Environmental Governance Programme
Integrating Environment and Human Rights into the Governance of the Mining Sector

Workshop Report
Workshop on Participatory Environmental Monitoring
March 26-27, 2019 - Ulaanbaatar, Mongolia
The Workshop on Participatory Environmental Monitoring was held on March 26-27, 2019 at the Holiday Inn Hotel in Ulaanbaatar, Mongolia.

The objectives of the workshop were to sensitize the stakeholders on the benefits of Participatory Environmental Monitoring and show the added values for all partners involved: the environmental authorities, civil society and the private sector.

The workshop was organized by UNDP Mongolia and the Government of Mongolia, under the joint Swedish Environmental Protection Agency - UNDP Environmental Governance Programme (EGP) for Sustainable Natural Resource Management. The EGP supports countries to integrate environment and human rights into the governance of the mining sector.

The workshop was facilitated by Mrs. Erdenechimeg Dashdorj, Natural Resource Governance manager at the Open Society Forum Mongolia, and Mr. Dagva Myagmarsuren, the founder and Director-General of the QMC mining consulting group in Mongolia. This workshop report was prepared by UNDP Mongolia.

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Executive Summary
The Workshop on Participatory Environmental Monitoring was attended by over 100 participants, including representatives from Ministry of Environment and Tourism (MET), Ministry of Mining and Heavy Industry (MMHI), General Agency for Specialized Inspection (GASI), National Human Rights Commission (NHRC), local government offices (aimag, soum level), bagh governors, local environmental and inspection officers, citizens, professional associations, mining companies, civil society organizations, and by experts from Swedish Environmental Protection Agency (Swedish EPA), Source International, and the joint Swedish EPA-UNDP Environmental Governance Programme (EGP).

Mr. Ts. Batbayar, Vice-Minister for Environment and Tourism, and Mr. Tim Scott, UNDP, opened the workshop and welcomed participants.

Mr. Scott noted the Government’s leadership in taking to steps to address the social and environmental dimensions of the mining industry; passing of environmental legislation to increase public participation and decision-making, integrating human-rights based approaches into the governance of the mining sector, and leading the degraded land census, and working closely with civil society and private sector partners, and international partners including, the Extractive Industries Transparency Initiative; the Inter-Governmental Forum on Mining, Minerals, Metals and Sustainable Development; the Office of the UN Special Rapporteur on Human Rights and the Environment; and the Sida funded EGP, the co-organizer of the workshop.

Proposed Recommendations
• Develop participatory environmental monitoring (PEM) as an indispensable part of environmental management in Mongolia.
• Conduct research of existing local initiatives of PEM, and involve civil society organizations working in this field in this mapping exercise.
• Continue discussions and consultation on PEM legal environment, internal governance, operational procedures and sustainable financing.
• Develop localized PEM models that fit specific local situation and implement pilot projects.
• Build capacity of local citizens and provide with necessary equipment.
• Extend the support from MET, MMHI, GASI, NHRC and local authorities to PEM.
• UNDP to provide an integrated support and methodological and financial assistance.

General Observations by the Workshop Facilitators
• The workshop proved that multi-party discussion on environmental monitoring was long due in the Mongolian society. Mongolia has not paid enough attention to environmental monitoring; there is a legal framework for Government’s formal monitoring (GASI, MET); and for private sector actor to carry out their own monitoring. However, the implementation is insufficient.
• There is a lack of mutual understanding and trust among mining companies, citizens and local authorities. Therefore, PEM maybe a solution for more effective environmental protection and for building trust among parties involved.
• Policy makers who participated in the workshop acknowledged that creating a system of engaging local citizens and the public, such as PEM, may be an effective means to educate the public and change their perception towards mining. This was an important outcome of the workshop.
• Workshop participants expressed their expectation that UNDP will take a lead in bringing PEM to Mongolia.
Key Messages from the Workshop

Governance of Participatory Environmental Monitoring Committees (PEMCs):
• PEMCs could be established under the soum and aimag local councils (Citizens’ Representative Hurals-CRH).
• The Government needs to encourage and promote the establishment of PEMCs and create enabling legal environment for PEMC activities. The Government also has a role to play in ensuring equal participation of parties.
• Current legal provisions related to participatory monitoring need strengthening; specific duties could be added to provincial government duties or functions.
• Conflict of interest may arise when it comes to selecting a person to be in the PEMC. Ethics of PEMC members is critical.
• Citizens, PEMC members need to attend regular training to build their capacity.
• Company confidentiality will be one issue. PEMC member representing the company should be someone at the decision-making level.
• Community members who get employed by company cannot be independent. Smaller communities may also become co-opted by company.
• Independence from politics and company is the key. Working procedures of PEMC must be simple enough to be understood by citizens and this will ensure sustainability. PEMC members cannot be appointed from above.

Proposed Solutions:
• Create an enabling legal environment for participatory environmental monitoring (PEM) through amending the Law on Administrative and Territorial Units and their Governance and the Law on Environmental Protection.
• Adopt a model bylaw of the PEMC by a Cabinet resolution.
• Establish PEMCs under the Environmental committee of soum Local Council with equal representation of government, civil society and company.
• Ensure independence and prevent from conflict of interest by specifying mandate, responsibilities and ethical requirements.

Observations by Facilitators:
• Participants agreed on the need to create legal environment that supports PEM, and put forward some specific suggestions.
• However, given the existence of some regulatory provisions in environmental laws related to citizens’ participation in monitoring, there is a need to conduct a legal review, identifying provisions which would support or restrict PEM, and specify actual laws where these can be incorporated.
• Establishing PEMC at the soum level, the primary administrative unit, under the Environmental Committee of the Local Council, may be the most adequate option.
PEMC Rights and Responsibilities

**Responsibilities:** Provide comments on detailed EIA; participate in PEM planning; oversee the implementation while doing monitoring; decide on what to monitor and how by engaging specialized institutions; propose legal amendment; provide comments or feedback to local development policy documents; regularly deliver activities’ report to local areas.

**Rights:** Access to company site; be represented in EMP Council and provide comments; obtain monitoring results from the company.

**Means of implementation:** Collect sample and send to laboratory, submit to relevant authorized institution for conclusion; submit that conclusion to the company for follow-up measures; submit request to the Inspection agency to follow-up, in case the company fails to act; submit petition to court if the matter is of criminal nature; gather complaints from citizens; in particular, choose the site based on complaints received from citizens; collect sample from the chosen sites.

**Observation by Facilitators:**
Given the legal environment for PEMC status has not been clear, different experiences and models have been exercised across the country. Therefore, it was not possible to specify in detail potential issues and solutions for PEMC to plan and report and inform the public about its work.

Thus, in addition to creating a legal environment, there is a need to continue the discussion on internal rules and bylaws of PEMC. In this respect, a study could be done to evaluate different experiences of PEM being used in different local areas. Good practices of multiparty initiatives, such as IETI National council, working group and local sub-committee bylaws, could be researched.

**Potential benefits of PEM for Mongolia if it is introduced, and what we can learn from PEM**

- PEM will be recognized only when it is multi-party. Being multiparty will overcome issues such as lack of scientific knowledge, corruption, one-sidedness, and lack of funding. Three parties can defend their views, but the final one will be communicated to public. That decision is likely to an optimal one.
- Parties will receive accurate information, companies will be more responsible and eventually, laws will be implemented. It is with 3 parties that PEMC can be successful. Trust among parties will be enhanced, accordingly conflicts will be reduced.

**Observation by Facilitators:** Participants agreed that with PEM responsible mining can develop, and monitoring can reach out to areas where formal government monitoring is not able to reach. PEM can be a mechanism for enabling understanding among parties these days where the reputation of mining is low in the society.

**Social, economic and legal environment for introducing PEM**

- Article 42.1-3 is the main legal provision which on participation. IETI provides the right to information. However, there is no legal provision that refers specifically to participation of citizens in environmental monitoring. If PEM gets regulated, citizens’ participation will move from stage 1 to stage 4. Article 42 of the Law on Minerals could be amended to include PEM. Likewise, Law on Right to information and Law on Environmental Management Plan could also be amended.
- Legal environment for independent source of funding is the key. This will allow PEM for all mining – small and large.
- Information database recognized by all can be created, provided the basis for further analyses. This will result in reduced company risks and trust of ministry officials approving EMP will be increased.
- Water monitoring results in increased water payments.

**Observation by Facilitators:** The discussion on PEM to be mandatory or voluntary is likely to be continued in the future. While international experience is more towards keeping it as voluntary initiative, the workshop participants tend to support the creation of a legal environment for multi-party PEM.
Environment:
- **Who**: PEM to be done for all projects that require detailed EIA.
- **What**: water resources, quality, use, soil erosion, degradation, pollution, air quality, biodiversity.
- **How**: PEMC can use a format that fits given circumstance. Primary data must be accurate. Sample collected by PEMC during monitoring has to be submitted to independent laboratory. Monitoring site or points can coincide with the company selected sites or newly set up by PEMC.

**Observation by Facilitators**: Participants proposed to use PEM for all projects which require detailed EIA. However, this view may change after more focused discussions that take into account scale of mining projects and specifics of local areas.

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Gender Equality in PEM:
- PEMC can be created at soum level, with members of either gender not exceeding 60%. Women are better in consensus building and taking softer approach.

**Observation by Facilitators**: There is a need to continue discussions on gender equality in PEM with support of gender expert and in coordination of social and gender impacts of mining projects on local areas.

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Creating Sustainable Financial Sources
- Allocate certain percentage of revenue from use of natural resources, such as royalty and water fee.
- Allocate certain percentage of funding of “local development support fund” established under the local cooperation agreements.
- Include PEM costs in EIA of companies.
- Contributions from international programs, citizens and entities, and seek other potential sources of funding.

**Observation by Facilitators**: The workshop succeeded in identifying specific potential sources of funding which can be used within the current legal environment. This was important for further development of PEM in the country.

- Allocating certain percentage of Local Development Fund (LDF), funded from royalty, is one possible version. Actually, Local Councils make decision on LDF based on local community inputs. This maybe the most realistic option for sustainable financing, without jeopardizing the independence of PEMC.

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Conflict Resolution:
- It is not clear now if PEMC will have an official status or work on voluntary basis; therefore, it is not possible to define legal grounds for submission of petitions for conflict resolution;
- Define mandate, responsibilities of PEMC members and requirements, ethical code, and develop procedures election and dismissal of PEMC members;
- Prevent the PEMC from becoming a superficial institution which restrict citizens' voice, and which does not resolve issues;
- Strengthen independence of the judiciary in order to improve resolution of environmental disputes, and improve judges’ understanding and attitude;

**Observation by Facilitators**: It is important to strengthen independence of the judiciary and understanding and attitude of judges in protecting public interest and environment, through PEM and improve overall rule of law, law enforcement, and accountability.

- It is also important to create conditions for PEMC to work with integrity for public interest and without conflict of interest, by specifying duties and accountabilities of PEMC members, and by setting up mechanisms for transparency. There is a need to organize systematic work to build capacity of lawyers and judges.
**Linking with Government Inspection and Monitoring System:**
- Parties participate in collecting primary data and evidences;
- Allow companies to rectify breaches on voluntary basis, in the first instance; and if they fail to remedy, government agencies take measures as per their mandate;
- Publicly disclose measures taken by companies following the government inspection and monitoring notices;
- Build capacity of citizen representatives of PEMC;

**Observation by Facilitators:** Participants agreed on PEM being one of the most effective means for resolving environmental and social conflicts through consensus. It will create a room for companies to rectify breaches and resolve the issue quickly before the issue reaches court.

At the same time, it is important to create a system where results of government inspection and monitoring work are made public on regular basis, in easy to understand format.

**Environmental Rehabilitation and Mine Closure**
- Participation in environmental rehabilitation and development, approval and decommissioning of mine closure will be one of core functions of PEMC, therefore, there should be legal provisions enabling such participation.
- Build capacity of PEMC members who represent citizens in this area.
- Oversight and monitoring through licensing should be done by the government;

**Observation by Facilitators:** There is a pressing need to train PEMC members, in particular, citizen representatives of PEMC on collecting primary data and evidence which meet requirements, and provide them with necessary equipment, and improve the capacity and quality of laboratories and their independence.
Key Messages from Presentations

Presentation on environmental protection and rehabilitation in the mining sector by Mr. Tsogtsaikhan, Director of Environment and Resource Management, Ministry of Environment and Tourism

- Green Development Policy, 2014.
- Integrated database on environmental protection and rehabilitation
- Degraded land in Mongolia: 27,405 ha; of which 8,871 ha require rehabilitation.

Presentation on mining sector policy and the current situation by B. Delgerjargal, Director, Mining Policy Division, Ministry of Mining and Heavy Industry

- Significant contribution to the country’s economic development.
- Grounds for repealing mineral licenses.
- Priorities for 2019: promotion of responsible mining, approval of mine rehabilitation and closure regulation, improve management plans.

Presentation on human rights in mining by Ch. Altangerel, Director of Secretariat, National Human Rights Commission

- Article 16.2 of the Constitution: the right to live in healthy and safe environment, and be protected from the environmental pollution and disruption that causes ecological imbalance.
- Factors of violation of this right are many and are interrelated, cannot be resolved by changing laws only. Civil society participation is provided in international agreements and conventions such as the Rio Declaration of Environment and Development, Aarhus Convention, Bio Diversity Convention, Climate Change Convention, UN Declaration on the Rights of Indigenous and so forth.
- Research on “Impacts of Mongolian mining developments on the human rights” in 2012 (NHRC), the majority of the participants of the study, who are soum community residents, responded or 64% admitted “never discussed about the matter”, whereas 82% of the herders residing in the influence zone that undergone the research study admitted “soum government officials, bhag and Soum Citizens’ Representative Meeting do not ask citizens’ vote at all or inputs when they discuss about license authorization”.

Presentation on risk-based environmental, geological and mining inspection, by B. Narantsatsralt, General Agency for Specialized Inspection

- Planned, unplanned and performance-based inspections.
- Types: inspection, preventive measures, survey, and analytic inspections.
- Risk assessment-based inspection: open-pit, underground mines, ore enrichment plants.
- The professional inspection agency has been using the inspection sheet since 2011: the inspection has become effective, transparent, defining potential risks, examining the object with equal criteria and provides independent and impartial inspection services. Today, inspectors use 8 types of sheets for geology, mining examination, and 16 for the environmental inspection services.
Presentations Available Online

**Participatory Environmental Monitoring**
- **Introduction to Participatory Environmental Monitoring Committees - What has been learned in Latin America;** by Flaviano Bianchini, Source International
- **What is useful in Mongolia?**, by Flaviano Bianchini
- **Key Elements for an Effective Participatory Environmental Monitoring**, by Flaviano Bianchini
- **Successful Participatory Environmental Monitoring in Mexico**, by Flaviano Bianchini
- **Experience of Conducting Participatory Monitoring for the Implementation of Laws on Environment, Water, and Mineral Resources**, by B. Bayarmaa, Chair, Association of Khuvsgil Lake Owners, Mongolia
- **Participatory Environmental Monitoring in Oyu Tolgoi, Mongolia**, by Erdenebayar Naran, Oyu Tolgoi mining company
- **Experience of Environmental Monitoring for Energy Resources**, by Badrakh Energy company, Mongolia
- **Environmental Monitoring and Procedural Rights**, by Mats Kullberg, Communications Advisor, Swedish Environmental Protection Agency (Swedish EPA)
- **Environmental Monitoring Systems in general with Swedish examples**, by Tove Lundeberg, Senior Advisor, Swedish EPA

**Mongolia**
- **Mongolian Environmental Monitoring Systems**, by A. Enkhbat, Head of Division - Environmental Assessment and Auditing, Ministry of Environment and Tourism
- **Data, Information and Communication**, by Mats Kullberg and Tove Lundeberg
- **Environmental Protection in Mining Areas and Reclamation**, by P. Tsogtsaikhan, Director, Department of Environment and Natural Resources Management, Ministry of Environment and Tourism
- **The Policy and Current Developments of the Mining Industry**, by B. Delgerjargal, Director of Division on Mining Policy and Coordination, Ministry of Mining and Heavy Industry
- **Human Rights & Mining Sector: Current Challenges for Mongolia**, by Altangerel Choijoo, Director of Secretariat, National Human Rights Commission
- **Environmental, Geological and Mining Risk Inspection in Mongolia**, by N. Batbayar, Chairman of the Environment, Geology, and Mining Inspection Department, General Agency for Specialized Inspection
The Environmental Governance Programme (EGP) for Sustainable Natural Resource Management is a joint initiative of the Swedish Environmental Protection Agency and the United Nations Development Programme. The EGP supports countries to integrate environment and human rights into the governance of the mining sector.

E-mail: egp@undp.org
Website: egp-undp.org