

Public participation in ensuring sustainability of mining sector Center for Human Rights and Development (CHRD)

Mining is unsustainable activity that uses non-renewable natural resource and has tremendous environmental and social impacts. Although mining sector is favored for its economic profit sometimes its negative impact is so adverse that cannot be rehabilitated for all effort in the world. It is important to consider if mining can provide sufficient income to fully cover cost for mine reclamation and rehabilitation of negatives impacts. In Mongolia, there are quite some abundant gold mines that had up to 500 kg-gold-source. Economic profit was too low that companies could not finance rehabilitation.

Prior to initiation of mining project it is absolutely important to consider that it i) provides social benefit to local people e.g. job opportunities, business opportunities, infrastructure development, etc.; ii) has no adverse impact on health and environment, iii) economic net benefit is enough to afford for all costs associated with minimization, mitigation and rehabilitation of negative impacts. Unfortunately, both government and companies are interested in economic benefit rather than in social and environmental aspects and tempting to support mining industry. Therefore, information disclosure, fruitful discussions and participation of all stakeholders at decision making process is crucial to ensure sustainability.

Mongolian law in information transparency and freedom of information was adopted in 2011. According to this law information on human resources, finance, operation and purchase of good and service by governmental and state-owned organization must be transparent. However, if organization has classified its information as confidential or secret it is difficult to access such information. Most of the time information on feasibility study of mining project is classified as confidential. Without information on economic and technical aspect of the project it is difficult to discuss and make one's mind about the project.

According to amendment in law on Environmental impact assessment, detailed environmental impact assessment shall be conducted prior to starting implementation of the project, and obtaining license on using mineral resources, owning and using the land. During the conduct of environmental impact assessment, detailed information about the project must be disclosed and discussed by local people and herders who will be directly impacted by the project. Discussions shall focus on project component, potential impacts of the project, and their mitigation measures. Based on the discussion outcome, local citizens' representative's assembly decided whether to approve the project or not. Sometimes the citizens' representative's assembly decides against public interest. To rule it out possibility, CHRD has successfully worked on legislation to hold local administration accountable and included in the approved amendment of administrative law a clause about suspension of citizens' representative's assembly upon result of public referendum. This clause has never been used in practice. Once we have planned on practicing this clause in Selenge aimag. However, people affected by wrong decision of the citizens' representative's assembly were minority, whereas almost half of the population was relatives or related with representatives on the

citizens representative's assembly. It was highly unlikely that referendum will give desired result.

In January 2014, procedure on ensuring public participation during environmental impact assessment was approved by Minister of Nature and Green development. Although in the procedure it is stated that at stage of identifying project impacts, public meeting and discussions must be held and people's suggestions and recommendations must be fully reflected, it does not clearly state how much per cent of impacted people must participate in the meetings and discussions to consider acceptable and how to ensure free prior informed consent, and reflection of people's suggestions and comments.

On the other hand, the state and local inspectors, governmental agencies, local authorities do not fulfill their duties or misuse their authorization. Sometimes exploration and mining licenses are issued against public interest. For example, 6 exploration licenses and 3 mining licenses were issued in Burenkhaan phosphate deposit located near herders residence where the only water source called Hyadag river and Hyadag spring that are is used for local people for treatment of digestive systems such as liver. Moreover, the licensed area was the main source for pastureland. Also, 15 sacred stones of historical and cultural importance are located near the mining site. The cancelation of the licenses would have allowed local people to live in their land without any fear and risk to their pastureland, water source and traditional livelihood. With support of CHRDR, local herders claimed in cancellation of the decisions to issue mining and exploration licenses in 'Burenkhaan phosphate deposit' by the Geology and Cadastral office of the Mineral Authority in 2007. Court established illegality of the licenses, ordered the Mineral Authority to cancel the licenses fully satisfying the claim. Unfortunately, such success is rare event.

To access judicial process with a claim in public interest is complicated in Mongolia. Only applicant who has directly suffered can entitle to judicial redress. Although local governmental organization can claim in environmental damage to access judicial process it almost never happens because of corruption. Civil society organization does not hold legal right to claim in public interest. CHRDR is involved in the working group that is working on amendment of Law on non-governmental organizations. We are working on lobby to introduce right of NGO to entitle to judicial redress.

Previously, when a mining company was sued for ecological damage there was no approved methodology on economic estimation of ecological damage. CHRDR initiated process to develop a method for economic estimation of ecological damage. The method to conduct ecological-economic assessment of ecological damage was approved in 2008 and the method to estimate ecological damage and compensation was approved in 2010. Based on these methods ecological damage caused by Dachin Tamsag oil company in Dornod aimag was estimated around 3 billion tugrugs and judicial decision was made for the oil company to pay this sum of money.

In summary, to ensure sustainable development for mining sector that is based on non-renewable natural resource and can have enormous footprint not only on environment but also on socio-economy, it is crucial that information is transparent and decision making process involves all stakeholders. Government and companies must be accountable and bear full responsibility for their decisions and actions. Although at legislation on level public participation and accountability of mining companies and government is improving in Mongolia, actual improvement in practice is unsatisfactory. Most people do not know their rights and have poor legal education. Even CSOs suffer from lack of information and access to useful information and poor capacity. There is not sufficient financial resource to educate and empower public. Thus it will be useful to conduct a comparative analysis on public participation in development policy-making, decision-making and policy-implementation in different countries of the Asia-pacific region so that experiences, good practices and new ideas are shared widely.