are limited (egg the Gobi). etc. These impacts may result in a loss or reduction to their ability to maintain their traditional livelihoods.
Methods of estimating such impacts are not clearly indicated in legislation. This leads to frequent conflicts between license holders and citizens.

“Respiratory disease incidents in our bagh are usually high. We assume this is caused by the dust of the mine. It is hard to gain compensation for this as there is no thorough study that can prove it”. Khar Yamaat bagh physician of Bukhmurun soum, Uvs aimag.

Overall Solutions:

There is an urgent need to create legal provisions that broaden the definition of impacts amenable to compensation, clarify ‘impact zone’, estimate amounts of compensation, establish unequivocal cause and effect linkages and mechanisms for corresponding compensation payment. These clarifications will help reduce conflicts between citizens and license holders.

Local authorities and license holders need to collaborate and pay especial attention to establishing the ‘impact zone’ for the mining operations. There is no clear prescription for this because of the variation in circumstances between mine and mine.

Currently, the establishment of the ‘impact zone’, compensation for citizens within this zone are not regulated by any laws or resolutions. Thus, a Governor could investigate with the local communities how these issues can be better incorporated in a DEIA.

Land Release and Relocation


There is a common perception that land release and relocation of residents are occurring exclusively in urban areas, however such issues are also arising in rural areas. Especially where mining operations are taking place. It is necessary to identify the best way to efficiently resolve such issues in mutually beneficial ways, and legalize such ways in relevant laws.

Land release, resettlement and relocation can be understood as the relations associated with agreements made between the license holder and residents regarding the relocation of the resident to other areas, if exploration and mining operations are carried out in the land owned or used by the resident this may cause potential loss of healthy and safe living environment of that citizens due to such mine related activities. In cases where mines need to acquire land from unwilling sellers best international practice lays out strict guidelines on compulsory purchase and involuntary resettlement. There are many cases where these transactions have caused serious conflicts (egg Obuassi in Ghana).

Although there are no clauses in Mongolia’s Constitution, Law on Land, MLM, Law on Allocation of Land to Citizens for Ownership and Civil Code that directly regulate such issues, the relations associated with land release and relocation are regulated by these laws.

Currently, the Regulation for Land Purchasing and Obtaining or Exchanging Land for Compensation on Territory of Ulaanbaatar, which was adopted as an annex to the Ulaanbaatar CRH resolution #126 dated July 08, 2014 is come into power throughout the territory of Ulaanbaatar.
Today, relocation and compensation issues are resolved based on the Civil Code through agreement with citizens.

**Gap Analysis**

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<tr>
<td>GAP#1</td>
<td>There are no legal regulations regarding to compensation and relocation.</td>
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<td>The issue of residents and families, who may be required to be relocated due to mining operations is one of the most important issues is to be addressed.</td>
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<td>According to current laws, herdsmen are entitled to use their winter huts for up to 60 years and may extend this by 40 years. However, there is no ownership right existing for pastures, only ‘user rights’. This presents complicated situations for calculating compensation in such cases.</td>
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<td>There are many ways of issuing compensation to citizens who had to be relocated because of a mine. It is insufficient to estimate the amount of compensation only based on the cost of construction materials used to build winter huts (spikes, wood, timber etc.) without taking into consideration the impact on their ability to maintain their livelihood from livestock.</td>
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</table>

**Overall Solutions:**

As there are no legal regulations that directly regulate issues on compensation or relocation of citizens, an Agreement shall serve as the key document that assures the relations between the parties thus it is an important document providing the right to complain if any conflicts arise.

**Key Considerations:**

- Whether it is possible for the citizens themselves to select a new area;
- The calculation of equivalence between the new area for relocation and the current situation;
- If the situation in the new area for relocation is worse than current area, then is it possible to improve situation? (eg by constructing wells or estimating the difference in money terms etc.)
- Establishing the fairest way to calculate the amount and terms of compensation.
- (As seen from the survey, compensations for citizens that are relocated are calculated by different means, including paying fixed sums of money on an annual basis, constructing wells or fences for them and providing with workplace etc.);
- Establishing clauses in the agreement covering responsibilities or imposing of fines if a business entity fails to complete its duties;
- Ensure the persons signing on behalf of the license holder is entitled to do so.
- (If the agreement is signed by an official other than Chairman of the Governing Board or Executive Director of the entity that holds the license, then such an official must be properly authorized by the Chairman of the Governing Board or Executive Director)
- If relocations are required due to mining operations the local government has the possibility to introduce a policy on compensation, and provide own its proposals and comments. The Local community and local government representatives jointly need to monitor the implementation of the land release and relocation policy. However, land release and relocation urgently need to be legally regulated.
Information Transparency.
Mongolia has made major strides in transparency measures through its implementation of the Extractives Industries Transparency Initiative (EITI). It has a leadership position in this international initiative and is actively deepening its engagement from the national to the local level.

It is necessary to define legal regulations that indicate the means by which citizens can obtain information from mining operations. License holders have a responsibility to provide citizens with valid information, in an easily accessible and understandable way.

Clauses relevant to ways for citizens to obtain information about mining operations by are specified in the MLM, LEIA, Law on Environmental Protection, Law on Information Transparency and Right to Information etc.

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<tr>
<td>GAP#1</td>
<td>MLM</td>
<td>Clause 57.4: “State central administrative bodies in charge of environmental and geological and mining issues shall publicize and disseminate electronic copies of information on environmental impact assessment, environmental protection plans and reports, information about hazardous chemicals and other substances that may impose negative effect on human health and environment”.</td>
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<td>Clause 57.2: “State administrative bodies, upon license holder’s request, shall treat reports of exploration work, information with respect to mine operations and feasibility studies prepared by a license holder as the license holder’s confidential information during the valid period of the license. The license holder may conclude a confidentiality agreement with the State administrative body when they hand over information and reports”</td>
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<td>Clause 57.3: “Information classified as confidential pursuant to clause 57.2 of this law shall not be disclosed, published or disseminated except for pursuant to clauses and regulations established in the Law on State secrets, the Law on Organization secrets, and the Law on Private secrets</td>
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<td>Law on Organizational Confidentiality</td>
<td>Clause 6.1: “it is prohibited to keep in secret information that represents the impact of organizational operations, production, services, their equipment and technology used on human health and environment”.</td>
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<td>Regulation on Engaging of Public Participation in EIA</td>
<td>“It is the responsibility of project implementer, soum and district Governors, bagh and khoroo CRH, as well as aimag and metropolis Environmental Agency to ensure transparency and disclosure of approved DEIA reports”</td>
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DEIA needs to be transparent to facilitate public participation. However, there is often confidential information that can be considered commercial sensitive.

According to the law, a feasibility study of a license holder could be considered as a confidential document. Therefore, a DEIA automatically becomes confidential and could not be disclosed without license holders consent.

At the same time the Law on Organizational Confidentiality requires a license holder to disclose information if operations might cause hazards to human health and the environment. This means that a company (perhaps using hazardous activities) could not hide this information if whoever wants to have it.

The potential for legal conflict exists but experiences suggest that confidentiality over company operations are rarely agreed over issues such as hazards to human health and environment. They are usually acceptable to protect the commercial information of a company, public release of which may give competitive advantage to other’s in the same sector.

Overall Solutions:

There is a legal opportunity to develop further regulations and procedures regarding transparency and disclosure of some documents, including the applications of the license holder, EIA report, EMP, environmental monitoring programme etc. prior to issuing permission to possess and use natural resources to entities. This would be in line with international experiences.

The confidentiality related clauses in the Law on Organizational Confidentiality and MLM are conflicting. Therefore, these issues need to be addressed.

One of the possible solutions would be to divide the DEIA into confidential information and information for public disclosure. The public version shall include information about the operation that might cause hazards to human health and environment. This would, however, cause mistrust about what is in the confidential version and would set a precedent by giving the license holder the opportunity to hide any sensitive information.

Conclusions and Recommendations

➤ Mechanisms should be put in place to ensure that mining projects obtain community consent as a ‘social license to operate as part of the EIA process.

➤ An EMP must describe all the commitments made in the EI Report. These should have been formulated, inter alia, after consideration of the communities’ comments and suggestions.

➤ The Regulation on Engaging Public Participation in EIA procedures must have a clause that states local proposals shall be fully considered through public meetings and participatory methods. They should be adequately recorded and explanations given if they are rejected.

➤ As with EIA experiences internationally the current legal framework in Mongolia puts the onus on the project proponent to hire and finance the consultant to facilitate an EIA process. Thus, the risk is that some will favour advocacy of the project proposal.
rather than impartial analysis of its merits due to this direct financial relation. The solution to this usually rests in a consultants’ certification scheme that includes signing up to legally binding professional standards and codes of ethics. Non-adherence to these standards, by bias, corruption or incompetence, should result in dismissal from the list of practitioners and punitive measures in extreme cases. This would require a professional oversight body and system.

- An additional measure of independence would also be achieved by ensuring that a percentage of a new project proposal costs goes to a special fund which will be used for organizing a tender for the consultants to undertake an EIA of the project proposal. In this case, Removing the ‘employer - employee relationship’ between the proponent and the consultant will improve the prospects for an impartial EIA process.

- Bagh meetings must not be conducted within 15 days under current bagh conditions. This duration must be extended during EIA procedures. This is shorter than in many countries with far less sparsely distributed populations and better access to web-based communications.

- It is unclear how to incorporate the selected project proposals into the government approved Cooperation Agreement format. Putting such projects in annexes needs to be legally regulated. Moreover, operational procedures and regulations of Committees to develop, monitor and evaluate the Cooperation Agreements needs to be developed and enforced.

- A project impact zone can be determined according to many different criteria - land area, ecological, social, economic linkages etc. There is a need for methodologies in each relevant discipline to establish zones of impact for each project EIA.

- Currently, land release and resettlement are not adequately regulated. The GoM need to develop laws and regulations to determine recommended practices. This should not be just in terms of spatial dimensions but also needs to take account of displaced people’s livelihoods and their dependence on specific ecosystem services that will need to be quantified.

- Local communities, service providers, local authorities etc do not have sufficient knowledge about the mining operations. They cannot enter into effective engagement about mining projects, therefore they are losing the opportunity to participate in the process meaningfully and influence the decision-making process. Thus, the need is for widespread capacity development.

- The project proponent/mine developer is likely to have access to expertise (including legal) and information about a project, and its potential consequences, that a community will lack. This leads to mistrust and misunderstanding between the proponent and interested and affected parties. This results in a failure to hold key stakeholder to account. MEITI should be encouraged to look at transparency in EIA processes in more detail.
EIAs frequently fail to engage all relevant people in a dialogue - especially the marginalized and the vulnerable in communities. Some EIA processes have also been criticized by communities for paying too much attention to the views of self-appointed guardians of communities’ interests - views that may be contrary to the desires of the community themselves. Stakeholder analysis should be a key part of EIAs and the participants and their constituencies and mandates must be clearly identified.

Governments do not have the capacity to implement (including facilitate participation in) EIA regulations. Enforcement of the regulations and conditions, identified as part of the approvals process, is often ineffective and sanctions for failing to comply with procedures are no big deterrent. Delays, misunderstanding, lack of trust are common.

Many international initiatives are engaged in similar exercises to the current EU project, including establishing community platforms. This has highlighted the need to ensure donor programme harmonisation to avoid duplication of effort.
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APPENDICES

APPENDIX 1.

Laws and Regulations of Mongolia
Law on Minerals/Mongolian Law on Minerals
Law on Royalties
Law on Environmental Impact Assessment
Law on Environmental Protection
Law on Petroleum
Law on land underground
Law on Administrative and Territorial Units of Mongolia and Their Governance
Constitution of Mongolia
Law on Information Transparency and Right to Information
Law on Public Hearing
Law on Forest
Law on Buffer Zone in Special Protected area
Law on Special Protected Area
Law on Commonly Spread Mineral Resources
Law on water pollution fee
Law on Development policy planning
Law on Nuclear Energy

APPENDIX 2.

EIA Reports and Plans

Detailed Environmental Impact Assessment Report - Khentii aimag, Batshireet soum, Baruun Gutai Gold Deposit (EIA is performed by “Ashid Anand” LLC- 2015)

Report for additional disclosure for detailed EIA in Nuurs Khotgor Deposit located in Bukmurun soum, Uvs aimag (detailed assessment is conducted by ECOTON LLC -UB-2014)

Environmental Management Plan -Khentii aimag, Batshireet soum, Baruun Gutai Gold Deposit (EIA is performed by “Ashid Anand” LLC- 2015)
## APPENDIX 3.

### Participants in the workshop in Uvs province

(20-24 Jan 2017)

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WWF-MONGOLIA IN NUMBERS

10.6M
10.6 million ha of PAs established, which makes 39% of PAs

1992
WWF-Mongolia was founded in 1992

2
Works in 2 Ecoregions: Altai-Sayan and Onon River basin, the headwaters of Amur-Heilong

5
Focuses on 5 conservation targets: boreal coniferous forest ecosystem, freshwater ecosystem, 2 GPF priority species namely snow leopard and Mongolian saiga, and migration of ungulates as an important ecological process.

5
Introduced IWRM concept in 5 River basins and supports its plans

+140
Supports over 140 Community based organizations

24
Works with 24 children’s eco clubs

Cover photo by M.Uuganbayar

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Fax: +(976)-11-310237
E-mail: info@wwf.mn

Why we are here:
To stop the degradation of the planet’s natural environment and to build a future in which humans live in harmony with nature.
www.panda.org