

**Minutes of 16<sup>th</sup> Meeting of Mongolia Extractive Industries Transparency Initiative National Council**  
**21 December 2017**

National Council meeting started at 3 pm, on 21 December 2017, in the “Local Governance Hall” of the State House.

Participants to the National Council meeting: B.Enkh-Amgalan, Senior Advisor to Prime Minister, G.Tuvdendorj, Director General of Accounting Department, Ministry of Finance (representing Minister of Finance); D.Damba, Senior Officer of Mining Policy Department, Ministry of Mining (representing Minister of Mining and Heavy Industry); B.Saran, Senior Officer of Natural Resource Management Department of Ministry of Environment and Tourism (representing Minister of Environment and Tourism); A.Ariunzaya, Chair of National Statistics Office; B.Ulzii, Officer of Strategic Policy Department, National Audit Office (representing D.Hurelbaatar, National Auditor General); T.Bayarhuu, Officer of Enlightenment and Prevention Department, Independent Agency Against Corruption; L.Terbish, Officer of Enlightenment and Prevention Department, Independent Agency Against Corruption; E.Batjargal, Governor of Tuv Aimag; D.Enhbold, CEO, Mongolian National Mining Association; D.Galbaatar, Deputy Chair, Economics and Marketing Division, Erdenet Mining Corporation; M.Boldbaatar, Senior Officer, MongolRosTsvetmet LLC; S.Enhtuya, CEO, Monpolimet Group LLC; G.battsengel, CEO, Energy Resources; B.Sugarmaa, Director for Government Relations and Approval, Energy Resources; T.Munhbat, Senior Cooperation Officer, Oyu Tolgoi LLC (representing Andrew Woodley, CEO of Oyu Tolgoi LLC); N.Bolormaa, Chief Economist, PetroChina Daqin Tamsag LLC; D.Erdenechimeg, Coordinator of PWYP Coalition (representing P.Erdenejargal, CEO of open Society Forum); G.Urantsooj, Head of Human Rights and Development Center NGO; B.Bayarsaikhan, Head of Steps without Boundaries NGO; N.Narantsetseg, Head of Baigal Ekhyim Avral NGO; B.Bayarmaa, Owners of Khuvsugul Lake NGO; D.Tserenjav, Head of Transparency Foundation; B.Boldbaatar, Head of My Mongolia-Motherland NGO; and Yu.Delgermaa, Board member of Mongolian Environmental Civil Council. Of 30 members of EITI National Council, 23 were present with attendance rate of 76.6%.

Also present: Mark Ebert, Partner of KPMG Audit Mongolia and KPMG Audit France Consortium; G.Soyolmaa, CEO KPMG Audit; Javkhlan, Auditor, KPMG Mongolia; Gandul, Officer, Cabinet Secretariat of the Government of Mongolia; Tserenjurmend, Expert, Cabinet Secretariat of the Government of Mongolia; J.Battsengel, Tax Inspector, General Department of Taxation; Sh.Tsolmon, Coordinator of EITI Mongolia Secretariat; B.Delgermaa, Communication Officer, EITI Mongolia Secretariat; A.Odontungalag, Finance Officer, EITI Mongolia Secretariat; and G.Ganbat, IT Consultant, EITI Mongolia Secretariat.

B.Enkh-Amgalan, B.Enkh-Amgalan, Senior Advisor to Prime Minister and Secretary of EITI National Council, chaired the EITI National Council meeting #16.

B.Enkh-Amgalan: Good afternoon to you all. Prime Minister is busy, so he is not able to participate in this meeting, so I will chair this meeting of Mongolia EITI National Council. Government of Mongolia follows a policy that mining sector should be responsible, fair,

transparent and correct, In addition, mining sector must be safe and sound to environment. In his speech, Prime Minister pledged to make the licensing process fair and free from any corruption, and said any irresponsible act will be responded stringently. This will be the overall direction of the Prime Minister and Government of Mongolia.

Meeting started after the agenda is presented according to the procedure.

B.Enkh-Amgalan: Now, according to the agenda, G.Soyolmaa, CEO of KPMG Audit, will present the findings on EITI Mongolia 2016 reconciliation.

**1. TOPIC DISCUSSED: Discussion/revision of EITI Mongolia 2016 report (11<sup>th</sup> report) and approval**

G.Soyolmaa: Good afternoon, to the members of the National Council and Mr Enkh-Amgalan, Senior Advisor to Prime Minister. Our company completed the reconciliation of 2016 EITI report, which is 11<sup>th</sup> EITI Mongolia report, in partnership with our KPMG France, and here we are for presenting and delivering the final report. Representing KPMG, I, CEO of KPMG Mongolia, and our partner in France Mark Eberst, and Mongolia partner Javkhlan, are here.

My presentation will be split into three parts; first the findings from the reconciliation, second on how we considered the international standards in our report, and third recommendations.

When we reconciled the EITI data, first we set the materiality threshold as agreed with the MSWG. Also, in response to request from the MSWG, we set two different thresholds; national level and local level. For the reconciliation, we selected the companies that paid more than MNT 50 million taxes and payments for the national level reconciliation and companies that paid more than MNT 30 million taxes and payments for the local level reconciliation. Government reported that it received taxes, fees and payments from 2079 companies in 2016. Using the risks based methodology and considering the amounts and data reported by companies, particularly the amounts of taxes received from companies, we selected highly risky 213 companies that exceeded the threshold for reconciliation. Taxes and payments made by these 213 companies accounted for 95.6% of all government revenues from the extractive sector. For the first EITI report, Government reported that it received MNT 1,16 trillion taxes and payments from companies while companies reported they paid MNT 1,06 trillion taxes and payments, which resulted in MNT 105 billion discrepancy. Then, we sent templates for additional data to the government agencies and companies and collected more in depth data, and MNT 90 million discrepancies was clarified and reconciled, and final remaining discrepancy became MNT 74 million. When we checked the historical data on the unresolved/unclarified discrepancies, it was MNT 581 million in 2014 and MNT 112 million in 2015, respectively. As opposed to previous years, this year we have MNT 74 million discrepancy.

The key and common reasons for we have discrepancies in the reconciliation is that when the companies and government use different methodologies in converting in kind donations to monetary units, some companies simply did not submit their EITI data considering they

have no legal obligation to submit data, and aimags and districts were not able to provide adequate data even if we demanded them for data. Companies did not report to the E-reporting system, sometimes they reports incorrect (more) amounts, or reported certain payments for incorrect categories, returned payment were not adjusted in the company report, reported the payment made on behalf of other company, reported net amounts, reported last year's payment for this year, and reported payments and taxes not relevant to extractive operations. Then we reconciled the data from 15 companies whose payments generate the most revenues for the government revenue stream. They include Oyu Tolgoi generating 36% of government revenues from extractive sector, Erdenet 16%, Petro China 14%, as such these companies' taxes and payment accounted for 86% of government revenues from extractive sector. In terms of all revenue streams, royalties accounted for 24% of all revenues, corporate income taxes accounted for 21% and oil revenues accounted for 12% of government revenues. It is brief presentations on findings of our reconciliation work and more in depth presentation was made earlier at the MSWG. Next part is that we dedicated a separate chapter for the international validation and its findings. International EITI made validation on EITI, its compliance with international standards, which was approved in 2016, and reported the findings in January 2017. Next validation is planned to take place in January 2018. In our report, we studied how Mongolia complies with EITI standards, and identified some findings. In our report, we highlighted the areas with red showing what actions were taken for the areas that Mongolia was evaluated as insufficient. For instance, license registry and contracts, Mongolia was found to have made certain progress after the validation. All these findings are included in Chapter 5 of the report. For licenses issued and transferred in 2016, non-compliance with laws and regulations were covered, and license application dates of 19 companies out of reconciled 213 are included in the report. These companies are the companies that take 77% of all revenues. Also, coordinates for the oil fields with PSAs were included. Also, Mongolia has insufficient performance on the state participation, and we included relevant information in sections 5.4.2-5.4.4 of the report. For this data, we organized meetings with Erdenes Mongol and Agency for Policy and Coordination of State Property, and met each SOE one by one. Following recommendations on inserting the retained earnings, investment rules and practices, the relevant amounts were included in the report. Government shares, changes in government ownership and quasi-fiscal expenditures were also included in the report according to the recommendations. Also, we checked the transactions made by SOEs and included the relevant data in section 5.4.5. Whilst, section 3.3.4 contained the list of companies that failed to send data to EITI, just for information. When the quality of data was evaluated, 14 companies out of 213 had good quality, 34 had fair quality and 165 had poor quality.

AS a result of reconciliation of 2016 EITI data, we give you the following recommendations: work with National Audit Office on government data assurance; develop a Work Plan for raising awareness of government agencies that report to EITI on cooperation and get National Council approve the plan; organize training for the SOEs in the EITI standards and develop handbooks to build capacity of SOEs; modify the E-Reporting system that companies report VAT amount separately by recipient, Customs Department or Tax Department and VAT payer companies report amount separately; at the government level, segregate the revenues from extractive sector and other types of businesses and enforce the relevant regulations accordingly; improve the cadaster database and license

information transparency in order to enable the community to have access to data required by EITI standard; National Council and Ministry of Mining work together to disclose PSAs and consider about separating the revenues streams in order to disclose the revenue streams at the project level. In addition, MSWG also provided the following recommendations; impose stringent responsibilities to companies that don't submit EITI report, don't cooperate with Independent Administrator or not disclosing the audited financial statements; improve the implementation of Government of Mongolia resolution # 151 "Regulation for artisanal mining" for the formal artisanal miners; and improve the implementation of EITI international standards on contract transparency and establish necessary legal environment. (Presentation attached) .

B.Enkh-Amgalan: Thank you, now I open floor for comments and recommendations in relation to the EITI reconciliation report.

N.Bayarsaikhan: Thank you. There are cases that SOEs have established many daughter companies. U understood that you included the data on the SOEs as a separate chapter in the report. Here it says government controls 51% of stake in company Mon Czech Uranium, is it possible to find out and disclose who owns the remaining 41%? In terms of contract transparency, you gave recommendations on improving the legal environment. What exactly do you mean "legal environment"?

Mark Ebert: When we collected data on the other companies that SOEs own, we asked them to give information on the stake that government owns, so the next year's report must include the other owners sharing stake in companies that SOEs have stake. In terms of your second question, it is not a recommendation from us, it is recommendation included in response to request from your side.

D.Erdenechimeg: Thanks to the administrators for the report. During the MDWG meeting, which was held in November, we gave several comments, and it looks that the administrators acted on the comments. At the MSWG, we talked about General Agency for Specialized Inspection imposing penalties to companies that did not produce EITI reports and agreed to include information on this in the reconciliation report. Why this data is not included? You say that the report is prepared in English and translated into Mongolian and English version would prevail if there are disputes between languages. As opposed to the first version presented at the MSWG meeting, the translation has improved, but errors can still happen. We also need to consider for whom we are preparing the report. Prepare in English for sending to international EITI or prepare in English for Mongolian citizens? This is an issue we have been talking repeatedly. So, the National Council must discuss it and give guidance to the Independent Administrator. I agree that the recommendations are general. During the presentation at the MSWG, administrator proposed a recommendation to report in more in-depth, by projects, but this version does not have this recommendation. How can you remove a recommendation when you are unable to give more detailed recommendation? International Secretariat advises to start the reporting by project step by step starting from potential taxes and payments such as royalties, license fee and payment to local government, but agrees that not all can be reported by projects. At MSWG we asked to include this as recommendation, but it is taken out. Next issue is that the conclusion on PSA, which is Chapter 5, is incorrect. It says it is now transparent resulting

from changes in the template. But we wanted to make conclusion that the new law removed the confidentiality but it is not enforced.

B.Enkh-Amgalan: Any more question or comments? The report shows the list of companies that paid the highest amount of taxes and fees. This is an important indicator we should look at in the report. Companies like Oyu Tolgoi, Erdenet and Petro China paid the highest amount taxes and fees. Of course, each company has problem, so we will work on getting this issues fixed. Will try to reach consensus and will regulate the issues according to law.

Now, please answer. We have more to do with resolving the financial issues.

T.Munhbat: At the MSWG we talked about recommending to leave part of the taxes paid by the company to the relevant soum, so do the recommendations include about it? It would be better off to include in the recommendation.

J.Batjargal: When I look at the report, it looks like reconciliation of financial statement. Mongolia has a law on accounting, so it seems that we don't need to get a foreign entity to make audits. Whilst, it would be good to have administrators on environmental assessment and analyses. Companies working in the local areas are not registered in the respective soum, while large companies are registered at the general Department of Taxation. Companies pay only water and land feed to the local government, so the registration issue must be resolved. In rural areas, such as Zaamar, a company produces significant amount of gold, but it is added to the production of a district in Ulaanbaatar. That is how the financial statement indicate, so there is a problem with registration. Also, we need to have benchmark to control the costs and values of the product. Otherwise, companies tend to increase their costs. Part of the income must remain in the local soum; if not the local area is not developing because they don't have revenues except part of the royalties. Suggest these should be incorporated into the report and propose them as recommendations.

B.Enkh-Amgalan: Thank you, as long as we joined the international initiative, we have to produce our EITI report. According to our obligations taken for the international community, we convene today and discuss the findings of the report. Government fulfills its duty, allocates money in the budget and get the EITK report reconciled.

D.Galbaatar: EITI Mongolia definitely complies with international standards, but there are space for improvement. Many issues are not reflected in the reports. Since Erdenet was established, we have been financing lots of social institutions such as sports center, culture center, children's camp and so on, totaling more than 10. Company provides more than MNT 70 billion a year for financing those social institutions and pay MNT 16 billion taxes to the budget of the municipality. They must be included in the company social responsibility report. Second, is it correct to finance such social structures or not? We are a business entity, so profit is the key thing for us. If there is a law that allocates part of the royalties to the local government, we would pay only the taxes and the city of Erdenet would have adequate number of kindergartens and schools. Then the government must report for that it spent the taxes we paid; this would be realistic. Of we are trying to bring international knowledge and experiences, we must apply them correctly. Another example, now there is a practice to calculate the fixed assets depreciation and amortization, and internationally,

there are more types. For instance, natural resources depreciation, which OT uses. Today, Mongolia is going to make Law on Natural Resources, this type of depreciation must be stated in this law. Government invested and identified reserves, then why the government must own 51% of stake? Why not 75 or 10%? Of we appraise our reserves according to world standard, the reserve would be included as part of the chapter fund. Prime Minister is talking about value of natural resources. In addition, intellectual property is not valued. Rio gets payment for managing OT, get 6% of investment raised. Conversely, for Erdenet, feasibility study for 16 million tonnes of copper ore processing, which was developed by more than 400 institutions in Russia, then we updated this to 32 million tonnes, but this intellectual property is never valued. If we manage to sort them out, mining sector could give whatever we want. This year, Erdenet will pay MNT 575 billion to the national and local government, while Erdenet accounts for 93% of industrial output of Orkhon aimag and pay more than 90% of provincial budget revenues. We talked to the representative of Budget Standing Committee on allocation of revenues 10% to soum budget and 20% to aimag budget by amending the Minerals Law. In terms of corporate governance, there are many issues. First of all we must comply with 2 law and a standard. We initiated Law on Extractive Sector Transparency, but don't know where it is stuck. If we manage to get this law adopted, we can regulate two large areas; reporting and transparency. Also there is another standard made by UN, called Global Compact, which sets forth equality fairness and accountability in business, so this standard must also be introduced. Looks like the Mining Law is going to be made soon, but the draft contains some impossible provisions. We need to hire the experts because we have many skilled and education people. Unless we compete with foreigners with our knowledge and get everything they invent, there will be no ownership; nothing will be ours. EITI is progressing since 2005 relatively well and well-structured. It created good model and benchmark in terms of multi stakeholder approach and consultations among the government, industry and civil society. In Mongolia, there is no such tripartite structure, likely except the trade union working with tripartite social partners. As a researcher, I think we must raise public awareness on EITI and its outcomes. Now we are waiting law on extractive sector transparency and mining law. These laws need to be made correctly in relation to the existing tax environment. In Mongolia, tax laws have been amended quite frequently. Part of the mining revenues should be shared with local areas. During the Cabinet of Prime Minister Enkhbaatar, government allocated part of personal income taxes and royalties to the local administration. Today, city Erdenet is dependent on Erdenet company, gets fresh water from the mine and discharges water to the mine's treatment plant. If 30% of taxes are allocated to the local government, the city will develop, then these social institutions' financing could be shifted to the municipality. For example royalties, of course we are ready to pay, but the royalty is not calculated based in contract price, instead it is based on Australian benchmark price, which results in burden and bankruptcy of producers. Incumbent government is working to fix these issues. So, I gave all my proposal to the Work Plan, altogether.

G.Soyolmaa: As long as the EITI standard is in English and the validation is made in English, we thought we must use the English as the main version to prevail. If some terminologies and names are troublesome, the English version would prevail. Obviously, we have been paying attention to the translation and its quality. We were not informed about the actions taken by the Specialized Inspection Department; that is why it is not included in the report. In terms of reporting by projects, we will re-check it and will provide some

recommendations. Please also consider the recommendations stated on page 133 of the report.

L.Bayarmaa: I have both a comment and a question. EITI reconciliation report contains information on a license that was issued to MonRosTsvetMet illegally. It is good, but the related conclusion is unclear. In other words, the report must say it was issued illegally. Also, it says some materials were missing in the license. If these materials were complete, would it be considered legal? Such unclear points must be corrected. Check the process that issues licenses in violation of law in the rural areas and give relevant recommendations. Licenses are issued illegally in Zaamar and Delegereh soums, which fuels huge dispute, so your recommendations must also highlight on this and recommend giving licenses according to law. In term of license date, the conclusion seems very interesting saying it is unclear exactly when 216 companies were issued license. The date is unclear; does it mean that these companies own land in Mongolian territory for good with no expiration? This could affect the national security. The names include Altan Dornod Mongol and MAK. When will the license dates of these companies be disclosed? National Council should work on this. Furthermore, the report lists the relevant laws; law on Water Use Fee was adopted 5 years ago, but it says no company paid water fee. The report must indicate why companies not paid the water use fee, maybe the Ministry of Environment has not made regulations etc. We pay huge amount to administrators, if such unimportant conclusions and recommendations are made, we don't even need such report and such many people should not spend their times discussing. Will National Council approve it or not; it is the issue we have today. Conclusions, recommendations and language of the report must be re-processed.

N.Bayarsaikhan: There are some government agencies and companies that did not submit any data and reports to the EITI at all. They include General Department of Customs and Ministry of Environment and Tourism. We talked about data from Ministry of Environment and Tourism at the MSWG, why doesn't the Ministry give that required data? We are seeking data on how many companies placed deposits for the environmental rehabilitation and how much funds were released from deposit, but not the bank account statement of the Ministry. Why is this happening every year? For 2015 EITI report, we sent a formal letter to Ministry asking for data, but the Ministry made us wait for over a month, finally refused to disclose data saying it was confidential. In 2016, Ministry just said there was no company that received their money from deposit. According to decree #A-04 of Minister of Environment and Tourism of 2014 says that the deposits by companies shall be disclosed and made transparent, but the Ministry does not follow this decree. How can we work with ministry and agency that is not giving any data, what sanctions/penalties we impose, and How the Cabinet must react on this failure? Prime Minister says he will support transparency, but the ministries act against; in this case how can we work together? So, I propose that the decision/resolution we make today should state what action and measures we take in this case. And I suggest that National Council does not approve the EITI reconciliation report.

B.Enkh-Amgalan: So, we will get the comments incorporated in the report, then convene again soon?

J.Battsengel: Good afternoon. I worked closely with KPMG Audit on this reconciliation. KPMG started with MNT 1.1 trillion discrepancy, checked all data and finally reduced the discrepancies to MNT 74 million, which is not yet explained. I think the administrator made what it should have been made. Comments raised at the MSWG meeting were incorporated in the final report, as some members say, which I agree with. For the data on some companies that did not give data, it is reflected in the report as is. This was an issue we have had in the past, not only this year. I think this year we worked hard by checking each and every transaction one by one and worked accurately and meticulously. So, I propose to approve the report in principle.

B.Enkh-Amgalan: So, a lot has been made, hope that the tax specialist knows the key things.

N.Bayarsaikhan: The scope of today's meeting is limited by only discussing the report and approving the plan. But we have no time to discuss on policy issues on improving mining governance, ensuring transparency and increasing citizens' engagement. Therefore I suggest the National Council to convene no later than the end of Quarter One 2018. Mr Batjargal and Munjbat are also talking about policy issues.

N.Saran: In the past, we assigned the administrators to improve the report, and we can see they worked a lot for the improvement. We could push the company again, but that is almost all that KPMG can provide to us. Therefore, we need to cooperate with law and environment professionals to improve the reports from these aspects. In general, the report gives us the background and foundation, so I suggest we assign the auditors to improve the wording and terminologies, and accept the report.

L.Tuvdendorj: KPMG is one of the largest financial auditors in the world. In Mongolia, there are four large companies that work in Mongolia and complying with international accounting standards, one of which is KPMG. So, I believe in KPMG and accept the findings, especially the financials. We should not push all the issues to the administrators. There are separate agencies and companies doing environmental audit and mining audit. Furthermore, we need to additionally hire these companies for the reconciliation. We should not demand the administrators to get involved in issues that are not relevant to them and refuse from accepting the report, it is inappropriate. I agree that we must accept the financial reconciliation.

A.Ariunzaya: When we hear the suggestion and proposals, the part with conclusions has some problems. Because, the report is used in the future at the policy level, so the recommendations must be tangible, valid, but it is weak and blunt. Here is a question, as an auditor, is KPMG required to make conclusions with political views? Or, should the National Council make policy conclusion based on the weaknesses that KPMG identified? We need to select one of these options, then based on selection, we need to decide whether we approve the report today or later.

G.Battsengel: I agree with National Statistics Office. Auditors found that dates of 40 licenses are unknown. Now, the government and Mineral Resources Authority must work on this findings. So, I think we must approve the report made by auditors.



A.Ariunzaya: Having a working group and then get the necessary recommendations are included in the report would be appropriate. Think a working group with 5 members would do.

J.Batjargal: What is the exact ToR for the reconciliation? It must have a clear ToR and demand the quality accordingly. That is why I disagree the idea of accepting the report in principle, then we work to improve the make recommendations. We must get all required work done completely by the contractor. Clear recommendations and conclusion, then it is our duty, the government, to take follow up actions accordingly.

Yu.Delgermaa: EITI is a new structure and I understand that the reconciler carries out a financial audit. Some members said environmental legislations are not enforced and implemented, so I propose the recommendations include some points on the environmental side.

D.Erdenechimeg: This is not just a financial reports audit. People talk their ideas and concerns because the key data has some problems. What amount have we spent for this work? Considering such big amount, you should not just say English version prevails because of potential errors in translation. Think that there must be a team working behind it. We can have a working group to improve the recommendations, but who is going to pay the members? We are paying to the auditors, then is it appropriate to have another working group by incurring costs?

B.Enkh-Amgalan: Let's vote and support the report in principle, but the final report will be accepted after a working group reviews it. Please, vote. Let's have some experienced members in the working group.

Yu.Delgermaa: Auditors have weak capacity, but we should not do their work, we can cease the agreement..

D.Erdenechimeg: I suggest we give some support to auditors, improve the report, then a working group would finalize, then we should meet again after the working group review.

B.Enkh-Amgalan: Who want to work in the working group, voluntarily? No salary.

T.Bayarhuu: In this case, the overall concept of independent administration is going to be lost. If we have our working group and develop recommendation and conclusions, it means we are pushing our opinions to the administrators. From my side, I suggest we get assistance from some professionals on the report, the make it clear and understandable. Think they did the work according to the ToR, but our working group would affect the independent status of the administrators.

N.Bayarsaikhan: Auditors must push your people to work hard and effective, and improve the report. People in this room here today look like new, so it seems difficult for them to understand and reach agreement with members. So, the best idea is the National Council to meet again to discuss the final improved version of the report.

D.Galbaatar: What do you mean the companies that paid the highest amount of taxes? Such big amount of money is spent for this report, but it is not complete and not qualified to be submitted to the Government archive. So, improve the Mongolian language and translation of the report.

Sh.Tsolmon: Since the MSWG meeting discussing the report, administrators worked a lot to enhance the report. For instance, General Agency for Specialized Inspection informed that it imposed penalty to 10 companies, which was then passed to KPMG, as such we had some collaboration. The report was also submitted to the International Secretariat, and the response was the report has been improved significantly as opposed to the previous version, but the final conclusion not yet arrived. We must work according to the recommendations and respond to the conclusions. EITI made an agreement with KPMG in April, and worked on this report for several months. KPMG was selected through competition with other large auditors. We are satisfied with the result and think that we received the information and data we expected. So, let's endorse the report, but require the auditors to present the improved report followed by formal acceptance. We have many works waiting for us such as appointing a Bid Evaluation Committee for 2017 reconciliation before 10 January 2018. If we postpone the report, it will affect the subsequent work and their quality. So, in order to avoid any delays, we can approve it in principle, then ask the auditors to improve the report as requested by members and deliver the final version.

B.Enkh-Amgalan: Now, let's have voting. Those who agree with the report in principle, raise your hands. 14 ayes out of 22 members, so agreed on the report in principle. And, National Council assign the administrators to further improve the report as requested by members.

A.Ariunzaya: Auditors must review and improve the recommendations and translation of the report. We are impossible to demand the auditors to include this or exclude that. Recommendations and conclusions must have clear description about the legal basis, check and improve the report that it is in clear and understandable Mongolian language.

S.Enkhtuya: It is important that the report must be in good Mongolian language with good stylistics. Because it is a report that is publicized. If a badly written report is posted to the public, it will be bad not only to you, but also to us.

B.Enkh-Amgalan: Shall we agree that we will approve this report in principle and assign the administrators to submit the final improved report to the Secretariat before 15 January 2018?

J.Batjargal: When we say independent, we understand it incorrectly. When we hear some preliminary results of this report and give some recommendations, it is not considered as affecting the independence and impartiality. While, if a stakeholder pushes its opinion and views to the administrators and gets it included in the report, it could affect the independence; that is what I meant.

B.Enkh-Amgalan: So, 2016 reconciliation report is approved, and I will read out the draft resolution.

N.Bayarsaikhan: Every year, we talk about submitting the EITI report to the Budget Standing Committee of the Parliament, but we fail to do so. Therefore, I suggest that the final resolution from this meeting must state that the report shall be presented to the Standing Committees. Also, our resolution must state the actions we take in these agencies and companies that don't submit their data.

D.Erdenechimeg: Punishing is not important, but what we talk here never reach to the other parties and not converting into actions. A representative of Ministry of Environment and Tourism is always present at the meetings, but whatever we talk here is not passed to the Ministry; that is why we keep talking about it every year. So we must resolve such pressing issues.

B.Enkh-Amgalan: Let's present the report to the relevant Standing Committee. We are not an agency that is empowered to impose fines and penalties.

N.Bayarsaikhan: Prime Minister and the Cabinet says the government will be supportive to the extractive sector and it must be environmentally sound. That means we have a possibility to have a certain obligations reflected in the Agreement between the Chair of the Cabinet Secretariat and Ministry of Environment and Tourism on performance. Because Ministry of Environment and Tourism has not submitted any information and data for two consecutive years and we still cannot impose any binding responsibilities on the Ministry.

G.Urantsooj: As the Prime Minister serves as the Chair of the National Council and Minister of Mining works as a Deputy Chair of the National Council, would it be possible to discuss the report at the Cabinet meeting?

B.Enkh-Amgalan: Yes, I can take responsibility on this; however, it is impossible to have many people present at the Cabinet meeting.

N.Bayarsaikhan: We can have one or two representatives of the stakeholders.

B.Enkh-Amgalan: Thanks you, we must pay to the administrators before the end of the year, otherwise all the money left beyond the fiscal year, will be withdrawn.

N.Bayarsaikhan: I understand that we must pay to the administrators before the end of the year, agree to pay. KPG is a good company, but you need to think that you are working insufficiently on this project, so improve your performance and send us the good quality final deliverables. Think that I can not give be a trust next year.

B.Enkh-Amgalan: Let's move to the next topic, and I invite Sh.Tsolmon, Coordinator of EITI Secretariat to make presentations on the topic.

## **2. TOPIC DISCUSSED: Performance of Mongolia EITI 2017 Ation Plan and draft Actions Plan for 2018**

Sh.Tsolmon: Thanks you. I will make a brief presentation on the degree of performance of 2017 Action Plan and draft Action Plan for 2018. For 2017, we planned to carry out a total

of 75 actions, of which we have completed 54 so far with 74% of performance. MSWG met three times and sub-working groups met 2 times during the reporting period. Some larger achievement in 2017 include we organized a selection of audit consortium (independent administrator) and signed a contract with KPMG Audit in April 2017. KPMG presented its inception report in June and draft EITI report in November, respectively. Now, KPMG is presenting the final report to the National Council. 2016 EITI Mongolia report is finalized according to standards, which includes data from 213 extractive companies reconciled against the data from the government, and the findings are presented today. In addition, EITI Mongolia also organized activities for EITI reporting by the companies and government agencies for 2016, resulting in 1227 companies, 7 government agencies, 9 district and 115 aimag administrations submitting their EITI reports on payment and receipt of taxes, and other relevant data. As submitted by the Ministry of Finance, total revenue from the extractive sector was MNT 1.2 trillion. Moreover, we also worked on amendments to Government of Mongolia resolution #222 of 2012, which was formally adopted that Government of Mongolia fully recognizes the International EITI standards, requirements, chapter and protocols and agreed to discuss a draft law on BO disclosure at the Cabinet level no later than the end of 2017, and Government also decided to finance the subnational EITI council from public budget effective from 2019 fiscal year. In partnership with International EITI Secretariat, MSWG organized sub-working group meeting and a training on BO disclosure in September. Under the framework of “Roadmap 2020” plan, we also organized 9 discussions and dialogues, and developed the necessary definitions. Currently, Ministry of Mining and Heavy Industry has a Working Group, designated to develop the draft law for disclosure of beneficial owners. In cooperation with Erdenes Mongol SOE and KPMG Audit, we also provided training on EITI reporting to the state owned companies in 2016, in which representatives of more than 100 mining companies participated. For improving the subnational communication, we are implementing a pilot subnational communication project in selected 5 soums, including Yuruu soum of Selenge aimag, Zaamar soum of Tuv aimag, Bor-Undur soum of Khentii aimag, Gurvantes soum of Umnungobi aimag, and Delgerekh soum of Dornogobi aimag, with financing from EBRD. The progress of the pilot project is presented to the MSWG on frequent intervals and given comments and directions are incorporated into the project interventions. It is planned that the overall outcomes of this project will be presented in January 2018. We also started the online database on contract transparency, and signed MoU with Ministry of Mining and Heavy Industry and Open Society Forum, and posted 35 agreements in the online database. In addition, the database also contains relevant information and intro so that the local community receives information because it is important to focus on subnational activities in order to push the enforcement of Government of Mongolia policy on mineral resources sector and Government of Mongolia resolution # 222. In cooperation with National Development Authority, Mongolia EITI also organized a local planning workshop. For the contract disclosure and transparency, we established the online database, which was supported by Open Society Forum. EITI Secretariat, Ministry of Mining and Heavy Industry and open Society Forum signed a MoU and posted 3 mining sector agreements and contracts in the database. EITI Mongolia presented its activities on BO disclosure to Open Government Partnership, and get the BO disclosure reflected in the National Anti-Corruption Program. By working with National Development Authority, we also organized training on local planning, and with Press Institute of Mongolia a journalism training and with Mongolian Mining Journal capacity building training or journalists from 21 aimags.

Also, we have produced the Progress Report for Mongolia EITI, which needs to be discussed and approved by the National Council. The report was produced according to guidelines for the EITI compliant countries, and the draft report has been delivered to you.

For activities in the upcoming 2018, we have set four main goals, including [1] a full implementation of recommendations given by the International Validators and Independent administrator for 2016 reconciliation report, [2] producing EITI 2017 report, approval and dissemination, [3] promoting/advertising the impact and importance of EITI at national and subnational levels, enhancing collaboration, and [4] creating legal framework for BO disclosure and improving registry and information systems. Driven by these goals, we have developed an Action Plan for 2018, which contains 4 goals, 10 objectives and 37 actions, together with list of actions, outcomes, responsible parties, duration and time, cost estimations and sources of financing. Report on 2017 Action Plan performance and draft 2018 Action Plan was previously discussed at the MSWG and all comments and incorporated, so I request National Council members to review the report and the draft plan, give your comments and finalize.

B.Enkh-Amgalan: As long as we joined the international initiative, we have been producing our reports fulfilling our obligations. We must work according to the requirements from the financing agency. So, we must carry out some tangible and premium quality work. For the training and communication activities, we should support the civil society involvement and have their presence and involvement more and more. Next issue is that we also need to coordinate or fight against the illegal artisanal mining, because they are lawless and government legal actions cannot reach these people. They are small, so they maneuver quickly and disappear, and we cannot find them when we needed to impose responsibilities and penalties. What can we do with this problem? Now, I request you to give your comment in relation to the presentation.

Н.Наранцэцэг: Some actions, included in the 2017 Action Plan, were not performed, for instance contract disclosure that out of 200 companies, we have only 30 disclosed. When will be remaining contracts disclosed and will this work continue in 2018?

Sh.Tsolmon: All work that are not fully performed in 2017 will continue in 2018.

N.Bayarsaikhan: Does it mean that Action 3.3 was done? What does 300.0 mean?

Sh.Tsolmon: Ministry of Mining provided some information, so we consider this work is done. We had a Working Group on this.

B.Delgermaa: The column in the Plan contains the budget while the next column shows the performance. If money is spent, the resultant amount is in the column. That 300.0 means that MNT 300 000 was planned for this work, but it was made without any spending.

B.Bayarmaa: When we look at the performance part, we have nothing to do now, because we have almost 100% performance rate. If you look at the goals, they are huge. Here it says “Fully ensure transparency of SOEs” and next column says “done”, but the report indicates

only a few training was provided to the companies. Do we fully ensure transparency of SOEs just by organizing trainings? We must make it realistic.

B.Enkh-Amgalan: Lower the threshold and make the implementation realistic, correct.

Sh.Tsolmon: Performance was reported within the framework of the requirements in the EITI standards.

B.Bayarmaa: I understood, that means we must have realistic plan, then. Looks like Year 2018 plan was developed exactly the same way. A few training can never ensure full transparency. In 2017, we planned to disclose the dates of license application and issuance. However, the report says dates of more licenses held by more than 40 companies are still not transparent. This is clear sign of violation between our plan and reality. So, we must not make the same mistake and cheat ourselves. We want the plan includes the actions that we can achieve, also realistic. That is also what the consultants said. Actually, we must plan our activities in relation to the recommendations and conclusions in the report. And need to develop a realistic and measurable plan. We provided lots of trainings and distributed brochures, but they were just waste of resources and money. We keep providing trainings and delivering brochures, but the problems are not solved. Plan must be developed clear, realistic, achievable and measurable.

B.Enkh-Amgalan: I like what you said. We should not have a large goals and objectives like motto or slogan and small amount of implementation. Anyway, we don't need to negate what we have done in the past. Now, let's bring down the threshold and plan what we can achieve. Can we use simple terminologies to have better impact and outcomes? Or should we get stuck with this as is? Therefore, let's work on this 2018 plan today to improve it.

D.Erdenechimeg: This 2017 plan was not developed by Secretariat itself, but all sat together last year and endorsed it. I disagree with the idea of reducing/lowering the threshold for the plan. How can we have communication work without providing training? On contract transparency, Open Society Forum worked closer with the EITI, particularly on training and monitoring, it is worth mentioning.

B.Batjargal: When we talk about EITI, we must look at this initiative from the right angles. First of all, we must devote attention to licensing process. In 2015 and 2016, exploration licenses were disbursed without control. There was a case a some land was evicted, then 3000 hectares of land was given in replacement. Also, Ministry of Environment and Tourism retained the deposits for environmental rehabilitation for long time without release, then the companies just left the mined areas saying the government already has money to reclaim. Now, we start digging the tailings and reclaimed areas in order to get the reclamation made. So, we need to disclose all deposits for rehabilitation, if there is no company responsible for mining in certain areas, spend that deposit for the reclamation. If so, it would constitute a significant part of our work. In terms of taxes paid to the government, it will be disclosed and identified regardless of foreign auditors, as long as it is paid to the government. On the other hand, local administrations make social responsibility contract with companies, get some money for the local development and infrastructure; this must be disclosed and made transparent. However, this part is not disclosed, no data,

so we need to improve the registry, collect data and have a database, then report the expenditures. This year, the financing made by extractive companies in Tuv aimag was reconciled, which unveiled that companies provided MNT 580 million financing, but the receipt was MNT 401 million. In other words, we have MNT 180 million discrepancy, no evidence. Next issue is EITI says it is implementing pilot programs in 5 soums. If this project operates well and is spread to soums with mining companies and localized, it will have some impact.

G.Urantsooj: If you look at the plan, it seems that the work on license disclosure was made last year, and will be made again next year. If we already made the work of ensuring transparency last year, we must work this year on including it in the list of functions of the responsible government officers so that the license disclosure becomes a frequent and normal work at the agency, may be such system on the newly issued licenses. It seems that a responsible public officer must now have ownership and make it a day-to-day habit. Or should the EITI Secretariat keep being responsible with financing donors? Second, Road Map for disclosure of BOs by 2020 says it shall disclose the license holders. Now, the question is “Is having a license a crime? Why they keep undisclosed? To avoid from taxes? In this case it would be a crime, then do we really need to go after it trying to disclose? On the other hand, the plan says we will work with CEO and legal counsels. Would this be effective as the legal counsel signed confidentiality agreement? AS long as the land is the state property, then if the license holders don’t want to disclose BOs, would it be possible to terminate licenses and confiscate the land?” This seems to be a simple solution, so do we really need to work for this task. We plan to work till 2020 and budgeted 60- 70 thousand euros. This seems odd to me.

N.Bayarsaikhan: I propose adding a National Council meeting in the middle of the year, likely in June where we will discuss some policy issues. What we do in terms of artisanal miners. There are some panning gold for their livelihoods while there are some already established partnerships and already become employers. And there are some using heavy machinery and attacking to the licensed areas during the night. I propose we conduct some study on artisanal mining, develop draft policy and discuss it at the National Council meeting. Artisanal miners are everywhere, in Tuv aimag, in Bayanhongor aimag, in Selenge aimag? What can we do with them?

Some suggests to form a working group. Governor of Tuv aimag just said it that Government resolution #179 stated that aimag governor shall make agreement with companies working on strategically important mineral deposits and soum governor will make agreement on non-strategic deposits. For the existing 15 strategically important mineral deposits, aimag governors made agreements, so CSOs propose we do monitoring on the processes of these contracting.

Just a few minutes ago, we approved 2016 EITI reconciliation report, now let’s establish a working group to implement the recommendations of the EITI report, and get this reflected in our Work Plan.

Another are we have been weak is the approval of Law on Extractive Sector Transparency, so let’s discuss how we can ensure the legal framework in place. On the law, let’s again

form a Working Group, and make final decision and agree on potential solution at the next National Council meeting in the middle of the year. I propose to put these actions in the plan.

I also support the idea of more involvement of civil society; we would be ready to collaborate. In terms of trainings, there is a need to reflect them in our annual plan and continue, but need to think for whom. Particularly, those people working in the finance departments of companies and government financial officers, such as officers of Single Treasury and trainings must focus on them. Chairmen, high ranking officers and finance persons at the government agencies are frequently replace and changed, so we have immediate need to organize trainings. We should not get rid of trainings; instead we must keep providing trainings.

B.Enkh-Amgalan: Shall we approve the plan?

Yu.Delgermaa: In terms of communication and information outreach, we used to have such activities and we must continue, but in addition to trainings, we could produce stand alone TV program in order to provide information to the public and promote the activities of the initiative. Please, take this into account. Licensing process must be made transparent. It was informed that newly established Cabinet halted licensing. What about the licenses issued in the past? On these issues, we must work with the respective parties. We count on the new government that it will do lots of work, especially on the enforcement of environmental legislations. Ministry of Environment does not provide data, so the responsibilities must be imposed on the Ministry. Rather than talking about some ambitious big activities, we must start working on smaller issues that are achievable. In reality, if ministries with functions of enforcing legislation do their work, we don't need to be there quarreling with ninja miners. So, we are expecting the new Cabinet to take decisive measures. The public also expects it. Prime Minister is in the National Council, so I want his Senior Advisor to pass this information to him. IN general, I agree with the draft plan and that is what I can add.

D.Tserenjav: Then, we will need to have an entire chapter "Environmental Performance". If we keep adding ideas and proposals, it is endless, so must focus on key issues in principle; otherwise we have gone out of the scope of the issue.

B.Boldbaatar: Now, the Secretariat must activate its efforts on using online communication. Most rural areas have access to Internet, already 4G is there. Use FB as much as possible and provide adequate information, then we can even provide training through this way, and this will save on cost, I suppose.

B.Delgermaa: In the project soums, we have been operating FB communication active, producing soum newsletter and distributed the newsletters to herders during the Livestock Census campaign. AS such we have co0munication outreach for the target groups, but it might be invisible to use, in Ulaanbaatar. We will evaluate the project and will present the findings of the project end evaluation in January.

D.Galbaatar: During these days, lots of information is disclosed through the EITI. All data and information are posted into the website. However, there are two main issues. First,



eliminate the coinciding laws and have a clear regulation. It is often said that Government is the worst manager, but the effectiveness of government depends on the public officers. Due to economic crisis, Government and Agency for Policy and Coordination of the State Property made a resolution prohibiting the SOEs to give donations to individuals and foreign entities. And even government prohibited us to celebrate any holidays and festivities. On one side, this looks like restricting the social responsibility initiatives of SOEs, but Erdenet finances lots of social institutions, but this spending is not included in the EITI report. So my idea is that we must comply with standards and requirements of EITI in conformity of Mongolian legislations. We must have “take and leave” approach, which we take the necessary and beneficial and leave the unimportant ones. Due to conflicting interests, linkage between the community and companies are getting extinct. Local community and government blames companies for taking land and destroying pasture land. Therefore, the Community Development Agreement, which is set forth in the Minerals Law, must be effectively used to boost relations between these stakeholders. The current model agreement is limited, it cover a few areas, including jobs, infrastructure, and environment. Deputy Minister of Mining chairs the council, so we must develop good models for agreements. Also, it is better off to restore the provision in the former Law on Minerals stating the revenue sharing percentage. New Mining law must set forth provisions related to environmental rehabilitation, then could have legal regulation and clear research findings to define the policy goals. Must have experiences people in law, mining and governance to make a policy that s appropriate with the legal environment. If the policy is correct, everything will become structured and well ordered. As long as we choose to follow EITI path, we must have a standalone law on transparency. We will only succeed after we clearly define the route would travel along. What we have been discussing today is of more policy side rather than an Action Plan.

B.Terbish: I agree with the idea of training, but have a proposal on what target groups we must provide training. Independent Agency Against Corruption made a training in autumn of 2017 for the newly appointed local high ranking public officers. These people must be involved with these training sessions. If you select soums with mining production and with recent changes in administration, you can disseminate some information, and Enlightenment and Prevention Division of the Independent Agency Against Corruption is ready to collaborate. Action 5.1 in the 2018 Action Plan highlights PSAs, namely study the reasons on delay in disclosure of PSAa and consult on the level of transparency/disclosure, which is a huge task. The plan includes an action on PSA and its degree of transparency; thinks it is an important work. After this work, or following this work, would it be possible to disclose how many companies made PSA and how many of them fully performed their obligations. Our agency receives compliant that 70% of these companies don’t pay compensations or agreement was terminated etc. At the initial stage, we have collected some evidences proving this. In relation to PSA, we also must focus on the implementation of the agreement. Will the work on these issues be completed in 2018? Also, local administration and public officers don’t know about the PSA and even the company does not understand it. Therefore, include PSA as one module in the training and raise awareness of citizens and businesses on the importance of the PSAs.

B.Bayarmaa: The plan indicated some work on disclosure of oil sector contracts. Reconciliation report says the dates for licenses held by 261 companies were not found.

This could create a very dangerous situation. Unclear when the license was issued while the law enforcement is subject to dates of issuance. I have a suggestion on doing some work on transparency of licenses. From the draft plan, two points, create and incentive system and conduct a study, must be removed. We asked from external consultants and training facilitators, they said, “Obligate the disclosure by law, then impose penalties if not complied with”. We need to add a work on getting the Law on Mineral Resources Sector Transparency approved in the plan. Some trainings must be merged, and most of our money is spent for ads and information dissemination, not for finding good solutions.

D.Erdenechimeg: Everyone giving ideas and opinions, they talk about policy issues. We propose to change to motto in the plan to like “From reporting to solution” or similar motto. If a policy level decision is made, the situation will improve and citizens will become aware even without any ads and dedicated awareness raising. Other thing is that the plan does not include “radioactive materials sector”, it must be added. In terms of contract transparency, the efforts on disclosing other types of contracts are still insufficient. Despite, we have a MoU and doing some work, we managed to publicize only 35 contracts. In finding and posting the contracts/agreements, we encounter huge difficulties. Unless Ministry of Mining champions on this area, Secretariat and civil society have no enough power to make it happen.

N.Bayarsaikhan: I suggest to approve the plan in general, then to re-visit the budget afterwards. Because the recommendations in the EITI report is being released these day, I suggest to approve the overall budget sim, then make detailed allocations afterwards. Effective from 2019, subnational council will have their financing and budget, so we must to carry out some capacity building activities for the subnational councils, which will be responsible for spending.

B.Enh-Amgalan: So, bow I propose to approve the Action Plan by incorporating the ideas and proposals from the members. Please, those who agree on the draft resolution on the Action Plan, raise your hand.

### **3. TOPIC DISCUSSED: Draft Road Map for disclosure of beneficial ownership.**

D.Damba: Good afternoon all. As you know that a sub-working group for developing the Roadmap for BO disclosure was established, and I chaired this group. In December 2016, we got a plan with 7 objectives and 32 actions approved by National Council. Of 22 actions that we planned to complete in 2017, we carried out 13 and the remaining activities are underway. For instance, we conducted activities on incorporating the initiative with the national policies, advocacy and dialogues/training and implementing Government of Mongolia resolutions. List of key activities and achievements were distributed to the members. Year 2018 Plan clarified uncertainties on the sources of financing while goal of the Road Map and activities remained same. In addition, we also agreed to finance the activities under the project implemented by EBRD and made adjustments to the relevant documents and budget. This includes 205 000 Euro budget and work added as follows: objective one- to organize meetings and discussion at the government agencies level, objective two- amend the draft law, which will be a special chapter in the new draft law, which Ministry of Mining is working on, objective five- public capacity building and training,

and objective six- information verification, systems development and trainings. Also, under the goals and objectives, we expect some outcomes such as increased responsibility/accountability, reduced corruption, more fair competition and business remain apart from politics. (Presentation attached).

B.Enkh-Amgalan: It is not about arresting the BOs and imposing penalties on them, but we are trying to disclose them that a person working for the government and making decisions should not be the BO. Otherwise, we have nothing to do with businesses, how may percent one controls in the extractive company, it is OK if relevant taxes are paid.

B.Bayarmaa: There are two concepts, the second one is PEP.

B.Boldbaatar: Previous reports contained some mistakes, e.g. Government owns 75% of stake in Baganuur coal mine while other shareholder own the remaining stake. When we ask who these private shareholders are, some say it is UB City Bank or former MP Badamjunai, so are these people the beneficial owners? If yes, they have to be subject to disclosure. I also would like to ask to give highlights on the public companies and this should be included in 2018 Action Plan.

D.Damba: Working can be changed to “state owned companies and companies with state participation”.

B.Enkh-Amgalan: Think that Independent Agency Against Corruption will work closer on this work of disclosing beneficial owners.

B.Terbish: Our Agency already started our work in beneficial ownership disclosure. Our Department for Research and Analyses will likely disclose the beneficial owners based on the currently available data on more than 6000 license holders; either there are politically exposed persons. Anyhow, BO is still a new topic and areas for us, so we lack some research and information. Because, so far, there is no survey or study made among the license holders if they are public officials or PEPs. As of present, study on energy sector owners has been completed.

B.Battsengel: At the national level there are 3800 mining licenses and some people have part of them. Some guys have several licenses and they sell licenses. They make selling and buying agreement, pay 30% of taxes I transfer licenses. EITI report included more than 2000 companies while there are some uncovered license holders which are not registered as tax payers. Mineral Resources Authority can do nothing; that is an issue still exists. Tax department does not know the value of licenses, what happened with feasibility study, how the exploration license converted to mining license; as such there are many other issues. So the professional agencies must find a solution. Regulations say that licenses holders shall be disclosed no later than June 2018. We see people, not necessarily those working in the government, sell licenses. Hope that representatives of Independent Agency Against Corruption would devote attention to this license related issues.

B.Delgermaa: In terms of disclosure scope, license holder individuals, plus investors, beneficial owners of concentrators and individuals buying products from larger companies will be disclosed.

Yu.Delgermaa: here we can see the missing link between the government agencies.

B.Terbish: Our Agency has sent a series of recommendations to Ministry of Mining and provided some recommendations on eliminating more than 10 current violations and malpractice such as no licensing in 2017, now the relevant agency uses electronic systems for licensing, then stopped and etc.

B.Enkh-Amgalan: Ok, understood, now I will present you a draft resolution, which we will make in relation to this third topic. If you agree, please raise your hands.

D.Galbaatar: The idea behind is one has a license and inject investment. Beneficial ownership is a different understanding because benefit or profit is a different concept.

D.Damba : Draft resolution says “assign the WG”, which working group is this; EITI working group or a sub-working group on Roadmap? I also suggest of there is a member from Ministry of Mining, someone working on positions above Chair of Division, participation will be ensured and decision can be made effectively.

Sh.Tsolmon: Actually, a chair of Mining Policy Department was responsible for this, but the position has changed and now Mr Damba is taking care of it. We could ask the Cabinet Secretariat to give some directions to the Ministry of Mining.

D.Erdenechimeg: Can't we follow the same procedure that used for appointing the sub-working group?

Sh.Tsolmon: Previously, it was appointed by Mr Enkhbayar.

B.Enkh-Amgalan: Then, it can be sorted out in house, otherwise we would encounter difficulty if we look for ways to have a Government resolution. Now, let's move to fourth topic.

**4. TOPIC DISCUSSED: Improve enforcement of Article 42 of Minerals Law and Government of Mongolia resolution #179 (2016) and National Council giving directions for effective enforcement.**

N.Bayarsaikhan: As witnessed by the EITI report and its findings and as mentioned by the representatives of local extractive companies, there is an issue, which is Community Development Agreement. Article 42 of Minerals Law sets forth that extractive companies shall make a legally binding agreement with the local administration on environmental protection, increasing jobs and developing infrastructure in relation to extractive production. Afterwards, Government of Mongolia resolution #173 in 2016 approved the model agreement; however these legal obligations are not fully enforced, and it has still some violations. It is because the regulations for implementation of these provisions are not

developed and adopted. Governors of some aimags such as Dornodgobi, Umnugobi, Hovd and Bayanhongor manage to make agreements with all respective extractive companies. Contrary to it, there are some negative sides, e.g. local administrations still not made agreements with all license holders. All stakeholders, including citizens, government and other are all talking about this. Aimag administrations still fail to make agreements with all extractive companies, instead they work to make agreements with larger companies and generate revenues and financing. For instance, a company called Chingisyn Har Alt, operating in Dornogobi aimag's Dalanjargalan soum, made a Community Development Agreement with the soum administration and disbursed MNT 300 million, but no percentage of this money is left in the soum. Company says they perform their contractual obligations and inject financing, but no money is left in the soum. When extractive companies make Community Development Agreement with aimag administration, it does not constitute any provisions on the environmental performance in relation to the soum where the company is operating, and soum community protests companies. So the problem is the Community Development Agreement omits provisions on environmental protection at the soum when the Agreement is made with aimag administration, and money is drawn to the aimag when the Agreement is made local soum administration. Once the aimag makes agreement with the company, soum government has not power to oversee the implementation. When the Community Development Agreement is made and enforced, it regulates affairs pertaining to public law, so it is automatically classified as an administrative agreement. In this case, parties must carry out consultation and hearing on how the soum community is affected by the environmental impact, as required by administrative legislations. However, no hearing is organized when the Community Development Agreement is made with the Aimag Administration, e.g. on the agreements made in these aforementioned four aimags, public hearing was never organized. Aimag administration generates financing through the bank accounts of NGOs or Council of Local Residents NGO, and amount is significant. This increases corruption risk, reduces transparency, worsens governance, fuels suspicion among citizens and diverts environmental obligations. That is why I am presenting these issues to the National Council asking to make relevant decisions. Ministry of Mining, State Great Khural and Government of Mongolia pursues policy for the responsible mining, environmentally sound mining, transparent mining and limited impact on the natural environment. Most importantly, the policy implementation should not be flawed in the medium level. Therefore, we propose the National Council to make the following decision; establish a Working Group at the Ministry of Mining for the full and effective enforcement of Government of Mongolia resolution #176 no later than the end of Quarter One. In the abovementioned aimags, aimag administrations made agreements with mining companies, but with not all mining companies, but with a few larger. And, these agreements are explicitly illegal. If these agreements are checked and investigated, the respective Governor will likely be punished. Therefore, we also propose to issue a decision asking Independent Agency Against Corruption to evaluate thee agreements and take corrective actions if there are flaws and staggering. Unless, this agreement will pose risks to the public officers, so we submit this proposal for the prevention purpose.

B.Enkh-Amgalan: You mean that this agreement is regulating the affairs between the Governor and companies and you want to stop that aimags make contract with companies and get or fraud money from it?

N.Bayarsaikhan. I would not say fraud, but some money is generated from the companies, but all money is generated at the aimag level and nothing reaches to the grassroots soums; that is the main reason for the local community to protest mining sector. Aimags don't use the model agreement approved by the Cabinet, and they establish an NGO, which we call "in-pocket NGO" and get the financing through the NGO's bank account; overall the law is not implemented. We lack a uniform regulation on how enforce the legal provision and use the model agreement, because of this public officers, particularly the aimag Governors, and companies could be exposed to risks. Due to such circumstances, we think it is worth making a clear regulation. In order to do so, we can form a small working group and develop regulation as early as possible, possible no later than the end of Quarter One, so I request the National Council to take this into account and make decisions accordingly.

B.Enkh-Amgalan: Governor of Tuv aimag says they have no agreement made while only the soum governors made agreements with mining companies and attract financing from extractive companies. Looks like some soum governors are not managed and not listening to the Aimag Governor.

N.Bayarsaikhan: We found out that the model agreement we developed had dilemma and some ambiguous meaning. That is why both aimag and soums administrations make agreement with mining companies. In general, aimag, soum and company could made tripartite agreement in case there is a strategically important mineral deposit. If non-strategic, soum administration could make an agreement with the company. According to General Administrative Law, it is an administrative agreement; if we have clear procedures set for seeking opinions of citizens impacted by mining operations through a formal hearing and how to generate financing, this situation looks like we can regulate effectively.

D.Enkhbold: Formally "local government/administration" refers to soum, bagh and aimag. In this case, it is clear which of these hierarchies companies would select for contracting. When the model agreement was under revision, Mongolian National Mining Association gave some inputs saying it is a model, so we need a follow up regulation on how to make agreement and etc, but our proposal was not supported at that time. I agree with the idea, but don't know whether we have to talk about it at the National Council or not.

D.Galbaatar: it must be an issues related to donations.

N.Bayarsaikhan: No, not donations.

D.Damba: It is possible to make Community Development Agreement in three areas, infrastructure development, environmental protection and increasing jobs.

B.Bayarmaa: In the past, we talked on having a Working Group at the Mineral Resources Authority.

N.Bayarsaikhan. It is not yet in existence.

D.Galbaatar: Representatives of local governors told some realistic points, we must take it into account.

N.Bayarsaikhan: Aimag, soum and baghs are the same; they are considered as the local government. So at the stage of developing the model agreement, we have several discussions with stakeholders, and indicated that aimag would make agreement with company working on strategically important mineral deposits in order to segregate these levels. But it is still insufficient. We failed to give guidelines, this results in flaw of law and delay in company operations. For example, Dornodgobi aimag made Community Development Agreement and reflected the amount of money that company pays. But the agreement says company license will be terminated in case company does not give money; this is unacceptable, so we must have a clear regulation.

D.Damba: Prime Minister, as a Chair of the National Council, could give some clear guidance to the relevant line minister to revisit the model agreement and approve the regulations. And, this new regulation must clearly define which level would the “local administration” refers to.

D.Galbaatar: A representative of the local government, a governor, gave us a good idea, “If you have a goal, it must be measurable”. In the past, the measuring unit was money, 2-% of royalties goes to aimag government and 10% goes to soum government. If this is a case, all problems will be sorted out. Companies pay or invest, local Citizens’ Khural would allocate it accordingly. That is all.

B.Enkh-Amgalan: Has this issues been reflected in 2018 Action Plan?

N.Bayarsaikhan: No, but this can be implemented by giving some directions and guidance to the Ministry of Mining.

B.Enkh-Amgalan: We don’t have a legal status to directly assign any work to Ministry of Mining; instead we must approach to the Ministry asking to consider and take into account this issue.

N.Bayarsaikhan: Then, let’s establish a tri-partite Working Group.

B.Enkh-Amgalan: Will the decision made at the sub working group reach to Ministry of Mining in form of recommendations?

N.Bayarsaikhan: Regulation can be adopted by a decree of Minister of Mining.

D.Erdenechimeg: Most activities of the EITI are carried out in cooperation with Ministry of Mining, for example working groups in contract disclosure and BO disclosures.

B.Enkh-Amgalan: Are there anyone who want to work in the Working Groups? Civil society selected two representatives, not the government should propose members.

D.Galbaatar: As representatives of the industry, we propose to restore the legal provision 20% and 10% allocation of revenue between aimags and soums, which was in the previous law.

B.Enkh-Amgalan: Let's form this sub working group chaired by a Director General of Mining Policy Department of Ministry of Mining. Representing the civil society, Bayarsaikhan and Erdenechimeg will work in the working group, and to other stakeholders must nominate two members, each. Now, the last topic in the agenda.

**5. TOPIC DISCUSSED: Amendment to MSWG/National Council regulation and procedure**

Sh.Tsolmon: According to a recommendations given by the EITI Board, we propose modifications in the regulation. Previously, this was presented to the MSWG. According to the recommendations, we propose the following changes. MSWG has 33 members, 11 from each stakeholder. When the majority of members are present, we have quorum for meeting, and propose to change it to when we have at least 6 members are present from each stakeholders, we would have the valid quorum. In other words, when we have at least 28 members, including 6 from each stakeholder, then the meeting would proceed. In the past, when we have 16 members present, regardless of which stakeholder, the attendant was valid, so we propose to change this as I said earlier. According to the recommendation, when the MSWG makes decision and when the members have different opinions, we can now have a voting. Then we propose that when we have voting, the issue must be supported by no less than two third of members from each stakeholder group to qualify as final decision.

B.Enkh-Amgalan: As for me, I have attended three EITI National Council meetings so far. As the Prime Minister noted in his last speech, we will pursue a principle "Will be softer to obedience and stricter to disobedience". Please provide us with information on wrongdoings and violation of law, we will get an action and binding responsibilities work in response. I think it is decent regulation, so we proposed these changes to keep it decent. On the other hand, we also need to strike balance for the interests of companies. Government has regulatory roles. When necessary, for instance on a large scale construction and development for the local community and country, government would support and take all necessary measures.

B.Boldbaatar: Currently Mongolian National Mining Association nominates the representatives of professional mining associations and mining companies, and this process is entirely not transparent.

B.Enkh-Amgalan, Senior Advisor to Prime Minister, read the draft resolution from the meeting and members agreed unanimously (100%) and formally approved the final resolution.

B.Enkh-Amgalan: Thank you very much to you all for taking active part in the meeting and dedicating your time, and all the best.

Meeting ended at 7.10 pm..

Minutes reviewed/endorsed by:



Senior Advisor to Prime Minister,  
Secretary of EITI National Council  
Chair of MSWG

B.Enkh-Amgalan

Minutes checked by:

Secretary of MSWG and Coordinator of EITI Secretariat

Sh.Tsolmon

Minutes taken by: Finance Officer of EITI Secretariat

A.Отгонтунгалаг