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Framework and Enforcement for Environmental
Impact Assessment (Mongolia)

REPORT ON THE WORKSHOP ON STRATEGIC ENVIRONMENTAL AND SOCIAL ASSESSMENT AND ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS UNDER THE NEW LAW ON ENVIRONMENTAL IMPACT ASSESSMENT

Prepared by ADB Consultant Team

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Asian Development Bank

Report on the Workshop on Strategic Environmental and Social Assessment (SESA) and Environmental Impact Assessment Regulations under the new Law on Environmental Impact Assessment

Ulaanbaatar city, October 17, 2012

The Ministry of Mining and the Ministry of Environment and Green Development (MEGD) of Mongolia organized a national workshop in Ulaanbaatar city for three days between October 10 and 12, 2012. The workshop was supported by the World Bank and the Asian Development Bank.

Objectives

The main objectives of the workshop were to build capacity of key stakeholders on strategic environmental and social assessment of key stakeholders drawing on international experience and good practice; consult stakeholders on the design of a strategic environmental and social assessment (SESA) of the Mongolia's mining sector policy; and obtain stakeholder inputs into the draft regulations on environmental impact assessment under the new EIA Law of Mongolia.

Participants

The Minister of Mining Mr. Lgankhuyag and the Minister of Environment and Green Development Mrs. S.Oyun and representatives from the World Bank (Coralie Gevers), the Asian Development Bank (David Annandale) and the AusAID (James Roop) opened the workshop.

Relevant department heads and officials from the Ministry of Mining, the Ministry of Environment and Green Development, local government representatives as well as representatives from several private mining companies (Oyu Tolgoi, Peabody Winsway, Chinese invested Shin Shin), CSOs, researchers and officials from the international development organizations participated in the workshop (see Appendix 1 for a detailed list of participants).

Workshop Structure

The workshop had two parts. The first part introduced SESA from global perspective, shared experience and good practices, and focused on consulting about the design of the mining sector SESA for Mongolia. The second part consulted on the draft EIA regulations under the new EIA Law (see Appendix 2 for the detailed agenda for the workshop).

Summary of Results

The main results of the workshop are summarized below. These results will inform the review of the draft ToRs for the SESA of the Mongolian Mining Sector and the proposed EIA regulations.

Workshop Part I (WB)

Multi-stakeholder Coordination Experience

After the welcoming and opening of the workshop the participants divided into groups to discuss about the current situation and relevant experiences in multi-stakeholder coordination in Mongolia. The groups identified positive experiences or a missed opportunity on planning or policy coordination on mining and environment in Mongolia.

Civil society organizations' group

The group appreciated that attention has been given to community consultations and participation as well as the fact that some government tasks are being transferred to be implemented by the CSO. However, improvement is needed in the following:

- A legal framework to manage the cooperation between the government and civil society organization (CSO) is lacking
- The participation of the public and civil society is restricted and mainly formal. In most cases feedback from civil society is ignored or it is not reported back how feedback informed decisions taken. There is a need to regulate the public participation process.
- In rural areas conditions are much worse. Roles and responsibilities are unclear. All decisions are made by the Governors of soums or aimags who in some cases neglect the conclusion of the Inspection Agency. For example, the latest inspection revealed that 14 projects started without feasibility study or EIA and 3 of them were sent to court as criminal cases.
- The issue of the carrying capacity of the environment for the mining activity needs to be addressed. SESA should shed light on how much mining can Mongolia afford?
- CSO should be fully independent, therefore capacity building and funding mechanisms are crucial.
- Stakeholder engagement and participation should take place from the very beginning of any project.

Government representatives' group (state and local)

The group identified positive and negative aspects on policy coordination and listed further actions to improve the current situation. Positive aspects identified included:

- Lessons learnt are being included into amended legislations.
- Ecological footprints per capita are being estimated.

- Many initiatives have been launched to increase stakeholder participation.
- Supporting documents for Sustainable Development are developed and effective.

Weaknesses:

- Planning is weak because of budget constraints and lack of budget lines for policy coordination
- Enforcement, evaluation and monitoring are weak.
- EIAs are being developed with poor content
- Coordination between Government organizations is not adequate
- Significant capacity gaps in local communities and governments result in blind opposition to mining activities.

Recommendations of the group:

- Develop a court or legal agency specific to the mining sector
- Capacity building of sector's human resources and provide modern equipment and technology
- Human development action plan should address health sector and actions must take place to minimize potential negative impacts
- Policy making and planning must be in line with the international conventions and standards, but also should consider Mongolia's specific conditions
- Capacity of local governments needs to be improved.
- Manage partnerships and collaboration of stakeholders including government agencies, non-governmental organizations and the public

Researchers' group

Once again clauses on the strategic impact assessment included in the amended Law need to be revised. Strategic environmental assessment should not consider only environmental issues, but also a broader range of social issues to incorporate them into plans and programs (e.g. railway development, human development action plan). In general baseline studies are not undertaken in order to feed policies. Capacity building is too slow in every sector, and cooperation between Governmental agencies is poorly managed. The below listed stakeholders should be considered during policy making and coordination processes:

- Local communities
- Different population groups, especially youth
- Mobile population
- Directly and indirectly affected mining communities
- Researchers and teachers
- Local businessmen and facility owners
- Social service and welfare agencies

The group proposed to conduct a pilot Health Impact Assessment.

They also emphasized:

- The need to develop a common understanding and shared strategy for the mining sector and its role for the entire Mongolia.
- The following tools could be used to enhance participation of stakeholders in order to improve policy making: local area level participatory role advisory (PRA), focus group, household surveys, meetings and events, citizens' score cards (CSC); national workshops, internet voting, etc.
- It is very important to seek advice and include Mongolian researchers in impact assessment activities.

Mining company representatives' group:

This group expressed the following concerns:

- There are no common standards and predictable planning
- Too many reports are mandatory, however business relation and incorporation is poor, sometimes requirements from government agencies are conflicting each other. SESA could be the potential single one assessment for mining.
- The Inspectorate Agency occasionally makes sensational statements to the public media rather than actually solving problems.
- Inspections and audits should be continuous but also dependent on previous results.
- Participation of communities in the protection and conservation of the environment is very important. The challenge is to make this participation possible.
- Local authorities are not respecting earmarked resources for environmental rehabilitation.
- Capacity of NGOs on environmental and social performance of mining operations should be enhanced.

Main comments given during plenary discussion:

- Legal status must be cleared for the local community and CSO participation, concrete workable participatory tools and mechanisms should be introduced
- Change the current decision making procedures of vertical governance into direct democracy tools
- MEGD comments are essential, because MEGD itself has a crucial role on SESA development and implementation
- A coordinated (legitimate) CSO participation is also important, because often the CSOs contradict each other

- c. Include public health experience in the profile for the social development specialist
 - d. Inclusion of a geologist with expertise in hydrology is recommended.
 - e. Make explicit that the mapping specialist should have experience and command of Geographic Information Systems
6. Elaborate in more detail the institutional arrangements for the implementation of SESA.

Consultation on the Mining Sector SESA ToR: Analytical Work and Public Participation Process

Participants worked in multi stakeholder break-out groups to provide comments and feedback to SESA's analytical work and public consultation process. Break out works **1** and **2** focused on SESA's analytical work, whilst break-out groups **3** and **4** concentrated on SESA's public consultation. To facilitate discussions, guiding questions were given to the groups (see details from Appendix 3). The comments raised from the working groups are summarized below.

Group 1

1. Information sharing is poor at local level.
2. It is mandatory to include issues related to local nomads' rights, traditional nomadic lifestyle and culture into the assessments.
 - a. Nomadism and nomadic livelihood have been greatly impacted by mining in Mongolia.
 - b. The assessment must prioritize Mongolian tradition and culture.
3. The SESA must take into account that legal requirements on mining environmental management are not fully captured or clearly stated yet in legislation.
4. Incorporate the strategic assessment into socio-economic development planning.
5. Enough time should be given to stakeholders to read and understand reports or studies prior to their participation in discussions, workshops and consultations.
6. Consider demographic and social issues such as education, cultural vulnerability, discrimination in the social base layer.
7. Poverty map should include not only income but other vulnerabilities.

Group 2

1. Undertake analytic work on the traditions, lifestyle, living standards and habits of local communities and herders
2. in assessing the regulatory framework, analyze the relationship between mining and environmental protection
3. Establish a comprehensive SESA database
4. What is included or not in the social? Social could include so many things.

5. Include human and public health issues into the assessment
6. Donors and investors should participate in the consultations
7. Social impacts of mining closure are important

Group 3

1. SESA should be responsive to the fact that local communities are heterogeneous social structures which comprise groups with different interests. For example, the interests and concerns of migrants and relatively new residents are usually hidden or sidelined.
2. Support the need for making an in-depth research of local issues using a variety of methods. Engagement with herders would require a broad use of tools such as surveys (questionnaires), focus groups, community meetings and community scorecards.
3. In reaching out the sub-national level and communities random selection methods can be used
4. It is suggested that local level consultations are first carried out and then they are followed by the national workshop. In this way, local level issues and concerns could be integrated and harmonized at the national workshop.
5. SESA team must have a plan for communication and dissemination of information

Group 4

1. In order to organize SESA consultations successfully, first aimag/ soum or small scale local area forums would help. National workshop should follow and build upon these meetings.
2. Prepare well in advance participants that will attend national workshops. Discuss issues from specific to general (zoom in-zoom out).
3. Consider the specific conditions of particular stakeholders. (e.g. disadvantaged community groups) to develop information consistent with the needs and capacities of each stakeholder.
4. Choose participants carefully in order to obtain comments from each party equally. Assess if the participants are really representing the sector, organization or community groups. Clear criteria for legitimacy and representativeness of stakeholders are required.
5. First distribute enough information and data, and then collect comments, especially from the public or local communities.
6. Consultation should be a two-way process. Stakeholders should be informed how their comments were treated in the SESA. When the comments are not included, the justification should be also reflected in the relevant report.

Workshop highlights: Following are comments and proposed suggestions which were repeatedly emphasized by the participants during the SESA workshop:

- Conducting SESA is crucially important and timely as the mining sector is rapidly developing in Mongolia.
- It is important to include health impacts, consider local population (nomads) rights, and to feed consultations with analytical work.
- As SESA is being introduced into Mongolia for first time, its implementation must be consistent with the existing regulatory framework.
- Disclose adequate information in advance to request for feedback from local communities. Local level workshops, consultation and/or meeting should inform discussions in national workshops.
- Responsibility of the SESA team is also essential. Integration of recommendations into Government policies as well as public dissemination and transparent communication are key principles underlying the SESA.
- Public health and water expertise are critical in the SESA team.
- International best practices should be reviewed and country specific SESA methodology developed in accordance to Mongolian regulations and social conditions.
- Clearly define scope and responsibility for the SESA Steering Committee. Their independence or potential conflict of interest should be considered. The institutional setting for SESA implementation is important for reliability. Incorporation of CSO representatives is advised.
- Once again revise terminology, their interpretation into Mongolian and use simple wording.

Workshop Part II (ADB)

The **second part** consulted on the draft EIA regulations under the new EIA Law during afternoon session of second day. The objective of regulation are to align all documents with overall environmental protection policy when developing, amending or modifying the regional and national level policy and action plans from the government agencies. Moreover, to assess potential direct and indirect impacts on environment and community health due to project implementation; mitigation measures to prevent adverse impacts, public participation on decision making. This impact will be addressed/affect to MNEGD. MNEGD will conduct cumulative environmental assessment.

Mr. David Annandale presented introductory sessions on strategic environmental assessment, cumulative environmental assessment, and draft regulation on environmental impact assessment, regulation for monitoring the designated accounts of Environmental Restoration Bonds. Following the presentations the expected results and main objectives of discussion were explained. Workshop participants divided into 3 small discussion groups and feedbacks from small groups were obtained.

Group 1: Scope and Rights and responsibilities of Government Agencies.

Group 2: Procedure for Production of Strategic Environmental Assessment Studies

Group 3: Cumulative Environmental assessment.

The main results participants are summarized below:

- Review writing and correct text
- Incorporate with environmental protection and social policy
- Clause 1.2 of regulation: redefine issue/meaning of article
- Comment to exclude phrase “ensure”
- The final result of conducting strategic environmental assessment is policy
- Clause 2.1 of regulation: government agencies are attached in annex of this regulation
- Clause 2.2 of regulation: “could have significant impacts” who to identify this? The meaning is unclear
- Clause 2.3 of regulation: “Potential” who will identify? How to define is unclear.
- Clause 4.2 of regulation: “...if required as per Clause 6 of the regulation...” what is the criteria to determine if it is required or not? Who to determine?
- Clause 4.4 of regulation: terminology and meaning is very unclear. Need revision.
- Clause 4.7 of regulation: containing multi-meaning which are opposing each other. Need revision
- Clause 4.8 of regulation: MNEGD is not capable of conducting environmental impact assessment solely. Need cooperate with other relevant organizations.
- Environmental impact assessment- Strategic environmental assessment
- Clause 4.1: Term for Proponent - overlapped with clause 3.9

Conclusion: (most common comments)

- Terminology is unclear
- Need clearly define responsibilities
- Provide community participation
- Clarify rights and responsibilities of the parties
- Add to report

Mr. Ykhanbai Hijaba made presentation on Integration of public participation principles into draft regulations on SEA/CEA and EIA Procedures. In particular, public participation issues are addressed into detailed environmental impact assessment and general screening process; obtaining information/data from and information disclosure to public are included into developing stage of the environmental management plan.

As per workshop agenda wrapping up sessions held on draft regulations of environmental impact assessments. Mr. Chimed-Ochir made presentation on Environmental Restoration Bonds.

Participants are divided into 4 small groups to discuss. The comments raised from groups are followed below:

Group 1:

Worked on the draft regulations: Define the purpose briefly and more clearly, especially the timeline and action planning process

- Terminology and writing of clauses need revision
- Feedbacks from impacted parties
- Social and human health should be included
- Clauses 6.1 of regulation need revision
- More clarification for the term Interested parties is required. Which community group or organization etc should be considered as stakeholder. Follow up measures as per comments must be demonstrated officially. The terms of Offset and remediation should be explained, currently it is unclear.
- Clause 14.5 (5) must include health officer, local representatives of relevant professional
- Comments should be in written form.

Group 2:

- Conduct Detailed study. Comment is raised in Government resolution.
- Clause 1, 2, 5: the term "not removed" should be clarified. Justification is required.
- Comment to include all stakeholders/ interested parties.
- Stakeholders should include decision makers. But the group members did not agree on this comment, opinion divided.
- Public participation should be regulated by separate regulation which details on how to participate and public participation.
- Clause 6.2: Should be excluded
- Need expansion of representatives

Group 1: Worked on draft Resolution

- Should be add Clause 5.3
- Clause 5.2: review terminology such as correct Minister of Environment etc.
- Clause 4.4: not only make decision based on the conclusion of state environmental inspector, joint inspection/audit which provided public participation.
- Offset and rehabilitation requirements (add to regulation)
- Consult the reports on local level (sufficient, not sufficient)

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14:10 – 14:30	Questions and answers <i>Moderator</i>
Designing Mining Sector SESA in Mongolia	
14:30 – 15:00	Presentation of the draft ToR <i>Fernando Loayza, WB</i>
15:00 – 15:15	Questions and answer <i>Moderator</i>
15:15 – 15:45	Coffee Break
Introduction to the Consultation on the SESA Design (ToR)	
15:45 – 16:00	Process, questions and answers <i>Fernando Loayza, WB</i>
16:00 – 17:00	Discussion and clarifications of objectives, generic scope of work (main tasks are excluded), outputs, timing and, SESA team in the plenary <i>All participants and the moderator</i>
October 11, Thursday	
9:00 – 9:20	Summary of the Workshop day 1, Questions and answers <i>Moderator</i>
Consultation in Break-out Groups	
9:20 – 9:30	Building four or more multi-stakeholder groups for the discussion of SESA's main tasks
9:30 – 11:30	Discussion on SESA's main tasks: Half of the break-out groups will focus on the SESA's public consultation and participation activities (Paragraphs 11, 12, 18, 21 and 22 of the ToR). The other half will focus on SESA's analytical work (paragraphs 13, 14, 15, 16, 17, 19 and 20). Guiding questions will be provided to facilitate the review.
	Coffee will be served for the participants to have it while they discuss the ToR
Plenary	
11:30 – 12:30	Presentation and discussion of results of the break-out groups <i>All participants and moderator</i>
12:30 – 12:45	Wrap up of the SESA ToR segment of the workshop <i>David Annandale, ADB</i> <i>Fernando Loayza, WB</i>
12:45 -14:00	Lunch
Part II: Workshop on Strategic Environmental Assessment/Environmental Impact Assessment Regulations under the new Law on Environmental Impact Assessment	
14:00 - 14:15	Introduction: Workshop objectives and Agenda <i>David Annandale, ADB</i>
14:15 – 14:45	Introduction to the Procedures and Regulations (i) Strategic Environmental Assessment and Cumulative Environmental Assessment (ii) EIA Procedures (iii) Environmental Bond

	<i>David Annandale, ADB</i>
14:45 – 15:15	Introduction to draft regulation on Strategic Environmental Assessment and Cumulative Environmental Assessment <i>David Annandale, ADB</i>
15:15 – 15:30	Coffee break
15:30 – 16:15	Small group discussion on key Articles of the draft SEA/CEA Regulation <i>Moderator</i>
October 12, Friday	
09:00 – 09:30	Introduction to the draft regulation on EIA Procedures <i>David Annandale, ADB</i>
09:30 – 10:00	Integration of public participation principles into draft regulations on SEA/CEA and EIA Procedures <i>YkhanbaiHijaba, ADB</i>
10:00 – 10:15	Coffee Break
10:15 – 11:15	Small group discussion on key Articles of the draft EIA Procedures Regulation <i>Moderator</i>
11:15 – 12:00	Feedback session on key Articles of the draft EIA Procedures Regulation <i>Moderator</i>
12:00 – 13:00	Lunch
13:00 – 13:30	Introduction to the draft regulation on Environmental Bond <i>Chimed-OchirBazarsad, ADB</i>
13:30 – 14:30	Small group discussion on the draft regulation on Environmental Bond <i>Moderator</i>
14:30 – 15:30	Feedback on the draft regulation on Environmental Bond and Workshop Close <i>Moderator</i>
Closing	