

Local Level Agreements in Mongolia's Resource Sector: Lessons Learned and the Way Forward

Byambajav Dalaibuyan

SUMMARY

Formal agreements between resource companies and subnational or local level stakeholders affected by company projects, or local level agreements (LLAs), are becoming an important mechanism for increasing benefits for local communities and minimizing or avoiding conflicts in many countries. The main objectives of this policy paper are to assess Mongolia's experience with LLAs to date, identify gaps and opportunities, and recommend policy responses to improve existing regulation and agreement-making in practice.

Key policy recommendations

- *Prioritize mining projects and reduce the number of resource projects required to establish LLAs*
Implementation of the LLA requirement can be optimized by defining thresholds for resource development projects to establish LLAs.
 - *Incentivize the establishment of LLAs*
Linkages back to the project approval process can be created to motivate mining companies to engage and establish agreements with “host” local governments and communities.
 - *Clarify enforcement of the model agreement*
The model agreement needs to be revised and defined as a hybrid document consisting of a mandatory framework that defines the core elements of an LLA and a non-binding guidance document on potential agreement processes and content that local governments and mining companies can adjust to their needs and contexts.
 - *Develop and implement capacity-building programs*
Comprehensive capacity-building programs on local level agreement-making need to be developed and implemented countrywide.
 - *Support local civil society organizations to monitor implementation of LLAs*
The monitoring projects prove that independent third parties can play an important role in identifying gaps in implementation and opportunities for improvement of both individual LLAs and the overarching legal and policy frameworks for LLAs.
-

INTRODUCTION

Formal agreements between resource companies and subnational or local level stakeholders affected by company projects, or Local Level Agreements (LLAs), are becoming an important mechanism for increasing benefits for local communities and minimizing or avoiding conflicts in many countries.¹ Though in practice these agreements come in various forms and reflect vast differences in communities, companies and regulatory contexts,² an emerging body of knowledge and expertise describes the supporting conditions and key components for establishing and implementing effective LLAs, especially based on the experiences of a number of major mining countries, including Australia and Canada. A crucial commonality of LLAs in these and other countries is that project-affected communities and indigenous people or their representatives are generally one of the main negotiating parties, and benefits for them are viewed widely as a main focus of negotiation.

The Minerals Law of Mongolia has ostensibly made LLAs mandatory since 2006. However, a distinctive feature of the legal requirement is the pivotal and direct role assigned to local governments in agreement-making. The Minerals Law of Mongolia (Article 42.1) requires minerals exploration and mining license holders to “work in cooperation with the local administrative bodies and establish agreements on issues of environmental protection, mine exploitation and infrastructure development in relation to mine development and job creation.” In May 2016, the government of Mongolia approved a “Model Agreement on Protecting the Environment, Developing Infrastructure related to Mine Operation and Plant Construction, and Creating Jobs”—the first instance of legislative guidance regarding LLAs. The model agreement, however, does not include guidance on the process for negotiating and concluding an agreement.

The main objectives of this policy paper are to assess Mongolia's experience with LLAs to date, identify gaps and opportunities, and recommend policy responses to improve existing regulation and agreement-making in practice. This paper draws on the findings of two recent projects implemented by NRG: a multi-stakeholder workshop on community development agreements (CDAs) held in Ulaanbaatar in November 2016, and four monitoring projects focusing on the implementation of LLAs conducted by local non-governmental organizations (NGOs). In March 2017, NRG organized a multi-stakeholder meeting to discuss the findings of the monitoring projects in collaboration with Open Society Forum, which had also administered five monitoring projects through local NGOs. (See appendix for an overall list and additional information on relevant LLAs.) In addition to these main data sources, the paper draws on the author's research on LLAs in Mongolia during the past several years while working at the Sustainable Minerals Institute of the University of Queensland, as well as interviews with representatives of government, the mining industry and civil society actors conducted in April and May 2017.

The paper begins with a discussion of whether the requirement for LLAs has been implemented adequately, followed by an analysis section focusing on gaps in the formulation process, content and implementation of LLAs, while highlighting

A crucial commonality of LLAs in these and other countries is that project-affected communities and indigenous people or their representatives are generally one of the main negotiating parties, and benefits for them are viewed widely as a main focus of negotiation.

1 See David Brereton, John Owen and Julie Kim, *World Bank Extractive Industries Source Book: Good Practice Notes on Community Development Agreements* (Centre for Social Responsibility in Mining, 2011), <https://www.csr.uq.edu.au/Portals/0/docs/CSRM-CDA-report.pdf>; Ciaran O'Faircheallaigh, “Community Development Agreements in the Mining Industry: An Emerging Global Phenomenon,” *Community Development Journal* 44, no. 2 (2013): 222–238.

2 The term local level agreement (LLA) is used in this paper to encompass a wide range of local or community agreements. Other names are often used for these agreements, including community development agreements (CDAs), impact benefit agreements (IBAs), Indigenous land use agreements (ILUAs), cooperation agreements, social responsibility agreements and participation agreements.

examples of good practice. The paper concludes with recommendations aimed at improving the legal and policy framework for LLAs in Mongolia and enhancing the practice of agreement-making on the ground.

UPTAKE OF LLAS

The monitoring projects, which were conducted in several *aimags* (provinces) and *soums* (districts), consistently pointed out that LLAs are not integrated into the policies and practices of the majority of mining companies in Mongolia. To date only a small number of LLAs have been established in Mongolia. The Extractive Industries Transparency Initiative (EITI) report included information on LLAs for the first time in 2012. The 2012 report, which covered more than 200 mining companies and 1,500 licenses, included brief information about 23 LLAs, which ostensibly cover environmental and local development issues to some extent. The number of LLAs did not change much in recent EITI reports, and a database of extractive industry contracts launched by the government of Mongolia, EITI Mongolia and Open Society Forum in 2017 contains copies of 22 LLAs.³ These are not necessarily exhaustive numbers because there are no systematic disclosure and reporting mechanisms for LLAs in Mongolia, and local governments and companies are reluctant to voluntarily disclose their contracts. It is worth noting that the Oyu Tolgoi Cooperation Agreement is thus far the only LLA in Mongolia that the agreement parties voluntarily disclosed publicly. The monitoring reports confirm that uptake of LLAs by local governments and mining companies is low. The monitoring project implemented in Khentii Province, where a total of 273 explorations and mining licenses have been issued, was able to find information about 10 LLAs and obtained a copy of only one agreement. In Sukhbaatar Province, which has 127 licenses issued in its territory, the local government has only been able to conclude an agreement with Tsairt Minerals Company in 2013.⁴

The monitoring reports and the author's research suggest that the statutory requirement on LLAs is not the decisive factor motivating negotiating parties to initiate and establish an LLA; rather it has been evolving business risks related to operating contexts, local government commitment to receive fair benefits and the importance of obtaining local social and political support, or a social license to operate (SLO). Zaamar District of Tuv Province and neighboring Buregkhangai District of Bulgan Province provide good examples of local government commitment, where district governments impel mining companies operating in their territories to enter into an annual "Social Responsibility Agreement."⁵ Furthermore, an important pattern can be observed regarding business risks and SLO: foreign mining companies tend to be more interested in having, or under more pressure to have, an LLA. It is possible that they encounter greater business risks compared to domestic companies. Conversely, major "national" state-owned mining companies have been reluctant to comply with the requirement to have an LLA.

An important factor for the ostensibly limited compliance with the requirement for establishing an LLA in Mongolia is that the Article 42.1 requirement lacks any linkage back to the project approval process, which means that the costs to most mining companies of not reaching an agreement are low. No statutory penalties

3 Government of Mongolia, Open Society Forum and EITI, "Database of Minerals Contracts," accessed 4 May 2017, [http://www.iltodgeree.mn/search?q=&government=&project=&contract_type\[\]=Localcooperation agreement](http://www.iltodgeree.mn/search?q=&government=&project=&contract_type[]=Localcooperation%20agreement).

4 L. Bor, Head of Ikh Baga Bayan Sharga NGO, interview by the author, Ulaanbaatar, 2 June 2017.

5 Bolormaa Dorj, Governor of Zaamar District, "Responsible Mining," training module presented at a national dialogue hosted by UNDP, the British Embassy Ulaanbaatar and Civic Solutions Mongolia, Ulaanbaatar, 21 March 2016.

exist for non-compliance with the model agreement. Thus, there is likely to be little confidence in the willingness of courts to order a remedy. This is in marked contrast to the situation in countries (especially Australia and Canada) where the legal and policy environment now requires, or creates strong incentives for, companies to negotiate with Indigenous groups and local communities impacted by resource development activities. As Ciaran O’Faircheallaigh explains, for example, under Australia’s Commonwealth Native Title Act, applicants for mining leases are required to seek agreement with Indigenous people who hold or claim inherent rights to land (“native title”), while many comprehensive land claim settlements in Canada require “impact and benefit agreements” to be in place before resource projects can proceed.⁶

In Mongolia, when civil society organizations were working to introduce a requirement for LLAs in the Minerals Law in 2006, they advocated for a strong linkage back to the project approval process.⁷ This approach has not been supported by the government and was not integrated into the law.

However, recently, specialists at the Ministry of Mining and Heavy Industry (MMHI) expressed their willingness to require a report about LLAs from mining companies when the Minerals Resources and Petroleum Authority of Mongolia (MRPAM) reviews the annual work plan of a mining company.⁸ The MMHI and MRPAM will likely encounter stronger demands for adequate and equitable implementation of Article 42.1 and the model agreement. Accordingly, it would be appropriate for them to consider incentives and penalties, including linkage to the approval process.

It may be too early to assess the effects of the model agreement after one year. The government has not released any information about its implementation. The monitoring reports and the author’s research suggest that while in some cases the model agreement has been used in negotiations as a starting point, in many cases, local decision-makers do not use the model agreement at all, and the agreement renders little or no complementary incentive for efforts and commitment from mining companies.

LLAs IN PRACTICE

Agreement parties

Good practice: Tripartite agreement

The Oyu Tolgoi Cooperation Agreement was negotiated as a tripartite agreement that involved Umnugovi Province, Khanbogd District (and three other project-affected districts), and the company. In addition, the agreement includes special subcommittees aimed at channeling and advocating concerns of local people directly affected by project impacts.

The Minerals Law does not clarify whether the *aimag* (province) or *soum* (district) government should play the lead role in local level agreement-making. Under Mongolia’s unitary government system where central and provincial governments have the power to direct what happens at local (district) levels, the provincial administration often seeks to secure greater mining benefits for the province. This has led to province-level agreements for relatively large-scale mining projects such as Oyu Tolgoi, Tumurtei Ovoo and Khushuut, while district governments often play a direct role in agreement-making for relatively small- and medium-scale mining projects.

6 Ciaran O’Faircheallaigh, “Social Equity and Large Mining Projects: Voluntary Industry Initiatives, Public Regulation and Community Development Agreements,” *Journal of Business Ethics* 132, no. 1 (2015): 91–103.

7 Open Society Forum and Centre for Human Rights and Development, petition by civil society organizations to amend the Minerals Law (2006).

8 Anonymous, interviews by the author, May–June 2017.

Some provincial governments, such as Bayankhongor, Dornogovi and Umnugovi, have taken an overarching or umbrella approach, seeking negotiations at the province level with all mining companies operating in the province's territory to increase province-level benefits from mining projects. In contrast, the monitoring project conducted in Zaamar District (Tuv Province) shows that the provincial government sends district governments a template social responsibility agreement, which is different from the model agreement, and sets a deadline to return the agreement to the province.⁹

Agreement-making process

Good practice: Involvement of local *khurals* (parliaments)

A working group in Khovd Province developed a framework for a cooperation agreement with MoEnCo Company (the Mongolia Energy Corporation) and obtained approval from the province's Citizens' Representatives' Khural (Parliament) to proceed with negotiations in 2015.

A crucial downside of most of the agreements monitored by NGOs is that a relatively small number of local government decision-makers play a dominant role in agreement-making, often with little accountability to their constituents, especially project-affected communities. The monitoring projects consistently point out that agreement-making involves little or no community participation and consultation. In a few cases, such as Oyu Tolgoi and Khushuut, local governments made efforts to facilitate consultation, but the outcomes of this consultation were not disclosed.

Though commitment by local governments to facilitate meaningful public consultation is crucial, they encounter significant practical challenges in their implementation of this consultation. For example, consultation activities by local governments that are conducted without any framework documents, such as a local government position paper and a draft scope of agreement, usually result in a wide range of scattered opinions. It is important for local governments to understand that effective agreements require adequate time and strategy. For instance, LLAs of megaprojects may require several years to ensure that local communities engage effectively and ultimately gain fair and long-term benefits.

An important positive aspect of the LLA approach in Mongolia is that agreements can be subject to public administration regulation, including public consultation and transparency requirements. None of the approximately 30 LLAs reviewed by the author included a confidentiality clause. Article 5.1 of the model agreement states that the agreement parties should inform local citizens about the agreement's establishment, upload related documents to their websites within three working days, and deliver a copy of the agreement to the local EITI committee within five working days.¹⁰ In July 2016, the General Administrative Law introduced an important complementary mechanism for improving public participation in the agreement-making process. The law requires government bodies to conduct a public hearing before establishing agreements that contain public interest concerns. Local NGOs and media organizations can play an important role in adequate implementation of these participatory measures through independent monitoring and advocacy for their implementation in the LLA context. While some experts view LLAs as administrative contracts, a formal explanation by relevant bodies such as courts would likely improve the uptake of public hearing and disclosure.

A relatively small number of local government decision-makers play a dominant role in agreement-making, often with little accountability to their constituents.

⁹ Letter from Tuv Province dated 23 January 2017 attaching the template and setting a deadline of 10 February, thereby allowing a very short period of time for parties to establish an agreement.

¹⁰ The agreement does not state whether it means within five days of signing.

Good practice: Civil society participation

A working group in Khovd Province established to renew its cooperation agreement with MoEnCo included a local civil society representative in 2017, as a result of the monitoring project conducted by the NGO Khovdiin Toli in 2015.

Another important lesson learned on the agreement process is that collaborating with external and independent experts is a useful way to increase the bargaining power of local governments and communities, and maximize the benefits they gain from negotiation. The monitoring reports show that local governments lack the capacity to develop a comprehensive understanding of the impacts and benefits of mining projects due to their inadequate in-house expertise and resources. In some cases, implementation of an agreement is constrained by terms of agreement that are not based on solid knowledge of the company and project characteristics, such as feasibility studies, human resources policy, procurement capacity and environmental impact management. The monitoring project of the Khushuut Mine Cooperation Agreement pointed out that the agreed progressive payment (0.6-1 USD per ton coal) based on the volume of coal export was not based on up-to-date feasibility studies and market analyses, resulting in only 20 percent of the projected amount.¹¹ In Bayan-Ovoo District (Khentii Province), for example, Khankhashir Company agreed under its cooperation agreement with the district government to hire 300 to 400 local people despite the fact it has a total of 250 employees.¹²

Some company representatives reported that they sometimes blindly accept local government demands in order to obtain project-related approvals. Moreover, some local governors said that they are not assured about the legality of agreements they signed with mining companies.¹³ These kinds of accountability issues and risks may explain the prevalent reluctance of local governments and mining companies to publicly disclose cooperation agreements.

Local governments lack the capacity to develop a comprehensive understanding of the impacts and benefits of mining projects due to their inadequate in-house expertise and resources.

Good practice: Specific obligations

Under the cooperation agreement between Matad District of Dornod Province and PetroChina Daichin Tamsag, local businesses and herders have preferential access for supplying goods to the company. Procurement notices are regularly posted on district government information boards.

Under the cooperation agreement between Dashbalbar District of Dornod Province and Shin Shin Company (China), the company is obligated to employ no less than 60 local citizens registered by the local government as unemployed, provide a safe working environment and ensure that monthly salaries are no less than 300,000 MNT.

The content of LLAs

Most LLAs in Mongolia are rudimentary documents. An average LLA does not exceed five pages in length. The Oyu Tolgoi Cooperation Agreement and Khushuut Mine Cooperation Agreement are exceptions among the nine agreements monitored, as they are significantly longer and more detailed. The content of most LLAs does not vary considerably. In general, they provide local government support for proposed or existing mining projects, in return for some company commitments and obligations to contribute to local development and mitigate socio-environmental impacts. The company's obligations often include preferential access for local community members

11 Khovdiin Toli NGO, "Introduction of the Monitoring Report of a Cooperation Agreement between Khovd Aimag and MoEnCo Company," Natural Resource Governance Institute and Open Society Forum joint meeting, Ulaanbaatar, 28 March 2017.

12 Employers Association of Khentii Province, "Monitoring Project Summary" (Open Society Forum, 2017).

13 Some issues related to the Law on Conflict of Interest are discussed in the following sections.

to employment opportunities, participation of local businesses in contracting opportunities and social investment in different forms.

However, the monitoring reports consistently raised the issue of agreement obligations being expressed in broad and vague terms (“where required,” “where possible,” “shall support,” “shall increase,” “best endeavors”), which makes it difficult to measure and monitor an agreement’s progress and results. Implementation of an LLA is likely to improve when the parties work to achieve concrete targets based on clear, agreed goals and consequences if the targets are not met. Furthermore, the agreements monitored contain many commitments and obligations directly repeated from already applicable laws such as the Law on Environmental Protection and the Minerals Law. In one case, an estimated 18 out of 35 clauses in an agreement were clauses directly cited from different laws.¹⁴ A wide range of stakeholders share the view that these kinds of short-term and one-off obligations should be avoided, and LLAs should be negotiated and structured in a way that contributes to the achievement of objectives identified in the province or district’s local long-term development strategy.

An important feature of Mongolia’s approach to LLAs is the treatment of financial obligations within the agreements and the interaction of this with other policy and legal frameworks, including the evolution of the country’s system for sharing resource revenues at the local level. The central government has traditionally sought to exclude from LLAs direct company financial contributions to local governments. Article 42.1 and the model agreement do not contain any provisions on financial contributions from mining companies to local governments. Historically, the state in Mongolia has not supported increasing economic benefits from mining to host districts and provinces through additional taxation and payment revenues (e.g., a payment for each ton of product exported). Instead, interregional equity in the distribution of mining benefits has been the dominant fiscal policy approach.¹⁵

In practice, however, provisions for financial contributions by companies to local governments have been included in some previous and existing agreements, and seen by local governments as one of the main objectives of negotiation. (See appendix.) Indeed, LLAs can be seen as a response by local governments to the historical lack of subnational and local revenue sharing. Some local governments, disenchanted with the absence of a revenue sharing system that supports the development of mining areas, viewed the main value of using LLAs as gaining a direct revenue stream from mining companies.

The Law on Conflicts of Interest, which became effective in January 2012, places restrictions on financial contributions from mining companies to local governments. Under this law, “a public official, or a state or local institution, is prohibited from requesting or accepting any form of donation or financial aid for public use from a natural or legal person.” The law restricts a range of local government-controlled funds, which were created and used prior to the law to receive donations, and fixed financial contributions from mining companies, some under an LLA and some not. However, local governments and mining companies have also used alternative mechanisms for receiving a direct revenue stream, such as local development funds (LDFs) and foundations (regulated by the Civil Law and Law on NGOs). In the case of small- to medium-sized companies, contract work and services funded directly by mining companies have become common. In provinces and districts with many

Implementation of an LLA is likely to improve when the parties work to achieve concrete targets based on clear, agreed goals and consequences if the targets are not met.

14 Employers Association of Khentii Province, “Monitoring Project Summary.”

15 Andrew Bauer, Uyanga Gankhuyag, Sofi Halling, David Manley and Varsha Venugopal, *Natural Resource Revenue Sharing* (Natural Resource Governance Institute, 2016), https://resourcegovernance.org/sites/default/files/documents/nrgi_undp_resource-sharing_web_0.pdf.

mining operations, the local government may ask mining companies to carry out construction and services (e.g., building roads and street lights, supplying hospital equipment, providing student scholarships, digging wells, distributing yurts, etc.) from a list created according to the government's annual plan.¹⁶

Interaction with the revenue sharing regime became more relevant when the government of Mongolia amended the Budget Law in May 2015, introducing a new royalty revenue distribution scheme that required the transfer of 30 percent of royalty revenues and 50 percent of exploration and mining license fees for projects to host provinces and districts. The new scheme excluded megaprojects, or strategically important deposits such as Oyu Tolgoi and Tavan Tolgoi. Altering the previous interregional equity approach, this decision was ostensibly made mainly in response to growing concern regarding the lack of benefit sharing and the high disapproval rate of exploration license application among local governments in 2015.¹⁷ The new scheme gave a clear advantage to "mining districts and provinces." For example, the government estimated that the transfer to LDFs of host districts would increase 4 times because of the law. Consistent implementation of this policy could make direct financial contributions from mining companies pursuant to LLAs redundant. However, the new revenue sharing system did not last long. In December 2016, when it approved the 2017 budget, the government lowered the rate for the transfer of royalties from 30 percent to 10 percent.¹⁸ The scope of LLAs will likely be influenced by this change in the revenue sharing system, and whether districts are receiving their announced shares. This could in turn again raise the interest of local governments in having a direct revenue stream from mining projects through LLAs. The local impacts of the existing revenue sharing system need to be understood adequately, based on solid statistical data, and incorporated into policy frameworks for LLAs and project-specific negotiations.

The local impacts of the existing revenue sharing system need to be understood adequately, based on solid statistical data, and incorporated into policy frameworks for LLAs and project-specific negotiations.

Implementation of LLAs

Implementation of agreements depends on a range of factors such as complexity of agreements, practicality of mutual obligations, existence of designated mechanisms for implementation and monitoring, and inclusion of clear incentives and penalties in the agreement if parties fail to deliver their obligations.¹⁹ Except for the Oyu Tolgoi Cooperation Agreement, which devoted a significant amount of time and resources to elaborating and negotiating these issues in detail, the other agreements reviewed largely sidestepped the issue of ensuring that agreements are implemented effectively. Most commonly, LLAs have a clause stating that implementation of the agreement will be reviewed annually. The monitoring reports suggest that review results are not publicly disclosed, and the renewal and extension of LLAs, in some cases, is done without adequate appraisal by parties and local communities.

Most LLAs explicitly state that they are legally binding and enforceable in court. Under most LLAs, parties should strive to resolve their disputes through negotiation and can take legal action if required. However, there is little room for parties to pursue legal action. First, the obscure language of LLAs often renders it difficult to objectively measure to what extent parties met their commitments and obligations. Second, parties are usually reluctant to take legal action because they do not want to jeopardize mutual relationships that, while problematic in some areas, may

16 In Zaamar District (Tuv Province), for example, small-scale gold companies prefer to provide scholarships for local students and yurts for poor households. See Khuvsugul Lake Owners Movement "Monitoring Project Report."

17 Bauer et al., *Natural Resource Revenue Sharing*.

18 However, the estimated transfer was dropped from the national budget when the Government of Mongolia revised it in accordance with the conditions of the IMF's bailout package in May 2017.

19 Ginger Gibson and Ciaran O'Faircheallaigh, *IBA Community Toolkit: Negotiation and Implementation of Impact and Benefit Agreements* (The Gordon Foundation, 2015).

be generating benefits in other areas. In such a context, it is useful to incorporate incentive instruments in LLAs intended to increase costs or lessen benefits for parties if their obligations and commitments are not met adequately. For example, some LLAs in Australia and the United States have provisions stating if targets for hiring local people are not achieved, the company should pay specified amounts to the local government or into special funds that will be used to improve “employability” of local people.²⁰

The monitoring projects point out that local government committees established to implement cooperation agreements are predominately composed of local government officials and company representatives, and they lack formal rules and designated resources needed to support the committee's effective functioning. This problem is in part addressed in the model agreement. According to the document, a relationship committee with nine members equally representing the local government, the company and local people should be established to monitor implementation. However, the model agreement does not include any further guidance on ensuring effective functioning of the relationship committee and its transparency and accountability aspects. There can be serious practical difficulties in establishing and maintaining the effective and consistent functioning of the relationship committee stated in the model agreement. First, the model agreement's clause 4.2 stating that the community representatives should be nominated in community meetings and approved and appointed by the governor of the province or district runs counter to the principle of independent community representation. Second, the model agreement does not address resources for the effective functioning of relationship committees such as internal procedures and funding. Third, multi-stakeholder relationship committees become problematic if dozens of license holders or companies are entering into agreements with the local government. It is not practical to establish committees for each agreement with license holders. This problem brings to the fore the broader impracticality of the blanket requirement that all exploration and mining license holders, which means a large volume of licenses, should establish LLAs. Prioritization of minerals projects based on project scale or financial thresholds and phases of mine-life can be an effective way to ensure that LLAs are practical and have significant benefits for local governments and communities.

It is useful to incorporate incentive instruments in LLAs intended to increase costs or lessen benefits for parties if their obligations and commitments are not met adequately.

Conclusion

The Minerals Law's mandatory requirement for companies to establish an LLA is an important commitment of the government of Mongolia to improve the mining sector's engagement with local communities for enhancing local development opportunities, including environmental protection. While the requirement's implementation has been inconsistent, the wide range of LLAs established in the past decade provides an opportunity to build a knowledge base for improving the existing regulatory framework and the practice of agreement-making on the ground. The government reaffirmed its commitment to promoting LLAs as a way forward with the approval of the model agreement in 2016. It is also important for the government to provide clarity on implementation of the mandatory requirement. The government needs to be realistic about universal uptake of LLAs under Article 42.1 and what can be achieved from the model agreement, considering that the capacity and interest of local governments, companies and communities varies widely. The interaction between LLAs and the revenue sharing system needs to be evaluated based on solid statistical data and incorporated into policy frameworks for LLAs.

20 O'Faircheallaigh, "Social Equity and Large Mining Projects"; Jo-Anne Everingham, Rodger Barnes and David Brereton, *Gulf Communities Agreement - 15 Year Review* (Centre for Social Responsibility in Mining, 2014).

The monitoring reports show that it is crucial to build the capacity of local governments to seize the opportunity to sit at the negotiating table with mining companies to engage them in dealing with local development issues in a transparent and effective way. Many of the gaps that the monitoring projects identified in the process, content and implementation of LLAs can be addressed by well-designed capacity-building programs. Most international good practice guides and training materials on LLAs are based on the experiences of companies and communities in Australia and Canada and cases of relatively large-scale (often world-class deposits) projects. While these resources are important and useful, it is helpful to develop resources for capacity-building programs tailored to the Mongolian legal, political and social context, including lessons learned and good practice.

Consultation and transparency allowing for monitoring and accountability are very important as the gap assessment above indicates. Provisions of the model agreement addressing these issues should be promoted by all stakeholders and included in actual LLAs and eventually the law. Similarly, effective enforcement of the General Administrative Law's requirement for a public hearing and transparency regarding administrative contracts is a vital step towards enhancing community consultation in local agreement-making. Monitoring of implementation of the Administrative Law's public hearing requirement by civil society organizations and their proactive engagement with the local government and mining companies will be crucial in enhancing consultation and community participation in local agreement-making.

Recommendations

Drawing on the above analysis, the following five policy responses are recommended to improve the regulatory framework for LLAs and practice regarding local level consultation and agreement-making:

Prioritize mining projects and reduce the number of resource projects required to establish LLAs

Effective implementation of the LLA requirement would be increased if LLAs were only required for minerals projects over a certain threshold in terms of project size and phase. This would increase the likelihood that LLAs (and agreement-making processes) are better resourced and subjected to greater scrutiny, thereby making it more likely that benefits for local development are realized from major mining projects. Projects below the threshold could be required to use other means to engage with impacted communities such as social impact management plans, community consultation plans, memoranda of understanding and advisory committees. For example, the current 2,168 exploration licenses could be excluded from the Article 42.1 requirement, especially given that LLAs with exploration license holders have in practice been uncommon in Mongolia. The existing 1,593 mining licenses could be categorized, according to the size (deposit, production, revenue) and impacts (environmental, social) of planned and existing projects.

Incentivize the establishment of LLAs

Linkages back to the project approval process can be created to increase the motivation of mining companies to engage and establish agreements with "host" local governments and communities. One option is for the Ministry of Mining and Heavy Industry to revise the regulation on commissioning mines and processing plants to add a condition to provide a copy of the LLA prior to appointment of an assessment commission. Another possibility is to require a report on the LLA when the MRPAM reviews annual mine work plans.

Clarify enforcement of the model agreement

The model agreement needs to be revised and defined as a hybrid document consisting of a mandatory framework that defines the core elements of an LLA, including consultation (procedural guidelines), review and transparency measures (transparency of LLA, composition of relevant committees/decision-making, publication of periodic reports on obligations), and a non-binding guidance document on potential agreement processes and content that local governments and mining companies can adjust to their needs and contexts.

Develop and implement capacity-building programs

Comprehensive capacity-building programs on local level agreement-making need to be developed and implemented countrywide. There is an emerging body of knowledge on international good practice on local level agreement-making in the mining industry. A combination of international good practice with knowledge and practical expertise of local best practice and lessons learned could be highly effective.

Support local civil society organizations to monitor implementation of LLAs

The monitoring projects prove that independent third parties can play an important role in identifying gaps in implementation and opportunities for improvement of both individual LLAs and also the overarching legal and policy frameworks for LLAs. Further efforts are needed to support the capacity of local civil society organizations to engage with local governments, communities and mining companies in negotiating LLAs and monitoring their implementation.

APPENDIX. LLAs INCLUDED IN THE NRG AND OSF MONITORING PROJECTS

Title of agreement	Implementing NGOs	Date/period	Mineral type/ Deposit name
Cooperation Agreement between Dashbalbar District (Dornod Province) and Shin Shin Company	Centre for Human Rights and Development	2011/2 years	Metals/Ulaan
Cooperation and Stability Agreement between Sukhbaatar Province and Tsairt Minerals Company	Ikh Baga Bayan Sharga San	2013/3 years	Silver/Tumurtei
Cooperation Agreement between Khovd Province and MoEnCo Company	Khovd Mirror	2015/1.5 years	Coal/Khushuut
Social Responsibility Agreement between Zaamar District (Tuv Province) and Uuls Zaamar Company	Khuvsgul Lake Owner's Movement	2016/1 year	Gold/Zaamar
Cooperation Agreement between Umnugovi Province, Khanbogd District and Oyu Tolgoi Company	Steps Without Borders	2016/33 years	Copper–Gold/ Oyu Tolgoi
Cooperation Agreement between Gurvansaikhan District (Dundgovi Province) and GPF Company	Rural Women's Development Support Fund	2014/NA	Gold–Silver/ Zuun
Bayan-Ovoo District (Khentii Province) and Khanshashir Company	Employers' Federation Khentii Provincial Branch	2015/2 years	Flourspar/Dojir
Environmental Protection and Local Development Support Agreement between Matad District (Dornod Province) and PetroChina Daichin Tamsag Company	Buir Nuur, Khalkh Gol, Numrug Basin Protection Movement	2016/1 year	Oil/Matad
Cooperation Agreement between Bayandun District (Dornod Province) and Range Resources Company	Mongolian Environmental Protection Association Dornod Branch Council	2016/1 year	

Byambajav Dalaibuyan is a JSPS postdoctoral research fellow at the Centre for Northeast Asian Studies, Tohoku University, and honorary research fellow at the Centre for Social Responsibility in Mining, Sustainable Minerals Institute of the University of Queensland.

The Natural Resource Governance Institute, an independent, non-profit organization, helps people to realize the benefits of their countries' oil, gas and mineral wealth through applied research, and innovative approaches to capacity development, technical advice and advocacy.

Learn more at www.resourcegovernance.org