A "LET'S CHANGE IT" SYNDROME – WHY DOES POLICY FAIL IN MONGOLIA?

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Abstract

This article discusses policy failures in Mongolia by describing examples of mining policies that have not been successful. After policy failures, politicians in Mongolia often engage in the "blame game". They have provided four explanations for policy failures in mining: geopolitical interests of major powers; the dynamics of global commodity markets; private business interests; and civil society activities. These explanations are also found in other new democracies with market economies. However, this article introduces the 'let's change it' syndrome, which is the tendency to change policies without critical reviews and proper implementation processes. The "lets change it" syndrome increases mistrust among all actors, including policy makers, and creates a 'vicious cycle' of cheating and competition within the bargaining dynamics. Unless Mongolian politicians exert political will and courage to uphold the rule of law and to strengthen the proper institutional capacities of policymaking, mining and other government policies will continue to fail.

Introduction

This article asks a question: "Why have many policies failed in Mongolia?", with a focus on mining policies. The question is worthwhile to examine not only because Mongolia is in the radar of foreign investors, but also because the Mongolian case is not unique among other developing democracies. Since its political and economic transitions in the 1990s, Mongolia has been led by two major political parties – the former Communist party, the Mongolian People's Party (MPP), and the Democratic Party (DP), either alone or in coalition. The campaign platforms and governmental action plans of both parties were always dedicated to "good governance", meaning accountable, responsive, effective, and efficient governance. Despite the intra- and inter-generational dynamics, only a handful of politicians, the 'usual suspects', have been holding the highest policy-making posts in Mongolia. Both parties also claim to be dedicated to policy continuity and transparency. Similar ministries and agencies, albeit frequently re-named, have been developing and implementing these policies. All these actors, parties, politicians, and bureaucracies, have been aided by foreign assistance, ranging from the United Nations (UN) to international financial institutions (IFIs) and foreign governments, in order to improve their policy-making capacity and establish good governance. Millions of dollars have been spent for such causes.

Today, two decades after the political and economic liberalization, both Mongolians and foreigners are still complaining about policy instability, unpredictability, and non-transparency in Ulaanbaatar, key features of bad governance. Even the most knowledgeable foreign officials are now vociferously complaining about Mongolian government policies in particular and politics in general.[1] Interestingly, Mongolian policy-makers, unlike some of their counterparts, do not face extreme challenges of external armed aggression, domestic insurgencies, coup d'état, ethnic and religious fractionalization, destructive natural disasters and severe punishments. So, why does the policy process fail in Mongolia?

To answer this question, this paper first presents a few examples of mining policy failures, *second*, examines the most-commonly-presented explanations: external (i.e., geopolitics, global economy) and internal (i.e., private interests and civil society activists) factors, *third*, discuss the syndrome of 'let's change it,' and *finally*, reflect on potential solutions. The solutions presented include (1) upholding the rule of law and (2) strengthening the institutional capacity for policy-making. This paper recognizes that poor policy making is common in new democracies in market economies. The paper argues that the current policy failures will continue unless the Mongolian government diagnoses and cures the "let's change it" symptom by upholding the rule of law and strengthening the proper institutional capacity to formulate, implement, and revise policies.

Mining Policy Failures

Mining policy is a good entry point to understand the overall policy-making processes of Mongolia. For one, mining has been one of the dominant economic sectors of Mongolia since the early 1900s.[2] Second, with extensive mining activities, mining has caused numerous political and socio-economic challenges for policy-makers. Today any policy decision related to mining triggers diverse reactions from political parties, political-business factions, businesses, civil society activists, and citizens. Third, mining policies also have implications for global stakeholders such as IFIs, multinational corporations (MNCs), state-owned enterprises (SOEs), foreign governments, and

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[1] Complaints about Mongolian mining policies have been addressed by American, Chinese, and Russian ambassadors almost at regular basis since 2010. For recent examples, the US Ambassador's Address for the North America and Mongolia Business Council, October 7, 2014; interview of Chinese Ambassador, *Udriin Sonin Newspaper* [Өдрийн сонин] August 18, 2014; and, Russian Ambassador's interview, *Zuunii Medee Newspaper* [Зууны мэдээ сонин] August 14, 2014.

[2] The mining sector of Mongolia has evolved through different historical stages: mostly Chinese dominated artisanal mining period (up to 1925), when Western companies were conducting small-scale exploration and extraction activities; the socialist period (1925-1989), when the Soviet Union and other communist bloc states (esp., Czechoslovakia, Bulgaria, Germany) had assisted establishing a large and medium scale mines and conducting geological surveys; the post-communist period (from 1990 onwards), when Mongolia has been using its mineral resources to attract foreign and domestic investors.

transnational advocacy networks (TANs). Finally, mining requires policies with long-term consequences, not only to ensure foreign and domestic investors business rights and property rights are protected, but also to assure citizens limit negative mining impacts on politics, economy, society and environment are prevented. For these reasons, the study of mining policy and its failures is useful to illuminate ways to manage the central challenge of democratic governance, how to promote long-term policy solutions in the face of short-termism (fractionalized, parochial interests) dominated politics. In other words, mining policy failures in Mongolia highlight a key feature of democratic politics: politicians, who are on an electoral schedule are inclined to neglect the long-term consequences of their policies and only be interested in remaining in office at any cost.

The following examples illustrate the less successful policy-making processes in Mongolia. They are *policy failures* for a few reasons: (1) their negative consequences are still present; (2) both politicians and the public acknowledge them as failed policies; (3) succeeding parliaments and cabinets have not taken any long-term policies to mitigate their negative impacts; and (4) politicians and bureaucracies still introduce similar policies that would certainly repeat these failures.

The Gold Program [Алт хөтөлбөр] was introduced in 1992 to attract foreign and domestic investors and to alleviate the immense socio-economic challenges resulting from the economic transition of the early 1990s. Even though the program provided opportunities for domestic mining companies and the government to generate some revenues, the program brought many challenges. First, mining companies exploited the weak regulatory and institutional settings and the majority of miners did not properly close and/or reclaim their mining sites. Second, related to the first, it provided opportunities for the emergence of a Mongolian-type of ‘gold rush’, the *ninja* miners, people who engage in artisanal mining activities at abandoned mining sites. Although the studies present different numbers, over 60,000 people engage in artisanal mining activities and live within the informal (illegal) socio-economic structures of the artisanal mining (Swiss Agency for Development and Cooperation, 2011, pp. 23-27; Grayson, 2004). Third, the negative environmental and socio-economic impacts of these small and medium-sized mining companies and artisanal miners are the most devastating to local community, environment, and herding livelihood (Swiss Agency for Development and Cooperation, 2011; World Bank, 2006). Although a few attempts were initiated, they did not succeed because of sudden policy changes.

Nalaikh Coal Mine [Налайхын уурхай is a thermal coal mine partially closed following a deadly explosion in 1990. From 1954-1980, a Soviet-style mining town was built in Nalaikh to provide high-quality coal for the Soviet military facility, which was the largest joint Mongolian-

Soviet military airbase and included engineering and air defense units. The mine also supplied power plants of the capital city as well as *ger* districts in the greater capital city area. At that time, the mine had state-of-art facilities and followed the Soviet mining standards for environmental and labor safety.[3] The withdrawal of Soviet military forces and suspension of Soviet assistance contributed to the overall deterioration of the operation and maintenance of the Nalaikh mine. Because of economic devastation in 1990, the government partially closed the mine, but it could not fully restrict artisanal mining activities in underground shafts of mostly unemployed miners and their families. Today over 1500 people mine with the lowest safety requirements. Since its partial closure, on average 10-17 people die annually in Nalaikh mines.[4] Despite periodic talk about the negative impacts of artisanal mining in Nalaikh, no government attempted to enforce the mining law, standards, and regulations or to provide a long-term policy solution even though it is the closest mine to the capital city.

Oyu Tolgoi [Оюу толгой] was the first-ever and largest mining deal with multinational mining corporations (Jackson, 2014). Eight years after its discovery by the Canadian company Ivanhoe Mines, the Mongolian government concluded the investment and shareholders' agreement with Ivanhoe Mines and its partner, Rio Tinto, in October 2009. Under the agreement, the Mongolian government obtained 34 percent ownership of Oyu Tolgoi, while 66 percent was held by Turquoise Hill Resources, jointly owned by Rio Tinto and Ivanhoe Mines). The mining agreement for the project highlighted local employment and procurement, and promised infrastructure and economic development through value-added production, such as a copper smelter, power plant, rails, and roads. Phase I, an open pit mine, was completed in June 2013, however the Mongolian government and Rio Tinto failed to reach agreement on the project costs and an agreement for phase II, an underground block-cave mine. This disagreement caused both sides to take retaliatory measures against each other, for example the Mongolian government made tax claims on the foreign partners, and an overall slowdown in the project and cuts to Mongolian employees and some local procurement by the investors. The slowing of the overall project development sent negative signals for foreign, especially Western investors, and heated up domestic politics. Now many policy questions, such as how to deal with powerful, global investors over the ownership, management, and development of the large-scale projects and how to assure the public

[3] Mining administration, mining rescue unit, recreational facilities, railroad, and mining vocational training college,

[4] For more information on Nalaikh mine, see http://mining.time.mn/content/26292.shtml; www.eurasianet.org/node/63373; www.ibtimes.com/most-dangerous-coal-mine-world-mongolias-illegal-nalaikh-pits-1564916; ubpost.mongolnews.mn/?p=10802

about long-term environmental and socio-economic challenges, remain unanswered. The most interesting fact is why politicians, most of whom were members of the 2004 and 2008 parliaments that approved the investment agreement, now have been attempting to change their policy choices.

Tavan Tolgoi [Таван толгой] is the largest coal deposit in southern Mongolia. Since 2008, Mongolian politicians, bureaucrats, and private businesses as well as foreign investors have hoped to generate quick, substantial revenue from the *Tavan Tolgoi* (TT) deposit for two reasons. First, the deposit is close to Chinese and East Asian markets, and if the railroad to the Chinese border is built (247 km) it will be inexpensive to export the coal from the mine. Second, unlike the Oyu Tolgoi mine, the deposits are extractable with open-pit mining technology. Therefore, both domestic and international parties have been extensively competing over licenses for mining operations and development of infrastructure, especially the railroad. In 2010, following the recommendation of the National Security Council (NSC), the parliament directed the government of Prime Minister S. Batbold to negotiate with potential foreign investors to operate the western section of the mine. A year later, the government announced its decision to divide the operating licenses for Chinese Shenghua Group (40%), Russian-Mongolian consortium (36%), and American Peabody Energy Corporation (24%). However this decision was recalled immediately due to concerns from Japanese and Korean bidders. At the same time, the government permitted the state-owned Erdenes Tavan Tolgoi to operate the eastern section of the mine under contract with domestic and foreign mining companies. These contracts were later revoked and re-negotiated by the new government of Prime Minister Altankhuyag. In August 2014, the government issued another resolution to finalize the bidding over the operation of the Tavan Tolgoi mine, but no final resolution has been reached due to the political issues involved.

The Strategic Entities Foreign Investment Law was passed by the parliament in May 2012 and invalidated in October 2013 with the passage of the new Investment Law. In April 2012, the Chinese state-owned Aluminum Corp of China Ltd (Chalco) launched a bid to buy the stakes of Ovoot Tolgoi, a Mongolian coalmine, from the South Gobi Resources Ltd (SGQ), a Canadian company. Since the deal was done without informing the Mongolian government, politicians and the public began to voice concerns about the country's sovereignty. A month later, the Mongolian parliament passed the 'Strategic Entities Foreign Investment Law,' which requires foreign state-owned and private investors to obtain the parliamentary and governmental (cabinet) approval to operate in sectors of strategic importance, such as terrestrial resources, banking and finance, and media and communications.[5] Just like the quick passage of the law in less than a month, it was amended in April 2013, and repealed in October 2013 with little study and justifications.

The Windfall Profit Tax Law was passed in 2006 and repealed in 2011. The law imposed a 68 percent tax on copper and gold concentrates. In accordance with this law, mining companies operating in Mongolia would pay 68 percent tariffs on copper and gold concentrates if the price of copper and gold exceed $2,600 per metric ton and $500 per troy ounce respectively on the London Metal Exchange.[6] The threshold for gold was raised to $850 in 2008. Although the initial draft included only copper, gold was added later because of pressures from civil society movements. Interestingly, this law was secretly passed through a quick legislative process without proper consultation with major stakeholders, such as the copper and gold mining companies. By imposing the windfall profit tax, politicians intended to generate revenues to implement their election campaign promises, such as promises of cash transfers to Mongolian citizens, to assuage concerns of environmental and civil society movements concerning irresponsible mining, and to pressure the Oyu Tolgoi mine to build smelter facilities in Mongolia.

The Windfall Profit Tax Law produced several unintended consequences. First, it faced strong opposition from the mining communities, and many mining companies sought ways to evade taxation, which was partially successful due to poorly institutionalized enforcement. The scale of the artisanal mining, an untaxed sector, increased. Second, the main company impacted by the law was the Mongolian-Russian joint copper venture, *Erdenet*, which was required to generate additional revenue for the state beyond its operational capacity. Third, the law projected the image of an unstable regulatory environment for major foreign investors.

The Law on Prohibition of Minerals Exploration and Mining Activities in Areas in the Headwaters Rivers, Protected Water Reservoir Zones and Forested Areas (known as *The Law with the Long Name* [Урт нэртэй хууль]) was passed by the parliament in July 2009 under pressure from civil society organizations and the environmental movement.[7] Since the implementation of the aforementioned Gold Program, environmental damage, especially to rivers and forests, had

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[5] The Strategic Entities Foreign Investment Law (2012) available at: www.legalinfo.mn.

[6] The 68 percentages was taken not because of the careful calculation, but of the commemoration of the Mongolian sumo records.

[7] The law was published in the *State News* (Төрийн мэдээлэл) 2009, No. 28. In 2011, the Head of the Mineral Resources Authority acknowledged the law was an important step towards responsible mining, but its implementation process was not clearly articulated. "The Law with the Long Name is a Good Legislation," ["Урт нэртэй" хууль бол сайн хууль] 27 April 2011, http://economy.news.mn/content/64451.shtml; the civil-society compiled information on the Law with the Long Name is available at transrivers.org.

grown noticeably and disrupted the livelihood of herding families and agrarian communities. The Law with the Long Name caused strong opposition from the mining companies, while bringing staunch support from civil society and the public. However, the implementation process became difficult for two reasons. First, the law stopped all types of exploratory and extraction activities of mining companies near water sources, river basins, and forests. As a result, the government has been mandated to reimburse costs of all these mining companies. Second, the law lacked effective enforcement mechanisms for artisanal miners, whose operations were not regulated under any mining and environmental legislation. Although civil society and environmental movements succeeded in pressuring politicians to regulate irresponsible mining activities, politicians failed to produce a well-thought, phased, and effective policy that considered the demands of all stakeholders, namely civil society organizations, mining companies, and local community.

These are a few examples of failed mining policies in Mongolia. Although politicians, parties, and bureaucracies have been attempting to improve the regulatory framework for mining activities, these laws, regulations, and standards are destined to be "momentary policies", due to the bargaining dynamics of major stakeholders including domestic and foreign investors, mining lobbies, mining companies, and IFIs on one side, and civil society actors made up of domestic and international networks, environmental movements, and local community on the other side. Between these two forces, politicians, parties, and bureaucracies could not envision and enforce long-term mining policies.

Typical Explanations for Policy Failures

The following explanations are commonly offered to explain these faulty mining policies.

1. External Factors In the absence of major international or regional armed conflicts and threats (conventional and non-conventional), politicians often highlight two external factors, the dynamics of the global market and the geopolitical interests of major powers. Understandably, these external factors constrain Mongolian policy-makers who have limited capacity to deal with them.

Dynamics of Global Market. In 1990s, Mongolia was desperate for western investors, but few responded because of the unattractive market environment, such as poor infrastructure, uncertain political and socio-economic development, and underdeveloped regulatory framework for foreign investors. From a broader regional perspective, Mongolia had some promise because China was not seen as a promising market for natural resources. There also were the economic sanctions against China following the 1989 Tiananmen Square incident. Being overwhelmingly aid-dependent and isolated from the global and regional markets, Mongolian politicians had very little choice except to create the most welcoming regulatory framework for Western investors. They were unable to constrain investments from Chinese small and medium enterprises that were mostly joint ventures with Mongolian individuals and firms. When the potential benefits from mining activities increased after the year 2000, Mongolian politicians were overwhelmed with the increased interests from foreign investors, resulting in high expectation for resource-based development among politicians. Because of this, politicians began to lose their earlier visions of non-mining development strategies, such as agriculture and tourism, and the economy became highly dependent on mining. The dependence on mining made the country dependent on international commodity prices and Chinese buyers. Instead of understanding and planning for commodity market dynamics, politicians have blamed mining policy failures on the commodity boom and bust cycles. The dynamics of the global market are not the only reason for mining policy failures because global commodity cycles should be built into policy making. The reliance in Mongolia on the mining sector and a few mega projects, along with inefficient distributive policies, increase the vulnerability of Mongolia's economy.

The Geopolitical Interests of Major Powers Geopolitical interests also appeared to provide another reasonable external justification for politicians to evade public scrutiny for faulty mining policies. Since Mongolia is a small, weak, and peripheral state, all external actors, including Mongolia's two powerful neighbours, distant major powers, their MNCs and SOEs, and IFIs, exercise strong, effective leverage over Mongolia. For the time being, these external actors, except Russia on some issues, seem to be tolerant and respective for Mongolia's domestic policymaking process.

In retrospect, Russia has been quite assertive in certain areas and has explicitly pressured Mongolian politicians to change their policies (Wachman, 2010; Radchenko, 2013).[8] The first area of Russian interest is with railroads. For Mongolia, the railroad is the most critical infrastructure for mining. With its partial ownership of the Mongolian railroad, the Russian government is heavily involved in the railroad politics. This is seen by its (1) rejecting the Mongolian government's attempt to accept the US Millennium Challenge Account funds ($188 million) for the railroad

[8] Mongolia is overly dependent on fuel imports from Russia and transit routes to Europe while Russia maintains a significant percentage (49-51) ownership of Mongolia's key infrastructure (i.e., railroad), industry (i.e., Erdenet copper plant), and other joint ventures – such as Mongolrostsvetment LLC (the 4th largest fluorspar mining; potential silver mine).

project; (2) advocating the linkage of major mining sites to the trans-Mongolian and trans-Siberian lines; and (3) delaying the linkage of major mining sites in southern Mongolia to the Chinese railroads. Uranium mining is another area. From 2009, Russia re-established its influence in developing uranium deposits in Mongolia by (1) establishing the joint liability company, Dornod Uran; (2) marginalizing the Canada-based Khan Resources Inc; and (3) agreeing to resume full-scale of cooperation with Mongolia in areas of uranium, such as education, training, and infrastructure.[9] Russian state-affiliated oligarchs have also pushed to be involved in major mining activities, including Tavan Tolgoi and Asgat, and in infrastructure projects, such as power plants and railroads. Overall, railroad development and uranium mining were explicitly advocated by the Russian state, whereas the other issues have been advocated by Russian oligarchs.

In contrast, China has been more tolerant and less assertive in dealing with Mongolia, although it possesses strong leverage over Mongolian policymakers.[10] First, China did not openly retaliate against Mongolia's inclinations to provide more opportunities for Western companies. This might be understood in the context of Chinese closer economic collaboration with the West. Second, China tolerated Mongolia's protective measures against Chinese SOEs' investment into mining, telecommunication, and banking sectors. For instance, Mongolian politicians cancelled the bidding of the Chalco, a state-own aluminum company to buy the SouthGobi Sands coal mine and approved the Strategic Entities Foreign Investment Law. Third, Chinese companies appear to be accepting the mining policies, despite the unpredictable and unstable nature of these policies, and offering more flexible policies towards Mongolia, especially in the areas of joint development of infrastructure and access into Chinese transit networks and ports. This type of Chinese constructive behavior would certainly create a favorable market and investment environment for mining in Mongolia.[11]

Given these contrasting behaviors of Mongolia's two neighbors, Mongolia has attempted to attract political security and economic interests of the so-called 'third neighbors', distant major and secondary powers that are expected to support Mongolia's efforts to maintain its sovereign statehood in a complicated neighborhood. Mongolia has restructured its macroeconomy with assistance from these states and IFIs, entered into a series of agreements with them to increase trade and investment, and even offered various types of exemptions, ranging from visa to taxation, for

[9] "Uranium in Mongolia," October 2014, World Nuclear Association, available at www.world-nuclear.org
[10] Mongolia is also dependent on Chinese investment, market, and infrastructure (esp., railways and seaports).
[11] However, these Chinese behaviors have been regarded suspiciously in Mongolia.

these states. With the commodity boom, long-term stability of the Chinese market and Mongolian desires for engaging non-Chinese firms, private companies of third neighbor states appear to have some advantages over Chinese and Russian SOEs. Moreover, the democratic system also provides these multinationals with formal mechanisms to influence domestic policy-making process. As a result, we have witnessed these multinationals exert influence through various channels. This includes lobbying of Mongolian politicians by governments, IFIs such as the WB, IMF, EBRD, and retired, influential international politicians such as James Baker and Tony Blair.

Although all these external actors, who all are simply pursuing their pure business interests to maximize gains and minimize costs, contribute to competitive political and business environment for Mongolian politicians, none of these actors, except Russia in some areas, have demonstrated explicit manipulation of Mongolian policymakers in developing and implementing the mining policy. Therefore, it is not sufficient to point out external factors, such as the dynamics of global market and geopolitical interests of major powers, as key explanatory factors for mining policy failures of Mongolia.

2. <u>Domestic Factors</u> Politicians also point to two specific domestic factors for causing the policy failures. One is private business interests, which are expressed by political and business factions and business interest groups, and the other is civil society activists, who have been labeled by politicians as "populists" a problematic term in Mongolia.

Private Business Interests. As in all democracies, both developed and developing, businesses have several possible channels to influence the policy-making process in Mongolia. Businesses seek to advance their business interests and to increase and protect their wealth), complicating the policy-making process. Within this context, politicians, political parties, and government bureaucracies need to create and maintain the predictable and just business environment. This is the most complicated factor impacting policy making, especially during a democratic transition period for a developing state like Mongolia. Starting from the period of the privatization of state properties in the early 1990s, the ability to acquire natural resources contributed to the emergence of a new capitalist class. Many mining companies and individuals obtained mining licenses and privatized previously state-owned mining enterprises, some jointly with foreign investors. This process was pushed forward by a coal-mining boom in the early 2000s and increased foreign mining interests in Mongolia. All businesses wanted to capitalize on these *ad-hoc* opportunities. Several private businesses established mining consortia to operate in the largest coal mine deposits, such as Tavan Tolgoi, while others such as MSC and Jenco competed against each other. Other firms such as MAK quietly bargained over major mining projects, and several firms competed for a role as suppliers to the mines for equipment, fuel, food, and other services. Today private business competition has become more intensified and is formally and informally institutionalized in Mongolia's political processes. Just a quick glimpse of the composition of the parliament, cabinet, and political parties demonstrates how much these private business interests are entrenched into the policy-making process. Therefore, this is clearly one of the most influential factors for the policy changes and failures in Mongolia. However it should be noted that all other democracies face this influence of competing business interests as well.

Civil Society Activists and Movements. Politicians also blame civil society activists and environmental movements for mining policy failures. Similar to private business interests, politicians, political parties, and bureaucracies cannot escape from the pressure of civil society movements. Until the main causes of public discontent are sufficiently addressed and/or assured with reasonable medium and long term solutions, civil society activists and movements will persist. In any democracy, the government would expect public discontent and social mobilization when the government cannot provide important public goods, especially justice. This also applies to the Mongolian case. Since 1990 the civil society space has remained open for civil society activists, organizations, and movements. A few main themes, including corruption, injustice, and environmental degradation, have been advocated by these actors. The growth of the mining industry simply intensified the public discontent for three main reasons. *First*, corruption, revolving around the natural resources, provided much stronger justification for public discontent than corruption involving foreign aid. The public is more concerned with mining issues because: (1) the land and natural resources are considered the public, national property; (2) mining activities have the most visual impacts on the environment, society, economy, and politics; (3), especially in the Mongolian case, the public is concerned about non-transparent governmental debts, such as borrowing loans and bonds in anticipation of operating large scale mines with foreign investors. *Second*, the environmental damage, especially from artisanal mining, arouses a stronger sympathy from the public in comparison to other major social issues (World Bank, 2006; Swiss Agency for Development and Cooperation, 2011). *Third*, major mining investment projects provide an effective leverage point for the public to pressure politicians, parties, and bureaucracies because political instability increases the risk for large-mining investment deals, making it harder for the government to reach deals with these firms. Unlike authoritarian regimes, we would expect similar types of public discontent in other democracies, especially in developed ones, if the mining industry contributes to corruption, injustice, and environmental degradation. Any politicians, parties, and activists would pursue populist politics for multiple purposes including morale, political positioning, and rent seeking. Therefore, similar to private business interests, civil society activism and populist politics are also considered one of the main influential factors for mining policy failures.

A Typical Quick Solution

In retrospect, the most common methods for dealing with policy failures in Mongolia have been, *first,* for politicians, parties, factions, and civil society activists to blame each other and geopolitics and the global economy for the failure of policy, and *second* for the government to change policies without asking important hard questions, such as why is there a need to change; what part of the policy is working or not working; why did it fail; what would be the short, medium, and long term impacts of a policy change; what are the optimal, win-win options; and what would be the most agreeable implementation for all stakeholders? I call this blaming and uncritical policy change a 'let's change it' syndrome that increases mistrust among all actors, including the policy makers, and devolves into a vicious cycle of cheating and competition to change the bargaining dynamics.

So, why do policymakers in Mongolia prefer the 'let's change it' attitude? It seems to be structural. The current political setting is very dependent on the four-year electoral cycle since all key policymakers and enforcers, including the president, parliament members, prime minister, cabinet members, governors, and local assembly members, are changed every four years. Their time horizons are short and competition for being re-elected is costly. That means they need to blame their opponents as soon as possible in order to gain power and authority to maintain their own patron-client networks. Instead of calculating the long-term benefits of stable policies, they prefer to change the rules of the game, the laws and regulations, to create a favorable operating environment while blaming their opponents for any policy failures. As a result, we witness sudden policy changes immediately after changes in the political landscape. Like other parliamentary democracies, the political landscape of Mongolia is changed not only after presidential, parliamentary and local elections, but also by the cabinet changes precipitated often by non-confidence votes in parliament. Because policymaking institutions and process are heavily dominated by political actors with short-time horizons, policymaking in Mongolia becomes unstable, unpredictable, non-inclusive, divisive, and non-transparent. In an ideal country, where policies are stable, predictable, inclusive, and transparent, policy changes are incremental, continual build on the achievements of previous policies, and increase the certainty for all stakeholders. But, in Mongolia, it is the opposite, politicians want to change policies without substantial studies and discussion while their blame game usually ends up in conspiracy theories.

Mining policy in Mongolia is the main policy arena facing these challenges. It is also important to note the reasons that natural resources aggregate competition among politicians, parties, and factions. First, natural resources, especially gold and coal, offer opportunities for a quick accumulation of wealth without much investment and technology, therefore, many actors want to exploit this window of opportunity that comes from a weak regulatory framework and the demands of the Chinese market. Second, competition among foreign and domestic investors generate rents for politicians, parties, and factions in return for political support of favors such as favorable bidding arrangements, investment agreements, licenses, and tax loopholes. Third, major long-term investment deals potentially provide multiple benefits for politicians, parties, and factions, ranging from personal, factional, and to political prestige. Therefore, the mining sector not only becomes the target of political competition, but also suffers from effects of the 'let's change it' syndrome when policymakers change laws and re-structure the policy-implementing and enforcing units to favor their own interests.

The first way the mining sector suffers is that politicians have a strong interest in changing laws and rules. The Minerals Law, has had two major revisions since 1997 and is waiting for the next major one. At the same time, this law has been amended and revised multiple times, especially from 2009 forward. Some changes are understandable because of the passages of new laws such as the Uranium Law and the Law with the Long Name in 2009. But policymakers are still unable to produce substantial studies and reports on the implementation of their previous legislation and potential implications of the proposed changes for the public. The few examples provided earlier of failed mining policies also illustrate that policymakers are not overly concerned with the quality of policies or the policymaking process, therefore, laws and rules are vulnerable to changes of the political landscape and power differentials of politicians, parties, and factions.

The regular reshuffling and restructuring of governmental units, including ministries and agencies in charge of the coordination, implementation, and enforcement of mining policies, has made it hard to develop and implement mining policies. Laws exist in Mongolia to insulate the government bureaucracy and bureaucrats from political, economic, and societal pressures, in practice, however, politicians, parties, and factions compete for control over ministries and agencies. Parties who gain power often neglect the existing laws and regulations pertaining to the government and public service. Politicians, parties, and factions *first* restructure and reshuffle ministries and agencies to accommodate their private, fractionalized interests and *second* appoint party-affiliated individuals to senior, mid-level and junior positions of the ministry, agency, and provincial (аймаг, сум) bureaucracy. As a result, party-affiliated officials aim to benefit within the four-year, or even shorter, election cycle. Consequently, these frequent structural and personnel changes complicate the policy coordination, implementation, and enforcement functions of those ministries and agencies. Thus contributes to mining policy failures, making it hard for any policy to be implemented. The key mining ministry and agency, the Mineral Resource Authority, and other relevant ministries and agencies in charge of the environmental protection, finance, taxation, inspection, and law-enforcement are all affected by the changes of the political landscape.

Are There Better Solutions?

There are many possible ways to improve the quality of the policy-making institutions and process to improve mining policies and reduce failed policies. In fact, many politicians are aware of these possible solutions, but they lack political will and courage to implement them for long-term benefits. Moreover, because this *clientalistic* political structure is increasingly entrenched, many good principled people talk about moral principles and patriotic deeds, but act in favor of parochial interests. Therefore, for a 'win-win' result, policymakers need to look beyond the short-term horizon; investors should avoid supporting 'corrupt' opportunities; and the public must maintain pressure both on politicians and investors, such as through the media. Thus requires politicians to improve the quality of policy-making processes in order to increase trust among all stakeholders. Here are four possible measures to accomplish that.

The Rule of Law[12]– politicians, parties, factions, businesses, and the public need to adhere to the rule of law principle. In particular, policymakers, especially, high-ranking politicians, must follow the law, regulations, and standards that are the rules of the game approved by them and their predecessors. Although the rule of law principle does exist and is reflected in the contemporary politics of Mongolia, there are numerous deficiencies. In regards to constitutionalism, rulings of the Constitutional Court were obeyed up to 2000. Since then politicians, especially parliament

[12] The rule of law includes the constitutionalism, independent judiciary, and pertaining legal culture. The most important feature of the rule of law is that politicians must be binded by the laws, rules, and regulations (Fukuyama, 2010).

members and cabinet members, began disregarding Constitutional Court decisions. The parliament and its appointed cabinets have override the Constitutional Court decisions on power-sharing between the legislature and executive bodies, electoral procedures, and appointments of politically-affiliated officials to non-political bureaucratic and judiciary posts. Judicial independence is still questionable. There is sufficient evidence to illustrate political and business influences over the judiciary and law enforcement organizations. For example, political parties and factions assert their influence over the judiciary, especially the procurator's office, and over the anti-corruption agency through the presidential office. They also exert influence over the police, marshal service, intelligence, and taxation *via* the prime minister and cabinet. Finally, because politicians for various reasons do not show respect for the law and rules, the legal culture is undermined by politicians and political parties. Attitudes like 'the Mongolian law is for three days' or 'түгжилдэх' (to renege/to cheat) are popular in society. Therefore, all policy-makers, shapers, and takers should adhere to the rule of law principle. This would certainly have strong implications for improving the mining policymaking process.

The institutionalization of the legislature. The parliament must improve its policy-making and revising process. It needs to build up and empower its own non-partisan bureaucracy, especially the standing committees, in order to advance public interests rather than parochial, factional, and private interests. It needs to increase incentives to conduct a thorough examination of existing policies rather than encouraging proposing new legislation. It needs to strengthen the accountability of parliament members. What's the current legislative picture? First, the Mongolian parliament elected in 2012 is overwhelmingly represented by business interests in comparison to the parliaments of 1992 and 1996.[13] Second, all parliament members are entitled to introduce a draft bill or changes to the existing legislation. This provides immense opportunities to change any policies and increases the workload for the parliament and staffers. Third, the law-passing process is the easiest because there are very few veto players. With the presence of 39 (out of 76) members, any legislative initiative can be discussed in the general session and passed by only 20 votes. Incomprehensively, members can vote by pushing voting buttons on behalf of other absent members. Finally, there are strong monetary incentives for the law initiation. A member can get up to 20 million tugrugs for initiating the bill, money that is meant to provide funding for experts and

[13] For total net assets and wealth of the Mongolian parliament members, see "The Wealth of Parliament Redux: What's It Worth?" November 11, 2013, available at: http://themongolist.com

staff.[14] Therefore, the parliament should constrain today's fractionalized, decentralized policy-changing behavior, but should create incentives for proper institutionalization of the legislature.[15]

The institutionalization of political parties. This is another important step to improve policies, including for mining. Today the most powerful political institutions in Mongolian politics are the political parties, especially the two dominant ones. Because they are dominating the political landscape, both parties provide opportunities and protection for politicians, bureaucrats, businesses, and civil society activists. At the same time, these parties are the training ground for future political leaders and bureaucrats. However Mongolian political parties have increasingly become clientalistic and based on patron-client networks, rather than issue-oriented platforms and/or ideologies. In other words, they are weakly institutionalized, although there are some difference between the MPP and DP. Pelizzo argues that "party's weak institutionalization is not the only cause of political corruption, but it is certainly one of the causes of party corruption" (Pelizzo, 2006, p. 180). If the political parties are clientalistic and corrupted, then the parliament and government bureaucracies are gradually becoming clientalistic. Although well intentioned laws on political parties were passed by the parliament, it is not adequate until senior leaders of political parties dedicate the will and courage to enforce the official laws as well as parties' own internal regulations and discipline.

The insulation and professionalization of the bureaucracy. Politicians need to not only agree on, but also commit to the insulation and professionalization of the bureaucracy.[16] Unless public servants are insulated from political and business interests, policies are unlikely to be implemented and enforced thoroughly and properly. In theory, public servants are supposed to serve as gatekeepers against parochial, short-term interests by adhering to long-term developmental policies. In reality, this would not be the case if political parties, factions, and interests groups competed for the public to protect their own interests, to increase their benefits, and to marginalize their opponents. "Adopting any ideal public service laws and practices in the world" is not helpful, as Spiller (et al)

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[14] Interview with parliamentary staffers, December 20, 2014.

[15] I borrow the notion of institutionalization as elaborated by Samuel Huntington. The institutionalization is defined as the process by which organizations and procedures acquire value and stability. The level of institutionalization of a political system can be defined by the adaptability, complexity, autonomy, and coherence of its organizations and procedures. The level of institutionalization therefore can be measured by its adaptability, complexity, autonomy, and coherence. For more on institutionalization, see (Huntington, 1968).

[16] For a review of the Mongolian public service reform, see (Tsedev & Pratt, 2008).

argues, “if patronage involving positions in the bureaucracy remains an important currency used by politicians to reward their partisan base” (Spiller, Stein, & Tommasi, 2008, p. 28). The current regulatory framework for public service and conflict of interests are ideal if politicians, parties, and factions just uphold it. Because party officials and senior bureaucrats are not following these public service laws, regulations, and standards, the current political structure encourages unaccountable, opportunistic, and cozying behavior by politicians, bureaucrats, and businesses. This also encourages individuals and public servants to seek political party affiliation, and in turn, discredits the merit-based professional public service. Since this is an overall challenge for the public service, the mining sector is also affected. Without insulating public servants from political and business interests and influences, it would be difficult to expect proper implementation and enforcement of mining policies at the national and provincial levels.

Conclusion

This article considers mining as a good entry point to understand the challenges of overall policy-making process in Mongolia. After considering the usual suspects of the blame game, Mongolia’s policy-making environment is not so much different from other resource-based economies. All smaller, resource-based economies need to deal with external factors such as the global market dynamics and multi-national and transnational corporations that are backed up by respective governments. They also must manage internal competition among private businesses and public discontents regarding revenue distribution and environmental protection. Instead of seeing the changes in the political landscape as an opportunity to change the rules of the game, politicians, parties, factions, and interest groups need to adhere to the rule of law principle. Otherwise, ‘short-termism’ in Mongolian politics will weaken the institutional capacity of the state to reach, honor, and implement long-term policies to protect both investors and public. Disciplined, professional and apolitical state institutions, together with a responsible parliament and political parties, could lead Mongolia out of the vicious cycle of ‘crabs in a barrel’ politics.

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