

**Minutes of meeting of Mongolia Extractive Industries Transparency Initiative Multi Stakeholder
Working Group
(27 March 2013)**

31st meeting of MSWG was started at Oyu Tolgoi Information Center at 4 pm, 27 March 2013.

Members present: E.Sumiya (Senior officer of Cabinet Secretariat); G.Zulai (Officer of Accounting Policy Department, Ministry of Finance); T.Zuunnast (Officer of Strategy Planning and Policy Department, Ministry of Mining); B.Hulan (Officer of Policy Implementation Coordination Department, Ministry of Mining); D.Munhsaihan (Officer of Mineral Resources Agency); D.Enhtuya (Tax Inspector, General Department for Taxation); N.Alгаа (CEO of Mongolian National Mining Association); H.Lhamaa (Multi-stakeholder cooperation officer, Oyu Tolgoi LLC); B.Ganhuleg (Tax officer of Boroo Gold LLC); N.Dorjdari (Officer of Open Society Forum); N.Bayarsaihan (Head of Steps Without Boundaries NGO); D.Tserenjav (CEO of Transparency Foundation); N.Narantsetseg (Head of Baigal Enhiin Avral NGO); B.Bayarmaa (Head of Owners of Hubsgul Lake NGO); B.Batbold (Board member of Mongolian Environmental Civil Council); L.Otgontsetseg (Manager of Mongolian Environmental Civil Council); L.Otgontsetseg (Head of Onon-Ulz River Movement); D.Sengelmaa (Board member of Mongolian Environmental Conservation Association); S.Otgonsaihan (Head of My Mongolia-Motherland Movement); and Sh.Tsolmon (Secretary of MSWG and Coordinator of EITI Secretariat). Of 33 members of MSWG, 19 were present and attendance with 55%.

Also present: Z.Sugarmaa (Chair of Department, Energy Resources LLC); Jonathan Pell (CEO of Adam Smith International); Susanne Larsen (Australian Lawyer); R.Batragchaa (Lawyer); P.Oyunbileg (Manager of Adam Smith International), D.Ganhuyag (Translator); B.Delgermaa (Communication Officer of EITI Secretariat); and A.Odontungalag (Finance Officer of EITI Secretariat).

Sh.Tsolmon, Secretary of MSWG and Coordinator of EITI Secretariat, opened the meeting and made opening remarks.

Sh.Tsolmon: Good Day? At today's meeting, we have guest participants including Jonathan Pell, CEO of Adam Smith International and Leader of EBRD project, Australian lawyer Susanne Larsen, lawyer R.Batragchaa; P.Oyunbileg, Manager of Adam Smith International, and D.Ganhuyag, Translator. IN the past, Mr Battengel, CEO of Energy Resources, was a member of National Council, from now on he will be replaced by Sugarmaa, so we invited her today to familiarize with MSWG processes. (He asked for comments on agenda and internal regulations). For today's meeting, T.Zuunnast, Officer of Strategy and Policy Planning Department of Ministry of Mining, N.Alгаа, CEO of Mongolian National Mining Association, and N.Bayarsaihan, Head of PWYO Coalition, will make presentations. Anything to add on or remove from the agenda?

I. TOPIC: Findings of survey on draft Mongolia EITI Law and its concept notes

J.Pell: The key goal of the presentation is to discuss about the current legal environment and framework of Mongolia EITI. We need to consider what provisions must be in the draft law in order to create conducive legal environment for the EITI. In addition, we will also discuss what would be the form of legal framework. Further on, we are talking about potential financing for the work and what we are doing in the next stage.

We have started our activities in Mongolia only 10 days. The project was previously implemented. We met MSWG members and many other stakeholders. Then, we made analyses why the previous draft law on EITI was not supported. Our lawyers, S.Larsen and Batragchaa, will present about the law.

S.Larsen: My presentation will start with simple question. Sometimes people ask what law is. IN response, we explain it is document for implementation of government policy. Making a law and enforcing a law basically aims at two main goals. First, it defines and rights and responsibilities, and second, it attempts to change the behavior of people. There are some limitations in creating legal environment. For instance, some issues are regulated by Constitution or other legislations, so we refer them as limitations. As we see, there are some immediate needs to establish legal framework for extractive industry transparency. For example, preventing from ceasing the EITI when a new government or a new minister is appointed, establish their responsibilities and rights by clearly stating the principles of transparency, keeping transparency issues independent from government and ensuring financial sustainability; due to these reasons, we think a standalone law is necessary. In addition, the law must also require companies to participate in EITI. The next part of the presentation is financing, which my colleague Batragchaa will present (Presentation attached).

R.Batragchaa: In terms of the law, we may have three options. First, a standalone law, second, a chapter in Sub-Soil Law, and third, reflecting all necessary clauses in various legislations. In addition, we have to find solutions on how to finance EITI. In order to maintain sustainability of EITI, it is necessary to talk about financing. For some season, we have made several ground and ideas on financing the EITI from other sources, not the government budget (Presentation attached).

P.Oyunbileg: In the next few months, we will update our assessment on legal framework and will send you copies. Chairman L.Gansuh advised us to get the comments in writing. Accordingly, we will get comments from you and I will be responsible for this work. Our proposals will include all possible comments from you including how the National Council and MSWG would work and etc. We have met representatives of Ministry of Mining. A Working Group has been established at the Ministry of Mining, and our team will collaborate that Working Group. Now, shall we vote? It is necessary for today's meeting that we need to get your votes if we need a standalone law for regulating the legal environment of EITI. If we reach a solution that we need a law, we will have to start our next activities immediately.

Sh.Tsolmon: Members may ask questions.

N.Algaa: Looks like we have no questions. We talked about it two years ago, so we have no questions. We waited this discussion for long time. We had opportunities to implement this idea earlier, but MSWG did not make decisions at that time; that was the reason all work ceased. I tried hard to get a decision made. In response to request from the project, we must vote and tell them what to do so that they could immediately start developing draft law or amendments, so I call for voting. I even ask you to vote for standalone law.

E.Sumiya: EITI has been implemented for 6 years in Mongolia. It is been going on without any dedicated legislations. There are no any legal provisions to track and resolve the discrepancies. Government agencies and business entities are subject to reporting, but we cannot impose sanctions for not reporting due to lack of regulation. In other words, we could take punitive measures, but tend to cover greater scale and many parties. According to estimations, over 1800 companies must report to EITI, but not all in reality. Minerals Law is relatively liberal allowing a company to own and transfer multiple; consecutively registration of license holders is troublesome. In addition, many junior companies are coming into Mongolia. They always avoid taxes while larger companies have fewer problems as they have formal registrations. Second, some aspects of the initiative are regulated by different laws; that is the reason proposed draft laws are always rejected at the Ministry of Justice. We manage to operate complying with multiple legislations for different aspect of EITI. Therefore, Batragchaa must play key role in this process as the previous lawyers failed. Now, you must carry out analyses on all Mongolian laws; that is what I will expect from you. Legislative analyses is a thorough work. Such simple options can be proposed by anyone. Finally, we submit it for approval for Ministry of

Justice, they say proposed provisions are already reflected in different legislations. Therefore, lawyers, particularly Batragchaa, must play important role and take significant responsibilities. Working with Ministry of Mining is fine, most importantly the proposed draft must be endorsed by Ministry of Justice.

B.Batbold: One question. The presentation on the key requirements of the draft law says disclosing EITI information and also it mentions confidentiality. What does the latter mean? What are you going to keep confidential? Issues on company management or what else? It needs to be clarified. We are trying to ensure transparency as much as possible.

R.Batragchaa: This means the proposed draft law will prevail over any other confidentiality clauses or laws. A law on transparency that would override confidentiality agreements.

B.Batbold: Isn't what you said and what they said contradicting?

R.Batragchaa: In Mongolia, we have priority of laws, Constitution, international treaties, laws, regulations, resolutions and etc. Here, we regulate the contracts with law and impose duties on disclosure.

E.Sumiya: In Mongolia, confidentiality issue is being regulated by any means: in other words, companies submit their reports even if their agreements are confidential.

R.Batragchaa: We have conducted analyses. Thought that previous MSWG meeting mixed reporting requirements of government agencies with transparency aspects. Likely, in my understanding, previous draft was not approved because of this mix. Therefore, reporting of government agencies is different and ensuring its transparency is different.

N.Bayarsaihan: Let's say imagine we have standalone law. After we got the concept note approved, what advocacy work are you doing to get the law passed and enforced? Or, will you just leave after developing draft law? How are you going to work until the law is passed? Any guarantees for continued activities?

J.Pell: First, we are working on the concept note in order to get this approved by Ministry of Mining. Next work will be on developing the draft law. Further on, we will focus on providing legal understanding with/to Ministry of Mining and Ministry of Justice. In cooperation with a Working Group at Ministry of Mining, we will work on draft law. In terms of time plans, we expect draft Minerals Law and other associated laws will be discussed on autumn session of Parliament. That means, Parliament could discuss Minerals Law at the same time with EITI law or proposed draft amendments. On consultation and discussion on the draft law, we will closely work with MSWG. Then, we have two main activities; communication and training. The must be integrated with the draft law timing and other aspects. Our goal is not just leave after developing a draft law, but getting this approved and other work on implementation.

R.Batragchaa: Concept note will be developed based on your proposals. It is said 70% of good law is based on the concept note. We met Legal Advisor of the President. He said he would prefer standalone law and promised to help us contacting ministries. Obviously, we will cooperate with a team at Ministry of Mining. It is good that you give us your preference on legal options.

D.Tserenjav: You said about the advantages of standalone law. Why not telling the disadvantages? It seems that it takes long time by developing drafts in order to make a new law. As long as the EITI principle is clear, we don't need to talk about standalone law, do we? Instead of just focusing on draft law, why don't we study the pressing issue in the extractive sector comprehensively? For example,

templates, information systems and financing. Such many issues can be standardized as a solution. We work hard and get a law approved, but the situation changes from time to time. Maybe, the majority may say it is good to have standalone law. But we must have flexibility for decision making.

Sh.Tsolmon: I will comment in order to clarify questions from Mr Tserenjav. For instance, Australia is very identical to Mongolia, but they are precautious about EITI.As Ms Larsen is from Australia, she could tell us potential negative sides using concrete examples, in this case it would be more clear.

Z.Sugarmaa: What type of regulation do other countries apply?

R.Batragchaa: We are working to legalize the matters that are currently regulated by government resolutions. On the event that principles of independence and sustainability are legally guaranteed, everything will become clear.

N.Dorjdari: Australia is implementing EITI as a pilot because federal government has some limited rights than the local government. Let me tell you about the international cases. EU is working on making a standalone law. Nigeria already made a standalone law. In this country, a large Secretariat with 50 staff is working operating in very broad scope. As with our country, we have opportunities to establish a new status at the international level. Both Government of Mongolia and extractive industry will benefit from it. Furthermore, international organizations such as IMF are working on financing the initiative. For Mongolia, not only World Bank is financing EITI, but it is finance from a fund created by more than 10 countries. EU is making a standalone law on reporting the transparency. International transparency chapters include many issues like license and contract transparency. Therefore, we must attract our companies into this international mechanism. Most importantly, tri-partite participation principle. Otherwise, it is clear what to report and disclose. Personally, I think we must have standalone law. We could reflect clauses in various laws, but without the standalone law, this financing from EU will be unfruitful.

Sh.Tsolmon: Thank you, any more comments and proposals?

D.Sengelmaa: I sent an email to MSWG members about the important aspect that must be reflected in the concept note for the draft law. As we have limited time, I will skip; hope you will read it. Regardless it is a standalone law or clauses in different laws, it provides details on what are missing without regulation, so I request you to read it and incorporate in the concept note.

Sh.Tsolmon: Any more comments?

D.Enhtuya: As I represent General Department for Taxation, I will give my comments. Think that we should have standalone law. Nowadays, we have difficulties in collecting reports from government agencies; therefore it must be regulated by law.

Sh.Tsolmon: Hopefully, we will talk a lot on this topic. In May, our legal consultants will come again. And will kick off the main work. We expect that documents will be released by June. Then in July and August, we will have to do some technical work. As Mr Sumiya said, it is understood that EITI aspects are included in various legislations. But, it must be clarified and displayed in more details. So, conduct your analyses and submit to us. Our stakeholders were supposed to make presentation on legal grounds but it seems it is not necessary. You must comments from all stakeholders, then compile their feedback and comments and submit to us.

N.Algaa: Let's vote if we will have standalone law or not. We must decide it now, at this meeting, by voting.

Sh.Tsolmon: Ok, please vote. T.Zuunnast from Ministry of Mining, do you have any comments or proposals?

RESOLVED TO: 1. MSWG to support the option to have standalone EITI law and reflect the comments from the members.

2. TOPIC: Proposals to draft Government policy document for mineral resources sector development regarding EITI legal framework and positions of stakeholders on form and content of legal framework and financing

T.Zuunnast: We are on a position that standalone law is correct choice. MSWG members must give opinions and comments on the draft government policy on mineral sector. After the key point is included in the policy document, we will carry our research on the draft law concept note. Then on, the key work will start and proceed. Ministry of Mining thinks it is better off to have a standalone law. Draft law is almost ready, so now we have to work on the concept note.

N.Alгаа: Now, let's vote. Unless we make decision today, we have no need to have such meetings. Once decision is made, we must pass it to the project and enable them to work. We have been talking for two years. After that we must work hard to get the legal documents discussed by stakeholders including the public. Mineral resources sector policy document must contain a point "establish legal environment", the rest can be regulated by the policy.

N.Bayarsaihan: I support the standalone law. Also support Zuunnast's idea to get a Working Group for concept note established and approved by a decree of Minister of Mining. What about sending us the draft mineral sector policy document to us for comments? We need to check and read it. Another idea is what about having a second option together with the draft law? If we had to reflect the clauses in different laws, we could have hands on options and proposal. Again, I am on the position that we must vote so that the work goes on and advance forward.

Sh.Tsolmon: Now, shall we vote by raising hands? Looks like we are all on the same page.

N.Bayarsaihan: Vote by raising hands.

Sh.Tsolmon: So, vote resulted in that MSWG agrees to have standalone Law on Extractive Industry Transparency.

N.Dorjdari: As Mr Alгаа said, Adam Smith team should develop a plan and take actions to ensure the draft law is well discussed/consulted and enforced. Otherwise, just a few people sitting in this room must not be discussing, need other fresh ways.

N.Bayarsaihan: It must be discussed by Civil Council.

N.Alгаа: According to the same model for dialogues on draft Minerals Law, civil representatives must be brought into the discussion process.

B.Batragchaa: Nowadays, a Working Group for mineral sector policy has been established and working. You need to give us your comments to the policy document, what sentence and phrase, and send us by email.

N.Bayarsaihan: Need to read the draft mineral sector policy document.

B.Batbold: Unless we include points about EITI in this policy document, we won't be able to make a new law afterwards.

N.Bayarsaihan: Send us the draft document. If it is already in there, we don't need to add anything.

Sh.Tsolmon: No need of word "standalone". Just insert "establish legal environment". This concludes our meeting and thank you all.

RESOLVED to: 1. Provide EITI related comments to draft mineral sector policy document.

2. Assign Adam Smith team to conduct a questionnaire among all three stakeholders on the proposed content and form of draft EITI law and assign all stakeholders to express their positions and provide comments.

MSWG meeting ended at 17.45.

Meeting minutes reviewed by:

Sh.Tsolmon
Secretary of MSWG, Coordinator of EITI Secretariat

Minutes taken by:

A.Otgontungalag
Finance Officer, EITI Secretariat