

**Minutes of meeting of Mongolia Extractive Industries Transparency Initiative
Multi-Stakeholder Working Group
(9 November 2012)**

MSWG meeting started at 2pm, 9 November 2012, in the Conference Hall of the Mongolian National Mining Association.

Members present: L. Gansuh (MSWG Chair and Senior Prime Ministerial Advisor); E. Sumiya (Cabinet Secretariat Senior Officer); G. Altansuh (Mineral Resources Authority Chair); D. Munhsaihan (Mineral Resources Authority Officer); J. Iveelen (Finance Ministry Accounting Policy Department Officer); B. Hulan (Mining Ministry Policy Implementation Coordination Department Project Officer); S. Bayartsetseg (Environment and Green Development Ministry's Environment and Natural Resource Department Officer); B. Oyun (Petroleum Authority Divisional Chair); D. Damba (Mongolian National Mining Association President); H. Lhamaa (Oyu Tolgoi LLC Multi-stakeholder Cooperation Senior Officer), E. Erdenetsetseg (Erdes Holding LLC Accountant); Ch. Ochirham (Baganuur Shareholding Company Finance Department Chair); N. Dorjdari (Open Society Forum NGO Manager); N. Bayarsaihan (Steps Without Boundaries NGO Head); D. Tserenjv (Transparency Foundation NGO CEO); N. Narantsetseg (Baigali Ehy Avral NGO Head); M. Otgontsetseg (Mongolian Environmental Civil Council Manager); D. Sengelmaa (Mongolian Environment Conservation Union Board Member); Sh. Tsolmon (MSWG Secretary and EITI Secretariat Coordinator). Present were 19 of 33 members (58%).

Also present: B. Osorgarav (Ulaanbaatar Audit Corporation LLC CEO); N. Erdenetsog and B. Mendbayar (Senior Auditors); T. Otgonhuu, L. Badamtsetseg, Ts. Sarantungalag, D. Bas-Orgil and D. Ahjool (Auditors); B. Bulgan (General Customs Agency Customs Inspector); Chagnaadorj (Aroun Suvarga Movement Head); B. Delgermee (EITI Secretariat Finance Officer).

I. TOPIC: Final conclusions of Mongolia EITI 2011 reconciliation and status of discrepancies

E. Sumiya: Chairman Gansuh will be 30 minutes late, and asked us to start without him, which we will. There are three main agenda items. Do you have any comments on the agenda or meeting rules? If not, first topic: Ulaanbaatar Audit Corporation LLC CEO B. Osorgarav will give a presentation.

B. Osorgarav: At the 12 October 2012 MSWG meeting we presented the preliminary findings of the Mongolia EITI 2011 reconciliation MSWG meeting, with the inclusion of member comments and recommendations, with some discrepancies to be resolved. We then closed off the reconciliation as of 2 November. Today we present the conclusions of the reconciliation (presentation attached).

N. Dorjdari: I'd like to ask a question. You offer two figures on unresolved discrepancies: MNT 724 million and MNT 385 million. Why? If one is the government discrepancies and the other is the company discrepancies, surely the total discrepancy must be the sum of these two, over MNT 1 billion. Isn't that so? Listing various discrepancies as net discrepancy and initial discrepancy is confusing. As the report will be read by the public, it should be clear.

N. Erdenetsog: We tried clarifying discrepancies in various ways. This option was found the best. The MNT 385 government discrepancy, unresolved after reconciliation, is between what the government showed it received, without company comment; the MNT 724 million discrepancy is what companies claimed to have paid, but for which the government had no receipt. We arrived at a net discrepancy from the two figures. As there is more on the government side and less on the company side, when we balance positive and negative, the net discrepancy looks smaller. But, as you said, the real discrepancy should be arrived at from the MNT 385 million and 724 million, which neither party could explain.

N. Dorjdari: Another question. You have just distributed material showing data disaggregated by aimags. As I understand it, if a company gives you a single figure, like say land fees, how did you disaggregate this figure by aimag?

B. Mendbayar: When two sides provide data, all figures are large. For example, Oyu Tolgoi LLC reported paying MNT 500 million for land fees, for which we get detailed transaction statements on how much, when and to whom. We match this data against government reports or contact the aimag, which gives us more detail. This data breakdown is reconciled and disaggregated by aimag, which is the data we now present.

E. Sumiya: I have a question. You are talking about large sums for the General Taxation Department. In fact, an inspector collects taxes and allocates them to categories according to regulation. The tax office plans to collect X amount of corporate income tax; if the company over-pays this tax, the excess is withheld for VAT by agreement with the company. Does this still happen? Did you notice this?

B. Mendbayar: Yes, that happens. Company reports are disaggregated by tax type, but the General Taxation Department does not disaggregate; when we see discrepancies, we get detailed clarification from the tax officer.

E. Sumiya: Sometimes the report says there are discrepancies because the government excludes data from local subsidiaries. Can the General Taxation Department confirm this? We are going to consider this issue in detail later.

N. Erdenetsog: In the reconciliation, large discrepancies are found in payment of service charges and fees. The central government sometimes finds it difficult to report receipts of payments at the local level. We understand that the government accepts this. For instance, in the reconciliation we clarified MNT 330 billion on the government side and MNT 880 billion on the company side. That indicates that both parties report insufficiently and the accounting system is poor.

N. Dorjdari: To sum up, the unresolved discrepancies total MNT 1.1. billion, but the report gives unclarified discrepancies of MNT 339 million. These multiple figures are confusing. The term net discrepancy does seem to have any meaning in this case, except maybe statistical importance.

N. Erdenetsog: This can be corrected.

L. Otgontsetseg: As I understand it, the government received MNT 385 million, but it was not evidenced by the companies, and there is a discrepancy of MNT 525 million on the company side; adding these two figures gives the net discrepancy. Correct?

N. Erdenetsog: No. You should understand that the government MNT 385 million and the company MNT 724 million remain unexplained. Don't give any preference to the net discrepancy. When we do calculations on large tables and figures, we use the term "net discrepancy" to ensure all figures match. You may understand it as a checklist we use internally.

B. Osorgarav: But, I think it is not incorrect to keep the term net discrepancies. The government had over receipts, the companies had under payments, so the discrepancies are net, not explained by the balance sheets from the two sides. It is right to take these numbers as the unresolved net discrepancy.

D. Damba: There is a table at the end, cash flow. How important is it? What can we see from this table?

B. Erdenetsog: It shows quality of data and reportage. Initially, the government reported total revenues as MNT 1.8 trillion, but this rose to MNT 2.1 trillion after reconciliation. Companies reported total

payments as MNT 1.3 trillion, which rose to MNT 2.1 trillion after reconciliation. The reason for the company under-reporting is that 58 of the 200 reconciled companies were not included in the government reporting, so that resulted in discrepancies. The financial stream table displays the total of claimed taxes, fees and payments to government from the 200 companies and the total amount that the government claims to have received from the 200.

Sh. Tsolmon: At a previous meeting, the National Audit Office reported total received revenue from mining sector at MNT 1.2 trillion, but our report says the total receipts from only 200 companies were MNT 2.1 trillion. Did you study this discrepancy? What is the reason for such under reporting by the National Audit Office or what methodology did they use to arrive at their figure?

N. Erdenetsog: We briefly spoke of this discrepancy to the MSWG, saying that it needs checking. We did not study their methodology and have not checked.

N. Dorjdari: As far as I know, the Finance Ministry started calculating and disclosing its mining sector revenue from 2011, and even produced retrospective data. This should be clarified from the Finance Ministry rather than the National Audit Office.

B. Osorgarav: I think that the National Audit Office reports Finance Ministry data, which does not include fees and charges.

N. Dorjdari: Were all large mining companies included in this 200? How can we be sure? For instance, the Nadmin company announced that it had discovered a copper deposit as big as Oyu Tolgoi. This company has never been included in our reports. I am concerned that some companies are not included.

N. Erdenetsog: Companies paying over MNT 40 million in government tax for any given year are reconciled. We don't know how the companies were selected; perhaps the Secretariat can answer this question. There are some companies not included in the reconciliation, as they raise funds at international stock exchanges. If the next reconciliation requires disclosure from companies raising finance on the international market with branches in Mongolia, we could do this. I think these companies are not reconciled because their large finances are retained outside of Mongolia; they explore in Mongolia, reporting costs and no profit, only paying license fees, so they don't cross the MT 40 million threshold and do not need to be reconciled.

N. Dorjdari: I believe there are over 1000 licensed companies, 500 of which have submitted reports, and we have reconciled 200. It is difficult to evaluate which of the other 800 are big or small. In the worst case, if the government omits Erdenet in its report, it is not going to be reconciled. The issue is how to sort this out.

Sh. Tsolmon: To select the 200 companies, we use the government report. From government lists, we automatically pick up companies that pay over MNT 40 million taxes; from them, we select companies that have reported to EITI, and so on; finally we have companies for reconciliation. We email MSWG members on how companies have been selected and ask for reaction. That is how we have worked. Obviously, we must concentrate on large companies left out of reconciliation. However, we must use confirmed data to select companies to be reconciled.

N. Dorjdari: I have a proposal for Mr Sumiya. The Mineral Resources Authority has information on license holders and the EITI has information both on companies that submit EITI reports and on government agencies. With all these data, we should be able to check: are these 500 companies really non-operational or did they not pay due taxes and fees? This should be included in the report.

D. Damba: Our information is that there are over 400 companies actively working in the mining sector. It is true that some may be left out, so we must check. Most exploration companies make no large profit as they incur huge costs and donate to local administrations. We also have issues relating to companies that raise funds abroad.

Chagnaadorj: Gatsuurt is one of our largest companies. Do these companies plant crops when they pay land fees? Also, the report gives companies that claim to have made payments which the government denies receiving. Why?

Mendbayar: Land fees are reported as a bulk amount. It is impossible to distinguish which part is a fee for mining operations and which is a fee for planting. Like Gatsuurt, we asked Selenge aimag administration for clarification; they claimed to have received no land fees, while the company showed payment documentation; that was the reason for the discrepancy.

N. Bayarsaihan: The Ulaanbaatar Audit Corporation has considerable experience in EITI reconciliation. Have you observed any change in attitudes of government and companies during reconciliation? Also, a question from Tsolmon. This says 58 non-EITI reporting companies were included in the audit reconciliation, resulting in large discrepancies. What did you do to get reports from these 58 companies and what consequences will be imposed on them?

B. Osorgarav: Compared to the reconciliation four years ago, we have a much improved understanding. One large difficulty is that mining company accountants changed very often. It complicates our work when they tell us that the previous accountant did not formally transfer his/her work, or they just don't know stuff. The 58 companies included in this year's reconciliation knew nothing at all about EITI reconciliation. Companies that had previously been reconciled knew much more.

B. Mendbayar: Government agency involvement with the EITI is quite good. This year, the structure of the Labor and Welfare Service Agency had changed, and data access was relatively hard as they had no designated officer. Generally, attitudes are improving.

D. Damba: How did your auditors work in the reconciliation? In particular, how many staff were involved? How much did it cost? Over what period? Will you be able yourselves to do the audit reconciliation if there are more companies?

B. Osorgarav: The contract was signed on 6 July 2012. The reconciliation work started on 6 August and took three months. Our company was not alone for the task; we worked with the UK Hart Noirs group. Basically, our 12 staff worked almost day and night for the last month. We worked in 21 aimags, over 120 soums and about 20 government agencies. If there are unresolved issues with an agency, we have to refer as often as necessary.

Sh. Tsolmon: As to taking action against the 58 companies, the Secretariat does not have the legal power to do so. We present the problem to the MSWG and National Council and they make decisions and recommendations. The General Agency for Specialized Inspection imposes sanctions.

L. Gansuh: What sanctions have been imposed so far?

Sh. Tsolmon: Legal fines of MNT 1-2 million.

L. Gansuh: Any more questions? If not, has anyone comments or proposals?

E. Sumiya: First, comments and explanations on unresolved and initial discrepancies in the reconciliation report must be clear. The public will read the report, so please concentrate on making it

as clear as possible. Second, concerning unresolved discrepancies, I suggest we get formal documents signed by the General Agency for Social Insurance, Labor and Welfare Service Agency, General Taxation Department and Mineral Resources Authority. We will impose penalties on these government agencies, so the situation must be evidenced. Third, Hart Noirs CEO Chris Noirs said at the previous MSWG meeting, "The National Audit Office said that government revenue from taxes and fees from the mining sector in 2011 was MNT 1.2 trillion." Our report says the taxes and fees paid by 200 companies totaled MNT 2.1 trillion. I ask MSWG members to sort out such discrepancies.

N. Dorjdari: Page 14 of the report shows the discrepancies disaggregated by company and type of tax. In the same way, the final report should show discrepancies in detail; this is important. Mr Sumiya said earlier that the report must be clear and understandable for ordinary people. Finally, Auditor Chris Noirs made an interesting recommendation at our previous meeting. He said, "Total revenue was MNT 1.8 trillion, and here is the discrepancy - now you don't pay attention to figures, but pay attention to what this MNT 1.8 trillion is spent for." It is your right as an independent auditor what recommendations you give us. But such conclusions in the final report would be a deviation of the overall concept of our PWYP Coalition.

N. Bayarsaihan: Unresolved discrepancies are all expressed in monetary units. They must also be expressed in percentages of the overall amount. I also have a comment on conclusions and recommendations. Yesterday, an Open Society Forum consultation on the 2013 government budget was held at the Finance Ministry, reporting mining sector revenue as MNT 1.2 trillion. The recommendations should say that the Finance Ministry should use our report to plan budget revenues for the next year.

D. Damba: The report shows companies claiming payments of reported amounts, while the government claims non-receipt, resulting in discrepancies. It is obvious that companies would never report unpaid amounts as paid, because they would get into trouble. The issues are at the aimag and soums. We must devote attention to not repeating these events. Reconciliation covers a broad field and verifying data takes intensive labor; so we need to improve auditor capacity or use several audit companies for the overall reconciliation.

L. Gansuh: We discussed the draft report once before. The Ulaanbaatar Audit Corporation was supposed to present the report in early November, but it was postponed till today. So let's include all your comments. First, the leaders of the three stakeholders must do more work on the final report. After revision, Tsolmon and all three stakeholders must sign off and present it to the National Council.

I warned you at the first meeting that we will go all-out for improved performance of the initiative. It is not perfect, but improving reporting is a headache for the international level. We must maintain the current level of achievement we have reached.

We plan to convene a National Council meeting before 1 December. Printing the report would be a big job, so please copy the main report and the sub-national report onto a CD, to save time and cost.

As well as the presentation, the Ulaanbaatar Audit Corporation should prepare a brief conclusion and list of issues needing resolution, a very brief summary, for presentation to the National Council.

We probably won't be able to get comments/explanations from government agencies on unresolved discrepancies before the National Council meeting, so, auditors, please make your comments and explanations why discrepancies occurred and in relation to which agency.

Second, 2012 reconciliation companies must be named by the end of the year and the companies notified as early as possible. And several members have asked: what are we doing with this issue of raising finance from the exchanges?

Sh. Tsolmon: Project transparency is being discussed internationally. This too needs study.

N. Dorjdari: The issue of raising finance from exchanges concerns not only Mongolia, but is also being discussed internationally. Batjargal has made a good study on this.

L. Gansuh: OK, the MSWG will look into it, ask Batjargal to share his information, and present our findings to Parliament and the International EITI Board, with suggestions. That concludes the first agenda item.

RESOLVED to: 1. Support the Mongolia EITI 6th reconciliation report (2012); include members' comments; and assign leaders of the three stakeholders and the Secretariat Coordinator to revise, sign and submit the final version to the National Council before 1 December 2012.

2. Permit transfer of 60% of the agreed payment to the consortium of Hart Noirs (UK) and Ulaanbaatar Audit LLC (Mongolia) for reconciliation of the 6th Mongolia EITI reports.

3. Assign the Secretariat to list companies to be reconciled for the 2012 Mongolian EITI report and send notifications of the selection.

II. TOPIC: PWYP Coalition proposal on amendments to reporting templates

N. Dorjdari: The PWYP Coalition studied potential changes to EITI reporting templates, particularly the removal of some taxes and fees. We asked several companies, the General Taxation Department and the Customs Agency whether reporting of these taxes and fees is difficult. They all replied that there were no difficulties. The key reason for problems is that various taxes and fees fall due in the fiscal year, and they sometimes find it hard to locate the hard copy of primary financial documents to submit to auditors. Otherwise, they say there are no problems in reporting and for accounting systems. We understand that reports must cover as many taxes and fees as possible. But we must allow reconcilers to pass over small amounts of taxes and fees. We think we can do that. For instance, the absence of tracking of identified discrepancies in the initial reconciliation report is less than 5%.

E. Sumiya: The Budget Law comes into effect on 1 January 2013. It bans donations to government agencies except educational, health and cultural organizations. If we raise the reconciliation audit threshold from MNT 10,000 to MNT 100,000, auditors will not have to chase down every single transaction.

L. Gansuh: Let's consider the proposals from the PWYP coalition one by one. Fuel tax (gasoline and diesel) is only paid by Erdenet and Petro China Daqin Tamsag, as they import fuel themselves; so we have already removed it. If Oyu Tolgoi is liable for a greater amount of this type of tax in the future, let's keep it in the template.

Windfall tax: Some taxes may be paid retrospectively, so let's keep it in the Other section.

Stamp duty for the licenses under the Nuclear Energy Law. **The** coalition has suggested keeping these, rather than removing them as we proposed. But, a stamp duty is a fee. Let's not go after the small stuff. We have been reporting for 6 years. Let's focus on key items. This is removed, we hope that you will understand.

The coalition also proposes to stay fines. We left it before, why did you think it was removed?

N. Bayarsaihan: We were working on Ulaanbaatar Audit's first draft.

L. Gansuh: The coalition also resists removing vehicle tax from templates. It is reported that Oyu Tolgoi, with the most vehicles, paid MNT 12 million. Why do we need it on the template?

H. Lhamaa: Mining companies may outsource other companies for transport, so pay little of this tax.

D. Sengelmaa: Mining companies import expensive mining machinery, which is insured in and re-insured internationally.

L. Gansuh: OK, let's do this way. If you want to keep this tax in the template, give us ideas on how to increase taxes and fees from the large trucks, which only pay MNT 50,000; or why do we need to put this in the EITI report?

N. Bayarsaihan: The tax may look small in the overall reconciliation report, but it is large in a soum level report.

L. Gansuh: OK, accepted. You also asked to keep the Other section. Agreed. The fee for using firewood from forest; you want this in the template. It is not a royalty, so it should be removed.

L. Otgontsetseg: It is an issue in local areas. Mining companies collect wood. We can find out which company use wood, and talk about consequences.

L. Gansuh: I am very well aware of it. I could argue with you about it for hours. Only two mining companies have permission to collect firewood. The other companies must buy wood if they need it. The amount this fee raised in 2011 was only MNT 1,200,000, which is only 0.000001% of the total payment. Why do we need this?

N. Bayarsaihan: As long as only two companies pay the fee, let it remain in the report, so there is no discrepancy to make problems.

L. Gansuh: You are trying to keep it because you proposed it. Look at the situation with a robust mind. The law says that mining companies must not use wood direct from the forest, they must buy it. You need to work on enforcement of the law, but this fee will be removed. Fee for permission to use commonly distributed minerals: let's remove it. Stamp fee paid to local administration. Removed. Donations to other government agencies, we agreed to remove, but you ask not to. Let this stay.

N. Dorjdari: I have one proposal. Once again, payments are being removed. But companies tell us they are no problem to report. The reporting templates basically have two sections: obligatory and voluntary. Why don't we shift these low payments to the voluntary section to open reporting possibilities for companies? Also, main data and sales amounts are not filled out completely. We need to look into this, too.

L. Gansuh: OK, all removed taxes, fees and charges are shifted to the Voluntary Reporting section. That concludes the second agenda item.

RESOLVED to: 1. Thank civil society for active participation in modifying reporting templates.

2. Advise MSWG to modify EITI reporting templates and include MSWG members' comments; get National Council permission to use the templates as pilot in 2013.

III. TOPIC: Draft regulations for MSWG

E. Sumiya: There were several demands to amend the existing regulation. We have been complying with a regulation that was approved 4 January 2007. Since then, international rules have been modified significantly. EITI MSWG changed to tri-partite and the membership changed. There is also a need to promote ourselves to the public, and to increase participation and responsibilities of parties. Therefore we offer updated rules for MSWG. We have always met in these rooms; the proposed regulation offers options such as e-meetings and how to document (presentation attached).

L. Gansuh: Do you have any questions?

D. Tserenjav: This Secretariat: is that the one that Tsolmon coordinates, or a different one? We understand our existing Secretariat, but this document says MSWG Secretariat. Are they different?

L. Gansuh: No. It must be a mistake. Correct it.

N. Dorjdari: If the MSWG does not agree and must vote, how will this be done? Also, we must allow equal representation of the three stakeholders on every sub-committee.

L. Gansuh: We need to add that parties will vote if there is no consensus, and all shall comply with decisions approved by a vote. We should also add that a session can defer a decision on a topic once.

N. Dorjdari: I have one comment. We should number MSWG meetings; I don't know if this needs to be in the regulation. And we have an EITI logo, which MSWG should use on all material.

E. Sumiya: Let's put some provisions on the logo in the Other section.

N. Bayarsaihan: How will disputes be resolved?

L. Gansuh: If MSWG members discuss and vote, we will definitely have disputes. Requests or challenges may be notified to the Secretariat. As to agenda items, we ask MSWG to vote on whether to discuss or not. Include this in the regulation.

D. Tserenjav: It is usual for MSWG members to send a representative. How can we regulate this?

L. Gansuh: As with all government agencies, busy senior managers may send a representative to get information. However, members must themselves participate in decision-making meetings. That concludes today's meeting.

RESOLVED to: 1. Approve the new draft regulation of EITI MSWG with inclusion of EITI MSWG members' comments.

2. Assign MSWG Secretary and leaders of each stakeholder group to comply with regulation of EITI MSWG.

3. Void the MSWG regulation approved by MSWG meeting of 4 January 2007.

MSWG Meeting finished at 5.10 pm.

Meeting minutes reviewed by:

L. Gansuh (Senior Prime Ministerial Advisor, MSWG Chair)

Meeting minutes taken by:

B. Delgermaa (EITI Secretariat Communications Officer)