REGIONAL OVERVIEW OF COUNTRY SAFEGUARD SYSTEMS TO MITIGATE TRANS BOUNDARY INFRASTRUCTURE MEGA PROJECT IMPACTS

MONGOLIA
<table>
<thead>
<tr>
<th>ABBREVIATIONS</th>
<th>full form</th>
</tr>
</thead>
<tbody>
<tr>
<td>ADB</td>
<td>Asian Development Bank</td>
</tr>
<tr>
<td>ACL</td>
<td>Anti-Corruption Law (Mongolia)</td>
</tr>
<tr>
<td>AIIB</td>
<td>Asian Infrastructure Investment Bank</td>
</tr>
<tr>
<td>BRI</td>
<td>Belt and Road Initiative</td>
</tr>
<tr>
<td>BRICS</td>
<td>Brazil, Russia, India, China and South Africa</td>
</tr>
<tr>
<td>CAR</td>
<td>Central Asian Republics</td>
</tr>
<tr>
<td>CAREC</td>
<td>Central Asia Regional Economic Cooperation</td>
</tr>
<tr>
<td>CIS</td>
<td>Commonwealth of Independent States</td>
</tr>
<tr>
<td>CSS</td>
<td>Country Safeguards Systems</td>
</tr>
<tr>
<td>EAEU/EEU</td>
<td>Eurasian Economic Union</td>
</tr>
<tr>
<td>ESCC</td>
<td>Energy Sector Coordinating Committee</td>
</tr>
<tr>
<td>EIA</td>
<td>Environmental Impact Assessment</td>
</tr>
<tr>
<td>EIB</td>
<td>European Investment Bank</td>
</tr>
<tr>
<td>EBRD</td>
<td>European Bank for Reconstruction and Development</td>
</tr>
<tr>
<td>GDP</td>
<td>Gross Domestic Product</td>
</tr>
<tr>
<td>GoM</td>
<td>Government of Mongolia</td>
</tr>
<tr>
<td>GTI</td>
<td>The Greater Tumen Initiative</td>
</tr>
<tr>
<td>IFIs</td>
<td>International Financial Institutions</td>
</tr>
<tr>
<td>ILO</td>
<td>International Labor Organization</td>
</tr>
<tr>
<td>LEP</td>
<td>Law on Environmental Protection</td>
</tr>
<tr>
<td>INSTC</td>
<td>International North South Transit Corridor</td>
</tr>
<tr>
<td>MFN</td>
<td>Most Favored Nation</td>
</tr>
<tr>
<td>MNT</td>
<td>Mongolian national currency Tugrug</td>
</tr>
<tr>
<td>MECSC</td>
<td>Ministry of Education, Culture, Science and Sports</td>
</tr>
<tr>
<td>NATO</td>
<td>North-Atlantic Treaty Organization</td>
</tr>
<tr>
<td>NDA</td>
<td>National Development Agency (Mongolia)</td>
</tr>
<tr>
<td>NDB</td>
<td>New Development Bank</td>
</tr>
<tr>
<td>NOWPAP</td>
<td>Northwest Pacific Action Plan</td>
</tr>
<tr>
<td>NSR</td>
<td>New Silk Road (US initiative)</td>
</tr>
<tr>
<td>PA</td>
<td>Protected Areas</td>
</tr>
<tr>
<td>PPP</td>
<td>Public Private Partnership</td>
</tr>
<tr>
<td>Acronym</td>
<td>Description</td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
</tr>
<tr>
<td>QII</td>
<td>Quality Infrastructure Initiative (Japan)</td>
</tr>
<tr>
<td>SAP</td>
<td>Structural Adjustment Program</td>
</tr>
<tr>
<td>SRF</td>
<td>Silk Road Fund</td>
</tr>
<tr>
<td>TTFS</td>
<td>Transport and Trade Facilitation Strategy</td>
</tr>
<tr>
<td>UNESCO</td>
<td>The United Nations Educational, Scientific and Cultural Organization</td>
</tr>
<tr>
<td>UNEP</td>
<td>United Nations Environment</td>
</tr>
<tr>
<td>UNHCR</td>
<td>The UN Refugee Agency</td>
</tr>
<tr>
<td>WBG</td>
<td>World Bank Group</td>
</tr>
</tbody>
</table>
SUMMARY  The five Central Asian Republics also known as the Stans – Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan - and Mongolia are landlocked and resource rich countries with history of dependence on a larger neighbor for support, cooperation and military protection.1 But a more important similarity to bear in mind is their shared political culture deeply rooted in the communist past and still characterized by top-down single source decision-making, low transparency and high corruption leading to poor law enforcement.

Measures to enforce anti-corruption law, strengthen the independence of judiciary and to reform law enforcement institutions have been underway since the early 1990s in all the Stans supported by either the World bank, ADB, EBRD or bilateral donors. These same development banks spent time and resources in improving the environmental legislation to bring them to the international standard levels or to install country safeguards systems in these countries to allow infrastructure projects under CAREC or a mega mine for example in Mongolia. However, Kyrgyzstan faces major governance challenges in all sectors of the economy and at all levels of the state apparatus, including entrenched corruption, infiltration of state institutions by criminal groups and political instability, resulting in economic problems. Corruption and years of cronyism and clientelistic2 practices have fueled citizen discontent and political instability, leading to a popular uprising in 2010, and to the election of a new government in 2011. In terms of pressing problems, this description would tightly fit Mongolia as well.

Both Mongolia and Kyrgyzstan have seen governments replaced every two years, all of them wildly slewing in their attempts to re-negotiate bad investment deals or at least respond to popular or populist demands amidst the clashing group interests within or spanning the ruling parties. The numerous documents and cases studied for this paper evidence the fact that environmental and social safeguards are simply waived when decisions are made on high profile investment projects often termed as “strategic projects” in these countries. This has a direct relation to the enforcement of environmental and social safeguards or management of the commons as clearly defined in the following abstract from Transparency International: “Capture of political decision-making is one of the most pervasive and widespread forms of political corruption in the Commonwealth of Independent States (CIS) region, where a culture of impunity prevails among politicians, prosecutors and oligarchs. In many CIS, EU accession and Eastern European countries, it is common to have MPs or local governors who are also business owners, without being questioned by the public, which perceives this as something normal. Companies, networks and individuals unduly influence laws and institutions to shape policies, the legal environment and the wider economy to their own interests. In this case having a comprehensive legal framework is not enough. What is required is effective implementation of anti-corruption provisions.” Therefore, unless corruption is addressed there is little hope that country safeguards systems will work in these countries thirsty for financial support and economic development opportunities.

I. Central Asia Sub-region

A. Political, economic, social and development trends in Central Asia.

General overview. This paper will attempt to give an overview of country safeguards systems in former Soviet republics of Central Asia known as the five Stans: Kazakhstan, Kyrgyzstan, Uzbekistan, Tajikistan and Turkmenistan and a closer look at the same system in Mongolia, a former Soviet satellite. These countries are selected on the basis of the shared historical background of command economies and similar post-socialist transition to democracy and market order assisted by international development institutions.

A comparative analysis of economic, political and legal framework similarities and differences of the five Stans is not the purpose and scope of this paper. The aim of this paper is to give a general overview of the region, existence and soundness of country safeguards systems for transboundary economic and infrastructure expansion of Western and Chinese interests into the region.

From the point of view of the penetrability of the region, it would be worthwhile to note that all five Stans are linked - as a legacy of Soviet times, - by interconnected transport, energy and water networks into a single body.

---

1 Russian Military Bases in central Asia, Nazarbayev University Political Science Review, January 11, 2017

2 Clientelism is the exchange of goods and services for political support, often involving an implicit or explicit quid-pro-quo.[1] https://en.wikipedia.org/wiki/Clientelism

3 Transparency International, Regional analysis by Conny Abel, Svetlana Savitskaya and Valentina Rigamonti, Jan 2017
The five Stans are at the same time quite distinct. Dissimilarities come into play when it comes to each country’s own economic and resource capacity for participating in the regional economic and infrastructure development and relations with the two big neighbors: Russia and China. These are relations of sets of trio: for example Russia-Kyrgyzstan-China or Russia-Mongolia-China with each regional country having to carefully balance their relations with Russia owing to the traditional ties and shared economic-infrastructure and the emerging influence of China with its potential and interest to finance mega projects in the region.

<table>
<thead>
<tr>
<th>Country</th>
<th>Population</th>
<th>Area (km²)</th>
<th>GDP (nominal)</th>
<th>GDP per capita (nominal)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kazakhstan</td>
<td>18,050,488</td>
<td>2,724,900</td>
<td>$196.4 billion</td>
<td>$7,715⁴</td>
</tr>
<tr>
<td>Kyrgyzstan</td>
<td>6,000,000</td>
<td>199,900</td>
<td>$6.4 billion</td>
<td>$1,067</td>
</tr>
<tr>
<td>Uzbekistan</td>
<td>32,121,000</td>
<td>447,400</td>
<td>$52.0 billion</td>
<td>$2,566</td>
</tr>
<tr>
<td>Tajikistan</td>
<td>8,610,000</td>
<td>143,100</td>
<td>$7.2 billion</td>
<td>$796.2</td>
</tr>
<tr>
<td>Turkmenistan</td>
<td>5,171,943</td>
<td>488,100</td>
<td>$29.9 billion</td>
<td>$7,522</td>
</tr>
<tr>
<td>Mongolia</td>
<td>3,121,772</td>
<td>1,566,000</td>
<td>$11.16 billion</td>
<td>$3,776</td>
</tr>
</tbody>
</table>

**Economic overview** - The Asian Development Bank (ADB) in collaboration with IDB, EBRD, WBG and other donors has been involved in infrastructure, trade and regional integration programs in the region since the very start of its economic and political transition. ADB serving the role of the Secretariat for Central Asian Regional Economic Cooperation (CAREC) is considered to have the best research and intelligence data for this region. Thus, this study will rely in many areas on research reports from the CAREC projects in these countries. According to the CAREC 2020 Midterm Review Report the economic environment for these resource extraction dependent countries has changed dramatically since the 2008–2009 financial crisis. The drastic economic downturn since 2014 has also had a negative impact on the entire region. This is evidenced by the GDP growth rates in the CAREC countries for 2005–2015 and projections for 2006–2020 as presented in the table below.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Kazakhstan</td>
<td>3.9</td>
<td>4.8</td>
<td>0.7</td>
<td>1.8</td>
<td>3.8</td>
</tr>
<tr>
<td>Kyrgyzstan</td>
<td>3.6</td>
<td>4.9</td>
<td>1.0</td>
<td>3.8</td>
<td>4.4</td>
</tr>
<tr>
<td>Mongolia</td>
<td>4.7</td>
<td>10.3</td>
<td>0.4</td>
<td>5.4</td>
<td></td>
</tr>
<tr>
<td>Tajikistan</td>
<td>6.1</td>
<td>7.0</td>
<td>3.8</td>
<td>4.4</td>
<td></td>
</tr>
<tr>
<td>Turkmenistan</td>
<td>9.2</td>
<td>10.6</td>
<td>4.3</td>
<td>5.1</td>
<td></td>
</tr>
<tr>
<td>Uzbekistan</td>
<td>8.7</td>
<td>8.1</td>
<td>6.9</td>
<td>6.4</td>
<td></td>
</tr>
<tr>
<td>Weighted average</td>
<td>4.8</td>
<td>6.5</td>
<td>2.8</td>
<td>4.5</td>
<td></td>
</tr>
</tbody>
</table>

The root causes of vulnerability to market shocks lie in the dependence on a single sector commodity or a single market termed in the ADB report as “lack of economic diversification, low productivity and competitiveness, modest progress in regional cooperation and integration”.

While the ADB report admits that “Shocks in commodity markets in recent years have proved ineffectiveness of growth strategies reliant on commodity exports”, the World Bank Group and EBRD take a different stance by proposing mineral extraction based or commodity reliant economic growth as competitive economic growth model for Mongolia for their next Country Partnership Framework.

The economic outlook for the CAREC countries for 2016–2020 forecasts growth at a low 4.1 percent. The faltering oil prices will linger at around $50 per barrel, thus not supporting upward trend for commodity exporters as well as importers. However, the ADB report argues that effective infrastructure expenditures to counter external shocks may translate into increased economic activity. In general, the CAREC countries will need to focus on a very different set of economic priorities with the changing international and regional economic development

trends in the region, concludes the report.

This conclusion appears to welcome the current trends in the region dictated by the One Belt, One Road (OBOR) initiative of China that focuses on the same trade and transport infrastructure and energy investments seeking to open ways to the European markets for Chinese goods and channeling region's natural resources to China.

Developmental Trends – Country briefs will focus on general economic potential and trends in sectors of interest of this overview: energy, trade, transport and other infrastructure in these countries.

Kazakhstan

Kazakhstan is a large country with vast fossil fuel and other natural resources and economically tied more closely to Russia than any other Central Asian state. The country recorded a poor growth of just 0.9% in 2016 as a result of low oil prices and currency deprecation. A gradual but modest recovery from 2017 is forecasted, with growth averaging at a low 2.9% in 2017-22. Heavy investment in the traditional hydrocarbon extraction sector with little economic diversification efforts will keep the growth lagging behind others.

Kazakhstan’s oil and gas are still shipped through Russia and most energy and transport grids in the region follow a north-south structure supporting industry and metallurgy in northern Kazakhstan closely interwoven with those in Siberia (Russia). Eurasian Economic Union was seen by Kazakhstan as a way to ensure its near- and middle-term survival through formal economic integration with Russia. However, Eurasian integration appears to be facing more than a few problems in its implementation as viewed by most stakeholders in the region.

Problems of Eurasian integration, regional and international security, as well as the uneasy relations in the Kazakhstan-Russia-China triangle and importance of OBOR for Kazakhstan’s interests were discussed by Kazakh and Russian experts during the expert forum, which took place on May 19-20 in Astana. Kazakhstan is an important factor for China’s OBOR initiative and a champion of this initiative not only in Central Asia.

Current Chinese financing in Kazakhstan totals some $13.9 billion primarily in oil, gas and energy sectors and $8.23 billion under the CAREC program in the same sector.

Kyrgyzstan

Kyrgyzstan is intertwined with Kazakhstan as the latter is with Russia. Though Kyrgyzstan has rich gold resources the prospects for economic development are considered to be limited due to a lack of economic and resource potential for growth. With GDP growth rate of 1.0% (2016) and modest forecast of 3.8% at best it has looked for support from Russia or the West for foreign assistance and economic investment in exchange for supporting their needs or goals in the region. However, with China’s OBOR initiative opening an opportunity for Kyrgyzstan to play a significant role as a back door into Central Asia or a gateway to Europe, Kyrgyzstan is trying to be more sensitive to Beijing’s interests. Kyrgyzstan received $2.58 billion for coal, gas and transport projects from China and $1.30 billion under the CAREC program for projects involving the country.

The country is self-sufficient in hydroelectric energy, exporting excess electricity to neighboring Stans in exchange for natural gas (Uzbekistan) and coal required for its heating plants. It is seeking to export hydroelectric power to China as well. Being sensitive to oil and gas supplies dependent on its financial capability to pay high prices or timely payments, Kyrgyzstan is forced to seek opportunities for developing limited domestic resources of oil and coal.

The main components of Kyrgyzstan’s physical infrastructure include roads, rail, electric grids, gas pipelines, and a telecommunications system. The road system consists 16,854 kilometers of paved roads. The rail system consists of one major rail line of a length of 370 kilometers linking its capital, Bishkek, with Kazakhstan.

Uzbekistan

Uzbekistan, of all the Central Asian states, is the one most independent of Russia, which rejected membership in the Commonwealth of Independent States (CIS) economic union and maintains a limited role in the CIS military pact. Uzbekistan is a member of the three-nation bloc of Central Asian states (joining Kyrgyzstan and Kazakhstan). Uzbekistan continues to trade with Russia and remains a source for Russia’s textile industry. Due to these factors this Stan attracted a great deal of attention from Western investors; while economic reconstruction here proceeded fairly slowly, its economy is diverse, and its population is large enough as a market and as a source of necessary workforce. Uzbekistan supported the US and NATO forces during the Afghan War and allowed opening of a US air base in Karshi-Khanabad in 2001. Uzbekistan has the largest population in Central Asia and thus is source of migrant labor in the region.

Uzbekistan has abundant fossil fuel energy resources with rich coal, oil, and gas reserves. The problems of

5 The Kazakh-Russian expert forum, Foundation for Development and Support of the Valdai Discussion Club, the Parasat Institute of Systemic Studies and the Kazakhstan Council for International Affairs, May 19-20, Astana.

6 http://www.carecprogram.org/index.php?page=kazakhstan

the energy sector are old infrastructure needing technological upgrade and the fact that it is already one of the most energy- and carbon-intensive countries in the world.8

Economically engaging with China is seen as an important factor for development of trade, energy and transit sectors. In 1992, ‘Economic and Trade Agreement’ was signed between Uzbekistan and China, whereby they granted Most Favored Nation (MFN) status to each other. China is the second largest trading partner with 20% of Uzbekistan’s imports coming from and about 17% of its exports going to China. However, yet again the exports from Uzbekistan are mostly consist of raw natural resources. This double-landlocked country has the capacity to become a transit link in regional, trans-regional and trans-continental networks. Thus, Uzbekistan may play an important role for development of OBOR and/or the International North South Transit Corridor (INSTC) sought by India, Iran and Russia.

**Tajikistan**

Tajikistan, with GDP growth rate of 3.8 (2016) and the predicted modest growth rate of 4.2, is economically much farther behind from the other Stans. It has been torn by war for the entire period since its independence from Soviet Union. The continued Russian military presence in Tajikistan is deemed a necessary protection for this country beleaguered by armed conflict.

Tajikistan is also a landlocked country and as such is confined to land and air transportation. The industrial areas of Hisor and Vakhsh are connected with the capital and with Uzbekistan, Turkmenistan, Kazakhstan and Russia through a rail system consisting of 680 kilometres of broad-gauge tracks. Tajikistan has a total length of roads of 27,800 kilometres.

The country produces about 3,000 barrels of oil per day, while its consumption needs are above 29,000 barrels per day. Tajikistan has a potential to increase the production of hydroelectric power and oil reserves but lacks access to necessary investments in these areas. Owing to the east-west configuration of electricity grids, Tajikistan imports and exports electric energy without satisfying or affording its own electricity needs.

China’s growing engagement in this country does not seem to suggest a healthier economy even against the backdrop of the retrenchment of traditional partners like Russia and other Stans. Chinese direct investments into Tajikistan in 2015 came to $273 million — 58 percent of the overall total. Russia’s direct investment dropped to a total of 7.4 percent ($35 M) in 2015 from 30 percent in 2010. The potential consequences of Tajikistan’s growing economic dependency on Chi-

---


9 Fuad Shahbazov China’s Economic and Military Expansion in Tajikistan, November, 2016

**Turkmenistan**

Similar to Uzbekistan, Turkmenistan also distanced itself from Russia by adopting a policy of neutrality. Turkmenistan is not a member of either the CIS economic union or its military bloc. However, it is limited to exporting its fossil fuels only through Russia to other Stans. Russia sells its gas to Europe, leaving the Turkmen to provide for the Central Asian states and to grapple with the task of extracting payment from these cash-strapped clients. Turkmenistan sits upon around one-tenth of the world’s proven natural gas reserves or the sixth largest stock of natural gas in the world and substantial oil resources but it has been precautious with economic and political liberalization reform.

The Central Asia-China pipeline began operations in 2009 and was expanded in 2010 and in 2012. Catering to the Chinese demand has helped to offset the loss of Russian markets, returning Turkmenistan’s exports to pre-2010 levels. The country’s economy has already come under pressure from the drop in global energy prices which brought the GDP growth rate from 10.6% down to 4.6%.

Energy exports account for 80% of Turkmenistan’s revenues and 35% of its GDP. It is an electric power exporter to Central Asian states and its southern neighbors. The most important generating installations are the Hindukush HHP, which has a rated capacity of 350 megawatts, and the Mary CHP of rated capacity of 1,370 megawatts. Turkmenistan’s exports to China reached $8.65 billion (2014).

**Russia – Eurasian Economic Union**

Russia continues to have a varying degree of influence in the Stans. Over 10 million ethnic Russians in these countries and a growing Muslim population within Russia itself are vulnerabilities requiring continued involvement for the Russian Federation in the region for its own security reasons. Russia is also interested in preserving the economic influence in CA to benefit from the past investments in infrastructure and to partake of the vast natural resources in the region. Russia is historically a major trading partner of these countries and the destination of many migrant workers from the labor-exporting neighbors, including China. The energy sector and infrastructure grids in all five Stans and Mongolia were traditionally Russian markets, which are now attracting Western interests and China’s OBOR initiative.

The Eurasian Economic Union was the primary proj-
ect for reasserting Russia’s regional hegemony. But according to Dragneva and Wolczuk, there “is little to inspire confidence that the Eurasian project is capable of delivering on its grand promises.”

The official website of the EAEU states that “Eurasian Economic Union is an international organization for regional economic integration. It has international legal personality and is established by the Treaty on the Eurasian Economic Union. The EAEU provides for free movement of goods, services, capital and labour, pursues coordinated, harmonized and single policy in the sectors determined by the Treaty and international agreements within the Union.

In reality it appears to function best as a customs union with many of the planned integration schemes coming to face a range of challenges caused by conflicting and competing interests in the region. Discussions by experts in the region conclude that there are difficulties in the implementation of each particular Central Asian state’s interests in the alignment of the Eurasian Economic Union (EAEU) and the One Belt, One Road (OBOR) projects. The conjugation became an unexpected moment for Russia as well: there is no understanding of how the goals of the Russian Federation are consistent with the goals of OBOR. In order to understand the inter-play of EAEU and OBOR expert suggest Russia to establish a dialogue platform similar the “China-Central Asia” forum created by China especially for communicating with Central Asia.

**China - OBOR:**

In October 2013, the CHINA announced the launch of its One Belt, One Road (OBOR) initiative, an ambitious scheme to build or rehabilitate infrastructure in over 60 countries, based on a comprehensive framework comprising a land belt from the CHINA through Central and South Asia to Europe and a maritime road via Southeast and South Asia, the Middle East and North Africa to European markets. OBOR is being supported by projects from a wide range of central and local government agencies in the CHINA, and by the international lending of its large policy banks.

This One Belt, One Road (OBOR) initiative is also known as the Belt and Road Initiative (BRI), the Silk Road Economic Belt (SREB), and more colloquially as the New Silk Road. The Maritime Silk Road Initiative (MSRI) is a component of the plan that has no immediate relevance to the landlocked Stans and Mongolia.

The land bridge and sea route together compose the One Belt, One Road that proposes a “regional integration” of multiple economic and political aims across dozens of countries. Kazakhstan and Kyrgyzstan are “located on China’s western border, they are gateway countries: how these states act and react will determine if the road paves a golden future or crumbles into a dusty dream”11. Whatever is envisioned as the new socio-political paradigm - the impact will be felt first in its immediate neighbors that stand on their way to the west—Kazakhstan and Kyrgyzstan.

OBOR envisions two land links from China, one through Mongolia and Russia on to Eastern and Northern Europe; and the other through Central Asia and West Asia on to Western Europe. China is planning to build a High Speed Rail network along the Eurasian region, which includes construction of three rail roads and several transit hubs on aforementioned corridors. Among these three routes, the southern-most route passes through Kyrgyzstan and Uzbekistan. In this regard, development of China-Kyrgyzstan-Uzbekistan railway is of vital significance.

Kazakhstan, of all countries of the Eurasian Union, is most active in the formation of an updated transport infrastructure with the participation of China. What does Kazakhstan expect from the conjugation of the EAEU and OBOR? These expectations are expressed in specific figures: 52% in the production sector, 24 billion dollars of investment, 15,000 new jobs and the participation of at least 80% of Kazakh workers. Potential OBOR investment projects for Kazakhstan list the following: China-Central Asian pipeline (natural gas); Eurasian Land bridge (railway corridor); China-Central Asia-West Asia corridor (China to Iran rail link); Khorgos-Aktau railway (Caspian to China link).

The China-Mongolia-Russia Economic Corridor is a key route in the Belt and Road network. Accordingly, Beijing expects to channel some $30 billion to related projects in the next five to ten years, with total potential investment reaching as high as $90 billion by 2035.

Planned OBOR investment project for Kyrgyzstan list the following: China-Kyrgyzstan-Uzbekistan railway (High-speed rail).

**II. Sub-regional trends**

The international institutional setting has witnessed major changes, including the establishment of new mega-frameworks for cooperation, financial institutions and regional trade agreements. The United States’ New Silk Road (NSR) established in 2011 aims at integrating Afghanistan with Central and South Asia by reviving traditional trading routes and rehabilitating key infrastructure links. The NSR focuses on four key areas: regional energy markets, trade and transport, customs and border operations, and business and people-to-people contacts.

11 Central Asian ‘Characteristics’ on China’s New Silk Road: The Role of Landscape and the Politics of Infrastructure, p. 01, file:///C:/Users/User/Downloads/land-06-00055-v2.pdf
Following a month after China’s launch of OBOR in October 2013, Korea announced its Eurasia Initiative, a broad infrastructure-based program with close links to OBOR.

In May 2014, Belarus, Kazakhstan and the Russian Federation signed a treaty establishing the Eurasian Economic Union (EAEU). Armenia and the Kyrgyz Republic joined the EAEU in 2015, and it is currently expanding its role as a regional trading bloc and customs union.

This below table shows the similarities of the regional initiatives in terms of goals and areas of integrations. It is yet to be seen how the China’s OBOR will avoid the challenges and obstacles faced by the previous integration initiatives.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(transport, energy, economic corridors,</td>
<td>Regional energy markets</td>
<td>Connectivity-infrastructure, logistics, energy, communication</td>
</tr>
<tr>
<td>Trade facilitation, trade policy</td>
<td>Trade and Transport</td>
<td>Trade and customs</td>
</tr>
<tr>
<td>Customs and border operations</td>
<td>Customs and border operations</td>
<td>Financial integration</td>
</tr>
<tr>
<td>“Good neighbors, good partners, good prospects” vision</td>
<td>Businesses and people-to-people</td>
<td>People to people bond</td>
</tr>
<tr>
<td>CAREC Institute, second-tier areas policy coordination</td>
<td></td>
<td>Policy coordination</td>
</tr>
</tbody>
</table>

Analysis by scholars in the region discuss three models for stimulating the Eurasian integration. The first model is the separation of spheres of influence: Russia (military security), China (economic cooperation) and Central Asia. This model unfortunately does not specify a very important factor –the role of the Central Asian states in this integration. The second model is conjugation, which is combining a collection of bilateral formats into a multilateral conjugation. The third option is the integration within integration. A multilateral conjugation will require interaction among all: the EAEU, China and the SCO, the EU and ASEAN. It is about creating a common space and overcoming conflicts of integration projects.12

The above scholarly analysis does not appear to take into account the new financial institutions and initiatives that have emerged as important players in the region. The BRICS countries - Brazil, Russia, India, CHINA and South Africa - established the New Development Bank (NDB) in 2014 with an authorized capital base of $50 billion meant to complement the financing provided by the existing multilateral institutions. In 2015, China led the establishment of the Asian Infrastructure Investment Bank (AIIB) with an authorized capital base of $100 billion. The AIIB, intended to help meet the enormous need for infrastructure financing in Asia, has attracted founding members from Africa, Asia, Europe and Latin America. The NDB and the AIIB both started lending operations in mid-2016.

In 2014 China announced the establishment of the Silk Road Fund (SRF), with an initial pledge of $40 billion. The SRF is intended together with the China’s policy banks, to finance infrastructure under OBOR.

In May 2015, the Japanese government announced the launch of a Quality Infrastructure Initiative (QII), under which it committed to provide $110 billion over the next five years to finance infrastructure in Asia.

ADB continues to be a player in the infrastructure development in the region. Current financing available for the energy, infrastructure and trade facilitation projects from ADB are presented in Table 213 below.

Regional corridors - Central Asia Regional Economic Cooperation (CAREC) framework program developed by the ADB and Central Asian states in 2001, is an ongoing development program with transport and trade facilitation as a key focus. Their interlinked nature was recognized by combining the strategic planning for the two sectors. The CAREC Transport and Trade Facilitation Strategy (TTFS) initially formulated for the period 2008–2017, was subsequently refined and extended to cover the period 2014–2020 as TTFS 2020 (ADB, 2014).

At present, TTFS 2020 includes 108 investment projects with an estimated cost of $43.7 billion, and 49 technical assistance (TA) projects with an estimated cost of $76.2 million.

The CAREC road corridor network is now expected to reach 29,350 km by 2020 as opposed to 24,000 km by 2017, the initial target of the TTFS.

Energy Sector - The CAREC master plan for the energy sector and the Afghanistan master plan form the foundation for the work of the Energy Sector Coordinating Committee (ESCC).

In the power sector, the Central Asia–South Asia Regional Electricity Market (CASAREM) project operates with its two complementary initiatives, the Central Asia–South Asia Electricity Transmission and Trade Project (CASA-1000) supported by the World Bank and the Turkmenistan-Uzbekistan-Tajikistan-Afghanistan-Pakistan Interconnection Project (TUTAP) supported by the ADB, which are the two most successful projects.

The Turkmenistan-Afghanistan-Pakistan-India (TAPI) natural gas pipeline project is the highlight of the energy sector program. Acting as TAPI secretariat since 2003 and as transaction advisor since 2013, ADB has been instrumental in the progress of the TAPI to date. The ADB helped establish the TAPI Pipeline Company Limited (TPCCL) and managed due diligence, including the preparation of the technical and financial feasibility studies. The total project cost will be determined upon completion of the detailed design and is expected to exceed $10 billion.

The Tajikistan-Afghanistan-Uzbekistan-Afghanistan 220kV interconnections are operational and are currently supplying the Afghanistan network with 650 GWh from Tajikistan and 1500 GWh from Uzbekistan. Implementation of the Turkmenistan-Afghanistan 500 kV interconnection, which will initially operate at 220 kV, has begun. A number of other interconnections between Afghanistan and Turkmenistan are also being implemented.

Conclusions of the CAREC 2020 Mid-Term Review “...to address investment needs in the energy sector, countries need to rehabilitate existing assets and consider non-public financing modalities...” and “in the changed international institutional setting, CAREC should revisit its partnership and cooperation arrangements” appear to be hailing the new initiatives, including the OBOR plans for this region.

III. Country Safeguards Systems

Overview

- Safeguards cover a variety of substantive areas in environmental and social management. There is no consensus or agreement which specifies what safeguard policies should protect. The policies of international financial institutions use Country safeguard systems (CSS). It “refers to a country’s legal and institutional framework, consisting of its national, subnational, or sector implementing institutions and relevant laws, regulations, rules, and procedures that pertain to the safeguard policy areas (ADB Safeguard Policy Statement, 2009). More specifically, “laws, regulations, rules, and procedures on the policy areas of environment, involuntary resettlement, and indigenous people’s safeguards, and their implementing institutions” are regarded as CSS mechanisms14. Domestic legal systems usually include laws aimed at protecting the environment and natural resources, along with laws that protect procedural rights, including access to information and grievance procedures.

14 Detailed description can be found at https://www.adb.org/site/safeguards/country-safeguard-systems
Finally, international safeguard standards are regulated by international environmental and human rights agreements. They include, for example, the Convention on Biological Diversity, the International Covenant on Civil and Political Rights, and the United Nations Declaration on Indigenous Peoples.

As CAREC is financed by a team (IMF, WBG, IDB, EBRD, UNDP with ADB serving as its Secretariat) of development finance institutions with a large and long-standing regional integration portfolio in Central Asia, it has done a serious research of country safeguards systems and provided extensive technical assistance to improve where needed.

Since 2012, CAREC/ADB has been implementing its “Regional: Developing Impact Evaluation Methodologies, Approaches, and Capacities in Selected Developing Member Countries” aimed at “Conducting impact evaluation for strategically selected interventions will help improve relevance and effectiveness of country and regional partnership strategies.” It’s hoped that the evaluations might include CSS in Central Asian countries but the reports from this project are not publicly accessible.  

Under its Building Country Safeguard Systems program for Asia-Pacific, a Regional Joint Safeguards Community of Practitioners meeting held twice in 2016 concluded that “DMCs and MFIs recognize the need for continued support to strengthen CSS, through workshops where knowledge and experiences can be exchanged and where gaps and opportunities for collaboration can be identified; comparative studies that offer in-depth and valuable information on how CSS can be improved; and activities that enhance capacity for CSS implementation.”

The following challenges identified by the “safeguards practitioners’ community” ring true for most of Central Asian countries: “With respect to environmental safeguards, there is often a lack of a legal framework; effective communication process to ensure active participation of stakeholders in the environmental impact assessment process and implementation and monitoring of an environmental management plan. Another issue is that the legal requirements are sometimes disproportionate to human resource capacity for implementation. There are also structural gaps that limit access of local decision-making authorities to centrally located technical capacity.” However, challenges identified by above practitioners do not list such shortcomings in the country safeguards systems as the lack of knowledge or culture of consultations with potentially affected communities for disclosing all potential negative impacts and negotiating mitigation measures with relevant stakeholders; the state intervening in resettlement programs by setting land price disregarding actual market price or caps on other resettlement related compensation measures; corruption in license issuing authorities, including those approving/accepting the environmental impacts assessment reports; a lack of technical capacity to carry out a full and detailed impacts assessment; and a lack of political will to enforce safeguards systems where they exist.

In post socialist countries involuntary resettlement was handled differently and the main obstacles to the alignment of CSS with ADB policy principles and other international good practices result from non-recognition of categories of affected persons who occupy or use the land but are not titleholders, criteria for fair compensation, and transitional assistance to displaced persons and host communities. Remedy is not clearly defined in the IFIs’ discussions on country safeguards systems.

Same applies to Indigenous Peoples (IPs) protection, as the key and fundamental issue there is the historical position of former Soviet states on indigenous peoples as well as the absence of a universally accepted definition of who can be considered an IPs. Nomadic livestock breeding is almost non-existent in Kazakhstan and Kyrgyzstan where more sedentary forms were introduced during Soviet era. While nomadic herdsmen in Mongolia are the backbone of its livestock sector and are dependent on pastures, there is no political will to recognize nomadic pastoralism as an indigenous culture and render protection under the IPs policies.

Under the Strengthening and Use Of Country Safeguard Systems project, ADB has assisted Stan with developing legal arrangements for public information disclosure; provisions for access, grievance mechanism; and compensation mechanisms. In Kazakhstan, however, “implementation and shortcomings in the judiciary and the enforcement of court judgments remain a serious problem.” A comprehensive comparative study of the country safeguards system was also carried out in all CAREC countries. We will look at A Comparative Analysis of Kyrgyzstan’s Legal Framework and Involuntary Resettlement Safeguards in the ADB Safeguard Policy Statement, disclosed with a “for dialogue only” stamp.

This Comparative Analysis of Kyrgyzstan’s Legal Framework and Involuntary Resettlement Safeguards in the ADB Safeguard Policy Statement was issued in April 2016 as a discussion paper only. Areas for improvement in the recommendations to amend laws include: a) ensuring that resettlement is avoided where possible; b) that EIA process includes possibility for alternative project to avoid resettlement; c) in cases of involuntary resettlement provide compensation to all


resettled regardless of land rights and asset registration; d) to stipulate to require resettlement plans for enhancing living standards and/or restoring livelihoods of resettled and displaced poor. In areas where there was no equivalence such as Policy Principle 1: Screen the project early on to identify past, present, and future involuntary resettlement impacts and risks. Determine the scope of resettlement planning through a survey and/or census of displaced persons, including a gender analysis, specifically related to resettlement impacts and risks, a recommendation was made to include these early screening, identify all resettlement impacts and risks, resettlement planning, survey and census of displaced, including gender analysis in the relevant laws of the country.

It remains to be seen how these recommendations will be pushed forward by the ADB with the relevant governments as these are the actions resisted by governments and business corporations.

The ADB project on *Strengthening and Use of Country Safeguard Systems Completion Report* disclosed in September 2017 does not give a qualitative evaluation of the project achievements.

<table>
<thead>
<tr>
<th>Country</th>
<th>Objective</th>
<th>Activities and Outputs Completed</th>
<th>Achievements</th>
</tr>
</thead>
<tbody>
<tr>
<td>KAZ</td>
<td>Strengthen the CoR’s capacity for safeguards grievance redress management in three regions</td>
<td>- Conducted regional training programs &lt;br&gt;- Prepared materials for training workshop</td>
<td>- Produced Guidelines on Grievance Redress Mechanism on Environment and Social Safeguards for Road Sector Project &lt;br&gt;- Printed the Information Brochure on Grievance Redress Mechanism on Environment and Social Safeguards for Road Sector Projects</td>
</tr>
<tr>
<td>KGZ</td>
<td>Strengthen capacity of Strategic Environmental Assessment in Kyrgyz Republic</td>
<td>- Prepared Guidelines on Strategic Environmental Assessment &lt;br&gt;- Implemented SEA training program</td>
<td>- The Guidelines were used on two pilot case studies: Strategy of the Road Transport Development in Kyrgyz Republic and Mid-term Strategy for Energy in Kyrgyz Republic for 2012-2017 &lt;br&gt;- 32 participants successfully completed the SEA training program</td>
</tr>
<tr>
<td>Country</td>
<td>Project Description</td>
<td>Objective</td>
<td>Activities and Outputs Completed</td>
</tr>
<tr>
<td>---------</td>
<td>---------------------</td>
<td>-----------</td>
<td>----------------------------------</td>
</tr>
<tr>
<td>MON</td>
<td>Reform of Legal and Regulatory Framework for Involuntary Resettlement (Phase 1)</td>
<td>Improve management of Land Acquisition and Resettlement in Mongolia</td>
<td>Conducted a situation analysis and assessment of key issues, conducted a gap analysis of Mongolian law against international standards, prepared the Framework of the LAR Law, formulated the draft LAR Law, conducted a study tour, prepared Capacity Assessment and Development Plan, carried out public awareness seminars and consultation on relevant legislation and regulations</td>
</tr>
<tr>
<td></td>
<td>Reform of Legal and Regulatory Framework for Involuntary Resettlement (Phase 2)</td>
<td></td>
<td>As Mongolia does not have an existing LAR Law, draft law prepared under the subproject was designed to fill this gap, draft law was submitted to Parliament for consideration, following the two subprojects, EARD was able to pursue a third phase via a separate technical assistance (TA 8210-MON)</td>
</tr>
</tbody>
</table>
### Improving Legal and Regulatory Framework for Environmental Impact Assessment

**Objective:** Improve regulations for implementation of the Environmental Impact Assessment Law

**Activities and Outputs Completed:**
- Carried out an extensive Diagnostic Review
- Drafted regulations on SEA and Cumulative Impact Assessment; on EIA; ensuring public participation in EIA, and on Environmental Bond based on newly approved Law on EIA
- Organized a joint workshop on Strategic Environmental and Social Assessment (SESA) of the Mining Sector and Environmental Impact Assessment Regulations under the new Law on Environmental Impact Assessment

**Achievements:**
- Five environmental regulations and two guidelines that originated in the preparatory work undertaken by the subproject were approved by the Government.

While this report states that a LAR law was developed and submitted to parliament, the ADB urban land and Ger District Restructuring projects have moved forward without a legal framework protecting the rights of resettled communities. A look at the gaps in the implementation of country safeguards systems reveal some similarities as presented through cases from Kyrgyzstan and Mongolia. Regardless of whether the country accepted and approved safeguards system compliant with international standards, their application on the ground is resisted by both national governments and foreign corporations. In the case of Kazakhstan its mega Khorgos Gateway project that has become part of the OBOR initiative, the official website is silent about any environmental and social impact assessments, mitigation measures or environmental protection plans (http://khorgosgateway.com/).

### Celebrated case to showcase this assessment

The Kumtor case is presented to evidence the application of environmental and social safeguards or its lack thereof in Kyrgyzstan. This is yet another evidence of mining corporations pushing for weakening of environmental safeguards in the name of “investor friendly climate”. Environmental groups in both Kyrgyzstan and Mongolia have gone through a long process of developing and pushing through parliament a law protecting glaciers or river headwaters (Mongolia case), which have been amended to suit the needs of so-called “strategic projects”. It appears that “strategic projects” in all Central Asian countries will not be required to comply with international environmental and human rights standards. It is already apparent that all OBOR projects will be defined as “strategic” in this region.

Like in Mongolia with its Law with the Long Name banning mining in headwaters of rivers, Kyrgyzstan attempted to ban mining in glaciated areas. The Jogorku Kenesh (parliament) passed in 2014 a Law on Glaciers, led by then-PM Erkingul Imankojoeva [an activist in the environmental NGO Karek] that would have outlawed mining in glaciated areas. The passage of this law was a reflection of widespread public concern about mining impact on the glaciers in the Ak Shirak mountains, a section of the central Tien Shan range east of Lake Issyk Kul, where the Kumtor Mine is located. Which, however, was not signed by President Almazbek Atambayev, into effect.

Like in Mongolia, a group of local community members were jailed for protesting against Centerra Gold’s Kumtor mine and threats on local community from national security forces are still real today for anyone attempting to prevent amendments to legislation exempting foreign invested (EBRD) mines from environmental protection requirements.

### The Kumtor case in Kyrgyzstan

Kumtor is a controversial gold mine of the Canadian company Centerra Gold and the only mine on active glaciers in the world. Centerra Gold has pushed for legislation to allow removal of glaciers to access the underlying ore. The proposed amendment to the Water Code was approved by the Parliamentary Committee on November 1, 2017. The code previously restricted mining activity on the glaciers for the Canadian company but the company by-passed the limitation by getting Kyrgyz governments issue annual permits for the removal of glacier ice since 1997.

The modification of Article 62, Protection of Glaciers, legalizes glacier removal by exempting glaciers Davydov and Lysyi, where Centerra is mining gold. This will allow “smooth operation” for Centerra without the...
hassle of “negotiating with government” on annual basis and facing criticism from environmental groups. Regardless of series of protests and negotiations with government by environmental groups on November 10, 14, 16 the amendments were approved on November 19, 2017.

Lesson to learn - Anthony Bebbington, a professor of geography at Clark University, articulates the need to learn from this case in an interview: This case demonstrates the way in which early impacts of a mining project structure any discussion of its later impacts. The justification for increased removal of ice from the glaciers in question seems to be that the earlier impacts of the mine on ice cover have been so significant that the glaciers are no longer viable – so why protect the little that is left given that it is likely to disappear anyway? One can imagine other variants of this same logic. In a region where indigenous peoples have been displaced by earlier rounds of extractive industry investment, some may argue “why should the last few indigenous people living in voluntary isolation be protected, when their long-term viability is unlikely, and the oil we could extract from this area will benefit millions?”...The implication for those who mobilize against the environmental impacts of resource industries is that you don’t want to lose the first arguments, because winning the later arguments is likely to be even harder.

I. COUNTRY DESCRIPTION: MONGOLIA

A. Current political, economic and social context

- Since the mid 20th century up until democratic transition in the 1990’s, Mongolia saw a rapid social development and industrialization in line with Soviet Union’s modernization policy in their satellite countries. An economy based on nomadic pastoralism was transformed towards a semi-industrial economy in the span of a few decades. As was the case with many rapidly industrializing countries of the time, environmental management practices were generally absent from the general development discourse and practice. This situation grew even direr with the implementation of economic reforms at the behest of international financial institutions in early 1990’s. Like many developing countries which underwent neoliberal transformation, Mongolia’s economy has become dependent on raw material extraction and export. In the wake of the so-called Structural Adjustment Programs (SAPs)¹⁸Mongolia has been left with weak institutions, political instability, environmental degradation, rising inequality, widespread poverty, and a sovereign debt crisis which now are the main institutional constraints for effective management of natural resources and protection of environment.

- Persistent economic imbalances arising from structural weaknesses of the Mongolian economy are set to continue for the foreseeable future. GDP growth slowed down to 1% in 2016 (from as high as 17.1% in 2011) largely as a result of declining exports from commodity price slump in global markets and persistent abuse and mismanagement by successful governments which resulted in huge public debt and an IMF bailout.¹⁹ Increasing reliance on the mining sector—which makes up 20 percent of Mongolia’s GDP - magnifies the impact of changes in commodity prices. Even though the economy rebounded in 2017, it was done primarily on the back of positive developments in commodity markets. Despite the improving outlook, Mongolia faces environmental and socio-political challenges. “Poverty rate rose from 27.4% in 2012 to 29.6% in 2016”²⁰ As the fall in poverty rates was mainly a result of the mining boom following 2010, it reversed very quickly to the pre-boom levels. Inequality²¹ and corruption²² remain a huge problem along with declining rates of political participation and widespread disillusionment with politics and institutions.

- The current medium-term development plan (Medium Term Development Framework) which is part of Mongolia Sustainable Development Vision 2030, is to be implemented in the first five years (2016-2020). Among others, it includes Mongolia’s Regional Development Policy and the Public Investment Program.

A. Country trends in financial investments

In September 2017, the National Development Agency (NDA) introduced the legal environment along with portfolio of investment and investable projects.²³It concluded that a significant number of countries that experienced economic crises. Conditionality clauses tied to these loans have been criticized by many experts because of their negative effects on the social sector and constraining effect on debtor/host country’s political space.

¹⁸Structural adjustment programmes (SAPs) consist of loans provided by the International Monetary Fund (IMF) and the World Bank (WB) to developing countries which underwent neoliberal transformation, Mongolia’s economy has become dependent on raw material extraction and export. In the wake of the so-called Structural Adjustment Programs (SAPs)¹⁸Mongolia
tains a number of logistic, energy, agriculture related projects, some of which are not properly calculated. Accounting even for these rough numbers, Mongolia requires an estimated investment of USD 2.5 billion (MNT 5 trillion)²⁴ to realise aforementioned projects. There is no publicly available data that estimates total funding needs for all mega-projects. According to midterm forecasts “growth will accelerate this year on large mining investments, then moderate in as coal production reaches full capacity.” (ADB, 2017). Without significant cash windfall, the Government of Mongolia (GoM) will likely to continue relying on the public private partnerships (PPP’s) to fill the funding gap. Further, the GoM will also seek to attract funding from multilateral development banks. Mongolia has determined its infrastructure and heavy industry targets for the period of 2016-2030 some of which were stipulated in the Mongolia Sustainable Development Vision-2030. This is in line with international trends where there is a “strong push to increase the involvement of the private sector in the development arena and to promote PPPs as key tool to reach the soon to be agreed sustainable development goals” (Eurodad, 2017). So far no studies on Mongolia’s PPP projects were done, which raises significant concerns about its future potentials. A comprehensive research by Eurodad concludes that there are significant problems with PPP’s such as: budgetary affordability of PPP options as compared with public procurement alternatives; level of efficiency in delivering services; sustainable development impacts of PPPs; and on transparency and accountability mechanisms (Eurodad, 2017).

B. Mongolia’s Cross-border Projects

• Mongolia’s cross-border infrastructure project follows the Central Asia Regional Economic Corridor (CAREC) plan. As of 2016, CAREC has mobilized $588 million for 11 projects in Mongolia. According to their mission, the program is “improving Mongolia’s transport and trade infrastructure and policies, and is helping to make the country’s economic growth more sustainable.”²⁵ These include projects such as transport, energy, trade facilitation and trade improvement. A closer look at CAREC projects reveals their exclusive concentration towards transportation of natural resources. Examples are an international transport route project connecting the Russian Federation with the CHINA and the construction of a logistics center in Zamyn-Uud (a crossing point on the Mongolia-CHINA border). A significant challenge for Mongolia and for CAREC itself is the issue of connecting program goals with present and planned global and regional initiatives on climate change and sustainable energy. (e.g. SE4ALL, EXPO 2017, PPCR, etc.)

• The Greater Tumen Initiative (GTI) The Greater Tumen Initiative (originally known as the Tumen River Area Development Programme) is an intergovernmental cooperation mechanism among four countries: China, Mongolia, Republic of Korea and Russian Federation, facilitated by UNDP and aiming at promoting regional economic cooperation among member countries. Signed by GTI member governments in 1995, the GTI focuses on the priority areas of transport, trade and investment, tourism, agriculture, energy, with environment as a cross-cutting sector.

The Tumen Region’s economic development takes place at the expense of the environment which is being threatened by degradation, namely, inland and coastal water pollution, biodiversity loss, deforestation and air pollution. In response to a special memorandum, a Strategic Action Programme (SAP) has been set up for the purpose of developing an effective long-term regional strategy for dealing with aforementioned environmental issue

• Russia – Mongolia –China Silk Road project

On July 5 2015, at the leaders’ meeting in Ufa/Russia, the three parties agreed to launch a Mongolian, Russian and Chinese economic cooperation program which will integrate the initiatives of the “Eurasian Economic Union” proposed by the Russian Federation, the “Silk Road Economic Belt” proposed by China, and the “Steppe Road” proposed by Mongolia. The proposed economic corridor is aimed at “enhancing the already existing trade between the three parties, promote product competitive power, improving the transportation routes between these countries and infrastructure construction”.

The plan stipulated in the Memorandum of Understanding, highlights the following areas of cooperation: development of transport infrastructure and interconnection; strengthening of construction of ports and customhouses, as well as inspection and quarantine supervision; strengthening of production capacity and investment cooperation; deepening of economic and trade cooperation; expanding cultural exchange and cooperation; promoting local and border cooperation²⁶. The Memorandum further clarifies that project-related investments “will include the use of national investment, private sector investment, the introduction of public-private partnerships and other

---

²⁴ http://nda.gov.mn/1239.html
possibilities such as the inclusion, not exclusive, of the Asian Infrastructure Investment Bank, the BRICS-New Development Bank, the Shanghai Cooperation Organisation Bank Consortium, the Silk Road Fund, and other financial institutions willing to support the financing."27

Even though several agreements have been signed,28 there are significant roadblocks to clear. Lack of an integrated coordination mechanism relying on comprehensive legal environment and institutional regulations presents the biggest challenge accompanied by problems of differing railway capacities, settling of railway tariffs and other related issues. For Mongolia, especially, it is imperative to be able to connect natural resource deposits with the existing central railway networks within the country due to high costs and risks (such as PPP’s and loans from multilateral development banks) associated with these types of projects.

Overall, Mongolia faces significant hurdles in aligning its mining and infrastructure policies with sustainable development goals. A dangerous tendency of banks such as AIIB to allow client countries to apply their own systems of environmental and social protection for large infrastructure projects is set to continue here. The above Memorandum states that “this project is not an international treaty, it does not produce rights and obligations under the international law.” Thus, the rights and obligations of the three parties under international treaties are beyond the scope of this project.” What it could mean in practice, is that Mongolia’s weak environmental governance system will be put to test by big infrastructure interventions.

• **Possible hook-up to the northeast Asian Super Grid (ASG).** Mongolia has made a request to join the ASG, a plan to connect electricity systems in Russia, Japan, China and South Korea. If it goes ahead, the plan will create a ring of interconnected systems with a diameter of some 2,000km, distributing cheap power from Russia and Mongolia’s Gobi Desert to the region. Mongolia’s request was made to Oleg Budargin, then the CEO of Russian Networks (Rosseti) power company, who met with Mongolian Prime Minister Jargaltulgyn Erdenebat and his energy minister, Purevzhavin Ganhuu. The negotiations concerned Rosseti’s involvement in modernizing Mongolia’s energy system, as well as Mongolia’s possible membership in the ASG. In particular, the two sides discussed the construction of a 500kV high voltage direct current (HDVC) power line to link their grids and provide Mongolia with relatively cheap electricity. Rosseti noted in a press release31 that this interconnector would become part of the ASG if it goes ahead.

C. **Social and Environmental Impacts**

- There are worrying trends indicating that the GoM may loosen environmental standards. The most high profile case was the repeal of the so-called Long Name Law which was enacted in 2009 under active pressure from Mongolian NGOs. The law introduced certain environmental protection standards in the exploration and exploitation licensing procedures and specifically prohibited mining activities at the river headwaters, protected water zones and forested areas. This was, despite several shortcomings, the most progressive piece of legislation with grassroots initiation since Mongolia’s transition to democracy. Largely due to “lack of commitment from the Mongolian government” and heavy pressure from international and domestic lobby groups, the law was promptly shelved in 2012, thus creating a significant stumbling block in terms of development of Mongolia’s environmental governance.

- Related to this, criticism has also been directed at the GoM’s actions weakening the body of regulations and procedures serving as environmental and social safeguards against adverse impacts of development projects. These government measures included, for example, deregulation of investment permit for four main sectors of infrastructure, agriculture, mining, and electricity. Responding to the critics, the GoM has tried to trivialize social and environmental impacts of infrastructure interventions, and claimed that the national safeguards systems are continuously being strengthened. It even appealed to the international finance institutions (IFIs) to abide by the national safeguard systems and help enhance their quality system to reduce the negative impacts of development.

B. **Country Laws and Policies**

A. **Environmental Governance Framework**

• The overall framework for environmental resources and their protection is stipulated in the 1992 Law on Environment. An investigation into the environmental law of Mongolia reports that during last two dozen years, Mongolian environmental governance framework has developed congru-

27 Ibid.
28 Significant milestones include SCO’s Dushanbe and Ufa meetings held in 2014 and 2015 respectively along with meeting held on 8 December 2016, where the governments of the three countries signed the Intergovernmental Agreement on International Road Transport along the Asian Highway Network.
29 http://www.globalconstructionreview.com/sectors/how-asias-super-grid-may-op7en-brig7hter-futu7re/
For the past 25 years, economic development and its organizational structure have been based on infrastructure, agriculture, and energy sectors and almost no attention has been paid to natural resource management which cuts across all sectors of government (Namjim, 2004). It is well established that coordination between ministries and their corresponding agencies is crucial for effective management. According to Hannam (2009), a major drawback for environmental management is “the significant imbalance between the Ministry/Departmental organizational system and the distribution of individual laws and administrative functions and duties” across respective organizations.

According to their mission (MNET, 2017), The Ministry for Nature, Environment and Tourism is responsible for a number of principal environmental laws, strategic papers, and programs along with many others. These enormous responsibilities present a difficult challenge for the Ministry - a situation it has no means to administer effectively due to significant financial, organizational, and human resource restraints.

Moreover, this problem goes straight to the main legislative body – The State Great Khural and its Parliamentary Committees. For example, the Parliamentary Standing Committee on Agriculture and the Environment (http://sc-environment.parliament.mn/) has responsibility for an extensive array of environmental concerns along with its responsibilities to evaluate respective legal projects, individual programs, potential international agreements (The Law on Parliament, section 19). The fact that most members of parliament (MP) are assigned to several Standing Committees and the fact that these committees don’t have permanent research bodies under them, place severe pressures on these bodies. In addition, individual MPs often times are not sufficiently competent to operate in multiple Standing Committees. This pressures the Ministry to cope with its environmental responsibilities practically all alone. In light of these constraints, experts agree that “Mongolia shall develop an alternative administrative system and legislative system to the ones currently in place if it is to have any chance of controlling the serious environmental problems confronting the country” in general. (Tortell et al 2008).

B. General Constitutional Provisions

The concept of natural resources and their protection is stipulated in the 1992 Constitution of Mongolia. Article 6.1 states that “the land, its subsoil, forests, water, fauna and flora and other natural resources shall be subject to the people’s power and state protection”. Article 16.1.2 states that citizens of Mongolia are guaranteed to enjoy “the right to a healthy and safe environment, and to be protected against environmental pollution and ecological imbalance”. Article 10.3 of the Constitution of Mongolia provides that multilateral environmental agreement (MEA) obligations become as effective as domestic legislation (1)on the entry into force of the laws on their ratification or accession. Many sectoral laws and environmental laws including Environmental Protection Law (2.2), Environmental Impact Assessment Law (2.2) have a clause which literally says: “If the International Treaties to which Mongolia is a signatory provide (differently) other than the present law, then the former shall prevail.” This stipulation allows for conflicting interpretations on which laws take the precedence – domestic laws or international agreements. The Constitutional Court of Mongolia, in accordance with Section 2 of Article 66 of the Constitution, shall make and submit judgment to the Parliament (State Ih Khural) “on the conformity of laws, decrees and other decisions by the State Ih Khural and the President, as well as Government decisions and international treaties signed by Mongolia with the Constitution.” Technically, it can be argued, that GOM shall comply with any procedures and commitments set out in International Conventions which it has ratified. This indicates that the country has a legal recourse to invoke international laws and treaties.

34 The State Great Khural has both legislative and oversight power in Mongolia. Its legislative functions are mainly preparing and carrying out plenary sessions or standing committee sittings, discussing drafts of laws or other decisions of the State Great Khural and adopting, passing and the resolving processes.
Proceeding from the Constitution, GoM has enacted multiple environmental laws, regulations and standards. The Law on Environmental Protection (LEP) and Law on Environmental Impact Assessment (LEIA) provide the overarching framework and general procedure and guidelines on environmental assessment. Since 1990’s, over 30 environmental laws as well as several hundred environmental regulations and bylaws were approved. Other key policy documents ratified and/or signed by GoM include plans such as National Biodiversity Action Plan, Climate Change Action Plan, and UN environment Conventions and Treaties, such as the Convention on Biological Diversity (CBD), UN Framework Convention on Climate Change (UNFCCC), Kyoto Protocol, and Vienna Convention for the Protection of the Ozone Layer among others. Moreover, Mongolia ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 18 Nov 1974 and Optional Protocol to the International Covenant on Economic, Social and Cultural Rights in 2010. ICESCR obliges GoM to respect, protect and fulfil the social and environmental rights of its citizen.

C. Infrastructure Provisions and Policies

- Mongolia’s potential for economic growth is constrained by the lack of adequate infrastructure like roads and railways. It is also one of the main constraints in attracting investment. So far the GoM has put in place several ambitious plans to support its infrastructure plans. Major projects are named in State Policy on Railway Transportation (Government Resolution No.32, 2010) and Mongolia Sustainable Development Vision - 2030 document (Government Resolution No.19, 2016). Major railroad projects that need to be constructed are laid out in provisions 2.107, 2.108, 2.109, 2.110, 2.11, and 2.112 of the latter document.

- As of 2016, only 12 per cent (6234.85 km, or about 48% of the total) of the country’s road network is paved. GoM has adopted the 2008–2020 Road Master Plan. According to the Ministry of Road and Transport Development around 16.7 trillion MNT (6.81 billion USD) of investment is needed to expand and upgrade the national road system. In railroad sector, which is the most preferred means of transport for the country’s international trade, main constraints are its limited coverage and small freight capacity. It needs to be upgraded to manage the increasing mining output and support diversification across sectors and regions.

- GoM views public-private partnerships (PPPs) as a way to accelerate the delivery of public services, and has worked to create an enabling environment for PPPs. World Bank has been the main institutional supporter of PPP’s through its programs and projects. The Parliament adopted the State Policy on PPP (PPP Policy) in October 2009, and a Law on Concessions (the Concessions Law) three months later in January 2010. The focal point is the State Property Committee (SPC) with its Department of PPP and Concessions (the PPP Unit) established in April 2010 to oversee the screening, procurement, negotiation, and management of PPPs.

In 2013, a grand total of 51 projects was approved by GoM Resolution 317, with a later update to 55 projects (2015).

The May 2017 statement by Mr. Khayankhyarvaa, the Chair of the Mongolian People’s Party’s (MPP) Caucus in the Parliament, raised significant problems concerning the PPP projects. According to him, PPP project contracts worth 11.1MNT trillion (around 4.6USD billion) called for an audit and the Law on Concessions needed an urgent revision.

These concerns were not unfounded. Previous audit by the National Audit Office (NAO) and evaluation by the National Development Agency (NDA) established significant problems in PPP projects in all stages. NAO report concluded that “relevant government bodies didn’t execute their obligations set in the Law on Concessions such as: to provide methodological and expert assistance to other relevant authorities (6.2.7.); to evaluate and oversee the implementation of the concession agreement and implement the legislation on Concession (6.2.8.); to establish and maintain the Russian railway (238 km).

35 http://www.indexmundi.com/mongolia/environment_international_agreements.html
36 Road and transport sectors policy and projects report presented on January 17, 2017.
37 The rail network is made up of 1,815 km of broad gauge track (1,110 km are on the Trans-Mongolian Railway that connects Ulan-Ude, on the Trans-Siberian railway in Russia, with the Chinese city of Jining, by way of Ulaanbaatar in Mongolia. Other link connects Eastern Mongolia to the
Mongolia-Strategy-for-public-private-partnerships
39 Article 4.2. of the Law on Concessions sets out 8 different partnership schemes such as Build-Operate-Transfer, Build-Transfer, Build-Own-Operate, Build-Own-Operate-Transfer, Build-Lease-Transfer, Design-Build-Finance-Operate, and Renovate-Operate-Transfer. Moreover, as set in Article 4.2., other concession types “may be adopted depending on the nature of the specific concession item and the works and services to be rendered.”
40 http://www.ikon.mn/n/zzr
41 http://nda.gov.mn/backend/l/fyYEJJqKeG.pdf
national centralized registry and database on concessions (6.2.9.); and to prepare tender documents specified in Article 11, announce, organize and evaluate the tender (6.2.11.). The report further highlighted that “there was no single project that had financial planning such as costs, total investment, and their present values.” NDA’s report of project implementation concluded that “there is 80% risk i.e. inadequate implementation in PPP projects”. According to the report, assessment was done using 13 different criteria’s. Major violations and weaknesses include project denomination in foreign currencies, lack of financial and organizational capacities in implementing working groups.

D. Social protection provisions

1. Indigenous People and other vulnerable communities

• Mongolia is not a signatory to the ILO’s Convention 169, which recognizes the status of “Indigenous and Tribal Peoples.” As such, ethnic minorities who fully qualify under international guidelines as Indigenous or Tribal groups are provided no special rights or protections. This is particularly applicable to the Dukha (or Tsaatan) reindeer herding minority, whose reliance on hunting for food is heavily threatened by hunting laws and whose pastures are restricted by creation of protected zones. Dukha minority have been reported by UNHCR and UNESCO that they faced widespread societal discrimination and their language was seriously threatened. Ethnic minorities’ land access and ownership rights are not adequately protected, which infringes upon their “right to own property, alone, as well as in association with others,” as stated in Article 17 in the Universal Declaration of Human Rights (UDHR).

• Despite the fact that Mongolia had supported many multinational initiatives for indigenous peoples such as the recent Declaration on Rights of Indigenous Peoples the concept of indigenous peoples is not applicable in the context of the current legislative framework. Article 30.2 of the Mongolian Constitution mentions native peoples in the context of eligibility for election to the post of the President. However, the term is not defined anywhere in the constitution or in other laws. A Supreme Court interpretation from 2011 defines native people as “a person who is born to Mongolian [citizen] parents and remained a citizen since then.” If we abide by the currently effective international legal definition of indigenous people who have “historical continuity with pre-invasion and pre-colonial societies” Mongolian herders shall be classified as indigenous.

• Mongolia is a home to more than 10 different ethnic minority groups (e.g. Kazakh, Tsaatan, Tuva, Dukha, Chantuul, Khoton and others). Unfortunately, there are no specific affirmative policies, laws or regulations relating to their development. On the other hand, all ethnic groups are granted equal constitutional rights. The Constitution of Mongolia stipulates that “no person shall be discriminated on the basis of ethnic origin, language, race, age, sex, social origin and status, property, occupation and post, religion, opinion, and education.” Regardless of these formal assurances, almost all ethnic minorities face such common problems as “lack of acceptance within the broader society, a lack of recognition of each sub-group’s rights and basic freedoms, ongoing systematic discrimination and human rights violations, a lack of institutional and/or legislative protections, a lack of political will to implement existing legal protection frameworks, and a lack of redress mechanisms or a lack of access to redress mechanisms.”

2. Involuntary resettlement

• The Law on Land allows the state to acquire privately possessed land through negotiated settlement or confiscate land from the owner, if the owner uses land in a way harmful to the social and economic welfare of the given community. Article 40 sets out all other violations where the state may confiscate land from the owner. Under Article 27 of the Law on Urban Development involuntary resettlement may be caused in accord with an approved urban development plan.

• The Land Allocation Law (Article 32) stipulates that land owned by citizens may be replaced or taken back with compensation based on special need of the state including among others ‘to build roads, lines and networks and other objects of national scale’ (32.1.3). With regard to infrastructure development, land acquisition and resettlement issues are regulated only for construction of national scale infrastructure. Land acquisition and resettlement associated with other infrastructure development will be achieved through agreements with affected landowners or possessors in accordance with the Civil Code. Both laws provide for compensation to a certain extent.
• The Law on Land and other laws stipulate that land, personal property and immovables should be compensated at market value. However, compensation is mostly based on fixed rates approved by relevant government agencies. Under Article 27.3 of the Law on Urban development people are entitled to income restoration if land acquisition causes loss of income or livelihood. Yet this provision lacks specificity. Other resettlement assistance such as cover for transport costs are stipulated in this article. Land Allocation Law (Article 33) allows soum and district governors to establish servitudes over private land for the purposes of different land management measures without the need to pay compensation. In principle, effective compensation has to be provided prior to placement. But the Law on Land states payn time should be negotiated, or compensation vided within 60 days after the contract conclusion (Article 43.4).

• Since Mongolia has ratified most of the core international human rights instruments, including the Covenant on Economic, Social, and Cultural Rights, it is bound by obligations to provide remedies for the victims of human right violations. In that regard, all human rights violations in land acquisition process should be given effective and additional remedies. Contents of the aforementioned laws contradict in several circumstances with ICESCR, such as the prohibition of forced eviction. Along with aforementioned deficiencies, fundamental remedy procedures as need of resettlement plan, legal assistance, monitoring, provision of adequate housing with security of tenure, compensation, and negotiation of projects impacts are not addressed in relevant laws.

• Regarding public consultation and Information disclosure, there are no provisions in the Law on Land or Law on Land Allocation, only Article 4.1.6 of the Law on Urban development provides for some public participation. Other gaps include absence of grievance procedures. Remedies Grievance redress mechanism set out in ADB Development Bank’s Involuntary Resettlement Safeguards are not addressed in the laws. Therefore, to formulate project design that evaluates scope of projects impacts are not addressed in the law.

• Involuntary resettlement in the case of mining infrastructure projects taking pasture away from nomadic herders is not addressed in any law. Under the pretext that pasture is public land, pastoralists do not have land title. Use and access to pasture is managed by customary practice whereby a land title is given to a winter camp with the right to utilize the pasture within 2-5 km around the camp. There is a strong push from mining corporations on local governments to reduce further issuance of nomadic camp permits and land titles.

This below case will evidence how national law and the ADB’s requirement to comply with its Safeguards Policies was not applied in the case of Ulaanbaatar Affordable Housing and Urban Renewal Project (49169-001) and/or Ulaanbaatar Pro-Poor urban Redevelopment Support Systems for Ger Areas (51270) and note how these projects are not disclosed on ADB Mongolia’s website https://www.adb.org/countries/mongolia/results.

URBAN REDEVELOPMENT PROJECT

Effective environmental governance includes not only laws and policies, but enforcement mechanisms to implement those. This case is a prime example of divide between policies and implementation.

Civil Society Organizations (CSO’s) such as Amnesty International have raised concern on Ulaanbaatar authorities’ urban redevelopment projects financed by ADB that resulted in significant violation of human rights. One such case involves an urban redevelopment project in Ger area that has put thousands at risk of homelessness. Amnesty’s briefing on this case casts a light on issues such as lack of information on eviction, compensation and resettlement. The redevelopment agenda has focused on 24 Ger areas where approximately 9% of the city’s 1.3 million residents live and public housing which is deemed unsafe and/or structurally unsound. There remains high possibility of human rights violations where people are removed from their land due to redevelopment without adequate consultation and compensation, which is a violation of international human rights law.

United Nations Committee on Economic, Social and Cultural Rights has also raised concerns about the negative impact of the Ger area redevelopment regulation on persons “who do not have a legal title to their land, do not receive adequate compensation and are not provided with alternative accommodation in areas with basic social services.” This is a strict violation of article 11 of the Covenant. This trend is exacerbated by absence of specific measures to ensure equal participation of all and consultation with those affected by the redevelopment. Amnesty’s report highlights the inconsistency of the Mongolian legal system and lack of political capacity and/or will to implement its existing human rights commitments.

48 The article itself is too general without detailed procedures of implementing.
50 https://www.adb.org/projects/49169-001/main
3. Labour Health and Safety

- Labor relations, workers’ rights and employment conditions are regulated by the 1999 Law on Labor, subsequently revised up until 2017 by around 150 different laws, standards, regulations, and rules. The law also governs labor relations of state entities and foreign enterprises with Mongolian nationals and sets an assortment of guarantees and principles regarding working conditions, workplace, health and sanitation requirements, as well as provisions to concerning the employment of minorities. The scope of protection includes prevention from accidents, injuries and disease.

- Specific labor conditions, including wages, can apply in the Free Economic Zones, as the Governor of the Zone can design and implement labor and employment policies for the Zone (art. 7 of the Law on Free Zones), but none have been adopted to date. Concerns about the low level of health and safety standards, particularly in the road construction, energy and mining industries have been raised numerous times. Prevalence of fatal accidents, especially in artisanal mining is widespread. Following international best practice, the grant of mining extraction licenses should include requirements for submission and approval of a health and safety plan.

- Rigorous enforcement of existing occupational, health and safety laws and regulations, as well as the development and adoption of other measures is necessary. In practice, the Tripartite Labor Dispute Settlement Committees (TC) consisting of representatives from the Confederation of Mongolian Trade Unions (CMTU), employers, and Government resolves the majority of disputes between workers and management. However, management and legal contacts state that TCs are not compliant with the existing labor law. This issue is especially pertinent in light of proposed amendments to the Law on Labor currently under consideration by the GoM, that would allow employers, the Government, and CMTU form a committee to set actual working hours and conditions without direct involvement of employees.

- Further measures may include ratification of international treaties including the Labour Inspection Convention, 1947 (No. 81), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129), of the International Labour Organization (ILO).

4. Physical Cultural Resources

- The general legal provision that protects physical cultural heritage is laid out in the Constitution of Mongolia (Article 7.1) and the National Security Concept of Mongolia (Article 3.1.4.1). Law on the Protection of Cultural Heritage passed in May 2014, is the primary law intended to protect Mongolia’s cultural heritage by way of “investigation, registration, research, classification, assessment, preservation, protection, restoration, recreation, transfer, inheritance, ownership, possession, use and promotion of cultural heritage” (Article 1). Mongolia has ratified five out of the seven key UNESCO Conventions including treaties related the promotion of cultural diversity, the preservation and promotion of tangible and intangible heritage, and the fight against the illicit trafficking of movable heritage.

- Ministry of Education, Culture, Science and Sports (MECSC) is the main executive body for the implementation of the Law on the Protection of the Cultural Heritage. State Specialized Inspection Agency is the official body to conduct inspection of the activities within the purview of the Law. Government Regulation No. 241 of 1995 on the registry of Cultural Heritage Objects and other regulations pertaining to the investigation, registration, research, classification, assessment, preservation, protection, restoration, recreation, transfer, inheritance, ownership, possession, use and promotion of cultural heritage have been duly passed.

- “Tangible cultural heritage” means the physically existing memorial that represents a certain historical space and time period and is classified either as “immovable historical and cultural memorial” or as “movable historical and cultural memorial object.” Two main nationwide programs related to “tangible cultural heritage” were implemented since the 1990’s. First, the “National program on protection, restoration of immovable historical and cultural memorials” that was implemented in two separate instances from 1999 to 2005 and from 2008 to 2015. Second, the “National program on digitization of [movable] cultural memorials” that was implemented from 2006 to 2008. Cultural Heritage Center is the only government organization that specializes in registration, protection, digitization and restoration of cultural heritage.

- According to the UNESCO Country Development Programming Document (UCPD) for Mongolia 2012-2016, “effective protection of cultural heritage is limited by weak coordination between major international and national stakeholders, and the absence of public awareness about the significance of cultural heritage for national identity.” Crime against cultural heritage, including theft, smuggling, looting and illegal sale of artifacts are
widespread.

E. Environmental Laws, Provisions, Regulations

1. Law on Environmental Protection (LEP)
   - Enacted in March 1995 and last amended in May 2012, the Law on Environmental Protection declares general environmental objectives and policies, posits the establishment of relevant environmental institutions, and enacts common procedural principles. The LEP and accompanying regulations, procedures and programs have been enacted to achieve the objectives of major national environmental policies as defined – over time - in the Constitution, National Security Concept, Mongolia’s Development Concept, the Comprehensive MDG-based Sustainable Development Policy, Mongolia’s Sustainable Development Concept-2030, and Government Policy on Ecology.
   - Article 7 of the Law requires the conduct of natural resource assessment and environmental impact assessment, and Article 10 requires the conduct of environmental monitoring.
   - LEP is an example of a framework environmental law which, according to UNEP is enacted to address the cross-sectoral spectrum of environmental issues (Smith, 2011). This overarching approach establishes the basic legal principles without detailed codification which necessitates “further enabling legislation” (UNEP, 2011).
   - National Environment Management Act (NEMA) of South Africa was chosen as the model against which Mongolia’s LEP was compared. The South African environmental management policy is based on 7 principles and the LEP is reviewed in respect to each of the principles. First, different levels of state actors involved in environmental protection and their functions regarding development, approval and implementation of environmental protection policy, programs, legislation and measures are reasonably well defined. However, most of the functions are defined as plenary rights not duties.
   - Regulatory enforcement
     LEP specifies that standards are regulations for environmental pollution and waste disposal should be specified in separate documents. Entities using natural resources for commercial purposes have a duty to conduct natural resource assessment and environmental impact assessment at their own expense, and conduct environmental audit every 2 years. Provincial/city and soum/district level governments have the right to monitor compliance with environmental rules and regulations as well as halt activities deemed harmful to the environment and transfer the issue to the relevant authority. In general, the central authority for inspection is responsible for monitoring and enforcing compliance with environmental rules and regulations. Violators of environmental rules and regulations levied criminal or administrative penalties.
   - Establishment of integrating mechanisms and structures to facilitate participation
     Chapter 8 of LEP added in 2012, covers procedures for community-based natural resource management in detail. NGO participation in environmental protection is detailed in article 32. Though some items in the law briefly mention the duty of inspectors and other officials to promote participation of local citizens, no detailed procedures are specified. Citizens have the right to demand enforcement of environmental legislation, restriction on activities and organization that could potentially harm the environment. Citizens also can sue for the compensation of damages inflicted on the environment or for compensation of damages to their health and property resulting from environmentally harmful activities.
   - Inter-ministerial and interdepartmental coordination
     South Africa’s NEMA prioritizes co-operative governance across and between the spheres of government. It defines the establishment of a forum on monitoring the implementation of the stated principles and objectives as well as a committee consisting of heads of national and provincial environmental departments, meeting 4 times a year to discuss environmental implementation plans and “to promote the integration and co-ordination of environmental functions by the relevant organs of state”. To further promote cohesiveness in environmental management, every national department and every province must prepare an environmental implementation and management plan at least every four years submitted to the Minister. Any disagreements concerning environmental protection are dealt with through a clearly defined conciliation process. None of these NEMA mechanisms or any equivalents are found in Mongolia’s LEP.
   - Separation of institutional responsibilities for regulation of environmental impacts and promotion of resource exploitation
     In LEP, some potentially overlapping and generally vague mandates are given to different levels of national and local government with respect to limiting the use of natural resources, implementation of EP legislation and EP measures. This could lead to confusions and delays in the implementation of environmental protection measures.
   - Public access to information
     A new chapter on Environmental Database was added to LEP in 2008. The database is to be online and open to the public unless otherwise specified by law and to include all types of information related to the environment including information on land, soil, water, forest, and environmental legislation, payments made by relevant entities in lieu of the damage done to the environment, environmental statistics and others. A database center is
established next to the central state authority on environment and the entities responsible for entering data in the database within specified periods are defined in detail.

- **Institutional and community capacity building**
  Government and the central authority for the environment have the plenary power to organize and fund activities to provide environmental education to citizens. Government should approve and implement environmental education program in the scope of both the formal and informal educational systems. NGOs also can organize activities to provide environmental education to citizens. Article 39 states that the database center has the right to implement human resource policy including trainings. No other measure targeting capacity building is covered in the law.

2. **The Law on Environmental Impact Assessment (LEIA)**

- Environmental Impact Assessment\(^5^4\) (EIA) is one of the core mechanisms of Country Safeguard Systems (CSS). Effective EIA is achieved through the adoption and application of key principles, many of which\(^5^5\) are upheld in the Rio Declaration\(^5^6\).
- Mongolia has implemented EIAs since the passing of the LEP (Article 7, 9) and Law on Environmental Impact Assessments (LEIA). EIA system was launched in 1993-1994 when ADB sponsored several projects on EIA capacity building. More than 10 special guidelines were produced based on this law. In 2002, new amendments were made to the LEIA along with general improvement of the EIA related legislation. As a result, important sector laws now require EIA\(^5^7\).

- The Law on Environmental Impact Assessment, passed in January 1998 and last amended in May 2012, regulates “relations concerning protection of the environment, prevention of ecological imbalance, the use of natural resources, assessment of the environmental impact and decision-making on the start of a project”. This law stipulates the general requirements and procedures for project screening and conduct of environmental assessment and review. On January 4\(^{th}\) 2010, the Ministry of Environment and Green Development (MEGD) approved Order (No. A-2) that put in place Procedures for Environmental Impact Assessment\(^5^8\).
- The body in charge of EIAs is the Ministry of Nature, Environment and Tourism (MNET). It has a dedicated Technical Board for EIA, “with responsibilities for solving issues concerning environmental impact assessments, issuing formal opinions and providing recommendations on the findings and the reports of the assessments” (EPLM). The law stipulates that an EIA shall be done on every project and activity that could have a potentially adverse impact on the environment (Article 9). Article 9 also sets “development of proposals and programmes”, establishment of “contracts for the operation”, and “commencement and expansion of production or services” as stages when EIA shall be done. Mongolia’s LEIA requires a General EIA for all projects as a scoping process to determine whether a detailed EIA is required.

3. **Environmental Impact Assessment Procedure**

- EIA consists of: 1) Screening, and 2) Detailed Environmental Impact Assessment (EIA). Screening is mandatory for authorization of project implementation or issuance of permits on land use for household purposes, use and search of mineral resources and use of natural environment. EIA shall be conducted for projects intending to make use of natural resources in the construction, renovation or expansion of new or existing industries, services or structures or in other forms, and such assessments shall involve an advance determination and evaluation of the expected environmental effects of development proposals prior to major decisions being taken and commitments made” (Conover et al 1999).

54 The International Association for Impact Assessment (IAIA) defines an environmental impact assessment as “the process of identifying, predicting, evaluating and mitigating the biophysical, social, and other relevant effects of development proposals prior to major decisions being taken and commitments made” (Conover et al 1999).

55 As set forth in the Rio Declaration (Rio Declaration, 1992), there are five primary mechanisms:

1. Reliance on participatory approaches (Principle 10);
2. Application of the precautionary principle (Principle 15);
3. Application of the principle of intergenerational equity (Principle 3);
4. Conservation of biodiversity and ecological integrity is a primary consideration (Principle 4);
5. Improved valuation, pricing and incentives (Principles 8, 12, 13 and 16).

56 The Rio Declaration on Environment and Development was the result of The 1992 Rio Earth Summit. It was of principal importance in the consolidation and international dissemination of EIA, officially recognized as a tool for informed decision-making towards sustainable development (Principle 17, Rio Declaration) and for protection of biodiversity (Article 14, Convention on Biological Diversity). The strengthening of strategic EIA in the design of policies, plans and programs followed afterwards.

57 Environmental Protection Law of Mongolia (Article 7, 9), Law Of Mongolia On Environmental Impact Assessments; Law on Forest (6.1; 13.1.13), Law on Water (4.11; 9.1.3; 28.2.6; 32.2), Law on Air (21.2), Law on Living Modified Organisms (9.2.1; 9.3); Law on Buffer Zones (Article 9), Law on Animals (Article 7.4), Law on Minerals (Article 39.1; 39.1.7.3; 39.9; 40.2; ), Law on Oil (Article 18.2.2) Law on Land (41.1; 41.2), Law on Nuclear Energy (19.1.4) Law on Science and Technology (13.2.3), Law on Energy (20.3) regulations on environmental auditing and, guidelines on strategic and cumulative assessment.

58 The guideline provides: (i) guidelines on EIA document requirements and screening; (ii) methodologies for impacts and risk assessment, cumulative impact assessment and environmental health impact assessment; (iii) background information on strategic environmental assessment (SEIA); (iv) other additional information about mitigation measures and significant features of different types of project; and(v) templates for the environmental protection plan and environmental monitoring plan for inclusion in the detailed environmental impact assessment reports.
impacts of the project. The classification of projects subject to screening of EIA is as follows:

* Mining project
* Heavy industrial project
* Light and food industry
* Agricultural project
* Infrastructure development project
* Project of service
* Other project such as Urbanization, Project must implement for defense and civil protection, Water supply project, Purification facility, Refuse dump
* Project of biological species
* Business related with trans mutative living organism
* Project of chemical toxicant, radio activation substance and hazardous waste
* Operation on special protected area

- The main purposes of an EIA in Mongolia are (i) to determine whether a detailed environment impact statement (EIA) is necessary or not; (ii) to integrate generation and dissemination of environmental information. In terms of screening, Mongolia EIA system utilizes Categorical Exclusion criteria, which are lists of categorical criteria developed by the state agencies that aid in determining whether a proposed project has to undergo detailed environmental evaluation or not. The procedure is drawn on below graphic.

- The EIA Guidelines 2013 doesn’t explicitly identify project planning cycle phases like Pre-feasibility; Feasibility; Design and procurement; Pre-construction; Construction; Operation; and Decommissioning; closure and post-closure. An EIA should consider the environmental issues in all these project phases. Weakness of the Mongolian framework lies in the fact that EIA is designed for assessment impacts only prior to projects.

- There are four different environmental assessment programs. First two shall be done prior project development stage:

  "**Environmental impact assessment**” shall be conducted for “applications for a license for the use of natural resources, extraction of petroleum and minerals, and possession and use of land for business purposes and an approval for any other projects are subject to a prior general environmental impact assessment.” It is generally designed to aid relevant government institutions with regard to assessing a proposed project. The aforementioned UNDP report found that “finding show that the EIA process as implemented is largely ineffective and
needs considerable improvement for it to assist environmental governance” (UNDP, 2009).

“Environmental baseline assessment” (EBA) shall be carried out during the preparation of a feasibility study, design and drawing of any projects and formulation of national, regional and sector development programs and plans (Law on Environmental Impact Assessments 3.1.3). The professional licensed entity shall submit for review the EBA report and “Cumulative impact assessment” report to the Technical Board designated for hearing assessments at the state central administrative organization in charge of nature and environment. (Law on Environmental Impact Assessments 6.2.4)

“Strategic environmental assessment” shall identify (prior) potential risks, adverse impacts and consequences of actions to be taken in accordance with national, regional and sectoral policies, development programs and plans that are to be endorsed by the Parliament and Government (Law on Environmental Impact Assessments 3.1.3). According to the UNDP report conducted in 2009 and 2013, “it may be premature to implement SEIA widely in Mongolia.” The report further indicates that there is wide misunderstanding about SEIA and its functions, and SEIA’s are practically useless if consultative decision-making processes are not followed and implemented.

- Although in Mongolia the EIA is one of the components of the project approval process, it has, in contrast to the Environmental and Social Assessment (ESA), only a low prescriptive influence on activities actually implemented after approval.
- In the EU, unlike in Mongolia, the EIA is linked to an overarching Strategic Environmental Assessment (SEA) Directive, in which possible impacts are considered even at the level of planning, programming and policy making. EIA focuses on prevention of negative project impacts, and takes only partial account of project related risks. Further, the EIA focuses on environmental impacts and, even if at times it includes a few social impacts, it does not ensure balance between the environmental and social concerns.

<table>
<thead>
<tr>
<th>Country</th>
<th>Lao PDR</th>
<th>Thailand</th>
<th>Cambodia</th>
<th>Mongolia</th>
</tr>
</thead>
<tbody>
<tr>
<td>Law/Regulation</td>
<td>EIA Decree No. 1770</td>
<td>NEQA, B.E.</td>
<td>Sub-decree on EIA</td>
<td>EIA Law</td>
</tr>
<tr>
<td>Scope</td>
<td>Project</td>
<td>Plan and Project</td>
<td>Project</td>
<td>Project</td>
</tr>
<tr>
<td>Alternatives study</td>
<td>Stipulated in regulation</td>
<td>Stipulated in technical guidance</td>
<td>N/A</td>
<td>Stipulated in regulation</td>
</tr>
<tr>
<td>Public participation</td>
<td>Strict and concrete requirements in the regulation</td>
<td>General statement</td>
<td>General statement in the regulation</td>
<td>Strict and concrete requirements in the regulation</td>
</tr>
<tr>
<td>Information disclosure</td>
<td>Stipulated in regulation</td>
<td>No provision in current regulation</td>
<td>N/A</td>
<td>Stipulated in regulation</td>
</tr>
<tr>
<td>Certification of consultants</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Follow-up monitoring</td>
<td>Required</td>
<td>N/A</td>
<td>N/A</td>
<td>Required</td>
</tr>
</tbody>
</table>

59 Article 8.4 of the EIA law states that the Detailed Environmental Impact Assessment Report shall include alternative methods and technology.
60 Article 17.4 of the EIA Law states that the person authorized to do the detailed EIA should hold meetings with the local government, citizens and all who are to be affected by the project to receive their suggestions. Article 7.4.1 says a project that does not incorporate such suggestions as are stated in Article 17.4 will not be issued a license of operation or, if a license has been issued, it should be invalidated. Thus, suggestions and opinions of those directly affected by the project now assume great importance for project implementers.
61 Article 9.5 of the EIA Law states that an Environmental Management Plan shall consist of an environmental protection plan and environmental monitoring program.
Additional weaknesses of the EIA system include: lack of a project ranking system (categories A, B, and C), the IEE checklists, and the need for Environmental Clearance Certificates; bias towards administrative compliance; vague scoping process subject to arbitrary interpretations (Article 7); existence of a stipulation that allows projects to be implemented “without a detailed environmental impact assessment subject to specific conditions” even though those specific conditions are not laid out (Article 7); poorly organized, descriptive and overly technical reports.

The Asian Environmental Compliance and Enforcement Network (AECEN) conducted a comparative analysis of EIA compliance and enforcement among its 16 member countries. The main challenges faced by the member countries were as follows:

- Loopholes in the list of prescribed projects
- Late timing – decision has already been made to proceed
- Inadequate consideration of alternatives
- Incremental rather than cumulative impacts
- Conflicting interests - public sector projects are often the worst offenders for non-compliance
- Inadequate qualifications and certification
- Lack of data – especially cause-effect or dose-response data
- Systematic under-estimation of costs
- Inadequate monitoring plans
- Poor compliance and enforcement
- Inadequate sanctions +/-or prosecutions
- Conflicting jurisdictions
- Inadequate public participation

At the time of this study, it is unknown whether a survey of this type was done in Mongolia. However, by only researching laws, provisions, surveys and cases, we can conclude that practically all of these challenges are present in Mongolia. In terms of coherence between different institutions and mechanisms, it is worth considering whether the Mongolian EIA is fully embedded in more programmatic and strategic EIA or whether such processes are still disconnected. In practice, an EIA is used just meet procedural requirements rather than be used to improve project design. In this sense, performance review of EIAs undertaken by independent reviewers (i.e. civil society) could be useful.

4. Environmental Impact Assessment Mechanism in Practice

- Consideration of alternatives
  For example, NEPA regulations consider that the analysis of alternatives is “the heart of the environmental impact statement.” In Mongolia, an analysis of alternatives is required, but only for “alternative methods and technology that may potentially reduce the pollution level and for environmentally-friendly method and technology” (Law on EIA, Article 8.4.4). In essence, alternatives are required to mostly to justify why the developer’s choice was selected over other viable alternatives.

- Environmental Management and Follow-Up Mechanisms
  The main document coming out of Strategic Environmental Impact Assessment is the SEIA Report and Environmental Management Plan (EMP). EMP is used by authorities to ensure that the conditions for issuing the environmental license are fulfilled, to monitor whether the action’s actual environmental impacts are similar to those predicted by the SEIS, and to assess whether the selected mitigation measures are effective. Whether, the authorities actively monitor the action’s impacts after the permit has been issued, needs to be assessed urgently. Even though the legislation on EIA requires the definition of mitigation measures as part of the EIA, it doesn’t call for a structured plan or program to ensure that such measures are systematically integrated into the action’s operation.

- Application of the Precautionary Principle
  Where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing environmental degradation prevention measures. Lack of application of the precautionary principle presents clear danger for the environment in Mongolia.

- Intergenerational equity
  The principle provides that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations. This requires consideration of the impact of a proposed activity or project taking into account any long-term impact. This could also require consideration of project closure and site-decontamination.

- Conservation of biological diversity and ecological integrity
  Ideally, biological diversity and ecological integrity should be a fundamental consideration in assessment of all projects. It ensures that harm and damage to the

---

62 AECEN is a regional network of national and sub-national agencies from Asian countries committed to improving environmental compliance and enforcement in Asia. AECEN’s mission is to promote improved compliance with environmental policies, laws and regulations through the exchange of innovative policies and practices.

environment and society must be mitigated by the project. The project proponent and EIA consultant must evaluate various options and propose ways to avoid or reduce the potential harm. If harm is unavoidable, the project plan must include measures to provide appropriate compensation for the harm.

- Examination of dozen environmental protection plans gives us a rather gloomy picture. Most of these plans are extremely general in nature and lacks an assessment of the risk-weighted consequences of various options in terms of both inter-generational equity and measures to provide appropriate compensation for the harm. The number of EIA companies has grown rapidly in response to the dramatic increases in mining, infrastructure, construction sectors that require EIAs. While EIAs have been a new business area for environmental and technical experts by EIA companies, their lack of expert knowledge and skills about EIAs has resulted in poor quality EIAs, and conflicts of interest.

5. Trans-boundary and Global Environmental Assessment

- Transboundary environmental challenges in North-East Asian region include issues of water pollution, air pollution, climate change, deforestation and desertification. Northeast Asian countries “do not have environmental cooperation mechanism comparable to Europe’s successful regulatory regime” even though many have initiatives have been signed.

- Present transboundary environmental mechanisms in Northeast Asia in which Mongolia is part of includes multilateral initiatives such as North-East Asian Sub-regional Programme for Environmental Cooperation (NEASPEC), Tumen NET, Environmental Congress for Asia and the Pacific (ECO-ASIA), Northeast Asian Conference on Environmental Cooperation (NEAC), Acid Deposition Monitoring Network in East Asia (EANET).

- Mongolia-China Agreement on Protection and Utilization of Transboundary Waters, Sino-Mongolian Agreement on Cooperative Conservation of Nature, and Agreement on Dauria International Protected Area, Agreement on Protection and Use of Transboundary Waters, and Russian-Mongolian Cooperation in Environmental Protection are some of Mongolia’s other agreements with its immediate neighbors.

As described above, there are several multilateral environmental cooperation schemes including the NEASPEC, Northwest Pacific Action Plan (NOWPAP, and 64 13 EPP’s were examined). The project proponent and EIA consultant must evaluate various options and propose ways to avoid or reduce the potential harm. If harm is unavoidable, the project plan must include measures to provide appropriate compensation for the harm.

- Examination of dozen environmental protection plans gives us a rather gloomy picture. Most of these plans are extremely general in nature and lacks an assessment of the risk-weighted consequences of various options in terms of both inter-generational equity and measures to provide appropriate compensation for the harm. The number of EIA companies has grown rapidly in response to the dramatic increases in mining, infrastructure, construction sectors that require EIAs. While EIAs have been a new business area for environmental and technical experts by EIA companies, their lack of expert knowledge and skills about EIAs has resulted in poor quality EIAs, and conflicts of interest.

THE MINIS PROJECT

This case demonstrates an example where 1) NGOs’ side-stepped domestic CSS due to lack of provision on transboundary impacts assessments and directly engaged the multilateral donor agency’s grievance mechanism, and 2) NGO complaint was disregarded by the said donor agency.

In February 2015, Mongolian and Russian environmental and human rights NGOs submitted a request for an investigation to the World Bank’s independent accountability arm, the Inspection Panel. The complainants centered on the Mongolian Mining Infrastructure Investment Support Project (MINIS). The MINIS Project was signed in 2011 for 5-year period as an incubator for mining-related infrastructure projects, initially not listing any hydropower projects. In early 2012 a feasibility study for Shuren Hydro on the main stem of Selenge river was suddenly inserted into the project in addition to Orkhon HPP and water-supply scheme. The dam projects are meant to provide water and electricity to mining. At the same time in 2013, the GoM restarted planning of another large dam on Selenge river tributary – Egiin Gol Hydro outside of the realm of MINIS Project.

The Inspection Panel (WBIIP) received a Request for Inspection on February 10, 2015. MINIS’ Component 1 finances assessments, studies for subprojects, two of which - Shuren Hydropower Plan and Orkhon Gobi Water Diversion project - are the subject of the Request. The complainants claimed that these subprojects may have potentially irreversible environmental and social impacts on the Orkhon and Selenge Rivers in Mongolia and Russia’s Lake Baikal, a World Heritage Site. They argued that the WB completely disregarded its Operational Policy OP 4.04 – Natural Habitats, when selecting the dam projects on unique rivers with globally endangered species as targets for its technical assistance. They also raised concerns about lack of consultation and disclosure of information.

After 2.5 years of project monitoring the Panel recommended not to investigate the complaint. In making this recommendation, the Panel emphasized the need to ensure diligent implementation of the full set of environmental assessment tools that have been identified. The World Bank Board of Executive Directors approved the Panel’s recommendation on July 27, 2017.
the NEA region and Mongolia is yet to become its part. A recent workshop on the possibility of establishing a Transboundary EIA mechanism concluded that there are significant obstacles, such as: difference in political, economic and cultural backgrounds; and time constraints for actual implementation of TEIA. The study concludes that “implementing TEIA in the region is still urgently needed because of increased attention related to governmental policies and plans.” For example, a pilot project on Tavan Tolgoi - Gashuun Sukhait railway established potential transboundary impacts. Out of 37 potential impacts 13 were deemed transboundary. Taking into account that significant mineral deposits lie in areas near the border, it is essential to launch a comprehensive TEIA system in North East Asia.

6. Natural Habitats, Biodiversity, Protected Areas (PA)

- In 1998, the Parliament approved the National Programme on Protected Areas. The Master Plan for Land Use in Mongolia, approved by the GoM on 24 December 2003, provides the legal basis for the establishment of Protected Areas for the next 16-20 years. In 1998, Mongolia signed the Convention on Wetlands of International Importance. To date, 11 areas (covering 1,395,963 hectares) have been designated as “Ramsar sites”. In order to fulfill its convention obligations, Mongolia must take proper measures to protect those as PAs.

- In 1993, Mongolia joined the International Convention on Biological Diversity (CBD). As a signatory of the convention, Mongolia is committed to generally conserving its biodiversity and in particular, establishing a system of PAs that includes representative examples of all biodiversity and ecosystems. In 1996, the GoM adopted the Mongolia Biodiversity Conservation Action Plan as a guide for authorities and stakeholders on how to fulfill CBD commitments.

- The main policy document adopted by the Parliament is the National Program of PA (NPPA) of 1998. The program is a comprehensive policy document defining the long-term policy, until 2015 and beyond for establishing a physical network of PAs as well as improving management of PAs to reach international standards and thereby to ensuring ecological integrity of the entire country.

- Within the framework of World Bank, GEF Early Action Grant, a review of the implementation and status of the NPPA has been conducted. The review covered the quantity and quality aspects of the implementation and was generally assessed as ‘moderate’ (2.76 within a 5 grade scale) as no single dimension of the programme was assessed with higher grades. The review concluded that four aspects of implementation were either at “a very low level” or “unsatisfactory”.

- The existing Law on Special Protected Areas incorporate most of the fundamentals that are generally acknowledged in international best standards. However, current provisions of the law provide for limited community participation in planning and management. Further weakness concerns the benefits that are shared principally by facilitating land use by local people in and around protected areas.

- Further, Mongolia’s existing protected areas that cover about 17% of its territory and proposed protected areas are threatened by weakly regulated mining operations. Mining impacts on Mongolia’s protected areas are diverse and include licensed and unlicensed mineral activities in protected and buffer zone areas.

- Habitat destruction, degradation and fragmentation due to weakly regulated and/or illegal land use, pasture use, logging, hunting and mining are the major causes of population decline for species. According to Ministry of Environment’s 2014 report, “in recent years about 550 rivers, 450 lakes dried out, 75% of pastureland is degraded, 1.5 ha forest area deforested, Argali, Khulan, Gazelles and other mammals’ population reduced significantly.

C. Judicial System and Legal Arrangements 
for social and environmental violations)

A. Provisions for public participation and Information

70 Those were:
- To set up an economic and legal basis to increase funding sources beyond the state funding for the PA network
- To provide PA network staff with 1) opportunities to develop their professional skills and 2) stable working conditions
- To establish clear limitations for the use of natural resources within the established PAs by local communities as well as the implementation of restoration measures within the PAs and
- To develop and implement viable management plans for PA buffer zones as stated in the Law on Buffer Zones.

71 “Mongolian Law on Special Protected Areas and Law on Buffer Zones” – A review by the World Conservation Union
72 Current SDG matrix the baseline indicator is 17% (the 2030 target being 30%), which we failed to reach with MDGs.
1. **Meaningful Consultation**

- Mongolia’s Law on EIA ensures some rights of consultation. Projects that are required to undertake a detailed, cumulative and strategic EIA have some components of public consultation even though the term of ‘meaningful consultation’ is not specifically mentioned in EIA regulations. Even though Law on EIA has provisions calling for public involvement (Article 18.2), critical things remain absent. For example, the Article 18.2 allows “public comments during the process of strategic assessments of national and regional polices that the government plans to adopt and development programs and plans to be implemented”, there is no definition of “the public”, nor is it clear how these suggestions will be reflected in the assessment or which kind of public “opinion” will be taken into consideration.

- Aforementioned weaknesses are present in all main and sector laws that contain provisions on public consultation such as Law on Subsoil, Law on Water, Law on Water and Law on Forests. These provisions remain at the level of manifesto, are extremely general, lack accompanying procedures, specific guidelines on timing and methods, and effective liabilities. The provision that allows members of public to comment “within not more than 30 working days” (Article 17.3 of the Law on EIA) takes no account of the differing opportunities of local communities and certain population groups to access information and act thereof. The vague provision “may be invited” that is found in all these laws allows environmental decision makers to abuse the rule. The result is the prevalence of ineffective, perfunctory and overly subjective public consultations that take no account of the particular requirements of affected groups.

- Article 17.4 of the Law on EIA states that the person authorized to do the EIA should hold meetings only with “the local government, citizens and all who are to be affected by the project to receive their suggestions.” A project that does not implement such suggestions will not be issued a license of operation or, if a license has been issued, it should be invalidated (Article 7.4.1). However, there are many occasions when people are not consulted at all or when people who are involved in the process are not the ones “to be affected by the project”. Instances where projects are not introduced in detail or possible environmental effects are not told, are also prevalent. For example, a monitoring project covering 47 reports/cases, established that in 10 (22%) cases people were not consulted at all, in 33 (70%) cases consultation didn’t meet procedural guidelines, and in only 4 (8%) cases people were consulted properly.

- Article 3.2.8 of the Law on Environmental Protection allows local citizens to form “management communes” for the purposes of sustainable and equitable use, protection, rehabilitation of common environmental resources. Even though this is a significant provision that promotes direct democracy, it is inhibited by the hierarchical decision making characteristic of Local Citizen Councils where the lower level decisions can be easily overridden by higher level bodies (e.g. Soum/District level versus Aimag/Capital level Citizen Councils). Overall, weak and inadequate provisions regarding “management communes” are liable to be exploited by different vested interests (e.g. unrelated people from other places can exploit this) amid the GoM’s policy of delegating increasing numbers of state functions to the private sector.

2. **Public information disclosure; provisions for access**

- Ministry of Environment shall inform the population via its website about projects included in the national development plans or programs undergoing strategic assessment and EIA. In addition, according to the law on Environmental Protection, MEGD is obligated to maintain a State Environmental Information Database (EID) where all summaries of completed EIA should be placed for public access.

- The public and private sector obligations to provide accurate information on the environment and disseminate it to the public are not set uniformly. For example, out of ten laws only seven stipulate the right to obtain information from relevant government institutions and the duty to provide accurate information is spelled out in only six laws. But even then, these six laws offer exceptionally vague provisions such as “shall be made accessible” or “may be accessible” without procedures on exactly who, when and how should provide what kind of information.

- Public access to information is ensured by the Law on Information Transparency and Right to Information. According to this law, “citizens and legal...
entities shall be entitled to receive all information except for the information prohibited by law to publicly disclose for the purpose of ensuring human rights, freedom, national security, and organization's lawful interests as specified in article 3.1 of this law" (Article 11.1). However, the clause on "organization's proprietary information" is used to not disclose any information by private entities.

- Despite the fact that Law on Company Confidentiality does not extend secrecy onto the company operations that could affect "public health and environment" (Article 6), the Minerals Law explicitly contradicts this provision by allowing state administrative body to "treat reports on exploration work, information with respect to mine operations and feasibility studies prepared by the license holder as the license holder's confidential information during the valid period of the license." Owing to this fact, public has been unable to get accurate information on most major mining operations that could significantly affect public interest.

3. Public Participation in Environmental Compliance and Enforcement

- The Law on Environmental Protection allows non-governmental organizations to "conduct public supervision and inspection of the implementation of environmental protection legislation; to demand the rectification of breaches and to submit matters to authorized organizations for decision; to submit proposals on environmental protection to the central State administrative body and relevant Khurals and Governors; to organize ecological training and education independently or in co-operation with other concerned organizations; and to develop proposals, recommendations, and methodologies for environmental protection and restoration and submit them to the relevant organisation for decision" (Article 32).

- Even though public participation in environmental compliance and enforcement is stipulated in environmental laws, it suffers from excessive generality and a lack of clear obligation on the part of the state to finance monitoring and evaluation costs. Public participation is lacking in an EIA because the legislation fails to formalize public involvement. Therefore, public participation is left to the discretion of the proponent and the government authority, regardless of the law saying that the ministry should consider public opinion when reaching a final decision.

- General weakness concerns the lack of substantial right for citizens except formal rights such as the right to conduct public supervision, right to demand rectification, and the right to submit proposals that are not backed by specific regulations and procedures.

4. Public Participation in Environmental Impact Assessment

- A central feature of public participation in EIA processes is to maximize opportunities for the participation of all stakeholders, including other government departments, NGOs, CSOs, the general community, whether directly or indirectly affected local communities and the corporate sector. Best practice in EIA will provide for the following: public participation at all stages of the process, from screening to decision-making; community participation in the compliance and monitoring stage of the development; and specific participation strategies for women and indigenous people and their communities.

- Overall, some form of public participation during the EIA process is required by law. In terms of interagency coordination, LMEIA doesn't require that the responsible authority consult other agencies. The EIA law requires "consultations with and formally seek comments from the local authority and the community" only at the report preparation stage. The 2012 amendment to the EIA law has more articles calling for public involvement compared to the previous iteration, but there are many aspects which remain ambiguous and imprecise. For example, the law now stipulates that suggestions shall be taken from the public during the strategic assessment. However, "the public" is not defined. Moreover, there are no clear guidelines how suggestions made by the public should be reflected in the assessment. Suggestions from the public are not mandatory during the process of strategic assessments of national and regional policies that the government plans to adopt.

B. Grievance mechanism; offences and penalties, compensation mechanisms

1. Environmental Inspection and Monitoring

- The Health Inspection Department of the State Professional Inspection Agency (SPIA) is in charge of controlling and monitoring environmental health in Mongolia. This department controls water quality, soil pollution, chemical safety, consumer products and hygienic condition of water supply and sanitation utilities. The same Agency has Environmental Inspection Department which works closely with the Health Inspection Department and is responsible for overseeing the implementation of the environmental legislation. It controls urban air quality, water and natural resources.

2. Environmental Offences and Compensation
Since the mid-1990s, under a special provision of the Environmental Protection Law 1995, and various individual natural resource ‘use fee’ laws that followed, citizens have had access to many natural resources for the payment of a fee. Although this system is similar in concept to the worldwide “principle of user pays”, it has been very limited in the way it has been applied for all land where the fee amount is very low (and not indexed), is poorly administered, is not accompanied by natural resource incentives and support schemes (Hannam 2009). Worsening the situation, a substantial amount of fee collected is directed to the central budget with only small amount left to be reinvested for local conservation.

The 2012 LEP made polluters liable to compensate for the damage caused to the environment and natural resources. The amount of compensation payable is independent upon the natural resource which has suffered the damage. Natural resources in Mongolia are all to be assessed by private environmental assessors based on procedures formulated by the Ministry of Environment. Each type of natural resource is assigned an intrinsic value. This value may differ from region to region, for instance water resources may be more valuable in the Gobi than in other areas. The damage is assessed by an environmental inspector and a fine of 2 to 5 times the intrinsic value of the resource is levied on the polluter. Compensation is payable within 14 working days of the decision. If payment is not made within the specified deadline, such decision may be enforced through the court bailiff’s office. There is no opportunity to appeal the decision of the inspector.

A package of laws passed in 2012, e.g. the Law on Water Pollution Fee and amendments to the Law on Water, included additional payments for polluting water. Article 28.19 of this law bans issuing a recommendation on the use of water by an industrial entity employing environmentally harmful technology. These new legal provisions are the first step towards planning the development of this country with less harm to the environment. We have no way of gauging the effectiveness since there was no research concerning the implementation of these sanctions. This package of laws also created new liabilities for adviser’s of corporate CEOs, whose actions result in offenses such as money laundering, terrorism, bribery, environmental abuse, actions that threaten the nation’s economic security, or the abuse of state property.

Sanctions for environmental crimes may be “incarceration for a term of more than 3 to 6 months or imprisonment for a term of up to 5 years” depending on the type and severity of violation (Criminal Code of Mongolia - Chapter 3). Criminal Code of Mongolia also imposes monetary fines equal to 51 to 250 amounts of minimum wage (which is 240,000 tugrugs or approximately US$98). The EIA Law imposes sanctions for noncompliance with certain provisions and requirements including: a) termination of activities that are being carried out without a proper environmental impact assessment and confiscation of any incomerasing from such activities; b) suspension of activities in the event of breach of requirements set out in the environmental impact assessment report, and imposition of monetary fines ranging from MNT 3,510,000 to MNT 4,212,000 (US$1,446 – $1,735); c) revocation of the mining license for failure to adopt an environmental management plan, for non-compliance with such plan or for failure to submit compliance reports, and imposition of fines ranging from MNT 3,510,000 to MNT 4,212,000 (US$1,446 – $1,735).

The main legal and regulatory limitations in Mongolia are the inadequacy of penalties (basically too small to act as a deterrent) and inability to adequately monitor mitigation measures proposed in the EIAs. The lack of accountability on the part of EIA consultants and the project developers they work for, is a key aspect of the sanctions problem. For example, in the U.S., the EIA is expected to result in an action for which the lead agency will be held accountable. Thus, the agency has an incentive to hire a consultant whose work will provide adequate support for such a decision. In contrast, it is project developers who are responsible for hiring EIA experts in Mongolia. It is more than reasonable to suspect that developers have incentives to hire a consultant who is not necessarily interested in enhancing the decision-making process, but instead, in meeting the minimum legal requirements and overcoming any potential objections to the project.

Banks and financial and investment institutions are now under an obligation not to provide any funding and loans to projects deemed harmful to the environment and society. This provision seems to be an attempt to introduce the Equator Principles into Mongolian law, but the provision is uncertain and vague. There are “no objective criteria for what would be considered ‘harmful’, nor is there any link to the ‘polluter pays’ principle in the Law on Environmental Protection.” 76 There are no express sanctions imposed for non-compliance for violation of this principle.

Financial and administrative sanctions concerning EIA plans and its implementation also suffer from inadequate sanctions. Even though amount of financial penalties for violating the EIA law has been raised in the 2012 EIA law, the present sanctions

---

76 ibid
are too low to affect the operations of legal entities.

- Below are the corresponding liabilities corresponding to different stages of the EIA process from the law.

<table>
<thead>
<tr>
<th>#</th>
<th>Subject</th>
<th>Article in the EIA law</th>
<th>Liability</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>If a project or an activity proceeded with no environmental impact assessment conducted and with no due permits obtained</td>
<td>18.1.1</td>
<td>Illegal activity is halted, its proceeds are confiscated and transferred to soum and district budget accounts.</td>
</tr>
<tr>
<td>2</td>
<td>If a project doesn’t comply with the requirements defined in the EIA report</td>
<td>18.1.2</td>
<td>Project suspension until remedial actions; a fine equivalent to 25-30 times the minimum wage</td>
</tr>
<tr>
<td>3</td>
<td>If the project proceeded without an environmental management plan or did not implement the plan or failed to report its implementation status on time</td>
<td>18.1.3</td>
<td>A fine equivalent to 25-30 times the minimum wage</td>
</tr>
<tr>
<td>4</td>
<td>If a licensed entity undertook a detailed EIA which was later found to have been improperly conducted</td>
<td>18.1.4</td>
<td>A fine equivalent to 25-30 times the minimum wage</td>
</tr>
</tbody>
</table>

3. Regional Mechanism and the barrier of cross-border law enforcement

- Asia Pacific remains the sole region without a human rights court or commission, and without a human rights treaty. This noteworthy absence of human rights mechanisms is often explained away “by reference to the region’s size and heterogeneity, the constituent states’ reluctance to interfere in the affairs of others, and the existence of rivalries”. Most of West Asia is now covered by the Arab Charter of Human Rights, and Russia is covered by the European system, whereas ASEAN is covered by its nascent AICHR. 

- Multilateral cooperation in Northeast Asia still remains at its early stage due to challenges related to different legal systems, political commitments and the gap of national safeguards between countries. Absence of comprehensive sub-regional human rights mechanisms in Northeast Asia to address the adverse human rights consequences of cross border investments and infrastructure projects presents a crucial challenge for the countries involved.

D. Comparative Analysis of Country Legal Framework to that of the Safeguard Policy Statement (Using ADB’s Safeguard Guidelines)

**Equivalence Assessment Matrix: Mongolia Draft EIA Law Compared with the ADB SPS** compared the Mongolia’s 2012 Draft EIA Law to the ADB SPS Policy Principles on environment and involuntary resettlement. The main purpose of this comparative analysis is to identify gaps and to determine level of equivalency between Mongolia’s legal frameworks with all relevant legal instruments and ADB SPS Policy Principles.

**Equivalence Assessment Matrix** conducted by ADB found that the level of equivalence for Mongolia’s CSS for environment is low since it’s been established that the Mongolia legal framework is “fully equivalent” with only 2 of the 11 policy principles (18%) and with 8 of the 27 key elements (29%) of the ADB’s environmental safeguard. The report further concludes that Mongolia CSS for Environment is only “partially equivalent” with 11 of the 27 key elements (40%). Many provisions lacking in the EIA law will be added via “EIA Procedures” regulation that will include directions on environmental management planning.


78 ASEAN Intergovernmental Commission on Human Rights - was inaugurated in October 2009 as a consultative body of the Association of Southeast Asian Nations (ASEAN). The human rights commission exists to promote and protect human rights, and regional co-operation on human rights in the member countries
• Key elements identified as partially equivalent are:
  • Key Element 1, Policy Principle 2; concerns the identification of socio-economic impacts. The Mongolian CSS doesn’t have explicit reference to “indirect impacts” in the legal framework. All potential references to indirect impacts are implicit.
  • Key Element 3, Policy Principle 2; Mongolian CSS doesn’t have explicit reference to “induced impacts” in the legal framework.

E. Celebrated case to showcase this assessment

CONCLUSION

• According to the UNDP assessments conducted in 2009 and 2013, “there are clear and present weaknesses in implementing existing laws and using management tools already at hand and in the deficient allocation of funds and human resources to ensure competence.” Mongolia’s ongoing sovereign debt crisis and International Monetary Funds’ (IMF) Extended Facility Fund program with its austerity demands will, in all likelihood, further aggravate the situation. Already insufficient funds and human resource will be cut even more to balance the budget and moreover, environmental governance rules and its implementation could become even laxer in order to attract investment into mining and infrastructure.

• One of the main impediments to improving environmental governance is the misalignment of the current environmental law system with the principal environmental characteristics of the country. As documented in various environmental studies, “few environmental laws effectively identify with the physical environmental elements which contain rich and diverse ecology that requires special management” (UNDP 2005, Hannam 2009).

• Specific problems include: “structural and procedural deficiencies and poor quality of legislation; poor government administration of the environment, inadequate institutions; lack of effective community participation; failure to prepare environmental law around the sensitive ecological environment - which is in decline from: increasing degradation of water, soils and vegetation; expanding desertification; increased water, air and land pollution; loss of biodiversity, species decline and ecosystem dysfunction” (Hannam 2009). Moreover, law-makers had developed the law without fully considering the principles for long-term sustainable use of natural resources - instead focusing on managing the current situation. Many crucial elements are missing from the laws like education and training, developing information, and dispute resolution mechanisms (Hannam 2009).

• Transparency International’s 2016 Corruption Perception Index ranked Mongolia 87 of 176 countries globally, largely on par with its rankings from previous years. The primary law governing anti-corruption efforts is the 2006 Anti-Corruption Law (ACL), which sets criminal penalties for official corruption. Aug 4, 2017 In spite of important anti-corruption steps taken in recent years, Mongolia is facing important governance and corruption challenges. The quality of governance, as captured by major governance indicators, seems to be declining over years, especially with regard to government effectiveness and control of corruption.79

Conclusions regarding the EIA process

• Environmental assessments should inform decisions on possible projects by providing research about potential environmental and social impacts. Projects that do not consider such impacts are leading to an increasing number of conflicts and protests such as the Gatsuurt Gold Mine Project80 in Noyon Uul. The law on prohibiting mining in headwaters and forest resource areas Article 4.2 exempts mineral deposits of strategic importance. Centerra Gold sought and received “strategic mine” status in January 2015.

• There is growing need to move environmental assessment practices closer to international best practices if we are to avoid future conflicts. If the situation if not corrected, ambitious infrastructure, hydropower and other projects will escalate the risk of potential conflicts due to power asymmetries among the Mongolian government and growing influence of multilateral development banks such as the AIIB.


80 The gold deposit (http://www.mining.com/centerra-a-step-closer-to-moving-gold-project-in-mongolia-forward-63999/) is located in the Noyon Mount forest, which had been illegal according to provisions of the Law with the Long Name which prohibits mining operations in forest and river areas. Along with ecological value, it is significant as a sacred ritual site for many people, because that is where the archeological sites from the period of Huns are located. The most significant opposition activity took place in Ulaanbaatar in February 2015 when Mongolians went on hunger strike to protect Noyon Mountain (http://www.uranium-network.org/index.php/asia/mongolia/463-mongolians-go-on-hunger-strike-to-protect-noyon-mountain-from-unlawful-mining). The struggle continues up to this day.
References


