

Legal reform of public
participation in the Environmental
Impact Assessment

Policy research report

Legal reform of public participation in the Environmental Impact Assessment: Policy research report

This research report has been developed as part of the project intended to improve procedure on public participation in the Environmental Impact Assessment adopted in 2014, in the effort of enforcing the “Law on Environmental Impact Assessment.” The report is based on the legal framework analysis of the public participation in the EIA, CPM (Citizen’s Public Meeting) discussion minutes, resolution analysis, stakeholder interview and questionnaires, and results of international pilot studies.

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List of abbreviations

ROK	Republic of Korea
PRC	People's Republic of China
MNET	Ministry of Nature, Environment and Tourism
DoE	Department of Environment
MOE	Ministry of Environment
EMP	Environmental Management Plan
EIA	Environmental Impact Assessment
DEIA	Detailed Environmental Impact Assessment
LoAaTU	Law on Administrative and Territorial Units
RGA	Recommendations of the General Assessment
RF	Russian Federation
SIA	Strategic Impact Assessment
EBA	Environmental Baseline Assessment

EIA framework

The Law on Environmental Impact Assessment regulates relations amongst decision-makers and stakeholders concerning the assessment of environmental impacts, its recommendations, and decisions on regional and sectoral policies, development programs, and plans and projects.

While Strategic Impact Assessment /SIA/ concerns the programs and plans, the project assessments refer to General Assessment /GA/, and Detailed Environmental Impact Assessment /DEIA/. Nevertheless, the Environmental Impact Assessment /EIA/ is an overall study conducted to identify specific natural conditions and environmental characteristics of a particular project, program, plan, and policy. Cumulative Impact Assessments /CIA/ are conducted to identify all combined and duplicate effects of various projects and propose proper mitigation measures. Concerning the DEIA, the MOE issues a decision based on the recommendations of professional experts and the Expert Committee.

The EIA database contains 8854 General Assessment reports and 6313 approved DEIA reports, compiled since 1995. To date, the CIA has been conducted on Baghanuur and Tavantolgoi group deposits only, with the financing of the World Bank, while no SIA has been conducted.¹ During 2010-2020 period, a total of 3003 or monthly 30, and yearly over 300 DEIAs have been approved.

Out of all projects, 42.7 percent are located in Ulaanbaatar and 57.2 percent in provinces and regions. As per Ulaanbaatar, 80.8 percent are concerning services, agriculture, and production, and the remaining 19.2 percent are mining and infrastructure projects assessments. While in regions and provinces, 43.8 percent of assessments are mining and infrastructure, and 56.2 percent are agriculture, production, and service-oriented projects.

DEIAs are conducted by licensed local business entities based on the project owner's request. At present, all 95 business entities licensed to conduct DEIA are centralized in Ulaanbaatar.

Regulations on public participation

When adopting the revised version of the Law on EIA by the SGK in 2012, the special chapter on "Public participation in the impact assessment process" has been reflected. According to the law, the MNET adopted the "Procedure to ensure public participation in the EIA" and the "Methodological guideline of the environmental impact assessment" in 2014. The following provisions of the law and procedure are the primary regulations of public participation in the DEIA:

Law on EIA:

- "The legal entity that conducts the Detailed environmental impact assessment shall obtain official recommendations from the administration of the project territory, local citizens, and residents impacted by the project activities and organize a public discussion during the compilation of the report." /18.4/
- The "recommendations and minutes of the local citizen's public meeting" are included in the list of matters to consider in the Detailed environmental impact assessment report. /8.4.8/
- "The state central administrative organization in charge of nature and environment shall inform the public concerning the development programs and plans subject to the strategic assessment and projects covered with the environmental impact assessment." /18.1/
- "The project owner, along with the professional entity which conducted the assessment, shall organize activities to introduce the Detailed environmental impact assessment to the residents affected by the project." /10.5/

"Procedure to ensure public participation in the EIA":

¹ EIA database <https://eic.mn/eia/>

Research categories	Provisions of the procedure
Before conducting the EIA	2.4.1. The local administrative organization shall maintain transparent information on projects implemented locally; 2.4.2. The state central administrative organization in charge of nature and environment and local bodies shall reflect decisions of the general environmental impact assessment and comments received from the citizens and public on particular projects.
During the EIA	2.5.3. During the impact forecast phase, obtain citizen's comments comprehensively, using public discussion methodologies and participation method; 2.5.4. During the impact assessment phase, concentrate on the direct and indirect impacts of the project, based on public consultation, discussion, and questionnaire methodology, and consider reflecting people's livelihood and social issues. 2.6. The project owner shall introduce the project concept, positive and negative impacts, and mitigation measures to the citizen likely to be affected and may compile documents required to ensure citizens and public participation.
After compilation of the EIA	2.7. After compilation of the Detailed Environmental Impact Assessment and Environmental Management Plan, the business entity authorized to conduct the assessment, in cooperation with the project owner, shall introduce the assessment report and consolidated public recommendations to the public meetings of the bagh and khoroo territory within 15 working days. 2.8.If the particular project is implemented within the territory of several baghs and soums report shall be introduced at each public meeting of the territory separately to gather recommendations. 2.10.Citizens, who are likely to be affected shall submit their recommendations and comments concerning the environmental impact assessment to the Citizen's public meeting of the bagh and khoroo before the final decision has been issued.
After the EIA approval	1.5. The state central administrative organization in charge of nature and environment shall organize measures to inform the public via its webpage concerning the development policy, programs, and plans covered with the strategic assessment and projects conducted the environmental impact assessment; province and capital city departments of the environment shall publish information on projects conducted the environmental impact assessment. The management plan shall be accessible to the public. 2.11. Governors of the soum and districts, Citizen's public meetings, and the province and capital city departments of the environment are responsible for the accessibility and transparency of the approved reports of the Detailed environment impact assessment to the public. 2.12. The project owner shall ensure public participation during the Detailed environmental impact assessment report compilation, the environmental management plan development, and implementation and introduce its compliance to the public and residents of the project area at least once a year.
Compliant resolution	4.5. Citizens and public shall raise the Complaint and disputes concerning the assessment report to the project owner, the licensed business entity which conducted the detailed environmental impact assessment of the project, and local administration, at the initial stance. 3.7. The decisions on complaints and disputes raised at steps shall be resolved by the state central administrative organization in accordance with the relevant legislation, and in case the citizen and public disagree with such decision, may approach the court for the resolution.

Law enforcement

Within the project framework, the research has been conducted in April-May 2021, amongst 115 participants representing the assessment enterprises, project owners, local administration, and civil society in cooperation with the Independent research institute.² Average procedure enforcement evaluation amongst the representatives of the assessment enterprises is 3.11 /on a 1-5 point scale/.

Participants considered that legal requirements to enclose the CPM resolution and minutes of the meeting are enforced satisfactorily. This resolution and minutes of the meeting are strictly required by the Ministry, as part of the assessment report documentation clearance. Nevertheless, some of the representatives of the assessment enterprises believe that public participation, consultation, and discussion processes are being inefficient and unsatisfactory in terms of protecting the right of residents to live in a healthy and safe environment and concerning information delivery that is important for making environmental decisions. The enforcement of the procedure to ensure public participation is unbalanced, specifically unsatisfactory in the cases of small and medium-size projects.

The regulation to obtain public comments during the DEIA is often overlooked.

Out of 30 representatives of the assessment enterprises, 11 representatives stated of meeting citizens, conducting questionnaires, and 6 mentioned visiting households to conduct opinion gathering during the detailed assessment process. Out of 30 representatives of local administrations, 6 answered that assessment enterprises visit households to conduct the survey and organize one-to-one meetings.

It is common in practice that the assessment enterprises contract the project owner to conduct the general baseline assessment and detailed environmental impact assessments consecutively or together at once. Therefore, the project field study and impacted household research conducted as a mandatory part of the project baseline study are commonly referred to as a method of public consultation.

The assessment enterprises commonly conduct public information dissemination and feedback collection process inadequately, considering the information dissemination and participation issues as the responsibility of local administration and project owner. Hence, the other stakeholders consider that methods of opinion gathering are unclear, its reflection in the report are undetermined, and the assessment enterprises tend to deduct superficial conclusions without going into the depths of the problem for the companies have limited capability to study the region and meeting people in person, and unsatisfactory information concerning the regional specifics.

The purpose of the CPM discussion of the DEIA is unclear

Out of 30 representatives of assessment enterprises, 29 responded that they present the assessment to the Citizen's Public Meeting /CPM/ to gather opinion. Nevertheless, in Ulaanbaatar, it is common to introduce to the khoroo CPM or in the meeting organized by the Governor to hear an opinion. Only 12 respondents answered that report is discussed at the CPM. Moreover, some even mentioned that it is common to obtain a forged document certifying the assessment discussion and feedback hearing at the khoroo meeting.

The common misperception amongst the stakeholders, specifically amongst the local administration and citizens is to deem the DEIA report discussion, as a decision making to support the project. Moreover, stakeholders mentioned, when MNET review, they specifically seek supportive opinions and CPM resolution, only. This tendency may have the following adverse impacts:

- Individual to try to take an advantage of the circumstance, deeming the project is likely to halt if it was not supported by the meeting

² AMEP-2. Ensuring public participation in EIA: Stakeholder survey. 2021

- Due to blaming the attitude of the majority concerning the support, individuals tend to avoid expressing their opinion freely
- The value of the participation and input of potentially affected or affected citizens may lose its value due to the dominance of the local administration or a certain group of people
- Cause a conflict of interest situation in exchange for support or vote

Unsatisfactory organization and coordination of the CPM consultation

According to the procedure, the project owner, along with the assessment enterprise, shall present the consolidated results of the DEIA report and public consultation results within 15 working days of its completion to the bagh and khoroo CPM for their opinion. However, its enforcement is impracticable. Based on the questionnaire response, there is no regular schedule of the bagh and khoroo CPM meeting, which is conducted roughly 2-4 times a year which causes a delay. In most cases, if the meeting has been convened earlier, it is likely to be discussed within a 1-3 months period, or in case it missed the quarterly scheduled meeting, or if the meeting schedule has been delayed, it is expected to wait for 3-6 months. This kind of uncertainty leads to the following adverse effects:

- It slows the project planning or the progress, further reducing the economic value of the project.
- While waiting, the General assessment approval issued with 3-6 months validity expires, leading to additional paper works to extend its validity.
- It may lead to pleading, lobbying, negotiating, and bribing the local administration to convene the meeting.
- Forgery of the documents, to deem the meeting as convened.

Although the number and frequency of the CPMs in the khoros of Ulaanbaatar are relatively higher, the same uncertainties and adverse effects occur, as mentioned above.

The meetings also tend to be postponed or canceled due to incomplete quorum. The quorum depends on the citizen's activity, organization, settlement distribution, bagh management capability, and organization; therefore, the situation varies case by case.

There is no provision in the procedure concerning public information dissemination, report content, time allowance to read and comprehend its content. Since it is rare to convene an irregular meeting to discuss the assessment report in most cases, the assessment reports are discussed as a list item of the regular meeting agenda. The common practice is now to complete the “local” matters of the region at first and discuss the assessment reports at last.

Amongst the survey participant assessment enterprises, 45 percent responded that citizens raise noteworthy comments on reducing adverse environmental impacts of the project. Besides, 55 percent mentioned that citizens mostly comment on local development, landscaping, water well supply, donations, and support. The representatives of the assessment enterprise analyzed this circumstance of receiving irrelevant comments and proposals concerning the environmental impact assessment in the following manner:

- Questions and comments tend to reflect the conflict of interest concerning the project approval.
- Due to the limited information and understanding of the project, commonly unable to ask efficient question or comment and likely to be influenced by others.

While there is a practice to prepare and introduce the overview of the assessment report to the local administration, information dissemination practice by the local administration and assessment enterprises is limited, and some companies submit their materials on the meeting day only. This circumstance causes the citizens to participate in the CPM without any information on DEIA and

express their point of view based on the 20 minutes long presentation provided by the assessment enterprise.

According to the analysis of 20 DEIA reports approved in various directions, during the 2014-2018 period, based on the comparative reading of resolutions of the CPM and discussion minutes, participants mostly comment on the general project concept, rather than considering specific matters contained in the assessment reports, while the CPM leaders resolution contains 100 supportive contexts.

Uncertain regulation on transparency of the DEIA reports

According to the Law on EIA, the assessment enterprise shall submit one copy of the DEIA to each of the MNET, project owner, and the Governor of the soum or district of the project site. Also, the Governor of the soum and district of the project site, bagh, and khoroo's Citizen's public meeting and province and capital city department of the environment are responsible for the transparency and accessibility of the report to the public.

According to the legislation, the MNET disseminates the public information concerning the DEIA conducted projects through its EIA database. Where it contains the overview of the DEIA and the following sections of the DEIA.

- Adverse impact mitigation, elimination, and compensation measures
- Risk assessment and management
- Environmental protection plan
- Environmental monitoring and analysis program
- Documentation on public participation

Although the copy of the assessment report is received by the local administration, according to the survey, public access to those reports is extremely limited. The survey participants mentioned several reasons that lead to this circumstance:

- There are contradicting perceptions, whether the assessment report is a classified document or a transparent document.
- There is no public information on the accessibility of the assessment reports.
- Motivations to allow free access to the assessment report are low, for domestic citizens are uninterested in reading and reviewing the assessment reports, even when one intends to read, the materials are usually large and intricate to comprehend.

Assessment enterprises agree that the material accessibility is extremely limited before its approval. First, according to the legislation, there is no requirement to deliver the reports to the local administration and transparently report. Second, it is considered that citizens are uninterested in reading the complete report. And third, project owners and assessment enterprises are concerned about sharing their reports with the public.

Immediate challenges

Uncertainty of responsibilities

Due to overlooked clarity and consistency of duties and responsibilities of the public participation process in the Law on EIA and the relevant procedures, public information dissemination activity and opinion gathering tasks before the CPM discussion are often neglected, and further, the context of the CPM review and discussion activities are less likely to be meaningful and fact-based.

General requirements of the projects subject to the DEIA

Due to the extensive coverage of the projects subject to the DEIA, the workloads of the MNET experts and Expert Committee are remarkably high. On the other hand, the identical public participation requirements on DEIAs of all large and small projects cause huge mischief. Hence, small and medium projects are rather concerned with obtaining the “reference letters” from the local administration than ensuring public participation.

Based on our analysis conducted on the EIA database, irrespective of the General assessment conclusion issued by the MNET, the projects are allowed between 3-6 months period on average to complete EIA. Because of the extensive coverage of DEIA projects and unstructured circumstances, the time allowance to conduct EIA is not regulated. To disseminate information to the public, collect opinions, and organize consultation efficiently, the assessment enterprise shall have sound financial status, organizational capability, and a sufficient assessment work budget. On the other hand, enough time allowance is required to have the report draft discussed and reviewed by the CPM.

Budget adequacy for the EIA

For small and medium projects, it is highly questionable whether the cost of the EIA is sufficient to satisfy the public participation requirements according to the legislation. Assessments of the small projects within the proximity of Ulaanbaatar requires a relatively lesser budget. For example, small project assessments in the direction of the services cost between 4-15 million, and common mineral project assessments vary between 5-15 million. The budget for the rural site assessments is slightly higher due to the business trip, transportation, and other additional expenses.³ Some respondents mentioned that because many small companies compete in the assessment market, in some cases, they negotiate the assessment fee extremely low or between 500 thousand to 2 million MNT.

According to rough estimations of the representatives of assessment enterprises, depending on the scale of the public participation activities, 5-10 percent of the assessment budget is spent on tasks related to public participation. However, due to the limited bargaining capacity of the assessment enterprises, public participation expenses are improbable to be estimated separately to charge the project owners. Therefore, it is preferred to collect opinions with minimum possible cost by promptly gathering feedbacks and organizing consultations.

Organization of the CPM consultation

The most immediate challenge faced in public participation is the unclarity overlooked in the law and procedures, such as whether to have public consultation at the regular CPM meeting or to convene an irregular meeting, and by whom and how to distribute the preliminary information to the public, and what are the responsibilities of the local administration and the project owner. On the other hand, since procedures and the legislation do not mandate the experts of the MNET and the Expert Committee of monitoring the public participation process by and reviewing the detailed report and the assessment enterprises; project owners are more concerned with document compilation and approval resolution.

Information transparency and accessibility

In every stage of the EIA, huge demand exists for transparent and accessible information delivery to the public in comprehensible forms and content. The current practice of restricting access to various archived information of the EIA database, beginning from the assessment phase poses a vast barrier in ensuring public participation. It is not the public concern only, but the local administration and the

³ The prices for mining project assessment vary depending on the project type and scope, and according to the participants of the survey, minor project assessments cost 15-20 million MNT, medium-sized are on average 30-50 million MNT, and large projects cost 80-100 million MNT or above. The assessment pricing for significant infrastructure projects are relatively higher, according to the participants.

project owners are incapable of reviewing baseline and progress information of the assessment. Although the entire DEIA is not classified as confidential information of state or organization, full access to the report is limited.

A gap in the information and understanding concerning the EIA

General understanding of assessment law and procedures are unsatisfactory amongst the project owners and soum and bagh administration, especially concerning the assessments for non-mining purposes. Twenty-six out of 30 participants of the survey representing the local administration were unable to provide concrete opinion on enforcement of the procedures, unaware of the procedures, and never reviewed these procedures. It is of utmost necessity to conduct information and training activities amongst the stakeholders, specially dedicated for project owners and soum and bagh administration, and organize public information dissemination campaign to educate the public on EIA purpose, the importance of public opinion, and reasons for obtaining public opinion.

Possible solutions

Based on the international benchmark, previous studies concerning the EIA implementations, and interview with the experts, we proposed possible alternative solutions to the survey participants, asking for their feasibility and reasons to support. Below we describe the comparative dispositions of assessment enterprises /30 participants/, mining companies /30 participants/, and local administrations /30 participants/, concerning 9 solutions proposed in the survey.

Based on the survey responses, the following solutions received relatively positive dispositions from parties: affixing the proofs of information dissemination, opinion gathering, and public consultation to the EIA report /Solution 3/, developing a new guideline on public participation based on the project classification /Solution 4/, adopting public participation guidance, worksheets, and forms approved by the ministry /Solution 5/, and obliging the bagh and khoroo administration to organize consultation meeting within a particular deadline, after delivering the assessment report /Solution 6/; and concerning the other solutions, it is recommended to reconsider to consider on positive and adverse impact and compliance with other legislation and practice.

Table 2. Participants disposition concerning the proposed solutions

Solutions	Assessment enterprises		Project owners			Local Administration			
	Yes	No	Yes	No	Not sure	Yes	No	Not sure	Not sure
1	17	13	0	17	11	1	29	1	0
2	18	11	1	21	6	2	25	0	5
3	21	9		25	3	1	28	1	1
4	29	1		21	7	1	24	2	4
5	19	9	2	23	6	0	24	3	3
6	23	6	1	16	13	0	25	2	3
7	21	8	1	19	9	1	16	14	0
8	20	7	3	12	16	1	24	1	5
9	18	9	3	12	16	1	12	18	0

Solutions

1. MNET and local administration shall disseminate public information and receive opinions on planned and conducted General impact assessments
2. Clearly define public participation requirements for the general impact assessment works
3. Affix the proofs of information dissemination, opinion gathering, and public consultation to the EIA report
4. Develop a new guideline on public participation based on the project classification
5. Adopt public participation guidance, worksheets, and forms approved by the ministry
6. Oblige the bagh and khoroo administration to organize consultation meeting within a particular deadline, after delivering the assessment report
7. Transfer the public opinion gathering process to the electronic form (web)
8. Organize public hearing on EIA, on behalf of the bagh and soum

9. Review and discuss the assessment reports only by the bagh and khoroo CPM board meeting /Committee, according to the new revision of the law/

The survey participants suggested various other approaches, besides the above-proposed solutions, which are classified in groups and listed(unsorted) below:

Solution type	Participant offered solution
Diverse participation requirements depending on the project category	- Depending on the project type, impact, classification, and scope require a different level of public participation - Require CPM consultation for mining and heavy industrial projects and CPM board review for other minor projects, transparently inform the public on the results of the assessment report, and affix the public opinion to the document, and provide a recommendation based on the expert committee review - Based on the local environmental impact assessment categories, reduce the ministry experts' workload by transferring the decision-making power to the local administration and improve local participation - Assessment report of small projects must be clear, comprehensible, and short.
Gathering opinions during the baseline assessment or before issuing a general assessment conclusion	- Disseminate information to the public and obtain their opinion during the general assessment conclusion phase or conclusion phase of the general assessment - Organize a small-scale introductory meeting during the baseline study phase informing the public about project owner, activities, and production and enable an access channel for interested citizens to provide their feedback
Obtaining public opinion at the beginning and progress of the detailed assessment and implement citizen's feedback	- Develop the assessment scope and plan based on series of consultations - Obtain citizen's feedback after the conclusion of the general assessment, reflect those feedback during the progress of the detailed assessment and introduce the results at the next meeting - Elucidate and make more practicable certain parts of the procedure, specifically the sections concerning the information dissemination to the public, its form, deadline, target audience, methods of consultation, and ways to guarantee citizen with freedom of expression - Set a regulation on how to reflect feedbacks, consider, and the procedure on disregarded opinion - Conduct the assessment operations in cooperation with the local citizens, involving the local citizens in the assessment team activities, providing information - Conduct research on potentially impacted citizens, ad organize a questionnaire, discussion, and one-to-one interview with them and affix reports.
On ensuring information transparency and accessibility	- Disseminate information concerning the assessment to citizens simple and comprehensive manner from a single source - Local administration shall deliver information to the public from the beginning of the project using an information board, Facebook, and other channels - MNET must notify information on local impact assessment activities to citizens, promote the use of environmental information database simplifying its interface - Clarify the bagh administration role and information content delivered to the public - Disseminate overall information in easily comprehensible forms or form of posters, newsletters, video content - Disseminate information to the public through primary information channels or TV, newspaper, and social media
Eliminate the bureaucracy caused by the CPM date and quorum	- Schedule the CPM and CRM dated quarterly - Specifically, regulate the responsibilities of bagh and khoroo - Convene irregular, additional, and partial CPM meetings - Specify the meeting dates, organization, and quorum in the relevant law, and reflect the liabilities for failures of fulfilling their duties to convene meetings - Convert all actions online, the province, soum, and bagh administration and staff shall publish meeting appointment online and send meeting notifications online or via the communication network.

Improve CPM participation and results	• Use motivation methods for improving the citizen's participation instead of traditional methods • Obtain citizens feedback in writing, ensuring personal confidentiality • Feedback on citizens comments and requests, informing the acceptability of their requests, reflect corresponding information in the assessment report, and report to the CPM • Introduce the plan at the beginning of the assessment process and agree on a meeting date ahead • Discuss the assessment result alone by convening an irregular meeting • Organize introductory event before the CPM • Prepare an overview of the assessment report and introduction material in a clear and comprehensible manner for citizens • Involve corresponding experts of the MNET and the province department of environment for monitoring purpose • Deliver feedback sheet to the citizen along with the meeting invitation to obtain their opinion during the meeting • Coordinate the meeting allowing 5-7 days window after delivering materials and convening meeting to discuss the assessment report • The assessment report form submitted for meeting discussion shall contain information on the number of feedbacks received, types of feedbacks, and what measures were considered in the assessment report • Use motivational measures to improve citizens' participation in the assessment report meeting, for example, promotions and lottery.
Eliminate gaps in the stakeholder understanding of participation	• In the ministry review of the DEIA, instead of seeking supported or unsupported opinion, consider whether the citizen's feedbacks were reflected. • Establish a common understanding of EIA and the importance of citizen's participation. Change public misperception about the assessment enterprises which regards assessment enterprise's purpose as only assisting the project owners in obtaining project approval. • Promote the importance of the EIA and feedback process to the public
Improve public understanding of assessment	• Disseminate basic information on EIA to the local citizen and local administration, and organize measure, training, and promotion campaign on ways to participate and ensure their rights entirely.
Improve transparency and accessibility of the assessment report	• Define the transparency of the assessment report and ways to access electronic and printed copies of the assessment report in the relevant laws and regulations • Enable access to the report at the governor's office without official permission or criteria • The original of the assessment report and its briefs shall be accessible locally • Besides the printed form, publish the report on the most accessed local web page and TV channels.
Improve management plan implementation	• Ensure management plan enforcement in accordance with the EIA, and improve the monitoring mechanism • Authorized entities to approve yearly management plans shall review whether the project enabled public participation and challenge if it was not satisfactory.
Improve financial regulations of the assessment	• Reflect the costs for ensuring public participation in the general assessment budget, for this purpose to prevent cheap and unqualified assessment works, establish a benchmark tariff, implement financial monitoring on expenses, and take measures to ensure transparency
Improve the quality of assessment works	• To improve assessment companies' qualifications, responsibilities, and requirements, provide sufficient time for performing assessment and conduct deeper analysis on assessment reports. For this purpose, stricken the requirements for assessment companies, improve operational transparency and reporting requirements, and ensure participation of specialists of particular sectors • Enable participation of relevant NGOs and ensure their monitoring. Involve NGOs representation in the Expert Committee of the MNET, ensure NGOs and other relevant entities participation and monitoring of the public participation process of gathering citizens feedback and organizing

	consultations, cooperate in disseminating information, training, and promotion activities
Improve responsibilities in the other phases of the project	To prevent further misunderstanding by informing citizens and obtaining their feedback during the exploration assessment phase of the mining project.
Amend the current requirement to have the assessment discussed at the COM	- Have the report discussed by the soum CPM and bagh meeting chairpersons - Organize public consultation and obtain their feedback, and introduce the report to the bagh leader - Conduct survey questionnaire amongst the bagh citizens, especially amongst the impact area citizens - Organize consultations amongst the citizens, involve ministry and related agencies for monitoring purposes

International benchmark

Depending on the specifics of the geo-economical situation and regional cooperation trend of Mongolia, we benchmarked regulations of neighboring countries PRC, RF, ROK, and Kazakstan, comparable and developing country Peru and Botswana, and the Queensland state of Australia, an economy built upon mining, agriculture, and tourism.⁴

Mongolian regulation on public participation in the EIA framework is exceedingly general, compared to the experiences of other countries considered in this study. The basic principle of providing citizens with the necessary information to form an accurate understanding concerning the project assessment and only then becoming able to comment and ask about the project - is overlooked in Mongolian legislation on EIA /refer to attached examples of RF and PRC /. The legislation of other countries explicitly defines the forms of public information, deadline, and responsible parties, while Mongolian law and procedures neglect such details.

Table 1. Assessment report consultation

	Mongolia	PRC	RF	ROK	Kazakstan	Botswana	Peru	Australia /Queensland/
Whether the consultation is organized as independent consultation and discussion?	No /Mandatory CPM/	Yes /If required/	Yes /Mandatory/	Yes /If required/	Yes / Mandatory /	Yes /If required/	Yes / Mandatory/	Yes /If required/
Whether the consultation announcement shall be made?	No	Yes /at least 10- days ahead / /web, newspaper, and board /	Yes /at least 30- days ahead / /web and newspaper /		Yes /at least 20- days ahead / /web, newspaper, radio, and TV/	Yes /at least 30- days ahead / / newspaper/	Yes /at least 20- days ahead / /main channel/	Yes /at least 30- days ahead / /web and newspaper /
Whether the reports are transparently published for the public before organizing the consultation?	No	Yes /minimum 10-days / /web/	Yes /minimum 30-days / /web and hardcopy/	Yes /20- 60 days / /web/	Yes /minimum 30- days / /web and hardcopy/	Yes /minimum 30-days /	Yes /minimum 30-days /	Yes /minimum 30- days / /web and hardcopy/

The regulation to have the assessment report draft discussed at the CPM exists only in Mongolia. In the cases of other countries, the project owners organize the discussion and hearing in cooperation with the local administration. This provision creates various advantages, such as organizing the consultation promptly, announcing the public ahead, and allowing an opportunity for people to review

⁴ AMEP-2. International benchmark on public participation in the EIA. 2021

and comprehend the information. While public attendance is an essential factor, these countries concentrate on ensuring process control by securing the accessibility and transparency of the announcement and assessment information and publishing reports transparently for public consultation.

Although the other countries' practice to mandate public participation from the beginning of the detailed assessment or from developing the terms of reference exist in Mongolian legislation, there is a lack of definite regulation on ensuring its enforcement.

In contrast to the international benchmark, the coverage of EIA required projects in Mongolia is extensive, without categorization; thus, the public participation requirement is the same irrespective of the project type. Benchmarked countries commonly narrowed coverage of the EIA projects to improve the quality of the assessment tasks of projects with substantial adverse impact and significant social, economic, and strategic importance and allowed simplified assessment for other projects, regulating under the environmental licensing procedure. For example, as of 2018, 80 percent of EIA projects of China filled in EIA forms, 12 percent completed in registration forms, and only 8 percent compiled EIA reports.

Shifting from project owner and assessment enterprise-led public participation model to government offices cooperation model that provides active support and monitoring, inevitably requires regulation of public offices workload by correctly categorizing the projects and transferring power to the local administration.

Table 2. EIA categories in some of the benchmarked countries

Countries	EIA categories of projects
PRC	EIA, EIA forms, and Registration forms
ROK	EIA, Micro EIA
Kazakhstan	EIA, Simplified assessment
Peru	EIA, Semi-detailed assessment, and Environmental impact declaration

Policy recommendations

Following reformation and changes are essential in the EIA framework of Mongolia, to improve the public participation regulations:

At the EIA framework level:

- Detail the general assessment and EIA required project criteria.
- Introduce a simplified assessment (e.g., semi-detailed assessment and impact assessment form) procedure and differentiate the scope, validity, and public participation requirements of the General Assessment depending on the projects.
- Clarify the MNET responsibility to provide public information, receiving public feedback, dispute and complaint resolution, and monitoring
- Reconsider the regulation to have the assessment report reviewed and discussed by the bagh and khoroo CPM, and efficiently coordinate the CPMs in accordance with the LoAaTU, effective from January 2022, or shift to the independent and transparent discussion form, to monitor the environmental protection in line with their principal responsibility of bagh administration

- Establish a real-time version of the EIA information on the environmental information database that contains timely news and public participation documents intended to support ongoing assessment works
- Categorize the assessment enterprises depending on the human resources base, financial capability, quality monitoring framework, and expertise, and by issuing different licenses depending on the assessment category, improve report quality and improve competitive capabilities of the companies.
- Transparently publish the full versions of the draft assessment report and its approved version in electronic and hard copies, to ensure the “citizen’s right to know about the environmental impact due to the natural resources within the framework of their right to live in a healthy and safe environment” provisioned by the Constitution of Mongolia.
- Promote and describe the purpose and significance of public participation in EIA, particularly in the context of public consultation
- Explicitly define the ethical responsibilities of the assessment enterprises, which violated laws and procedures and committed unethical conducts.
- Improve monitoring by scrutinizing the legal and procedural regulations concerning the project selection, scope, and responsibilities of the projects subject to EIA accreditation

Disseminate public information

- Elaborately regulate the public announcement and notification forms, deadline, content, and liabilities in the law on EIA and procedures
- Ensure public accessibility and transparency of the impact assessment reports while safeguarding the corporate confidentiality principles
- Reflect public announcement and notification activities of assessment information in the assessment report
- Report the public consultation meeting and project report discussion process and result to the public
- The detailed assessment report shall have a simplified and non-technical brief for simple read and comprehension of non-professionals.
- Information on Environmental Information Database Assessment shall have a a simplified and non-technical brief for simple read and comprehension of non-professionals.

Ensure participation in the detailed assessment progress

- Define forms, deadline, and responsibilities of public participation starting from the terms of the reference development phase
- Estimate the public participation alternatives, depending on the project location, volume, sector, and specifics of the region
- Compile public consultation or public participation report and include the assessment report
- Timely notify the public on public consultation and opinion gathering activities conducted during the assessment process

Improve the assessment report discussion process

- Clearly define the form, content, and responsibilities of announcing discussion at least 10-30 days ahead in the relevant law and procedures
- Allow 10-30 days of review the full draft report either electronically or in hard copy
- Have a definite form and recipient of the questions and comments concerning the report draft, in electronic or written means to the MNET or local authorities
- Ensure opportunities for citizens and stakeholders to participate in the discussion voluntarily and express their view in written or verbally

- Set regulations to organize the discussion at least once or several times to ensure and maximize the citizens and stakeholder participation
- Explicitly regulate the organization, procedure, and reports of discussion and adopt guidance, models, and forms
- Require to transparently report the discussion reports timely or within 5 days of discussion
- Provision resolution methodologies in the law and procedures, on joint working groups establishment and its procedures, in case of disputes between parties or delays in conducting consultation meetings
- The listening process shall be implemented by the Ministry of Nature, Environment, and Tourism in case of disputes between parties or delays in conducting consultation meetings
- Reflect discussion progress, result, and related documents in the Public participation or public consultation activity section of the assessment report

Ensure transparency of the assessment report

- Following the approval of the assessment report, the public version of the document /eliminating the sections related to the business secret/ shall be published online for 6-12 months freely accessible by public
- The hardcopy of the public version of the report /eliminating the sections related to the business secret/ shall be retained in the public library /for example, soum library/ to ensure public and stakeholder access

Appendix

Principal regulation of EIA public participation of the PRC

After the issuance of the decision to conduct EIA
The project owner shall publish the following information on its or local administration web page: 1. Basic project information: project name, location, and primary activity 2. Project owner name and contact addresses 3. Assessment enterprise name 4. Link to the feedback form 5. Instruction on submitting the feedback Feedback forms approved by the ministry.
After completion of the draft EIA
The project owner shall inform the public with the following information: 1. On how to access the draft EIA 2. Recipients of the feedback 3. Link to the feedback form 4. Instruction on sending written feedback Citizens shall be provided with the opportunity to feedback for at least 10 working days. In case of numerous questions and negative feedback concerning the impact, the project owner shall conduct deeper consultation measures such as public discussion, hearing, and meeting. An announcement shall be made at least 10 days prior to the consultation or hearing to register people interested in participating and invite people mandatory to participate in the consultation. Within 5 days of completing the consultation and hearing, the meeting minutes shall be published online for public review. The project owner may seek support from the corresponding local administration in the organization of public consultation and hearing. The project owner shall carefully consider public feedback and prepare the report containing the following content: 1. Process of ensuring public participation, scope, and measures 2. Information of feedback collection and its analysis 3. Measures implemented concerning the public feedback and explanations The project owner shall transparently publish the blueprint of the EIA along with the public participation report on its web page prior to submitting them to the state-authorized entity.
The relevant authorized entity, after receiving the EIA blueprint and public participation report
The relevant authorized entity shall publish the following information on their web page, following the receipt of the EIA: 1. A full version of the EIA 2. Information of public participation 3. Instructions on public feedback The authorized entity shall maintain the above information accessible for at least 10 working days.
The relevant authorized entity, after reviewing the EIA and before issuing a conclusion
The relevant authorized entity shall publish the following information on their webpage, following the receipt of the final EIA report: 1. Project name and location 2. Project owner name 3. Assessment enterprise name 4. Principal activities of the project owner, significant environmental impact, and mitigation measures 5. Project owners' activities implemented to ensure public participation 6. Instructions on sending feedback

The information shall be kept accessible for at least 5 working days. Besides this information, shall notify the public of opportunities of conducting a public hearing, if public or project owner requested.

The authorized entity controls whether the legal requirement to involve public participation was adhered to and reviews citizen's feedback in detail. The authorized entity rejects the report if it fails to satisfy requirements.

After the review and approval of the EIA by the relevant authorized entity

Shall publish the conclusion on the corporate web page, along with information concerning the administrative complaint process.

Principal regulation of EIA public participation of the RF

After the issuance of the decision to conduct EIA

The project owner shall compile the terms of reference for the IEA. Following this, the project owner shall announce the acceptance of public feedback on project ToR through federal, provincial, and local newspapers. The announcement shall contain the following information:

- Name, purpose, and location of the planned activity;
- Project owner name and address;
- Environmental impact assessment period;
- The entity responsible for conducting the public participation;
- Public consultation form (questionnaire, hearing, and survey research, etc.), feedback methods and formats;
- Methods to review the terms of references of the EI, location, and term; and
- Other information.

Citizens may submit their feedbacks within 30 days of publishing the draft terms of reference. Based on the public feedback, the project owner shall compile the final TOR.

Before submitting the EIA blueprint

Shall organize the public hearing concerning the report blueprint.

The project owner shall submit their application to the local administration. The local administration shall issue a decree to conduct a public hearing. The details such as a date and location shall be published in the official sources /newspaper/ at least 30 days prior to the hearing date. The project owner shall maintain the report draft information freely accessible to the public for at least 30 days.

Local administrations are obliged to register the citizens willing to participate in the hearing/throughout 30 days/, organize public hearing, and prepare minutes of the hearing /within 5 days/. The project owner bears the hearing expense.

Minutes shall be reviewed and officiated by the representatives of the project owner, local administration, and the public. Consecutively, the document shall be affixed to the environmental impact assessment report along with other related documents.

The hearing shall not issue any decision, and it emphasizes providing information to the public and receiving their feedback.

According to the legislation, citizens may submit their feedback in writing within 30 days of the end of the hearing.

Matters that shall be reflected in the assessment report

According to the assessment procedure, the report shall contain the following information.

12. Report on public feedback process implemented during the assessment report preparation process:

12.1. Public announcement method, of feedback methods, deadline, and forms

- 12.2. Full names, organization name (if represented an organization), the address and telephone number of the organization or address and telephone number of the individual
- 12.3. Matters raised by the citizen's feedback, percentage, and minutes of the public hearing (If conducted)
- 12.4. Gap analysis on differences of the received comments, feedback, consultation of the public, local administration, and the project owner
- 12.5. Conclusion based on public consultation, and results of the feedback acceptance activity
- 12.6. Minutes, whether the public feedback has been accepted or rejected, and explanation in case of rejection
- 12.7. Relevant information delivered to all stakeholders during the assessment phase

Moreover, the report shall contain a non-technical overview of the project.

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