

Mongolia: Mongolia Mining Technical Assistance Project

Environmental and Social Safeguards Management Approach

1. **Project Category.** The project has been classified by the World Bank as Category B, as defined in the Bank's Operational Policy 4.01 on Environmental Assessment. As a technical assistance, the proposed Project will not finance any direct exploration or exploitation of mineral resources. However, the Project is being implemented in a sector that is known to be controversial with respect to environmental and social issues.

2. **Environmental Impacts.** The environmental problems associated with mining in Mongolia relate primarily to pollution management and physical disruption of pasture lands and water resources by both artisanal and larger mining operations¹. Many ongoing operations are not managed in an optimal way leading to environmental damage and production losses. In addition, despite the fact that the sector's financial contribution to the economy is substantial, little has been done to systematically assess and address the costs of possible environmental damage from the sector's ongoing and planned activities. This is mostly due to paucity of available data, uncertainty about the long-term impacts of mining activities, lack of coordination across responsible agencies, and a general lack of awareness of the fact that many of the negative impacts frequent in Mongolia could be offset by utilizing better production methods.

3. **Environmental Regulatory Arrangements.** In the past decade, the Government of Mongolia (GoM) has evolved from being predominantly the owner and operator of mines to being a manager and regulator. This transformation required setting in place a legal framework adequate to guarantee environmentally sustainable growth of the sector. The cornerstones of this framework include the Mineral Law of 1997, the Law on Environmental Protection of 1995 and its amendments of 2005, the Law of Environmental Impact Assessment of 1998, and the 2002 Land Law.

- **Mineral Law.** The 1997 Mineral Law was designed to accommodate GoM's limited institutional and financial capacity; it was amended in 2006, however the validity of those amendments is being challenged in the Constitutional Court. As it is, the Mineral Law provides a framework that takes into account some of the key environmental and social impacts of mining. However, the Law does not formalize public involvement in the permitting process, and lacks provisions to ensure sufficient funding for ongoing and future rehabilitation.
- **Environmental Impact Assessment Law.** The permitting procedures under the 1998 Law of Environmental Impact Assessment require that exploration license holders prepare environmental protection plans, which provide for measures to ensure that pollution of the environment does not exceed prescribed maximum limits, and also an environmental impact assessment (Articles 29 and 30), and an environmental monitoring program. The final report is not available to the general public for review, although it is a public document. During operations, all instances of adverse environmental impacts resulting from exploration or mining activities are to be recorded in annual reports, and amendments to the environmental

¹ World Bank 2006. Mongolia - A Review of Environmental and Social Impacts in the Mining Sector. East Asia and the Pacific region Environment and Social Development Unit, Washington D.C.

protection plan are to be proposed accordingly. Public hearings are not compulsory, and license holders may request the local administrative body to organize a public debate (Article 33). Both exploration and mining license holders are obliged to deposit an amount equal to 50 percent of their environmental protection budget in a special bank account established by the governor of the relevant soum or district (Articles 29 and 30 respectively). The deposits are to be refunded upon implementation of the environmental protection plan.

- The rights and obligations of a license holder expire upon the termination of the license, except for their obligations regarding environmental restoration and mine closure (Article 44). Post-mining rehabilitation measures need to be described in a separate environmental protection plan. Where licenses are to be extended, exploration-holders have to submit to the governor of the soum or the district a revised or new environmental protection plan prior to expiration of the existing license term (Article 31). License holders who apply for surrendering part of a licensed area or the entire license area are required to attach a certificate from the governor of the soum or district to the application stating that they have complied with the environmental protection plan for the surrendered area (Articles 45 and 46).
- ***Environmental Protection Law.*** The 1995 Law on Environmental Protection (and related-amendments of 2005) guarantees the right to live in a healthy and safe environment, ensure that social and economic development is ecologically balanced, and that natural resources are properly used. The polluter-pays-principle is expressed in Article 4 and awards citizens the right to present a claim against violators for compensation of damages to their property and health resulting from adverse impacts on the environment caused by the violator. Article 34 provides for fees and payments for environmental pollution and adverse environmental impacts.
- ***Land Law.*** The 2002 Law on Land regulates the ownership, use, and protection of state-owned land. Of significance to mining is the establishment of “special needs” lands that is land under special government protection, reserve rangelands, and hay land for government fodder reserves—by aimags, the Capital City, soums, or duuregs where mining is not allowed. In many instances, exploration and mining licenses, and active mines are within special needs lands; however, these mineral properties were granted before the designation of the special needs area, but this is by no means uniformly so. The Law on Land also requires that land that has been damaged from digging for mining purposes is to be restored (Article 52.1.2). Accordingly, annual land protection and rehabilitation plans need to be developed and assessed by the citizens’ representatives of the soums and bags, who may take measures to stop the development and/or enforce compliance (Article 57).

4. **Weaknesses in Environmental Regulation.** Significant gaps in the existing regulatory framework remains, including: (a) lack of socioeconomic impact assessment of any mining activities; (b) public input into the permitting procedure is not formalized and is primarily up to the discretion of the proponent; (c) limited transparency of the permitting processes and limited enforcement of sanctions; (d) the legal provision for depositing 50 percent of the funds required for rehabilitation on an annual basis has not resulted in the expected higher level and quality of environmental protection primarily due to lack of institutional capacity to ensure the implementation of rehabilitation measures, and also the lack of willingness and capacity of mining operators to come up with the remaining 50 percent of the funding necessary to complete

the environmental protection work once mining has ceased; (e) inability of MNE to compensate any rightful mineral license holders who are deprived of their rights to explore and mine if their area is incorporated into a new protected area because of lack of funding available to make such compensation; and (g) unregulated compensation for land use in mining.²

5. **Institutional Framework.** Key institutions involved in oversight and management of the mining sector, including environmental aspects, are:

- **MRPAM, GMIA, SSIA.** To strengthen the stability of the mining institutional setting and improve the overall performance of the sector, including in regard to environment, GoM has established a mandated autonomous lead agency—the Mineral Resources and Petroleum Authority of Mongolia (MRPAM)—with an independent regulatory agency—the Geological and Mining Inspection Agency (GMIA) to facilitate the implementation of the new mineral law. Since 2003, GMIA is a division of the consolidated State Specialized Inspection Agency (SSIA). Its 12 officers are now linked to aimag mine inspection agencies reporting directly to the prime minister’s office. The rationale for the consolidation was to establish inspection and enforcement independence from the regulatory functions. However, expected improvements in monitoring and enforcement have not materialized largely due to lack of appropriate coordination among enforcement agencies within SSIA and relevant line ministries.
- **Ministry of Nature and Environment.** The Ministry of Nature and Environment (MNE) is responsible for developing and enforcing environmental and natural resources policies. MNE is divided into five departments and two agencies. Since February 2003, the Environmental Protection Agency has been integrated into the SSIA, and Capital City governors are responsible for developing and implementing measures for environmental protection, monitoring any activities of local business entities, and coordinating activities at the local level. Local administrative bodies have the responsibility to ensure and monitor compliance by (exploration and mining) license holders of their obligations with respect to environmental protection, health, and safety regulations. The soum governor has retained the responsibility of organizing and implementing legislation and issuing permits. State chief inspectors are assigned to the aimags as well as the Capital City, while state inspectors/rangers are appointed at the soum and duureg level. The basic duties of state inspectors are monitoring, inspection, information collection, supervision, and instruction of rangers. They can require the elimination of adverse impacts or the suspension of activities with adverse impacts on the environment, and impose administrative penalties on environmental legislation violators.

6. **Institutional Weaknesses.** The overall institutional framework remains weak due to (a) lack of an appropriate structure to ensure the timely enforcement of rules and procedures for local government and land user permissions/contracts, governors’ approval of environmental submissions, and notifications and enforcement of sanctions for license violations; (b) poor coordination among the Ministries of Nature and Environment, Finance, the State Professional

² Mining, with its regulated activities like licensing, a land contract, and taxes, is considered an element of a modern, sedentary social arrangement applied to a pastoralist social setting that is unaware of the intangible property, and where regulation of the use of natural resources was traditionally done by common management. The provision of lease agreements between mining companies and suitable local governments could legitimize the use of land certificates as already practiced by some local governments.

Supervision Agency, and local administrative bodies; (c) weak and/or nonexistent compensation schemes for land acquisition due to mining expansion and social programs to benefit communities living near mining areas; (d) the strong need to ensure an appropriate level of public education, and information disclosure, particularly at the local level.

7. Social Impacts. The current institutional and legal framework does not particularly safeguard communities living near mining development areas. Development programs are often undertaken as “add-on” measures by the mining company, with the view to establishing a positive relationship with the local communities, but with minimal socioeconomic expenditure. As a result, important social issues remain largely unresolved, including the complex issues of land use, financial contributions to the local community, and the role of informal mining.

8. Large Scale Mining (LSM). Despite mining companies could be a valuable component of a diversified rural livelihood economy, the reality is that small industrial cities built to serve the needs of large mining enterprises were set up as new urban centers with no appreciable local rural recruitment. Companies strongly prefer to recruit in the capital city or other regions, or even in China and Russia if the companies are Chinese or Russian-owned, but almost never recruit in rural soums. The soums get scant revenue, merely land use tax and water use fees, while Ulaanbaatar gains the gold (Mongol Bank), royalties (government), jobs, stronger banks (seasonal loans), mine engineering support etc.

9. Unless a mining area can diversify into a broadly based economy, it remains vulnerable to the rollercoaster of commodity prices and sharp economic decline, with the ultimate closure of the mine as the former main employer and sole engine of economic prosperity. As yet, only Nalaikh (coal), Mardai (uranium), and Bugant (gold) are severely depressed towns due to closure of large mines in Mongolia. Partnerships between GoM and the mining companies need to be established for the development of socioeconomic programs in the mining areas, with the view to diversify the economic activities in such areas and ensure sustainability of the respective community after the mine closure.

10. Artisanal Mining (ASM). Most small-scale miners are engaged in placer gold mining. The small-scale miners are a complex mix of ex-herders, ex-farm workers, urban poor, elderly, and students, albeit in separate informal groups. Although almost entirely illegal, informal placer gold mining has proved to be a major and effective stimulus to rural livelihoods and rural economies, with a strong emphasis on poverty alleviation. Informal mining gives seasonal or regular employment and additional cash income for rural people, reduces migration to urban centers, and dampens the effects of catastrophic climatic events.

11. Conflict between ASM and LSM. Overall, tens of thousands of small-scale miners are engaged in placer gold mining and represent a major source of conflict with placer mining companies. For a period, this enabled effective resource partitioning with minimum conflict between the two parties, and the presence of informal miners was tolerated if their activities were confined to the waste tailings. Rather quickly, this tacit understanding broke down, triggered by a number of factors. Some inefficient companies, such as Mongol Gazar Ltd, reclassified their waste tailings as valuable future reserves. The ASM legal/regulatory framework would need to include provisions on how to deal with such conflicts, including clear rights/boundaries for each parties.

12. **Legal/regulatory framework for ASM.** Mongolia currently lacks a legal/regulatory framework for artisanal mining. Such a framework would include elements such as the establishments of miners' associations, the generation of a cadastre system at the soum level, restriction of informal mining to specific areas, and the limitation of the size of artisanal mining concessions. Special focus will be given to alternative technologies (retorts and gravity separation equipment) to minimize the use and loss of mercury to the environment; and increased awareness of ASM safety hazards and mitigation measures to help address the considerable but largely unnecessary environmental impacts and damage to livelihoods of rural people.

13. **Environmental and Social Impact Assessment.** Over the past two years, the Bank has conducted an overall review of the status of environmental and social issues and policies in the mining sector in to identify institutional and regulatory gaps that should be addressed to strengthen existing compliance monitoring with regulations, and to investigate whether additional resources and standardized procedures might be needed to mitigate any identified risks. Based on the findings of the completed review --and in collaboration with the World Bank and MNE Team implementing the activities financed by the Netherlands-Mongolia Trust Fund for Environmental Reform --, the Mining TA project will give particular attention to (i) institutional strengthening actions to deal with environmental and social impacts associated with the growth and development of the mining sector (including artisanal and small scale mining); (ii) measures to overcome existing and projected policy, institutional and budgetary constraints that result in limited enforcement and implementation capacity; (iii) ways to improve public participation and monitoring processes. In addition, the project will also benefit from the findings of a Strategic Environmental and Social Assessment (SESA) – also to be co-financed by financed by the Netherlands-Mongolia Trust Fund for Environmental Reform -- for the Southern Gobi Region; this exercise is intended to help frame a vision for a sustainable natural resources management in the context of the planned mining developments in the region.

14. **Project Support to Address Environmental and Social Issues.** In the context of assisting GoM to build and strengthen the regulatory framework and capacity to manage mining sector exploration and development, the proposed TA Project would: i) support MRPAM capacity building efforts to regulate, manage, and audit mineral developments, including *inter alia* environmental and occupational health and safety aspects; ii) help address the capacity, regulatory and institutional needs of line ministries (i.e. MNE) and agencies (i.e. SSIA) whose mandate relates to the mining-social and environment/natural resources management nexus. Environment and Social capacity building activities are intended to be complementary and/or to those that World Bank and other multilateral and bilateral donors are developing and/or implementing as part of their respective environmental and social programs.

15. Furthermore, the project would support GoM to implement the new regulatory framework for artisanal and small scale mining and establish extension services for education and training of artisanal and small scale miners, including best practice techniques related to environmental, health, and social impacts. Project activities will also address the institutional challenges, through an assessment of institutional capacity, to identify the gaps and areas for intervention. Actions, such as training programs (including on the job training), workshops and knowledge sharing, will be considered for improving the institutional response to the development of the mining sector, the project creating the platform for a more collaborative framework between relevant organizations.