

Minutes of EITI Mongolia 10th National Council Meeting

(28 November 2012)

The Mongolia EITI 10th NC meeting opened on 28 November 2012 at 17.00 in the Local Governance Hall of State House.

National Council Members attending: N. Altanhuyag (Prime Minister of Mongolia and National Council Chair); B. Hulan (Mining Ministry Mining Policy Coordination Department Officer, representing Mining Minister and National Council Deputy Chair D. Ganhuyag); S. Purev (Deputy Finance Minister, representing Finance Minister Ch. Ulaan); S. Oyun (Environment and Green Development Minister); Ts. Batbaatar (Parliamentary Budget Standing Committee Officer, representing Parliamentary Budget Standing Committee Chair and MP Ts. Davaasuren); A. Zangad (Auditor General of Mongolia); S. Mendsaihan (National Statistics Office Chair); J. Naranbaatar (Independent Agency Against Corruption Administration Department Chair, representing Agency Chair N. Ganbold); D. Damba (Mongolian National Mining Association President); G. Tsogt (MAK LLC Vice President); S. Otgonbat (OT LLC Vice President, representing CEO Cameron McRay); Z. Sugarmaa (CSR Chair and Department of Energy Resources LLC PR, representing CEO G. Battengel); S. Enhtuya (Monpolimet LLC CEO); M. Boldbaatar (MongolRosTsvetMet Supply Department Chair); S. Mergensod (Petro China Daqin Tamsag CEO); N. Dorjdari (Open Society Forum Manager); G. Urantsooj (Human Rights and Development Center NGO Head); N. Bayarsaihan (Steps Without Boundaries NGO Head); N. Badamhand (Mongolian Conservation Movement Head); B. Boldbaatar (My Mongolia Motherland Movement Head); D. Tserenjav (Transparency Foundation CEO); G. Chagnaadorj (Ariun Suvarga Movement Head); B. Batbold (Mongolian Environmental Civil Council Board Member); L. Gansuh (Prime Ministerial Advisor and NC Secretary); 24 of the 30 EITI NC membership (80%).

Also present by invitation: D. Enhbat (Environment and Green Development Ministry Natural Resources Department Chairman); G. Altansuh (Mineral Resources Authority Chairman); D. Munhsaihan (Mineral Resources Authority Officer); B. Battumur (General Department for Taxation Chairman); D. Enhtuya (General Department of Taxation Senior Inspector); B. Bolormaa (Finance Ministry Accounting Policy Department Officer); H. Lhamaa (OT LLC Multi-Stakeholder Relations Department Officer); N. Adiya (OT LLC Officer); B. Delgerbayar (Petro China Daqin Tamsag CEO); B. Osorgarav (Ulaanbaatar Audit Corporation CEO); N. Erdentsog and B. Mendbayar (Ulaanbaatar Audit LLC Senior Auditors); Sh. Tsolmon (EITI Secretariat Coordinator); B. Delgermaa (Secretariat Finance Officer).

Meeting Chair L. Gansuh (EITI National Council Secretary and Senior Prime Ministerial Advisor) presented 6 agenda topics, with a vote on approval of meeting rules and regulations.

I. TOPIC: Approving 6th EITI reconciliation report (2011) from Hart Noirs, IK and Ulaanbaatar Audit Corporation (Mongolia consortium)

B. Osorgarav presented the 6th EITI reconciliation report (presentation attached).

L. Gansuh: We twice discussed this report at the MSWG meeting. Several MSWG members are also on the National Council, so they should know enough information about the report we are discussing. A copy was also circulated in both hard and soft copy. So are there any questions?

B. Osorgarav: This report is of over 1,800 pages in 3 volumes, with a CD.

N. Altanhuyag: I have two questions. I will ask them first, then make my opening remarks before the meeting continues. First: you said in your presentation that discrepancies of over MNT 400 billion were found, which you resolved down to MNT 300 million. Please explain this again! Second: you said 85 companies did not submit a report. Must they submit a report? If they fail to do so, what action is taken?

B. Osorgarav: In the initial reconciliation of government receipts and company payments, a discrepancy of MNT 477 million was found. We are tracking this discrepancy to find reasons/explanations. The total unresolved discrepancy was MNT 622 million, MNT 278 million on the company side and MNT 344 million on the government side: a net discrepancy of MNT 74 million. Second, 58 companies did not report to EITI. During the reconciliation process, we looked at produced reports and checked all data for discrepancies.

N. Altanhuyag: Another question: the report shows 30-40% of government revenue. Does this refer to government revenue from the mining sector?

B. Osorgarav: Yes.

N. Altanhuyag: OK, I have prepared remarks for opening this meeting, but I don't want to read them all. This is my first meeting, so I have some ideas. The EITI NC is an important council, because, if it works well, it will make a significant contribution to the realisation of the Government of Mongolia policy on "transparent and responsible mining." It is also worth mentioning that the EITI ensures a tri-partite cooperation between government, companies and civil society for transparency.

So the National Council used to meet once or twice a year. I think that the council ought to meet once a quarter and release adequate information to the public. What the government for change wants is open and transparent processes between government, companies and civil society. We must end closed talks immediately. That is why as head of government, I promise to work as hard as possible for the EITI.

Mr Osorgarav's presentation shows that we do not have a clear responsibility mechanism. This must be clarified, and should not be voluntary.

Another serious issue is that some companies say they have paid while the government denies this. This should not happen. Such cases must be passed to the law enforcement agencies for investigation. If necessary, government could take part in sorting out the problem. You, the council, must concentrate on this, please. Don't just meet and talk; let's have concrete ideas, conclusions and action.

The EITI was initiated in UK, and it's good that Mongolia has joined the EITI. As a result, the government, civil society and companies cooperate in checking how much money is created by the mining sector, how much is paid in taxation, donations and for environmental conservation and how much was retained by the company; these are all serious issues. In general, there are lots of audits, and I'd like to ask NC members to clarify and narrow down audit findings. The Government will consider such conclusions and work with civil society and companies to make the system work.

Donations must be restricted and limited. Companies record them as donations, but in reality the companies are being robbed, as they are pressured for donations. Donations must be voluntary. We setting up meetings with aimag administrators online. We will remind them.

Finally, you are doing such a lot of work and producing many documents, so I would ask you to offer conclusions on what works and what does not. All the best to your work; the Government will work closely with you.

L. Gansuh: Thank you, Mr Prime Minister. Are there any questions?

G. Chagnaadorj: I mentioned this at the MSWG meeting: the audit reconciliation covers 200 companies. However, the Mineral Resources Authority says that over 1,800 companies have over 3,000 licenses. Not all companies are reporting, so implementation is falling short. Why do we not suspend or terminate licenses of companies that are do not report? Second, we have a very limited amount of information about the oil companies. Why is information about oil companies closed and not in the public domain? I would like to hear from the government representatives.

L. Gansuh: We have been producing reconciliation reports for 6 years. Last year, 150 companies were audited, and the number of reconciled companies is increasing. Still, let's work together to make all companies submit reports. Second, we are trying to eliminate drawbacks in previous reporting by changing reporting templates and amending report submission/receipt rules. We will present these during discussion on the next topics, when we will answer your questions.

G. Urantsooj: We have some seen some progress, like the increased number of reconciled companies, and reports being made at the sub-national level. However, we see donation discrepancies every year. It seems that National Council has a representative from the Independent Agency Against Corruption. Has that agency investigated cases relating to donation receipt discrepancies? Second, I have a proposal: the Anti-Corruption Agency should investigate

the annual donation discrepancies and report to the National Council; otherwise, the reconciliation is inefficient.

Sh. Tsolmon: The Independent Agency Against Corruption has from the outset had representation on the National Council. However, there has to date been no action to investigate discrepancies because there is no legal enabling environment. We have proposed the same to the National Audit Agency, but they said that they could investigate government agencies, but have no right to audit companies. When the proposal was made to the State Specialized Inspection Agency, they said it was beyond their scope. So action has been deferred several times.

J. Naranbaatar: At present, we have received no complaint or request from the National Council requesting investigation of discrepancies in donations received by government agencies, public officers or state-owned companies. If such a request were made, we may be able to investigate under the Criminal Procedure Code.

L. Gansuh: Only two months have elapsed since I received this duty. During that period, we have been discussing issues relating to approval of the 6th reconciliation report of the Mongolia EITI. Many important issues have been left hanging or have simply been heard. This time, the MSWG seriously discussed the findings and proposed that the National Council reach decisions on specific issues. For instance, the Mineral Resources Agency Chair has prepared a presentation on potential responsibilities/sanctions on companies which fail to produce EITI reports, and the Finance Ministry has prepared a presentation on implementation of Finance Minister Resolution 45 on the registration and recording of donations and aid. We are now striving to look at the 2012 report at a very different level. Everything has a starting point. From now, we will upgrade the reconciliation report. We must all work by looking forwards. Both the National Council and the MSWG represent three stakeholders, so a single person cannot bear all sanctions/responsibilities. Take minutes accurately, push the MSWG and submit necessary documents to the National Council through your representatives. Otherwise, it is a system in which one person is responsible while other push him/her. Everyone should make demands and everyone must bear responsibilities. If you have issues relating to past reports, we will listen openly. Any questions?

B. Boldbaatar: Does the report manage to disclose mining sector revenues transparently? For instance, the reconciliation includes companies such as MCS and Gatsuurt, which run businesses other than mining. Do you clearly separate their mining income from other business income? Second, it is said that 180 uranium licenses have been transferred. What is happening with this issue? There is no information on this. We can access the enter the Mineral Resources Authority website, but it offers no information. Earlier I asked about 13 oil companies. No one answered. I have an MSWG member for 7 years. Here, we are talking about over 3,000 licenses and 1,800 companies. All relevant information must be made clear. Otherwise, only 200 are audited while the others are not, but transfer their licenses to each other like traders. Please clear this up.

L. Gansuh: We probably ought to have talked about audit reconciliation at last year's meeting. I would discuss how the audit for next year should be carried out and how many companies will be reconciled. Since you are talking about previous years, I should add that previous meetings did not discuss oil and uranium-related issues; let's discuss them now, so please formally write your suggestions, so we can be formal on all issues and topics. Tsolmon, please answer the question.

B. Boldbaatar: In the past, we have repeatedly discussed these issues.

Sh. Tsolmon: Minerals Law Provision 48.10 does not apply to oil companies. They have submitted EITI reports on a voluntary basis. Initially, only Petro China Daqin Tamsag produced an EITI report. After several training sessions by the EITI Secretariat, 13 oil companies started submitting reports. As to uranium companies, Western Prospector, Areva and Central Asia Uranium are producing reports.

B. Osorgarav: For group companies, we only use data relating to mining business in the reconciliation report. Large groups such as Gatsuurt and MCS have subsidiary companies in the mining sector. These companies are audited.

L. Gansuh: End of questions. Now, we move to the 3rd and 4th agenda topics, and then I will ask again for comments on the report, so please prepare your comments. Now G. Altansuh Mineral Resources Authority Chair will make a presentation on companies that failed to report and what action should be taken.

III. TOPIC: Companies that failed to report and proposed action/responsibilities

G. Altansuh: We researched companies that have failed to report. License holders started submitting EITI reports in 2007 to the Mineral Resources Authority under Minerals Law Provision 48.10.

In 2007, 65 of the 1,599 license holders (1.4%) reported; in 2008, 105 of the 1,881 license holders did so (5.6%); in 2009, 105 of the 1,909 license holders (7.1%) reported; in 2010, 262 of the 1,907 license holders (37%); and in 2011, 283 of the 1,840 license holders (15.4%) submitted EITI reports.

The number of companies producing EITI reports has increasing from time to time, however only 15.4% of all license holders are reporting, which is insufficient. We conclude that this is because of inadequate legal environment.

As to responsibilities/sanctions for not reporting, Minerals Law Provision 48.10 says that guilty officers are fined MNT 100,000-500,000 and legal entities MNT 500,000-1,000,000; the State Specialized Inspection Agency is responsible for imposing sanctions.

A survey reveals that the State Specialized Inspection Agency in 2009 fined 41 companies a total of MNT 31.5 million and in 2011 fined 3 companies a total of MNT 2.5 million. We were unable to discover if any such action was taken in other years.

In 2011, over 1,800 companies own 3,700 licenses, but only 15.4% submitted an EITI report. The Prime Minister earlier asked if companies are obliged to produce reports and what sanction is imposed if they fail. The EITI has produced 6 annual reports; the number of company reports is increasing, but no work has been carried out to clarify and improve the legal environment. So we propose to intensify the legal environment and the requirement that all companies must report. First of all, this can be done by amending the Minerals Law, particularly a provision on sanctions and an increase in fines. The Mineral Resources Authority suggests developing concrete ideas and drafts in cooperation with the Secretariat (presentation attached).

L. Gansuh: Amending the Minerals Law will take a long time. Is it possible to do it differently, maybe by regulation? For instance, mine plans will not be approved if the company fails to report; are there any such quick solutions?

G. Altansuh: We must comply with the law on sanctions. We comply with the law in accepting mine plans and performance reports. The National Council and MSWG must discuss developing a regulation with which all must comply.

L. Gansuh: Tsolmon, do you have any study on this?

Sh. Tsolmon: We have no study, we comply with the legislation.

L. Gansuh: So what can we do? All our work is inept.

N. Dorjdari: it is important to create a legal environment. Maybe we have a quick solution. It is said that there are over 1,800 license holders, but the government reports receipts from only 500 companies. I think these 1800 companies are somehow registered at the General Administration of Taxation, so, the government must first produce its report on receipts from all companies. We also need to respond more actively to companies on EITI reporting.

L. Gansuh: Representative of the General Administration of Taxation, please answer: why did you report on only 500 companies?

B. Bolormaa: I am an officer of the Finance Ministry Accounting Policy Department. Actually, we should report on 1,840 companies. We consolidate data from the General Administration of Taxation and produce the Government of Mongolia report. In 2011, we produced the government report showing receipts from 518 companies, 200 of which were later reconciled. Why not all 518, but only 200? The Mineral Resources Authority says 1,840 companies, the General Administration of Taxation says 518, and 200 were audited. This shows that these figures are not coordinated.

I will continue with agenda topic 4. The audit report said that Finance Minister Resolution 45 has been insufficiently implemented. That resolution is entirely on how both parties should record donations. But the resolution does not define any sanction if donations are not recorded, while the Accounting Law has sanctions for failure to report transactions. Auditors report that one side says it has paid, the other says it has not received a payment, so it is unclear on whom sanctions or fines should be imposed. We need a thorough study on this.

L. Gansuh: If such a discrepancy is found between an agency and an individual, it will be investigated by the Independent Agency Against Corruption, is that not so?

B. Bolormaa: For example, it is said that a MNT 2 million donation was given to the Mineral Resources and Energy Ministry, but the ministry reported it did not receive the donation; subsequently a discrepancy was found, according to the reconciliation report.

L. Gansuh: At today's meeting we see many new needs for changes. We have no other way; we need to resolve all pressing issues and find solutions, somehow. If there is an immediate need to amend existing legislation, we should look at completing this as soon as possible. Now, General Department of Taxation representative, offer your proposals. As to data inter-relation, let's make an internal rule that initial data is provided by the Mineral Resources Authority to the General Department for Taxation, which will prepare all data and then send a formal letter to the companies. Members who have been with EITI for many years, please comment on this.

Sh. Tzolmon: Back in 2006, only 64 companies produced EITI reports. When we demanded that companies submit reports, exploration companies said they were not liable to report as they were not extracting minerals, so we introduced Template-2 for them. Oil companies said that the Minerals Law did not apply to them, so we developed Template-3 for them. As a result, we managed to get some more companies to submit their reports, but not all.

D. Damba: Even the name EITI indicates that we are unrelated to exploration companies. Most of these 1,800 companies are probably just exploring; only 400-500 are extracting minerals.

G. Chagnaadorj: I think that cooperation/coordination between General Department of Taxation, the Finance Ministry and the Mineral Resources Authority is weak. The Mineral Resources Authority says there are 1,840 companies, but our EITI report includes 518. Surely the government agencies could get data from each other and produce non-erroneous reports.

L. Gansuh: I understand what you say. To save meeting time, we will reconvene the National Council on today's unresolved issues. I will assign the Nuclear Energy Agency and the Petroleum Authority. I have a question for the Mineral Resources Authority Chair. Can you make all these licenses companies submit reports? What can you do to get reports done? You say the final way is a Minerals Law amendment. Isn't it possible to resolve this by Mineral Resources Authority Chair decree?

G. Altansuh: We can state, in our rules and regulations, that all companies must report. But issues relating to sanctions are regulated by law, by which it is presently possible to impose a fine of up to MNT 1 million for not reporting. But MNT 1 million is just a small amount for mining companies. So I maintain my proposal to make legal amendments.

L. Gansuh: Don't you have the right to cancel licenses for not reporting to the EITI?

G. Altansuh: We don't have such a right.

L. Gansuh: For how long can companies wait without exploration after they receive a license?

G. Altansuh: An exploration plan must be offered for three years, overall 9 years.

L. Gansuh: For how long they can undertake no prospecting?

G. Altansuh: If they don't prospect for a year, their licenses are cancelled for the following year.

L. Gansuh: That means you must contact exploration companies at least once a year.

G. Altansuh: But we cannot impose a sanction as there is no legal provision making an EITI report compulsory. Currently, we use Minerals Law Clause 48.10: "taxes and payments to government for the year shall be publicized no later than the end of Quarter One of the following year" to get the reports submitted. This clause must be made clear and detailed.

B. Battumur: Those 1,840 companies are registered at the Tax Office. Since 2012, the Mineral Resources Authority and General Department of Taxation are exchanging data. In 2010, the General Department of Taxation reported to the Finance Ministry, receipts from 517 companies and 1,537 companies in 2011. Of these companies, the Finance Ministry reconciled 518; 301 companies submitted EITI reports in 2011; 200 companies that paid over MNT 40 million in tax were audited.

L. Gansuh: Of the 1,840, you reported on 1,537. What measures must we take for the other more than 200 companies?

B. Battumur: We have no right to take any measure or impose any sanction.

N. Dorjdari: The Government is producing its own report independently from the companies. The General Department of Taxation reported on 1,537 companies, but why did the Finance Ministry reported on only 518? This is a problem. Reports from companies are a different issue.

B. Bolormaa: The Finance Ministry received reports on 518 companies and consolidated them into the EITI report.

L. Gansuh: I understand the EITI position is that the government and company reports must match. Do I understand that our civil society says that only the government report is enough, the other side has no authenticity?

N. Dorjdari: No. I did not mean that. If the government reports on all companies, discrepancies will occur on the company side. This should be checked and verified by auditors. If neither side reports, it is impossible to identify discrepancies.

L. Gansuh: What do you mean, the auditors should check?

B. Osorgarav: In the 2011 reconciliation, 58 companies were found not to have reported, so we meant they wanted these reports submitted.

L. Gansuh: For 58 companies, you can do it. But how can we go after all 1,800 companies? How much would we pay for audit reconciliation? Personally, I wonder how we can get these 1,800 companies to report.

N. Dorjdari: Of this 1,800, most will probably not be audited due to a material threshold. Most importantly, auditors must concentrate on companies that paid huge amounts.

L. Gansuh: Government agencies have no problem in producing reports on all companies, I have no doubt. But what can we do about these companies that are not reporting? Is the license just a worthless piece of paper? It seems that anyone willing to report is reporting, and anyone not willing is not reporting.

N. Dorjdari: I agree with you.

G. Tsogt: Regardless whether it is for exploration or mining, all license holders must submit mining and exploration plans to the Mineral Resources Authority. Mr Altansuh says there are no legal provisions on imposing sanctions. What information to get from the government agencies is probably a different topic. For instance, inclusion of donation data on in the Mineral Resources Authority template would make no sense. It must be recorded at, and reported by, the General Department of Taxation. You say discrepancies were found. For instance, three companies work together to build a new coal export terminal at the Shivee Huren border, costing MNT 1.8 billion. There are many agencies at the border, such as customs, border troops, inspectorate and immigration. It is unclear exactly for which of these agencies the terminal is being built; the company reports it as a donation, but it is unclear which agency may report it as a receipt. This is a situation that happens in reality.

L. Gansuh: Now Bolormaa will make a presentation on issues related to donations.

IV. TOPIC: Implementation of Finance Minister Resolution 45; proposed actions

B. Bolormaa: We see from the auditors' report that no parties comply with Resolution 45. Second, the resolution says there are no provisions for sanction on faulty acts (non-compliance) or negligence, so we find it difficult to impose sanctions. So I suggest the Finance Ministry renew this resolution. Third, discrepancies arise due to exchange rate differences or incorrect recorded amounts. These issues need consideration. Next, if an agency has received a donation which it has not recorded, and if this was found unlawful by investigation by law enforcement agencies, we may use a provision in the Accounting Law that allows imposition of a fine equalling 5 times the minimal wage on an officer, up to MNT 702 000.

L. Gansuh: Any questions?

B. Boldbaatar: The report says MCS Petro Mongolia donated 408 bottles of coke, 60 bottles of Chinghis vodka and 200 bottles of Tiger and Sengur beer to the Petroleum Authority. Is Coca Cola giving the donations, or Petro China? We approve that they disclose the donation, but if an oil company gives such a donation to the Petroleum Authority, it looks like a bribe.

L. Gansuh: Maybe Petro China bought the drink and gave to the Authority.

S. Mergensod: These cokes and other donations have nothing to do with Petro China.

B. Boldbaatar: You are right, I was wrong. It is a company called MCS Petro Mongolia.

L. Gansuh: So we have several issues that need resolution. Let's discuss all these issues at the MSWG meeting, and meet again at the National Council. As this meeting has a time limit, let's start checking and formulating our decisions. I will read them, and you can give your comments.

Sh. Tsolmon: As to Draft Resolution 3, international requirements say government and company reports must be audited. To enforce this rule, we need to make an internal joint resolution.

L. Gansuh: As to Draft Resolution 5, it is probably not possible to reconcile on a quarterly basis, as we see such large reconciliation discrepancies once a year. So remove it. The rest is OK. Also, let's add a provision on updating/renewing Finance Minister Resolution 45. Then we need a provision assigning the Mineral Resources Authority and General Department of Taxation to work together on receipt reports from all companies, and submit the report to the Finance Ministry. We should also assign the Finance Ministry to produce a Government of Mongolia report about cancelling companies. Plus, the Nuclear Energy Agency and Petroleum Authority must also have assignments. Now, what about the companies that don't produce reports? Let's ask all National Council members to lobby hard for a legal environment requiring all extractive companies to produce EITI reports in 2013.

N. Dorjdari: It seems that State Specialized Inspection Agency must enforce the provision imposing a fine of MNT 1 million on companies that fail to report. Also, reporting is related to reputation, so we must publicize the defaulting companies on websites.

L. Gansuh: This will be regulated by Provision 2. We can also include the Independent Agency Against Corruption.

N. Bayarsaihan: Can the National Council file a case with the Independent Agency Against Corruption?

J. Naranbaatar: Even an individual citizen may. If government agencies and/or officers misuse authorized powers, we will investigate.

L. Gansuh: Let's do it at all levels and refer cases to the agency. Anything to add?

B. Batbold: I have an issue to raise: publicizing the reports. We must establish a mechanism by which data from a company operating in Tuv aimag is made available to the aimag residents. Posting only on a website does not enable full access for local residents.

L. Gansuh: Let's regulate this by Provision 8, which assigns representatives of our three stakeholders to get reports discussed by local communities. The report is also disaggregated by aimags, so you must travel to the countryside with a copy of the report. If you have an issue for discussion at the MSWG, please let us know.

In addition, let's add that the MSWG should meet for implementation of the decisions and must report its results to the National Council. What would be the appropriate time frame? Otherwise we will be criticizing each other for not doing anything. I mean two points: first, let's all do our work, and second, we need to reach a consolidated agreement by internal discussion, and maintain a unified position. We should not leave it that civil society criticizes and companies protect their self-interest so finally the government is blamed. We must distribute work equally. So let's agree on a time frame. We should assign L. Gansuh and Sh. Tsolmon to report back to the National Council no later than the end of 2013 Quarter One.

We should also assign the Mineral Resource Authority and the Secretariat to explore the legal environment for ways to impose a sanction on non-reporting companies and to develop draft proposals within 2013 Quarter One.

Let's also assign the MSWG and the Finance Ministry to renew Finance Minister Resolution 45. So we have, agreed to resolve these issues relating to reports. Now let's move the third agenda topic.

I. TOPIC: Approving 6th EITI reconciliation report (2011) produced by Hart Noirs, UK and Ulaanbaatar Audit Corporation (Mongolia consortium).

RESOLVED TO:

1. Approve the EITI Mongolia 6th reconciliation report, produced by a consortium of Hart Noirs Ltd, UK, and Ulaanbaatar Audit Corporation LLC, Mongolia, from National Council meeting, with member comments.
2. Advise senior managers of EITI Mongolia Secretariat, Finance Ministry, Mining Ministry, Mongolian National Mining Association and Open Society Forum to post the EITI Mongolia 2011 reconciliation report and openly publicize the report.
3. Assign Sh. Tsolmon (EITI Mongolia Secretariat Coordinator) to send the 6th reconciliation report of the Mongolia EITI to International EITI Board.
4. Assign representatives of three stakeholders (Mining Minister D. Ganhuyag, Mongolian National Mining Association President D. Damba and Open Society Forum CEO P. Erdenejargal) to discuss the 2011 EITI Mongolia reconciliation report at stakeholder meetings and instruct Sh. Tsolmon (EITI Secretariat Coordinator) to provide support for discussions.
5. Assign the Government of Mongolia Press Office and the EITI Mongolia Secretariat to hold a press conference on the 6th Mongolia EITI reconciliation report to publicize the report.
6. Advise EITI Mongolia Secretariat to pay the remaining due amount for reconciliation work carried out by the consortium of Hart Noirs Ltd, UK, and Ulaanbaatar Audit Corporation LLC, Mongolia, after receiving an English copy of the report.
7. Assign the MSWG and State Specialized Inspection Agency to investigate all MNT 622.4 million discrepancies found by auditors and impose sanctions to related officers.
8. Assign the EITI MSWG and Finance Ministry to develop regulations requiring private and state audits of company and government EITI reports, and publicize the new regulation.
9. Assign the General Department of Taxation and Finance Ministry to produce a 2012 Government of Mongolia report, and all further reports, using data from the Mineral Resources Authority, Petroleum Authority and Nuclear Energy Agency, on all licence-holding companies.

10. Assign the National Council to develop rules and regulations requiring all companies with licenses for oil, minerals and uranium regularly to produce EITI reports.

11. Assign the EITI MSWG, Mineral Resources Authority, General Department of Taxation and Finance Ministry to take action enabling electronic reporting and cooperate with all respective parties.

12. Assign MSWG Chair L. Gansuh and EITI Secretariat Coordinator Sh. Tsolmon to discuss the above assignments at MSWG in detail and report outcomes to the National Council no later than the end of 2013 Quarter One.

III. TOPIC: Introduction on companies not producing EITI reports, proposed actions

RESOLVED TO: Assign the Mineral Resources Authority (G. Altansuh) and the EITI Secretariat (Sh. Tsolmon) in Quarter One 2013 to develop draft regulations on sanctions on companies not submitting EITI reports, and present the draft regulation to the National Council.

IV. TOPIC: Status of Finance Minister Resolution 45 implementation, proposed actions

RESOLVED TO: Assign Finance Ministry to develop a new draft resolution to replace Finance Minister Resolution 45 in 2013 Quarter One; present the draft resolution to the National Council.

II. TOPIC: Amendments to EITI reporting templates

L. Gansuh: OK. Proposed amendments to reporting templates were discussed twice at the MSWG. Presentations were distributed to you (presentation attached). Are there any questions relating to the template changes?

B. Boldbaatar: There was a row headed "Other" that is missing.

L. Gansuh: There is a section headed "Other" that includes fines and compensations.

B. Boldbaatar: It has been made much clearer; but there should be an "Other" section.

L. Gansuh: Unless we state specifically, we have no time to explain to all 1,800 companies one by one.

D. Tserenjav: We have discussed the reporting templates quite a lot. But when we read minutes of meetings, it seems that we must have an "Other" section. Life is rich, so new laws or rules may be made, or a local government and company could have some costs for cultural heritage conservation, and we may not have section where we can report these expenditures. That is why we need to add an "Other" section under the heading "donations to central and local government."

S. Mendsaihan: I was going to ask about agenda topics, but time has run short while I have been listening to the discussion. So I will give my comments and leave. I have been on the National Council for four years. During this time, overall EITI work has progressed. In particular, it is important that we are discussing the 2011 report in 2012. In the past, we discussed reports from 2-3 years earlier. Today, the National Council is meeting with new members. The meeting started exactly on time, so we see some progress.

The EITI essence lies in the principle that extractive companies must report how much tax they pay to the government, while the government reports how much it receives and how it spends the funds. Companies have to submit many reports to various agencies, they are sick and tired of the process, so we should not push them. I would like to ask the National Council to have a respectful approach to the issues.

As to the templates, information from all the agencies and companies should be unified or consolidated. We need to get reports on tax and payments without discrepancy, but work more on tax and payment discrepancies through investigation and checking. We could even do more work on the government data, checking tax and payments that have the greatest discrepancies; in these cases reconciliation should be easier, I guess. The Statistics Office collects, checks and disseminates all sorts of information and approves templates; we think that the EITI templates are quite rough.

Properly to implement BC meeting decisions, we need to change the way we take part in this meeting. For instance, the Prime Minister and National Council Chair just opens the meeting and then leaves; the Deputy Chair and Mining Minister comes and goes, government agencies come and go and their heads don't personally attend the meeting; this must change. We see one agency department head in a meeting, then a different senior officer next time. I don't know if they read all the previous meeting minutes. I suggest we need to regulate such problems.

Finally, I think issues relating to donations might be sorted out if we produced a small booklet or brochure on companies and agencies, parties to donations, and publicize donations. Problems might be reduced as government agencies will not be allowed to receive donations as from 2012. So I'd hope the National Statistics Agency will take an active part in the initiative.

L. Gansuh: Any other comments?

B. Boldbaatar: Much cultural heritage and many paleontological findings have been destroyed by mining operations. Therefore, I think we must have an "Other" section.

L. Gansuh: Do you mean an "Other" section inside an existing "Other" section? We previously decided to remove "fee for firewood from forest" but it is still there. Who left it there? We decided by voting, so we must check the meeting minutes.

Sh. Tsolmon: We first discussed removing some types of payment, but civil society organizations proposed a “Voluntary reporting” section, to get as much detailed info as possible. As it is put in the “Voluntary reporting” section, companies may or may not report this payment.

L. Gansuh: So where do we put the “Other” section?

N. Dorjdari: If a new law is passed and requires certain payment, we will find difficulty in changing the relevant template without an “Other” section. So an “Other” section must be included in both tax and payment sections.

L. Gansuh: Does that mean there should be one in the “Dividends” section?

N. Dorjdari: Or an “Other” section in voluntary reporting and one in mandatory reporting.

L. Gansuh: When we revised the templates, the “Other” section was not included. I wonder why I did not see it before. Let’s give this template to Mr Mendsaihan of the Statistics Office for revision, and assign a deadline. I think Mr Mendsaihan will decide where to put the “Other” section. Let’s assign him to do so. Now, let’s move to the next topic.

RESOLVED TO: 1. Assign the National Statistics Office (S. Mendsaihan) to update and approve the EITI reporting templates, including National Council member comments.

V. TOPIC: Approving a new of EITI Mongolia National Council regulation for EITI implementation

Sh. Tsolmon: Cabinet Secretariat Senior Officer Mr Sumiya was supposed to present the regulation, but he is on a mission abroad, so I will present it. The draft regulation has been circulated to you. It differs from previous resolutions as it proposes the introduction of an electronic meeting as well as the present physical meeting. The regulation also appoints heads of all stakeholders.

L. Gansuh: Any questions in relation to the regulation?

B. Batbold: At National Council and MSWG meetings, I see that government agency chairs always send representatives, who attend without information, do not answer questions and it looks as if they don’t report the meeting outcomes to senior officers. When high-ranking chairs do attend, they don’t know what we are talking about – that is obvious at meetings. So the regulation must clearly state who can represent whom, and how they must pass information on; otherwise we will continue to have this situation.

L. Gansuh: The regulation has new provisions that say stakeholders will chair meeting in turn, and a meeting can be held electronically. But when we talk about sanctions/responsibilities, we have no way of imposing them on all stakeholders. You say that the regulation must define who

must represent government agency chairmen if they are not able to attend. Then who will represent you if you are unable to attend a meeting?

B. Batbold: Well, I could send my comments in writing, as I have no deputies. We must get rid of the situation in which someone is represented.

L. Gansuh: You say either come yourself or don't send anyone? Mr Mendsaihan, what must we do? Any comments?

S. Mendsaihan: Actually, an agency chair must have a deputy. A representative of a member must be someone with the authority to make decisions. In fact, at least one always stays in the office. That is a potential solution. As to attendance, the Secretariat, which organized the meeting, could be informed well in advance who will attend, eg if Mendsaihan of the Statistics Office is not coming, the Secretariat must get advance warning in writing.

L. Gansuh: It is not appropriate for a regulation to directly instruct that a specific person will represent a member. Members ought to be ethical and attend personally. It is purely an ethics issue. Our Council is not a public administration agency, but it does have three stakeholders; so we must think what to do if a member does not show up.

N. Dorjdari: I have a proposal. As long as we register attendance, we must also post the attendance list on the Internet.

L. Gansuh: That is right. Let's publicly report the attendance record on the websites of the Secretariat, the National Mining Association, the Open Society Forum and government agencies.

S. Mendsaihan: I have two comments. The draft regulation says the Prime Minister will chair the meeting and Mining Minister will replace him if he is absent. This may not become a reality. Instead, the Deputy Chair (Mining Minister) could chair the meeting and the Secretary could act when he is absent. Second, instead of saying the Mining Minister, we should specify the Cabinet member responsible for the mining sector. It also refers to the PWYP coalition; what coalition is that?. There should be an abbreviations list on the front page.

L. Gansuh: As for the first comment, I would leave it as Prime Minister will chair the meeting. Let's vote on it. Raise your hands if you agree to change this provision. 4 votes. The provision remains as is. Comment on abbreviations accepted. Now, let's endorse the regulation. If it needs amendment, National Council will discuss.

H. Lhamaa: At the National Council we don't need to re-discuss in detail issues approved at an MSWG meeting.

L. Gansuh: Many non-MSWG members work at the National Council. It is up to the National Council either to discuss in detail or to repeal an MSWG decision, or to propose a new issue; the National Council has that right. So let's move to last topic.

RESOLVED TO: 1. Endorse the EITI Mongolia National Council regulation for implementation of EITI, including member comments.

VI. TOPIC: Approving guidelines for selection of an audit consortium for the EITI Mongolian 2012 reconciliation

Sh. Tsolmon: The topic is familiar to you all. First, we aim to get about 200 companies involved in the 2012 reconciliation. Second, we also propose to keep the MNT 40 million threshold. Third, we propose to reconcile reports under International Standard ISRS-4400. We have these requirements because we had a dispute in the process of selection of reconcilers for the 2011 report. Under Mongolian law, one auditor may only audit an agency for three consecutive years, so some bidders claimed that this is audit work; as a result, the selection process took over 3 months. We asked the International Secretariat for clarification and were told we must comply with the aforesaid standard. As planned, we will call for bids in mid-December, and receive expressions of interest in mid-January, followed by evaluation. A bid evaluation committee has been set up, but committee members must be certified by the Finance Ministry, which may take some time (presentation attached).

L. Gansuh: We recently discussed getting reports from all companies, but the proposal says 200 company reports will be reconciled. Issues are arising.. What shall we do now?

Sh. Tsolmon: In fact, reconciling 1,800 companies could not be done in one year, so International EITI requires thresholds to enable the audit reconciliation to be effective and efficient. They say it is effective to reconcile the leading companies. We also have cost-related issues. Reconciliation is financed by the government; in the 2013 government budget we are allocated MNT 200 million, which is insufficient for reconciliation of 1,800 companies. In addition, a consortium of international and national auditors must complete the reconciliation within 60 days. So I propose to get EITI reports from 1,800 companies and publicize them, from which we will select about 200 for reconciliation by their materiality level.

N. Dorjdari: We are not talking about auditing 1,800 companies. It is OK to have thresholds of MNT 40 million. What we mean is the government has produced reports on receipts from 518 companies, and the government must publicize this. The International EITI rule says all companies must produce reports. If we cannot get all companies to produce reports, we may not be validated. That's OK, not important. But audit reconciliation on 200 companies is a different issue and part of the EITI job.

L. Gansuh: It is fine to have an MNT 40 million threshold. But it is unclear how many of the 1,800 companies would pay more than MNT 40 million; maybe 300 or 400, we don't know. Second, Dorjdari said International EITI requires all companies must report. What is the exact number of companies? Do taxes and payments by 200 reconciled companies make up the majority of

government revenue, while the remaining 1,600 make up 1% or less? Considering the total amount, we are doing our work.

N. Dorjdari: How do we know that taxes paid by 200 companies, as you say, make up 99% of total government revenue? An initial government report must verify that the other 1,600 companies pay a small amount.

Sh. Tsolmon: It means 200 companies as an average. Unless we give approximate figures to bidders, it must be hard for them to calculate potential costs. Everything must be clear, to ensure clarity for everyone.

S. Enhtuya: An estimated 200-300 mining companies are operating in Mongolia, so I think 200 is a close figure.

L. Gansuh: Let's say 200 in average. If the number has to be changed, we will discuss it at the MSWG. Where did you get an MNT 40 million threshold?

Sh. Tsolmon: It is the sum of tax and royalties paid to the government..

L. Gansuh: How is MNT 40 million in terms of taxation? What percentage of companies would pay that amount in tax?

B. Battumur: MNT 40 million is a small amount for extractive companies, but it is high for companies in other sectors.

L. Gansuh: OK, let's impose an MNT 40 million threshold. The Mineral Resources Authority and General Department of Taxation should produce the initial report, then the Finance Ministry will select those which are over the MNT 40 million threshold. Now, let's approve the guidelines. We may announce the next meeting pretty soon, so be prepared. Thank you.

RESOLVED TO: 1. Approve guidelines for selection of an audit consortium for the EITI Mongolian 2012 reconciliation, including comments from the National Council.

Meeting ended at 7.35 pm.

Meeting minutes reviewed by:

L. GANSUKH
Secretary of National Council,
Mongolia Extractive Industries Transparency Initiative

Minutes taken by:

B. Delgermaa
Finance Officer, EITI Secretariat