

# CHALLENGES IN ENSURING PUBLIC PARTICIPATION IN ENVIRONMENTAL IMPACT ASSESSMENT AND LEGAL REFORMS<sup>1</sup>

## I. Introduction

Since 2000, environmental issues caused by the use of natural resources have been raised acutely in the entire territory of Mongolia. According to the Mineral Resources and Petroleum Authority, 1.8 million hectares area or 1.1 percent of the total territory has a valid license for mining and 4.5 million hectares area or 2.9 percent of the total territory have been granted exploration license.<sup>2</sup>

The Environmental impact assessment (EIA) is carried out to determine and mitigate potential negative impacts that may occur during the implementation phase of the project or in the process of using natural resources, conducting exploration, or mining mineral and petroleum. International researchers pointed out that “the key stakeholders involved in EIA are local communities, special interest groups, NGOs and government agencies”<sup>3</sup> and “ensuring public participation provides the basis for seeing the problems faced by the project in a broader context and solving them with multiple options, thus harmonizing social values and government policies”<sup>4</sup>. In our country, Environmental Impact Assessment Law /Revised Version/ came into effect in 2012, Its Article 18.5 states that The community involvement affair shall be regulated by the regulation. Therefore to enforce the law, “Regulations on the community involvement in the environmental impact assessment”<sup>5</sup> was adopted in 2014. Despite the implementation, numerous issues with this relation still exist.

## II. Main body

As of 2022, the Environmental Impact Assessment database has 9,596 approved general impact assessment reports and 6725<sup>6</sup> approved detailed impact assessment reports, with 70% of the overall assessments being detailed. In terms of detailed impact assessments, 40.5% for services, 25.1% for agriculture and manufacturing, 21.1% for mining and 13.2% for infrastructure development.<sup>7</sup>

During the detailed assessment process or prior to the report's preparation and discussion at a public meeting, public participation activities are defined in the regulation on public participation in environmental impact assessments, but implementation is inadequate because there is no provision for reporting and documentation.<sup>8</sup>

In the 22 environmental impact assessment reports analyzed in the 2021 Survey on Implementation of Participation in In-Depth Assessments, the minutes and decisions discussed at public meetings included the provision of necessary information, presentations. Based on laws and regulations, it is conducted to hear opinions in the

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<sup>2</sup> Mineral Resources and Petroleum Authority, “*Mineral Resources and petroleum statistics: 2022/03*”, page 6.

<sup>3</sup> Professor J.J.Muller, “Public participation in Environmental Impact Assessment: A Comparative analysis of the United Kingdom, South Africa and the United States”, 2001, page 14.

<sup>4</sup> William A. Tilleman, “Public participation in the Environmental Impact Assessment Process: A Comparative study of impact Assessment in Canada, the United states and the European Community”, 1995, page 339.

<sup>5</sup> Annex to the Order No.A-03 of the Minister of Environment and Green Development dated Jan 6,2014.

<sup>6</sup> The Environmental Impact Assessment database was accessed on May 12, 2022.

<sup>7</sup> The Environmental Impact Assessment database was accessed on May 12, 2022.

<sup>8</sup> Mineral Resources Programs in Australia and Mongolia: Report of Public Participatory Environmental Impact Assessment Procedures and Practices, 2021.

evaluation process. However, there were questions and suggestions indicating that citizens attended the meeting without prior information or detailed evaluation of the project.<sup>9</sup> Out of the 22 resolutions, only 2 proposed to incorporate citizens' proposals into the planning of the report, and 20 resolutions supported the direct implementation of the project, making it an announcement-style event.

If a public meeting of citizens does not support a project or a detailed environmental impact assessment, the company with the mining concession may hold a special meeting with the opposing citizens and promise a certain amount of money, funds, and a job. Our country is one of the seven Asian countries implementing the Business and Human Rights Program implemented by the United Nations<sup>10</sup>. We must conduct business in accordance with the UN Guiding Principles on "Business and Human Rights" approved by the Office of the United Nations High Commissioner for Human Rights. To achieve this, we must accept responsibility for refraining from initiating illegitimate initiatives or programs that have a negative impact on human health and the environment, as well as for preventing the potential of such lobbying.

It should also be mentioned that falsification of public assembly resolutions and forgery of citizen signatures are still commonplace. For example, LLC 'A' has a special license for mining 'Z' quantity in Bayankhongor province and when operations began, it faced strong opposition from the public and the quantity manager decided to change the protocol. Considered carefully. The citizens' council conducted an environmental review and filed an application with the public prosecutor's office. The act of retaliation proved that the organization forged the resolutions and minutes of the People's Assembly, but it was not charged as a crime, because it did not carry out activities using false documents and did not harm others.<sup>11</sup>

Although ten types of crimes against the environment are legalized in Chapter 24 of the Criminal Code of Mongolia, in the case of manipulating environmental impact assessment by using false documents, It isn't possible to impose criminal liability under Chapter 24. Also, even though the grounds for revoking a license are legalized in clauses 56.1.1 to 56.1.11 of Minerals Law of Mongolia, the ground for revoking a license in the case of false environmental impact assessment or public participation was not properly ensured is not provided. Article 56.1.5 states that 'the State central administrative agency in charge of the environment has decided, based on a report of the local administrative bodies that the license-holder had failed to fulfill its environmental reclamation duties set out in environmental protection plan or caused harm to the environment.' In other words, according to article 56.1.5 responsibility such as revoking the license can not be imposed in the mentioned cases.

### **III. Conclusion and Suggestions**

In summary, the mechanism of conducting the general and detailed environmental impact assessment during the implementation of the mining projects, ensuring public participation in the EIA, imposing liability if not properly provided as well as the

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<sup>9</sup> And there.

<sup>10</sup> Opening of the program "Business and Human Rights: Promoting Economic Growth through the Mechanisms of Protection, Respect and Recovery" February 29, 2021.

<sup>11</sup> Appendix - 1, Resolution of the Prosecutor's Office of the Bayankhongor region of January 29, 2020 "On termination of the registration case".

compensation is not fully formed and the fact that harmonization of laws and regulations is poor and some relations are overlooked indicate the need and demand to update and reform in accordance with Principles on Business and Human Rights, the Amendments to the Constitution of Mongolia and need of the moment.

Based on the research and conclusion above, the researcher would like to put forward the following suggestions for legal reforms in order to ensure public participation in Environmental Impact Assessment.

1. The State Great Khural of Mongolia passed amendments to the Constitution on November 14, 2019. Its Article 6.2 states that “A citizen shall have the right to know about the impact on the environment from the exploitation of land subsoil wealth as part of the right to live in a healthy and safe environment.” The said constitutional article should be coordinated with the Chapter 4 and Article 18 of Environmental Impact Assessment Law (Revised version). Making amendments in a detailed manner to how citizens will be provided with information at all stages such as before assessment, during implementation, and reporting.
2. Revising and amending Article 56.1.5 of Minerals Law of Mongolia to revoke a license if the EIA is proved to be false, or public participation was not properly ensured.
3. Based on the United Nation’s Guiding Principle on Business and Human Rights, amending Article 24, named Environmental crimes, of the Criminal Code of Mongolia to provide specific liability in the case of manipulating environmental impact assessment by using false documents, and including obtaining citizens’ votes by promising money, jobs, or other rewards to the citizens as an aggravating factor.
4. Based on the amendments above, revising ‘Regulations on the community involvement in the environmental impact assessment’ Annex to the Order No.A-03 of the Minister of Environment and Green Development dated Jan 6, 2014.

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