

**United Nations Human Rights Team Group**

**Discussion Paper for the National Dialogue:  
“Mining and Human Rights in Mongolia”**

*Prepared by Centre for Human Rights and Development*

*Ulaanbaatar  
2006*

## Foreword

In September of 2000, Mongolia was one of the 189 nations that adopted the “Millennium Declaration”. The Millennium Declaration contained eight core Millennium Development Goals. A ninth Millennium Goal was approved for Mongolia by the Mongolian Parliament in 2005. Millennium Goal 7 is to “ensure environmental sustainability” and Millennium Goal 9 is “to strengthen human rights and foster democratic governance”. These two Millennium Goals come together in Mongolia in the area of human rights, democracy and mineral development. Target 10, under Goal 7, is to “integrate principles of sustainable development into country policies and programs and reverse the loss of environmental resources”. Target 20, under Goal 9, is to “fully respect and uphold the Universal Human Rights Declaration and to ensure the freedom of media and the right of the public to have access to information”. Target 21, under Goal 9, is “to mainstream democratic principles and practices into life” and Target 22 is to “develop a zero tolerance environment towards corruption in all areas of society”.

The participants in the last meeting of the United Nations Human Rights Group stressed the fact that though Mongolia’s mining sector has become an important part of Mongolia’s economic development in the past ten years, this economic development has not been conducted in a manner consistent with Millennium Goal 7 “to ensure environmental sustainability”, or with Goal 9 to “strengthen human rights” in Mongolia. The participants discussed the damage to the environment and the violation of human rights of local citizens due to mining activities which pose an increasing challenge to Mongolia’s ability to achieve the Millennium Goals. It is hoped that by addressing these challenges in a direct and open fashion Mongolia will be able to ensure that it enjoys sustainable economic development while protecting its environment and its citizens in accordance with international standards and principles.

For this reason, the United Nations Human Rights Theme Group decided to organize a national dialogue under the heading “Mining and Human Rights in Mongolia”. The purpose of this national dialogue is to encourage the free exchange of ideas among all of the stakeholders in this area and to develop a consensus of the mining sector, government and civil society in Mongolia with respect to protection of the environment and protection of human rights within the context of sustainable development of Mongolia’s mineral resources.

After the initial discussion, the Representative Office of the United Nations Organization (UNO) in cooperation with the United Nations Human Rights Theme Group reviewed the human rights issues associated with Mongolia’s mining sector and commissioned the Center for Human Rights and Development (“CHRD”) to develop a discussion paper to frame this national dialogue. The purpose of this discussion paper is to outline the current issues and problems relating to mining and human rights in Mongolia.

The information in this discussion paper was gathered through individual meetings and group discussions with herders, artisanal miners, and representatives of Mongolia’s mining companies, River Movements, governmental organizations including the Ministry for Nature and Environment, National Commission for Human Rights, Ministry of Justice, General Police Office, State Prosecutors Office and Judiciary as well as representatives of the United Nations specialized organizations

and representatives of various public health and environmental NGOs. In developing this document the guiding principle has been to respect the interests and concerns of all of the participants and to incorporate their points of view on how best to integrate principles of protection of the environment and human rights into the sustainable development of Mongolia's mineral resources.

Information has been solicited from the various stakeholders on different topics relating to mining, the environment and human rights including adverse environmental impacts, issues affecting particular stakeholder groups, past human rights issues, and suggestions for change and improvement. In order to encourage consensus based cooperation, we have analyzed the stakeholders' responses and reviewed the experience of other countries in the area of human rights, the environment and sustainable mineral development. Based on this review we have developed recommendations for the protection of human rights and the environment in Mongolia in the context of sustainable development of Mongolia's mineral resources.

### **Adverse Impacts of Mining on the Environment**

Mongolia has a small population dispersed over an extensive land area. Mongolia also has many different kinds of valuable mineral deposits. The Minerals Law of Mongolia was adopted in 1997 and the government's "Gold Programme" was initiated shortly thereafter. As a result Mongolia's mining sector has prospered and mineral development has become one of the leading sectors of Mongolia's economy. Under Mongolia's Law on Minerals, "exploration" licenses entitle their holders to explore for minerals and "exploitation" licenses authorize their holders to engage in mining and mineral extraction activities. There are currently 6,171 mining exploration and exploitation licenses in Mongolia covering 71,107,888.66 hectares or more than 45% of Mongolia's territory. Of these 6,171 licenses, 5,172 are exploration licenses covering 70,901, 641.1 hectares and 999 are exploitation licenses covering 206,247.56 hectares. Under Mongolian law however, the issuance of an exploration license almost automatically entitles the holder to an exploitation license.

Exploitation licenses have been issued in many critical areas including significant watershed lands, habitat lands of rare and endangered species of flora and fauna, and areas of outstanding natural beauty, resulting in irreparable harm to Mongolia's natural environment and to future generations of Mongolia's people. As a result of the large number of licenses, the use of outmoded and environmentally destructive gold mining technology, inadequate environmental impact assessments, failure to rehabilitate mining sites and inadequate monitoring and enforcement of environmental regulations, environmental and associated human rights issues have become one of Mongolia's most pressing national concerns.

The most significant human rights issues in Mongolia's mining sector are a direct outgrowth of the adverse impacts of mining on Mongolia's natural environment. Mining activities in Mongolia have created serious problems of water pollution and ecological damage.<sup>1</sup> Based on the interviews with herders and professionals, it appears that the adverse environmental impact of mining is Mongolia's most serious

---

<sup>1</sup> In the course of developing this discussion paper, information on mining and related human rights issues was compiled from 14 of Mongolia's 21 *aimags*.

environmental issue. Among the most serious problems are water pollution, diminished surface waters, and destruction of pasture lands.

### Rivers and Water Courses

Mongolia is located in the uplands of central Asia and has very harsh winters, large seasonal temperature fluctuations, and limited and fragile water resources. In some areas the annual precipitation is not sufficient even to meet the needs of the population for drinking water. Mongolia receives about 22,000 cubic meters of water per square kilometer of territory, which places it among the lowest twenty four countries in the world in terms of water resources. Despite Mongolia's limited water resources, its rivers, streams, and associated pasture lands, are an absolute necessity for the nomadic herders who make up almost one-third of Mongolia's population. Yet the mining technologies currently being used in Mongolia, particularly for gold mining, require large quantities of surface and ground water and often use it inefficiently. At least partly as a result of such mining activity, many of Mongolia's rivers, streams, lakes, ponds, and much of its ground water resources have been contaminated, diminished, or have dried up completely. According to Mongolia's 2003 water census report<sup>2</sup>, more than 3000 rivers, streams, lakes, ponds, springs, and mineral water sources have completely dried up. Many Mongolian families are experiencing very severe hardships as a result of this rapid decline in Mongolia's available surface waters. Although mining has not been the sole cause of this problem, the rapid expansion of mining activity without adequate environmental controls has been an important contributing factor.

*Table 1. Consolidated Report of Mongolia's Surface Water Census*

Rivers		Springs		Mineral Water Sources		Lakes/Ponds	
Total	Dried Up	Total	Dried Up	Total	Dried Up	Total	Dried Up
5565	683	9600	1484	374	10	4193	760

### Impact on Pastureland

Mongolia has approximately 1.3 million sq. km. of pastureland which is 82 percent of total Mongolian territory but because of the damage to Mongolia's water resources much of this land has been damaged. Gold mining activities, for example, are often conducted within or adjacent to Mongolia's surface waters which has conflicted directly with the use of adjoining lands for pasture and crop lands. These land use conflicts are compounded by the fact that in most cases land is not biologically rehabilitated after mining as required by law. The areas licensed for mining exploration and exploitation often overlap the winter quarters, spring quarters, and pasturelands of Mongolia's indigenous herders. In addition, their lands are frequently degraded by multiple tracking of roads and damaged by dust from the heavy machinery used by mining.

<sup>2</sup> *Consolidated Report on Surface Water Census* (2003), Water Authority, Ministry of Nature and Environment

Table 2. Numbers of Exploration and Exploitation Licenses and damaged pastures and water sources<sup>3</sup>

1	Aimags	Licenses Issued			Damaged pasture in hectares	Polluted and dried up rivers, streams, lakes and ponds
		For exploration	For exploitation	In total		
1	Arkhangai	-	19		- <sup>4</sup>	More than 10
2	Bayankhongor	550	66	616	436.800	More than 40
3	Bayan-Olgii	7	4	12	1.6	-
4	Bulgan	-	-	15	8000	10
5	Gobi Sumner	14	2	16	-	45
6	Dornogobi	577	55	632	- <sup>5</sup>	-
7	Dornod	-	-	25 <sup>6</sup>	2113.4	2
8	Dundgobi	420	20	440	-	-
9	Zavkhan	61	-		-	-
10	Khentii	525	53	571	-	44
11	Ovorkhangai	87	16	103	-	2
12	Omnogobi	340	22	362	24156	3
13	Uvs	32	133	165	9437.8	4

### Forests, Plants, and Animals

In areas where exploitation licenses have been granted, entire ecosystems have been damaged. Destruction of forests and rare and endangered plants, contamination of soil and water, and the displacement of wildlife have all become common occurrences in mining areas. In the few areas where some form of land rehabilitation has been done, it has been limited to regrading the land to fill in the excavated holes. Biological restoration of the land and its associated ecosystems is almost never done.

### **Human Rights Issues by Stakeholder Group**

The human rights issues and violations associated with Mongolia's mining sector were reviewed from the perspective of the affected groups, as discussed below.

#### Herders Group

Approximately 30% of Mongolia's population is made up of nomadic herders. This group of people maintains a unique culture and lifestyle which is based on Mongolia's nomadic traditions. These herders are the people who are most severely affected by

<sup>3</sup> This table is based on data from UN Human Rights Volunteers from 13 *aimags*.

<sup>4</sup> 11 winter camps, 12 spring camps, 20 summer camps, 15 fall camps were effected. 10 hectares of forest were destroyed, and 2,500 hectares were seriously degraded.

<sup>5</sup> Currently there is no available data on Dornogobi *aimag*.

<sup>6</sup> Of the 350 license holders currently registered in Dornod, 25 are actively mining.

mining activities. Local citizens and herders are in agreement that under current conditions they and their local communities receive almost none of the benefits from Mongolia's prospering mining sector. That is why they do not want gold mining to be conducted on their home territory.

### **Box 1. Hard talk from local herders<sup>7</sup>**

**“We don’t see any benefit from having gold mining companies working in our territory. They have destroyed our land and rivers and made it impossible for us to live.”**

“Basically we beg our Governor, and say please don’t give our land to anyone if gold is found in our *soum*. But, you see, things happen just the opposite way. If big companies come to claim our land for gold, the officials simply agree to give it to them, and sign the papers. Sometimes I think maybe this is the way it is supposed to be. High level people, they know, they decide, they give away our land.”

“Tending livestock and pastureland capacity issues have become very difficult. 40 families and about 2000 livestock had to move from the territory occupied by Orkhon *bag*’s gold mining company where we used to live. All I can say is that gold mining has terrible effects on us herders. Not to mention its impacts on the environment and land where we should live. And now when I think back...we have lost so many things because we didn’t know how to fight; and didn’t know the laws and regulations. When gold mining companies first started their activities on our land, they promised many things, such as new job opportunities, opening felt or felt boot or carpenters’ shops, and building new hospitals, and other things. But now we don’t have any choice but to leave our lands.”

“For us herders, water is the most important thing. I don’t think that even after restoration those rivers will ever run again. As I know, a total of five rivers including this one have dried up...companies come here saying they have a license; they come and start digging without our approval; and we just have to move to some other place”.

“We don’t have a chance to know what is happening and to say that we will not give up our land. They dig gold in our most beautiful places that have water and pasture, we have moved so many times and now we don’t even have a place to move to.”

“Our *soum*’s people have been forced to move away for the last 5-6 years. We move our livestock 200-500 km. away from our *soum* to find pastureland. Because of this, many families from our *soum* have migrated to central places. There are many more who wish to leave but they aren’t allowed to leave, because the heavy migration has caused many problems with schooling, medical services, and retirement and pension allowances.”

“I cannot tolerate any more. I don’t have any place to move. If any other gold mining companies come here, I will have to fight with them, holding my firearms...”

### The Human Rights Problems of Herders

---

<sup>7</sup> From interviews with herders of Arkhangai *aimag*, Tsenkher *soum*, Dornod *aimag*, Bayandun *soum*, Omnogobi *aimag*, Mandal and Ovoo *soum*

Although many types of human rights violations, including violations of civil, political, economic, social and cultural rights have occurred, the following types of human rights violations most strongly emerged from the interviews with herders:

- Pastureland and surface water resources have been destroyed and as a result the herders' right to subsistence by engaging in farming and animal husbandry has been violated;
- When economic opportunities for local citizens have been destroyed, they have been denied the right to find other means to sustain and improve their lives;
- Their right to live in a safe and healthy environment has been violated by contamination of soil and water, by destruction of the surface of the land, and by depletion of ground and surface waters;
- They have been denied the right to access to information concerning mineral exploitation activities on their lands;
- They have been denied the right to participate in decision making concerning mineral exploitation of their lands;
- They have been denied the rights to be educated, to have access to health care and social welfare services because they have to move their herds further away, and for longer periods of time, from the places where such services are available;
- They have been denied the right to participate in monitoring and rehabilitation of their lands which have been damaged by mining and to recover damages for the destruction of their pasturelands and their water resources;
- They have been denied their right to preserve their culture and way of life because they are forced by mining to abandon their traditional lifestyle;

These rights have been violated because Mongolia's laws have failed to adequately protect Mongolia's environment and the human rights of Mongolia's herders and local communities.

### Artisanal Gold Miners<sup>8</sup>

Much has been said and many research reports written about artisanal or "ninja" gold miners. In 2003, it was estimated that more than 100,000 people were engaged in artisanal mining in Mongolia.<sup>9</sup> All of the participants in the interviews stressed the importance of addressing the issues involved in artisanal mining for the following reasons:

- The legal framework applicable to artisanal mining has not yet been settled and this type of gold mining is not recognized under Mongolia's laws;
- The current temporary regulations which apply to artisanal mining are not sufficient to regulate all of the legal relations involved in this activity. As a result artisanal miners are subjected to constant pressure from, and conflicts with, gold mining companies, license holders, police, local authorities, and local citizens. Since there is no official legal recognition of artisanal mining, it

---

<sup>8</sup> Based on information compiled through interviews with artisanal miners and local citizens in Sov or Uguumur (formerly Khailaastai), Geo, and bag 26 of Tuv *aimag*. The factual assertions and issues described in this section are based on the interviews with artisanal miners and local citizens and their factual assertions have not been independently verified.

<sup>9</sup> Grayson, Robin, *Ninja Gold Miners of Mongolia* 2003, p. 23.

is not possible to secure and protect the rights of the people who are engaged in that activity;

- In the absence of health and safety regulations, artisanal mining is extremely dangerous. As one artisanal miner stated: “there is no guarantee that a person will come back in the evening”;
- All sorts of human rights violations exist in the areas where artisanal miners are working including violations of the right to life, the right to live in a healthy and safe environment, the right to food and adequate nutrition, the right to health care, the right to education, the right to vote and participate in civic affairs and so on;
- Perhaps the most critical necessity emerging from these interviews is the need to provide artisanal miners with information on how to protect their rights. Without such information there is basically nothing they can do to improve their situation;
- Child labor: “there are many young children working as ninjas who have dropped out of school. These children dig gold and carry the same load of hard work as the adults. These children die when the walls of the digging holes collapse”. The miners ask “who pays any attention to this”?
- Environmental damage: to the question “who is harming the environment more – licensed gold companies or artisanal miners?” – the people interviewed have answered – “Both”. According to their answers neither group does the required environmental rehabilitation work. In addition, many of the artisanal miners use mercury in order to extract the gold. They also have begun to expand their mining activities into lands which have not been subject to prior mining. This is an emerging issue of immediate concern.
- Lack of economic regulation: there is an urgent need to improve the profitability of artisanal mining. Even the artisanal miners are concerned about this issue. They have said, “we don’t want to sell our gold to foreign people at cheap prices. Our gold never stays in Mongolia. We want to ask the government to found a branch bank in our region and to purchase the gold that we discover”.

**Box 2. Common conflicts as reported by artisanal miners and local citizens:**

- Conflicts between police and artisanal miners: artisanal miners report that after completing mining of gold deposits, companies and lease holders often allow artisanal miners to enter an area. Because in some cases gold exploitation by artisanal methods is more effective than using heavy equipment, the license holders allow artisanal miners to work the area until they find gold. If they find gold, someone obtains or renews a mining exploitation license and then forces out the artisanal miners, with assistance from the police. “This is a classic method. They bribe the chiefs of police who then order the police officers to act in their favor. Police officers don’t just force people off the sites: they arrest, beat, and club them. How is it possible that this is allowed to occur?”;
- Companies and artisanal miners: mining companies and artisanal miners are in constant conflict. It is understandable because both of them compete for the same gold. Companies have money, technology, equipment, and access to powerful people. They use the laws and local authorities in their favor. Therefore artisanal miners constantly face losses for their “unlawful”

activities. According to the artisanal miners, the reason that companies allow artisanal miners onto the sites is that companies have to pay 10,000 MNT per hour for bulldozer operation and 30,000 MNT per hour for excavators. “Instead they allow artisanal miners into their gold fields and then, after discovery of gold without cost, they force them out with police assistance; it is a sophisticated method for using people’s labor without having to pay for it”;

- License holders and artisanal miners: the problems are the same as above. It is difficult to predict the consequences if active measures are not taken to solve these problems. According to one artisanal miner, “one high level person from Geo came in mid-April of last year and shot a ninja with his gun. We hope this won’t happen again”;
- Local Citizens and artisanal miners: the life of Mongolia’s herders has become very difficult. People from different areas steal their livestock, their winter quarters, and their fuel. Water flows have been diminished and herders have had to leave their settlements. People dig deep holes around the winter quarters and homesteads and crush rocks from the mountains. Artisanal miners are blamed for all these problems;
- Local authorities and artisanal miners: local police authorities show up only when there is a need to force out artisanal miners. In other cases no one comes at all. They blame artisanal miners for causing them problems and complicating their lives. Companies pay and local authorities take bribes for granting water and land use permissions. Five years ago, places such as Tsenkher, Ulaan Khad, and The Three Gers had already been mined. However, when artisanal miners discovered gold in the remains of the deposits, local authorities leased the land again, issuing a new license. “Nobody knows who gives or who takes bribes or how or through whom they do it. At least they could make some improvements to the Zaamar community, or reconstruct the road. They do not protect their own citizens, but become the hands of foreigners”.

Based on these interviews, it is clear that it is necessary to update the legal framework applicable to artisanal mining, to increase the profitability of their work, to solve their social difficulties, to restore the environment, to eliminate the numerous human rights violations involved in this type of mining. The current temporary regulations have not adequately addressed the problems of the Mongolian people who are working as artisanal gold miners or those who must deal with them in various capacities.

## **Other Stakeholders**

### Local Authorities

According to Mongolia’s Law on Special Permission, which was adopted in January 2002, mining companies are required to obtain approval from local Governors before obtaining final permission from the Government to conduct mining operations. In addition, the Minerals Law of Mongolia provides that when license holders begin their mining activities, the local authorities have the right to obtain information about the environmental plan, and that the license holder has an obligation to utilize the licensed area in accordance with the environmental plan.

In reality with respect to the responsibilities and obligations of local authorities in relation to mining activities, the problems have been described as set forth below:

**Box 3. Statements from the administrative workers in the *aimags***

When mining activities have started in our *aimag*, many people thought that it would make a contribution to the development of our *aimag*. However, in reality, local citizens have not benefited from those activities. Moreover, it is sad for us to watch how the environment is destroyed and people leave their settlements. I really regret it. I don't really know what is the benefit to the nation from this mineral production.

As I know, the local authorities have no real decision-making powers. High level people decide whether to conduct gold mining activities in particular *aimags*. There are even specialized people and networks of people who take care of this matter, and they decide to whom to give permission to work. It is unbelievable how much pressure comes from them.

If I have to ask some favor for our *aimag*, I get pressure to sign the required documents for the companies.

When I used to work as a Governor of the *aimag*, I found out that the mining company was paying 50 percent salary of the employees of the Secretariat of the Governor's office for one of the *soums* and threatened to stop paying it. This is how these mining companies get to act as they please.

When I see the mining company's activity in our *aimag*, I think that it is indeed necessary to change the current Minerals Law of Mongolia. Why? Because gold mining companies, which already have obtained the licenses, come to conduct mining. But these mining projects do not provide any benefits for our area. According to the current law, the local administration doesn't have any authority to decide. It is very complicated.

Plus, I would like to say few words about the political situation. Government employees are not permitted to work if you are not a political party member. In reality, this has created an environment where we have to do what the political party says. For instance, if there is a disagreement between the Head of the Citizens' Representatives Hural and the Governor of the *aimag*, then they call us to Ulaanbaatar, blame us for making a mistake, and demand that we carry out the the party's directions. Take a look at the example of Omnogobi *aimag*. If you say something out loud, they warn "there are other people who have a softer voice than yours". Today, the political parties appoint the Governors of provinces in order to realize their desire to conduct mining activities in that province. I'm sure that you understand this reality without my explanation.

- In actual practice, local authorities do not have the capacity to prevent or meaningfully restrict the activities of mining companies if they have obtained lawful licenses from State authorities. Moreover, the local administration has a duty to help them to conduct their activities in their territory;
- All taxes collected are paid to the national budget, and no significant profits come to the *aimags* or regions where the mining is conducted;
- Mining activities in the local areas are extremely politicized and local authorities face pressures from different groups within the political parties.

- These facts demonstrate that the authority of the local administration has collapsed, which prevents them from protecting the rights and interests of the local region.
- The local authorities try to monitor and improve the implementation of the laws, but with few results;
- The only method used to protect land from mining is to take an area for the special use of the *aimag* and *soum*.

Consequently, local administrators want to change the laws and regulations relating to the mining sector to make mining more profitable for the *aimags* and *soums*, and to prevent violations of the interest of local citizens, and to remove the pressure from political parties and their groups.

**Box 4: What we heard from *Soum* Governors**

A major difficulty for *soum* Governors is that the Office of Geological and Mining Cadaster (OGMC) doesn't have a connection with local *aimags* and *soums*. In addition, the local administration doesn't have sufficient legal authority. People come suddenly and without notice to transfer their licenses and permissions. The only way we can get information about who has transferred a license is from Zuuni Medee newspaper. *Aimags* and *soums* never know what is going on. All decisions come from Ulaanbaatar. The Government knows the location of deposits which it has found, but there are many more private mining companies prospecting in the rural areas. They sell their licenses to exploitation companies before we even know about it. The local area only gets a water fee. They say that they hand over the gold to Mongol Bank, but you can't find out how much gold was handed over. The trade in licenses has become as common as the trade in livestock. One day another company comes to mine. Because of that, the previous companies don't pay their bills to the local administration. When you bring a lawsuit, it is too late because they have already changed their name. And even the courts say "go to Ulaanbaatar because that is where they are located". Although we have authority under the Environmental Law of Mongolia, there is no organization to help us. All we can do is call the Professional Inspection Office of the *aimag*. They come, issue an order, and then leave. They can't watch the field all the time. As soon as they leave, the companies enter again and start work. Gold mining companies work very secretly. When a Governor's resolution is adopted, they say that they will not conduct any more unlawful activities. But, after they've gone, you find mercury. The ninjas burn off the remaining mercury in their boilers. The *soum* published a handbook on mercury poisoning. But, people don't understand the consequences of mercury poisoning and think only about their profits. We have all these laws and regulations, but it's not in our power to do anything. All of the decisions come from the national ministries and agencies, when we should be able to decide these things ourselves. After permission issues from the local authorities, we continuously demand that the license holder fulfill its obligations. However, we are just waiting, without results.

In some instances gold mining companies to provide 50 percent of the salary of the employees of the *soum's* administration. In some cases, the companies use this as leverage to conduct unlawful activities. For instance, gold companies use that leverage to avoid placing 50 percent of the rehabilitation deposit into the *soum's* account, and to obtain water permissions over the opposition of the local citizens, and in other similar instances.

“We don’t have the capacity or ability to oppose companies with valid licenses or to negotiate agreements with them to conduct necessary programs for our *soum*”, explains the governor of one *soum*. For this reason the rights of local citizens are not adequately protected.

#### Words from a *bag* administration

“*Bag* administration tries to protect the interests of local citizens, to discuss the issues at the Local Citizens’ Hural, and to identify and protect important places as special needs lands of the *soum* or *bag*. They have started to cooperate with the local civil movement to protect the land, water and environment. But these people lack adequate knowledge, and there are no mechanisms or capacity to obtain information on the activities of the mining activities. The companies and high level government organizations try to obstruct such actions by local authorities”.

#### The perspective of the mining companies

In accordance with the guidelines for the preparation of this discussion paper, we have contacted companies using the list of companies printed by the Office of Geological and Mining Cadaster. We made 1,077 calls to 588 companies which held exploitation licenses. Of these, 506 companies declined to provide any information. The information from the 82 companies who responded is as follows:

The following problems were described by the administrators of companies possessing mining exploitation licenses:

- Environmental issues and the protests of local citizens cause difficulties for the companies;
- They stressed that they are concerned about environmental damage and the lack of water and that these issues need to be appropriately integrated into the mining sector by new approaches and mechanisms.
- The other main difficulties they face are tax pressure, bureaucracy, lack of support from the Mongolian government, and inadequate technology and investment.
- Weak national policy in support of domestic gold production; for example, the proposal to auction off mining exploitation licenses is seen as giving greater opportunity to foreign companies than domestic companies; and they disagreed with the differential tax rates applied to foreign and domestic companies.
- In addition, artisanal miners are causing serious problems for the gold mining companies; the licensees reported that artisanal miners are making it impossible to properly rehabilitate the land at mining sites.

One common point of view which we heard from the administrators of gold companies was “how can you say that the mineral sector is violating human rights when mining is the principle activity which is supporting the economic development of Mongolia”?

#### Voices from the Government ministry and officials charged with protection of the environment

The Government ministry and officials with jurisdiction over mining need to develop new approaches and policies that can be integrated into the mining laws in a practical manner in order to address the problems facing the mining industry, particularly in the areas of protection of the environment and human rights.

First, the following changes should be made to the policies governing mineral exploration and exploitation licenses:

- *Exploration licenses*: increase the authority and participation of the *soum* administration; strengthen environmental protection requirements applicable to mineral exploration; increase the authority and accountability of environmental inspection officers; make the issuance and extension of exploration licenses subject to compliance with environmental requirements; make license applications and licensing proceedings public information and allow public comment and participation; and increase the level of monitoring for compliance with environmental requirements.
- *Exploitation licenses*: increase the authority of the *soum* and *bag* administration; require licenses applications to be reviewed and approved by the citizens Hurals of the *soums* and *bags*; require consideration of the financial and technical capacity of the applicant to rehabilitate the land; provide for termination of licenses if the mining operation is not profitable enough to support rehabilitation of the land; prohibit mining licenses from being issued in critical areas such as the sources of rivers and springs, lake basins, areas with habitat for rare or endangered animals and plants, historic places and central places inhabited by local communities. Improve the systems for protecting the environment and accountability during mineral exploitation. For example cancel the exploitation license if the licensee does not complete at least 50 percent of the land rehabilitation work that was required by the environmental plan to be completed during the prior year; in such cases expend the funds from the rehabilitation bond to perform the work but do not release the mine operator from its responsibilities; require applicants to demonstrate that they are in compliance with environmental and rehabilitation requirements as a precondition to the issuance, extension and transfer of mining licenses; cancel licenses and impose criminal sanctions on companies and people who fail to complete required land rehabilitation or who damage the environment in other ways.
- If sustainability agreements are to be entered into, include detailed environmental standards and requirements as well as specific and adequately funded mechanisms for monitoring and enforcing compliance; develop, or adapt from other countries, improved methods and technologies to reduce the adverse environmental impacts of mining and to improve the quality of land and ecosystem rehabilitation; increase the level of research and improve data collection on the impacts of mining on the environment; develop, or adapt from other countries, improved methods for assessing the cost of ecological damage and for determining the cost of land rehabilitation and ecosystem restoration; require that environmental impact assessments include cumulative impacts and the entire watershed. Make mining license applications, environmental impact assessments, environmental plans and related documents public information; allow public comment and provide public

hearings in the licensing process; increase transparency and openness during the licensing process' and increase the level of expenditures for these activities.

### National Human Rights Commission

The impacts of unsound mining practices on human rights are a priority area of the Commission, and the Commission is interested in expanding their work in this area. In the past, the Commission has focused on improving labor standards in the mining sector, but now it is broadening its scope to people who live in communities around mining sites. The Commission has conducted a number of joint projects with the ILO on labor rights in the mining sector including freedom of association (2005), forced labor (2004), and child labor (2003). The Commission currently has a project proposal to work with herding communities affected by unsound mining practices. The project is expected to start in the fall of 2006.

### The Voices of Mongolia's Judges

Individual freedom and human rights are among the most basic values enshrined in Mongolia's Constitution and its Millennium Goals. The State is responsible for implementing these values through its system of laws; the judiciary is responsible for interpreting and implementing those laws in actual cases through judicial decision making. Because the judiciary plays such an important role in protecting human rights and the environment and in resolving disputes in the mineral sector we have included the point of view of employees of the judicial system in this discussion paper.

In 2005 a total of 24,492 cases were heard in Mongolia's civil courts. Of those only 4 cases involved mineral resource disputes. In addition 4 cases relating to mineral licenses were heard by the City, Tuv, Arkhangai and Khenti *aimag* courts. The administrative court heard a total of 386 cases in 2005, and of those 73 cases involved the land law and 19 cases involved the minerals law.

The following themes have emerged from our interviews with the judges. There are unlawful activities in the mining sector relating to licensing, taxes, labor conditions, environmental protection and the rights of local citizens and herders. In fact, violations of these civil and human rights of local citizens and herders are quite common, but these cases are rarely brought to court. There are several reasons why this is so. Because these violations occur mostly in rural areas where citizens are not familiar with the legal system they often do not know that the law has been violated. Even if they do know, however, they don't know where to turn, how to bring a law suit or how to prosecute one. In addition, as a practical matter, the complexity of judicial procedures can intimidate rural citizens and result in denial of access to justice. Rural citizens tend to be cautious of the courts and to lack confidence in the justice system. This may result from the following factors:

- the salaries and benefits of the employees of the judicial system are very low so they are susceptible to improper influences;
- the knowledge of court employees regarding human rights is inadequate and they have not had practical experience in applying the Constitution, international conventions and laws which Mongolia has adopted;

- the public does not understand that many cases involve conflicting factual allegations and legal principles and that the judge has an important and legitimate role to play;
- there is a need to show people that justice can be fair and to overcome the adage that the way to prevail in court is to influence the judge by reaching higher authorities; there is also a need to combat the idea that the courts are there only to protect the interests of the people who set them up;
- people feel that judges are assigned to cases because they have a connection to one of the parties or a personal interest in the outcome of the case;
- there is a need to improve the professional ethics of judges and to teach them to evaluate the evidence fairly and to decide their cases based on legal principles and not their personal views.

All of the judges participating in the interviews said that the Law on Minerals needs major changes and that suggestions for improvement to the law should be fully discussed and carefully considered. The judges said that although there are many laws that apply to the mineral sector, these laws are often ambiguous, inconsistent and contradictory. The judges identified a need for an organization such as a Law Revision Commission that could analyze the problems with the existing law and develop careful solutions.

The judges also felt that their self-governing organization is not functioning properly and that changes are required to make it work. Under the current system only one person makes all the decisions regarding the performance and accountability of judicial personnel. The judges felt that more people and more points of view should be involved in that process

#### Summary of UN specialized agencies in Mongolia

UN specialized agencies in Mongolia have been concerned about the human rights violations caused by adverse effects on the environment and they often deal with related issues in the conduct of their other activities.

#### UNFPA

The impacts of environmentally and socially unsound mining practices on human rights are a priority area for UNFPA. UNFPA recently received funding to implement a project entitled “Reducing Socio-Economic Vulnerabilities of Selected Peri-Urban and Informal Mining Communities in Mongolia,” which will address the lack of access to health and education services among unregistered migrants that have moved into peri-urban and informal mining areas looking for work. The project will work to reduce domestic violence, improve gender equality, improve knowledge about reproductive health in mining communities, and improve the capacity of local organizations to better serve unregistered mining communities.

#### World Health Organization

WHO is concerned about the impacts of unsound mining practices on human health, and has focused on three areas related to mining. First, WHO has coordinated a water safety testing program at selected sites around the country. Second, WHO is concerned about commercial sex activity around mining sites, and has set a goal of

100% condom use in these areas. Third, WHO has also implemented a program on silicosis, which can occur when people breathe highly mineralized air which can occur around mining sites. WHO has also worked with the Japanese aid agency, JICA, on mercury poisoning and artisanal miners. In addition, WHO has consulted with a number of mining companies before they began their operations on ways to mitigate possible health risks.

#### International Labor Organization

The negative impacts of unsound mining practices on human rights are a priority area for the ILO. ILO works closely with MONEF to implement extensive activities in this sector with a focus on reducing child labor. Past and current projects include efforts to promote dialogue between mining companies and artisanal miners, to review laws relating to artisanal mining and to promote improved legislation, to improve occupational safety of artisanal miners including the dissemination of a manual on best practices, to reduce child labor through monitoring and alternative-employment education projects, and to provide education on the health effects mercury. While ILO is concerned that unsound mining practices pose a serious threat to public health and the environment, ILO also cites an improvement in public awareness on mining issues since 2000. ILO will publish a report on artisanal mining in Mongolia in June, 2006.

#### UNICEF

UNICEF is concerned about the impacts of unsound mining practices on the human rights of women and children, including a lack of education among the children of artisanal communities. UNICEF does not have specific programs relating to mining at this time, but provides assistance to ILO upon request.

### **Comparison of International Best Practices and Mongolia's current practices with respect to mining and the environment**

As the chart below demonstrates Mongolia's current practices for regulating mineral development are not in accord with international best practices. This is true in many areas including freedom of information, public participation in decision making, access to justice and involvement of local communities in decision making. It is also true with respect to the procedures for conducting environmental impact assessments and the laws governing the financial and technical capacity of license holders, best available technology, air and water quality, land rehabilitation, bonding requirements and mine closure. In addition, Mongolia's laws regarding license revocation and license transfers are not sufficiently protective of the environment. Finally, there is the problem that Mongolia's existing requirements are not being consistently and fairly enforced<sup>10</sup>.

---

<sup>10</sup> See generally "Human Rights in Natural Resource Development", Zillman et al., Oxford University Press, 2002; "Breaking New Ground: Mining, Minerals, and Sustainable Development", Report of the MMSD Project of World Business Council for Sustainable Development an International Institute for Mining and Development, Earthscan Publications Ltd., London an Sterling, VA; "Hard Rock Mining: State Approaches to Environmental Protection", J. McElfish Jr. et al., Environmental Law Institute, 1996; "Mineral Exploration, Mining and Aboriginal Community Engagement: A Guidebook Report of the Workshop on Indigenous Peoples and Mining Minerals and Sustainable Development", World Business Council for Sustainable Development and I.I.E.D., Perth, Australia.

<b>1. LICENSING AND DECISION MAKING</b>	<b>International Best Practice ("IBP")</b>	<b>Mongolia's Current Practice ("MCP")</b>
<i>Freedom of Information</i>	License applications, environmental impact assessments, and decisions, are public information available on websites or for inspection and copying at nominal cost.	License applications, environmental impact assessments and environmental plans are confidential; only final decisions are public information.
<i>Public Participation</i>	Public notice of applications is published and members of the public are provided an opportunity to submit comments; public hearings are conducted for projects with significant environmental impacts or that involve new policy issues; public comments and scientific evidence submitted as comment or at public hearing must be considered in making decisions.	There is no public notice of applications, no opportunity for public comment, and no public hearing process. Licenses are granted without any significant public participation.
<i>Access to Justice</i>	Affected citizens and concerned NGOs have legal standing to participate in licensing proceedings and to appeal adverse decisions to the courts.	Affected citizens, but not concerned NGOs, have authority to appeal licensing decisions to the courts. Grounds for appeal are very limited.
	<b>International Best Practice ("IBP")</b>	<b>Mongolia's Current Practice ("MCP")</b>
<i>Involvement of Local Communities</i>	In Canada and Australia, prior to issuance of license, local indigenous populations can negotiate local participation/benefit agreements with mining companies including employment of local people, educational programs, opportunities for advancement, community development funds, environmental controls, and payment by mining companies for costs of negotiation, monitoring, and enforcement of agreements	Local community involvement is limited to consultation regarding environmental plan, and issuance of water use and land use permissions by <i>soum</i> governor.

<p><b>2.</b> <b>ENVIRONMENTAL IMPACT ASSESSMENTS (EIAs)</b></p>	<p>EIAs are prepared and approved as part of licensing process; there is opportunity for public comment and participation and adequacy of the EIA is subject to review by the courts</p>	<p>EIAs are prepared by consultants hired by mining companies, there is no standard format, no opportunity for public comment and participation, and adequacy is not subject to review by the courts.</p>
<p><b>3.</b> <b>APPLICABLE LAWS AND REGULATIONS</b></p>		
<p><i>Financial and Technical Capacity</i></p>	<p>License applicants are required to demonstrate financial and technical capacity to comply with environmental laws and rehabilitation requirements.</p>	<p>Applicants for licenses are not required to demonstrate financial and technical capacity.</p>
<p><i>Best Available Technology</i></p>	<p>Licenses are subject to requirement that mining companies employ best available technology or best practicable technology to control environmental impacts.</p>	<p>License holders not required to employ best available technology.</p>

	<p><b>International Best Practice (“IBP”)</b></p>	<p><b>Mongolia’s Current Practice (“MCP”)</b></p>
<p><i>Air and Water Quality</i></p>	<p>Mining operations are required to comply with ambient water standards that set enforceable standards for pH, turbidity, dissolved oxygen, and other parameters of discharges and receiving waters. Similar standards are applicable to air emissions.</p>	<p>Air and water quality standards are not being enforced.</p>
<p><b>4.</b> <b>REHABILITATION REQUIREMENTS</b></p>	<p>Continuous biological rehabilitation is required during mining operations to the extent possible with stock piling of topsoil and replanting of vegetation and with monitoring growth of vegetation.</p>	<p>Rehabilitation plans are required to be prepared but rarely implemented; where rehabilitation occurs it is usually limited to regrading the land without restoration of topsoil and vegetation.</p>

<p><b>5. BONDING REQUIREMENTS</b></p>	<p>Bonds or other security must be posted to cover the full cost of rehabilitation. The cost of rehabilitation is accurately measured.</p>	<p>Bonds are required by law for fifty percent of the cost of rehabilitation. The cost of rehabilitation is usually underestimated. The amount of the bond is often less than 50% of the underestimated cost. In some cases, no bond is posted at all.</p>
<p><b>6. MINE CLOSURE</b></p>	<p>Temporary and permanent mine closures are subject to strict requirements to prevent surface water run-off from polluting ground or surface waters and to protect people, domestic animals and wildlife.</p>	<p>Temporary or seasonal closures are not subject to specific requirements. Permanent closure requirements are not adequate, or, if adequate, not strictly enforced.</p>
<p><b>7. LICENSE REVOCATION</b></p>	<p>Licenses are subject to revocation for failure to post adequate security, comply with environmental regulations, or perform required rehabilitation.</p>	<p>Licenses are not subject to revocation for failure to post adequate security or for violation of environmental requirements or failure to perform required rehabilitation.</p>
<p><b>8. LICENSE TRANSFERS</b></p>	<p>Licenses may not be transferred unless licensee is in compliance with environmental and rehabilitation requirements.</p>	<p>Licenses can be transferred even if licensee has failed to comply with environmental and rehabilitation requirements.</p>

**Conclusions and Recommendations:**

Local communities and herders do not receive significant benefits from mining on their lands. The inefficient extractive technology currently being used in gold mining in Mongolia, combined with the failure to rehabilitate the land, has resulted in serious negative environmental impacts including destruction of pasture land and water pollution, has contributed to the reduction in water flows and the volume of many of Mongolia’s rivers, lakes, and streams.

This environmental degradation has led to violations of the civil, political, economic, social, and cultural rights of Mongolia’s citizens. Local herders do not have the right to participate in decisions concerning the issuance of mineral licenses on their lands, in decisions concerning water and land use permissions, in environmental impact assessments, or in the monitoring of environmental rehabilitation. . Under Mongolia’s existing legal framework the rights of Mongolia’s herders are not adequately protected and the government’s policies toward natural resource development have

not taken their interests sufficiently into account. The rights of Mongolia's herders to education, health care, and social welfare assistance have been violated because of their need to move to more and more remote locations in search of pasture land and available water. There are no established practices in Mongolia for assessing environmental damage and compensating the victims. There are no effective means for redressing human rights violations through the courts. In addition the people who are affected do not have adequate legal knowledge and do not have confidence in the judicial system.

Herders and local citizens have tried to protect their rights by establishing civil movements in different parts of Mongolia. They still lack, however, the organizational capacity, legal knowledge, and experience to deal effectively with mining companies and local authorities. Priority must be given to building the capacity of these NGOs to monitor implementation of principles of human rights and sustainable development.

The lack of any formal legal status for artisanal gold miners also leads to human rights violations. The artisanal gold miners are subject to pressures from mining companies, police, local government and local citizens and must live in a state of conflict which robs them of human dignity.

International best practices should be introduced to assure the rights of Mongolia's people to access to information, to participate in decision making, and to have access to justice with respect to mining licensing decisions, monitoring of environmental compliance, and rehabilitation practices. Mining practices should be modified so as to eliminate or minimize negative environmental impacts and to make greater contributions to local economic and social development.

In order to address the foregoing shortcomings in the current legal framework which is applicable to mining operations in Mongolia, there is a need for amendments to the Law in Minerals and the Law on Environmental Impact Assessments which would increase transparency and strengthen applicable environmental requirements. Specifically, these amendments should make mining license applications, environmental impact assessments and related documents public information. Public participation should be permitted and encouraged in the issuance of mining licenses by allowing public comment and holding public hearings on significant licenses. The authority of local communities should be increased to require approval of licenses by local Citizens' Hurals and to authorize them to enter into participation/benefit agreements with mining companies. Access to justice should be improved by allowing scientific evidence to be submitted by various stakeholders and by requiring such evidence to be considered by decision-makers and the courts. Interested non-governmental organizations, as well as individual citizens, should be permitted to participate in licensing proceedings and to appeal adverse decisions to higher authorities and the courts. Laws governing environmental protection and rehabilitation of land and ecosystems should be strengthened. Mining licenses should not be issued in critical areas including sources of rivers and springs, important habitat for rare and endangered species, historic sites, and central areas occupied by local communities. Mining licenses should be subject to revocation for failure to comply with applicable requirements and licenses should not be issued or allowed to be transferred unless the applicant has demonstrated financial and technical ability to

restore the land and unless the applicant is in compliance with applicable environmental requirements.

Proposed amendments to Mongolia's Law on Minerals and Law on Environmental Impact Assessments designed to bring Mongolia's law more into line with international best practices for protection of the environment and public participation in licensing decisions have been developed in conjunction with this discussion paper. These amendments will be submitted to the Standing Committee on Finance, Ulsin Ekh Hural and to interested members of Parliament.

In order to achieve long term sustainable development of Mongolia's mineral resources, Mongolia's policy and decision makers must integrate principles of environmental protection and human rights into Mongolia's laws, policies, and programs relating to mining and natural resource development. Unless such changes are made Mongolia will not be able to meet its Millennium Goals or fulfill the democratic promise of its Constitution.