



Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Ажлааг илгээгч, ажлаагч
ойлгогч үйлдвэрчид ажлаагч

Өмчлөгчид өмчлөгчид
аажуулах

SUSTAINABLE ARTISANAL MINING PROJECT MONGOLIA

Assessment of implementation process of the “Temporary Regulation on Artisanal and Small Scale Mining Operations” approved by the Government Resolution No. 72, 2008

December 12, 2008

Introduction

This assessment was made based on the surveys of group of ASMs, local self governance and administrative institutions, central authority officers and international experts.

This assessment was designed to identify the challenges and difficulties on the process of implementing the temporary regulation on the gold deposits where 87% of the gold small scale miners are working throughout Mongolia and within this scope of work it gathered the feedback of the local people from four target areas of SAM project.

Foremost priority was given to the local self governance and administration officials who are responsible for implementing the temporary regulations at local level and in total of sixty people were part of the assessment.

It also included the temporary regulation assessment done by SAM project legal advisor Ms. Laura Barreto on behalf of international experts and consultants.

Due to the time constraint it was not considered as sufficiently inclusive set of recommendations from all potentially important parties. Therefore it is very important to deepen the assessment in the future by including the feedback from the artisanal miners working in different type of mineral exploitation. In addition to that it is required to include government officials to assessment process and assessment findings and best practices of international experts and consultants.

By taking these points into account it can be considered as an initial version of the temporary regulation assessment and furthermore it is clear to be updated with new inputs and findings.

We would like to extend our thanks and appreciations to all participating organizations and individuals for sharing their opinions.

A Table of Contents

Introduction.....	1
Summary	3
1. ASSESSMENT BACKGROUND.....	3
2. METHODOLOGY	4
2.1. Discussion meeting method (Evaluation method from ASMs)	4
2.2. Questionnaire method	4
2.3. Observation method	4
3. OUTCOME OF THE ASSESSMENT	5
3.1. ASM community feedbacks.....	5
Feedback of the first group	5
Feedback of the second group.....	6
Feedback of the third group	8
3.1.1 Sub-conclusion.....	8
3.2 The questionnaires from the officials of local self governance and administration institutions and state organizations.....	9
3.2.1 Findings of the questionnaire.....	9
3.2.2 Sub-conclusion.....	13
3.3. Additional assessment.....	14
4. CONCLUSION.....	15
5. COMMENTS AND RECOMMENDATIONS.....	17

Summary

It seems clearly from the assessment that, the development of the first step of legal enabling environment and approval of the temporary regulation from the Government was not only created the pleasant working opportunity to the ASMs but also it was a great result of the collaboration of government and development institutions that are involved to this sector.

By approving the temporary regulation the Government of Mongolia has expressed the acceptance of small scale mining sector as a branch of mining industry and further policy for cooperating the sector. The participants of this assessment admit that this temporary regulation is a first law and legislative document that would observe in the ASM sector and it has both advantages and disadvantages as well.

Feedback summary of all participants of assessment:

Advantages:

- Opportunity for the ASMs to form an organized partnerships officially and to access a land under legal framework
- It enabled ASMs to become and develop socially responsible member who maintains balanced appropriate environmental, social and economical relationships
- It enabled to provide an easy access to social welfare service packages as having official registration
- Reduced the centralization related to given topics as a result of charging responsibilities to local government
- Improved working condition
- Mitigate negative consequences and damages caused by illegal activities

Disadvantages:

- Although it clearly defined the mining work area, it created too complicated and multistage bureaucratic mechanism to access land
- It confined profitability and future development of ASM sector activities by describing limitation on equipment and land that is not economically effective to be used by large scale mining companies
- Prohibiting mining work for the mothers with children under 3 was a discriminating clause to human rights
- Specifying of only unregistered partnership formation is effective into practice, but it sets limitation on other organizational types
- Contract duration was specified to be only for one year, so it could not provide full utilization of mining activities

From the result of SWOT analysis done by SAM project and ASM division, the temporary regulation creates the threats by welcoming entry of big mining companies into small scale mining, and ignoring economic profitability of the ASM communities.

1. ASSESSMENT BACKGROUND

1.1. "The regulation for implementation organizing, monitoring, and communicating of results of Laws, Presidential orders and Government Resolutions" approved by the Governmental Resolution No: 160 dated on July 5, 2006.

1.2. Article No: 3 of Mongolian Governmental Resolution No: 72 dated on February 27, 2008.

1.3. To identify negative and positive points for the temporary regulation on ASMs operations and developing the proposal to put amendments on the articles that is not practically realistic, impossible to be implemented due to specific reasons in the process of implementation.

1.4. In order to develop practically adequate and realistic ASM draft law, it required to make an assessment on the “Temporary regulation for ASM operations” approved by the Government in 2008 and to collect the relevant information.

2. METHODOLOGY

The assessment was done under following four methods:

- Organizing the discussion meeting with ASMs, exchange ideas and opinions and gather information
- Get questionnaires from the officials of local self governance and administration institutions and state organizations
- Direct assessment of international experts and consultants
- Conducting field observations

2.1. Discussion meeting method

(Evaluation method from ASMs)

It organized on-site discussion meeting with ASMs. It covered:

- Dividing the participants into several groups according to their understanding and knowledge of the temporary regulation
- Each group was assigned simple and assessment-oriented group work based on their qualifications
- It gathered ASMs feedback, comments, and relevant information

There were four target sites of SAM project in the discussion meeting:

- Builsan, Bombogor sum of Bayankhongor aimag (placer mining of gold).
- Buureg, Jargalant sum of Bayankhongor aimag (placer mining of gold).
- Sujigtei, Bornuur sum of Tuv aimag (hard rock mining of gold).
- Gachuurt, Mandal sum of Selenge aimag (hard rock mining of gold).

And the total of 104 representatives of ASMs were participated. (Please see the report of discussion meeting in the SAM project office).

2.2. Questionnaire method

(The questionnaire method conducted for the officials of local self governance and administration institutions and state organizations)

The questionnaire method was covered total of 60 sum governors, heads of citizens representative khural, and officials and heads of environmental protection agency from Bayankhongor aimag, Buyant sum of Bayan-Ulgii aimag, Chandmani sum of Gobi-Altai aimag, Delgerkhangaigai sum of Dundgobi aimag, Bayandun sum of Dornod aimag, Orkhon sum of Selenge aimag, Shariin gol sum of Darkhan-Uul aimag, Bornuur sum of Tuv aimag, and Uyanga sum of Uvurkhangaigai aimag, and director and officials of State Specialised Inspectorate Agency.

2.3. Observation method

(The observation of the SAM project staff and small scale mining association members) The SAM project and ASM division staffs made an analyse on implementation of temporary regulation. To complete the assessment the two team members paid field visit in targeted areas and organized interviews and meetings with relevant stakeholders. In parallel working team did field observations and obtained information which conceptually contributed for identification of positive and weak points in implementation of temporary regulations.

3. OUTCOME OF THE ASSESSMENT

Sub-conclusion was done on the assessment of each participating parties and it was finally summarized.

3.1. ASM community feedbacks

ASMs were divided into three groups according to their knowledge and understanding about the temporary regulation during the discussion meeting, as follows:

- Well informed
- Moderately informed
- Poorly informed

To get comments from the ASMs who have very poor understanding about the temporary regulation and who have poor access to read and implement was very important to identify gaps and complicated issues and improvement needed points in the coming law and regulation.

Feedback of the first group

The following group works with two questions were given to the six groups that included well informed ASMs and partnership leaders about the regulation:

A. Please comment on the positive and negative points about the temporary regulation?

(Duplicated concepts and points given from all participating six groups were briefed as follows)

Positive points	Negative points
<ol style="list-style-type: none">1. The first legal enabling environment to the small scale mining activities2. Enabling conditions for the ASMs to be organized in partnership formation, get the mining land by concluding contract, to do mining activities in the local areas and improve livelihoods and furthermore to contribute to local development3. According to the regulation sum and local government allocate mining land to the ASMs so it is good start to increase official work place.4. State and government officials attitudes have been changed towards ASM communities started to direct attention to them5. It creates an opportunity for ASMs to receive governmental care and service, and get settled their social issues (by having a local registration and involved into health and social insurance packages)6. It creates an opportunity to ensure the ecological balance based on initiations of mass communities.7. The government provides support on establishment of ore processing factory8. It enabled to regulate labour protection and safety, occupational health and social issues under legal framework and to function adequate	<ol style="list-style-type: none">1. Although the regulation allows that ASMs partnerships' one day work volume is 200m³, and its total ore extraction size is 25 tn, it set limitation on mining equipment capacity not exceeding to 500cm³. It is not practical and is not possible to do mining and rehabilitation activities by using this low capacity equipment2. The article indicated that ASMs should mine in abandoned areas that are not rehabilitated and artificial deposits are wrong. These areas have a less mineral content, unsafe to work and dangerous to the health.3. The deposit as indicated in the article 9.1 "Mineral deposits and occurrences that are economically inefficient for large scale mining in terms of their mineral reserves and quality" is very rare4. Lot of bureaucratic process to access land for partnerships5. Unclear issue of using explosive materials for small scale mining sector6. The rehabilitation standard is not clear7. The payment for using the land is not clear8. Prohibition of mothers who have children under 3 and a person who lost the working ability up to 70% makes restriction to the human rights concept9. It is needed to work out and follow the labour protection and safety rules that are suitable for the situation10. It was prescribed that the number of the members of the partnerships to be 2-100. But the maximum limit is too high and it makes it difficult to organize the activities11. Requiring IDs and documents of family members to

<p>training, controlling and monitoring system</p> <p>9. ASMs have the detailed labour schedule and plan</p> <p>10. It will positively influence on local economy through sustaining ASMs income who are working under legal regulation</p> <p>11. Negative impacts of the illegal mining activities are decreased as a result of ASMs organizational formation</p> <p>12. It provides a strong bases for the initial artisanal mining model</p>	<p>join the partnership is difficult</p> <p>12. There is no condition to sell the gold directly to the bank. Paying 68% of tax to sell the gold to Mongol bank is too high</p> <p>13. It is not clear how to receive social care and service packages</p>
--	---

B. Please comment on how to improve the negative points of the regulation and make changes?

1. Increase the capacity of the equipments that could be used by ASMs
2. Decrease the maximum limitation number of the partnerships
3. Remove the article that prohibited the mothers who have children under 3 and a person who lost the working ability up to 70% to work as ASMs
4. Remove the article that required IDs and documents of family members to join the partnership

The followings are the comments and feedbacks given by the people, experiencing real success and challenges of the regulation in their life:

From all listed positive points except No. 7, it can be assumed that the regulation provides an opportunity, but it could not produce solid answers about tangible results of the temporary regulation in their life, so it implied that there are still challenges in the implementation process of the regulation. ASMs are still not experiencing true benefits of the regulation, except waiting something good from it, it can be concluded that the regulation is incompatible to the real life. The reasons for being incompatible to the life and for having abstract expectations of the people in the meeting can be seen from their negative points. The positive point No. 7 says that *"The government provides support on establishment of ore processing factory"* and it is not related to the temporary regulation but is implementation of Governmental resolution No. 28, 2008.

The simple example on the obstacles for implementing was shown by participants in the negative points No.s 2, 3, 4. It says that *"The deposit that is less economical for big mines in terms of mineral reserve and quality as indicated clause 9.1 of the regulation is very rare, and there are lot of bureaucratic process to access land for partnerships"*. To form into unregistered partnerships as indicated in the temporary regulation the ASMs have to have the land and these articles are almost impossible to implement and have lots of bureaucratic process. Due to these issues the ASMs are not experiencing true benefits of the regulation, but waiting something good from it. Therefore for the further legal development, there is a need to consider on the land issue differently.

From the analysis it was revealed that the prohibition of pregnant woman or mothers who have children under 3 to work as an ASMr greatly affects to their livelihoods. If a mother gives birth to three children with 2 years of gap between them, then she has to be away from mining work for 8 years and it seems reasonable to criticize this kind of article.

And also it was mentioned that when creating legal and enabling environment, there is a need to develop parallel a special regulation for buying minerals from the ASMs.

Feedback of the second group

The following group work with two questions was given to the six groups that included moderate informed ASMs about the regulation:

What would you like to know about the temporary regulation?	What kind of difficulties do you face to implement the regulation? What article is not clear?
<ol style="list-style-type: none"> 1. How do the partnerships get the land access? 2. To get the permission and use the explosives, what law and regulation to follow, how to take the blasting course? 3. If they can access to health insurance after joining to the partnership. 4. Can a partnership get a financial support to get land and start the activity? 5. What kind of help can we receive on use of latest harm free technique and technology? 6. Prohibiting of non-partnership member to work in ASM as indicated in article 31.5 of regulation is incompatible to the real life. How to organize it specially in summer season? 7. How does the Peoples Representative Meeting supposed to help the ASM activities? How do we get our own land? 8. How will it be reflected to the regulation about forming the partnerships of native citizens besides the people who are registered to the soum? 9. It is indicated in the article 4.3 of regulation that "Portable technique and equipment is a mechanical apparatus and machinery with internal combustion engine capacity up to 500cm³". This provision is not clear. What is a mechanical apparatus and machinery with internal combustion engine capacity up to 500cm³? 10. How many unit area will be allocated to each ASMr? 11. In the clause 31.1 it is indicated that "The mother who has a child under 3 is prohibited to work". What is the reason to specify as mother with the child under 3. 	<ol style="list-style-type: none"> 1. There is no difficulties for implementing the temporary regulation 2. All articles are clear 3. It is difficult to organize activities due to too big number of members in the partnerships 4. Allocate the land. Allocate the land equally to each partnership 5. It is needed that the soum administration to come and learn about our life, organize our activities and collaborate. 6. Provide with the health service from the soum and local authority 7. The help needed on technique and equipment to do the rehabilitation work after exploitation 8. Organize the native citizens to work

Feedback of the third group

The following group work with one question was given to the three groups that included poorly informed ASMs about the regulation:

A. Why do you not know about the regulation? Please list down the reasons.

The ASMs who belong to this group were answered the question “A” as follows:

1. Limited opportunity to receive the information due to far location from soum centre
2. Did not get the information because of not attending the previous trainings
3. Poor literacy
4. Did not attend previous trainings due to the work load and business
5. Did not understand the meaning when read
6. Due to inactivity
7. Hand-outs were not enough for everybody
8. Was busy

What the ASMs want is can be seen from the questionnaire of ASMs who have been informed moderately and poorly about the regulation. First question to ask by the ASMs is “How do the partnerships get the land access? And it confirms that the articles that are concerned on the land issue are not implemented up to the present. There is no system to give the special permission to use explosives to ASMs and unregistered partnerships in Mongolia and it was clear that it creates an inconvenience to the ASMs activity.

There is no article that indicates about an individual ASMs’ activity, so it demanded the ASMs to form unregistered partnerships. And it creates the thinking to the ASMs that they would be accepted only after forming the partnerships and becoming membership. And it was noticed that it is not possible for an individual ASM to have an access to social welfare service packages and to have an official registration.

There is no case of unregistered partnerships that are established in Mongolia up to present having their mining land officially due to the land restriction of the regulation. And also it was noticed that the technical specification that is indicated in the regulation completely shuts the ASMs normal activity.

3.1.1 Sub-conclusion

The feedbacks of ASMs were collected from the SAM project sites that were selected from the areas with high density of ASMs, through the group work that is simple yet significant for the assessment. The ASMs were concerned mainly on the following issues:

- The first legal enabling environment to the small scale mining activities
- The ASMs said that State and government officials attitude has been changed towards ASM communities started to direct attention to them
- Having a local registration and involved into health and social insurance packages, creates an opportunity for ASMs to receive governmental care and service, and get settled their social issues
- The government provides support on establishment of ore processing factory. And the ASMs were very grateful for it as it gives an inspiration for them to believe in the future
- It positively influences on local economy through sustaining ASMs income who are working under legal regulation and negative impacts of the illegal mining activities are decreased as a result of ASMs organizational formation
- It appears that the limitation on mining equipment engine capacity not exceeding to 500cm³ is needed to be changed up to acceptable possible capacity
- It provides a strong bases for the initial artisanal mining model
- The issues of decreasing the maximum limitation number of the partnerships, and the article that prohibited the mothers who have children under 3 and a person who lost the working ability up to 70% to work as ASMminer were discussed several times
- The article that required IDs and documents of family members to join the partnership creates difficulties
- Research on the possibility of selling the gold directly to the bank, and freeing the ASMs of paying 68% tax to sell the gold to bank

- It is needed that the soum administration to come and learn about our life, organize our activities and collaborate
- Make clear the issue of using explosives in ASM sector
- It is needed to develop ASM sector rehabilitation standard
- It is needed to look-over on the article that indicated “to allocate to ASMs the abandoned areas that are not rehabilitated and artificial deposits”. These areas have a less mineral content, unsafe to work and dangerous to the health.
- There is a lot of bureaucratic procedures to access the land in the deposit that is “Mineral deposits and occurrences that are economically inefficient for large scale mining in terms of their mineral reserves and quality”. Therefore the issue of providing the land to the ASMs is not solving and it impedes the starting of implementation
- It is noticed that there is great need of organizing workshops and advocacy activities broadly to explain the regulation

3.2 The questionnaires from the officials of local self governance and administration institutions and state organizations

The questionnaire was prepared with 13 questions on the regulation and its implementation and involved 60 officials of local self governance and administration institutions and state organizations. To select the participants of the questionnaire, we aimed to involve the representatives of aimags and soums where the ASMs are concentrated.

3.2.1 Findings of the questionnaire

1. As the temporary ASM regulation is approved and issued, is there favourable legal environment set for ASM operations?

Table 1.

Answers	Number	Percentage
Not answered	3	5%
Yes, there is	28	46.7%
No, there is not	25	41.7%
Do not know	4	6.6%
Total	60	100%

46.7% of the participants were answered as the favourable legal environment set for ASM operations is established, and 48.3% of the participants were answered as not established such an environment or “do not know”.

2. Are artisanal miners organized into partnerships according to the regulation?

Table 2.

Answers	Number	Percentage
Not answered	8	13.3
Yes	12	20
No	40	66.7
Total	60	100

66.7% of the participants were answered “yes” and 20% of them answered “no”.

3. Could you write down about the reasons of unwillingness of ASMs to be organized into partnerships:

Table 3.

No.	Answers	No.	%
1	They do not know how to be organized	15	25
2	There is no leadership among artisanal miners	6	10
3	They do not know where to get advice/recommendations and information necessary	6	10
4	There is lack of initiatives of artisanal miners	7	11.7
5	Local government and Citizen's Representative Khurals are not willing to support/favor of artisanal miners	6	10
6	They do not clearly understand the importance of being organized into partnerships	13	21.6
7	Not answered	7	11.7
8	Total	60	100

25% of the participants were answered as they do not know how to be organized, and 21.6% of the participants were answered as they do not clearly understand the importance of being organized into partnerships.

3. *Have the Soum/District Governors and CRKh taken any appropriate measures for regulation and coordination of ASM operations according to the temporary regulation?*

Table 4.

Answers	Number	Percentage
Not answered	7	11.7
Yes	25	41.7
No	23	38.3
Do not know	5	8.3
Total	60	

41.7% of the participants answered as "yes".

4. *What measure are being taken by the Soum/District Government & CRKh?*

Table 5.

No	Answers	No.	%
1	On Khurals, an issue how to regulate ASM operation was discussed	24	40
2	An issue of land that is potential for allocation to ASM partnerships was discussed and decided	11	18.3
3	A proposal on quantification of mineral reserves to be utilized by ASM partnerships was submitted to the MRPAM	0	0
4	A decision "it is not possible to engage in ASM within the Soum/District territory" was made	0	0
5	Not answered	25	41.7
	Total	60	100

5. *Please share your thoughts on why the Soum/District Government & Citizen Representative Khural has not taken any measures and actions?*

Table 6.

No	Answers	No	%
1	Soum/District Government & CRKh authorities do not have good understanding on the regulation	14	23.3
2	Soum/District Government & CRKh are not willing to support ASM operations	5	8.3
3	There is no land to be allocated to ASM partnerships in the Soum/District territory	3	5
4	There are no initiatives raised by ASMs to be organized into partnerships	14	23.3
5	Soum/District Government & CRKh authorities have lack of legal understanding & knowledge	4	6.7
6	Not answered	20	33.3
	Total	60	100

23.3% of the participants answered as “Soum/District Government & CRKh authorities do not have good understanding on the regulation”, 6.7% of the participants answered as “Soum/District Government & CRKh authorities have lack of legal understanding & knowledge”, and remaining 20% of the participants answered “do not know”.

7. Do you think it is possible to have ASMs registered, covered by health and social insurance in your residential area?

Table 7.

Answers	Number	Percentage
Yes	45	75
No	11	18.3
Not answered	4	6.7
Total	60	100

75% of the participants answered that there is a possibility to organize the activity involving the ASMs to registration, and health and social insurance.

6. If it is not possible, please describe the reasons?

Table 8.

No.	Answers	No	%
1	ASMs do not have any registration within their residential areas.	10	16.7
2	ASMs do not know about the importance of having health & social insurance coverage	7	11.7
3	ASMs are not interested/willing to be covered by health & social insurance	3	5
4	Not answered	40	66.6
	Total	60	100

9. Please write down what constraints/difficulties the artisanal miner face in terms of organization into partnerships?

- There are no initiatives raised by ASMs to be organized into partnerships
- The ASMs are not interested in understanding, working in a team, and organizing. They are more interested in working as they want

- The ASMs are not interested in organizing and getting under control. They like to mine everywhere they want and do not want to learn and understanding and implement the law
- The project activities are not fully involving the community
- They do not run this business regularly, move to the places according to gold recovery rate
- There is no land for the ASMs with reserve, and it is not profitable when work in the allocated land
- It is difficult to organize into partnerships due to the seasonal pattern work
- Conflicts arisen due to the lack of understanding about the regulation, lack of workshops to advertise the regulation, benefits of forming the partnerships
- There is no responsible person of this issue in the local area
- Most of the ASMs came from the other parts of the country, so it is difficult to organize them
- The land issue is not solved
- People are misidentifying unregistered partnership with NGO

10. Have the ASM partnerships made contracts on mining of mineral resources with their Soum Governors?

Table 9.

Answers	Number	Percentage
Yes	10	16.7
No	37	61.7
Not answered	13	21.6
Total	60	100

61.7% of the participants answered as “no” and another 21.6% of the participants not answered.

11. What are the reasons for not making contracts on “mining of mineral resources”?

Table 10.

No.	Answers	No	%
1	Partnerships are not able to prepare all documentation necessary for making contracts	23	38.3
2	Land allocation per partnerships is still not decided	4	6.7
3	Partnerships are not initiative or active	18	30
4	Local Government & CRKh do not accept/ are not willing to support	4	6.7
5	Not answered	11	18.3
	Total	60	100

Others: please share your comments:

- There is no advertisement on the laws and regulations. The land allocation contract is not in process due to the argument between ASMs and herders about the land
- The ASMs destroy the environment and do not take the responsibility for their action. Therefore the local government does not support ASMs.
- Attention of the local governor and PRKhs’ was weakened due to the year of 2008 is being an election year.
- They move often, do not work in the same place regularly
- It is needed to take action to stop ASMs activity; otherwise it creates all kinds of negative occurrences to the society. Only few people getting rich
- It is difficult to solve the land allocation issue

- The ASMs and local government authorities are not started researching the regulation and organizing
- The soum officials do not support ASMs and do not take action as discussed
- The ASMs have no understanding about the regulation due to the lack of information on the regulation

38.3% of the participants have answered as “Partnerships are not able to prepare all documentation necessary for making contracts” and 30% of the participants have answered as “Partnerships are not initiative or active”.

12. What difficulties/constraints are met for enforcement of the regulation? Please share your comments & feedback:

- The lack of initiatives and information and knowledge about the regulation
- Some of the authorities have lack of legal understanding & knowledge
- The regulation is not only implementing but also the local authorities do not know it well
- There is no expert in charge of ASM issues in the local areas
- It lacks with the trainings and workshops on the regulation towards the ASMs
- It is difficult to solve the social problems of ASMs
- The ASMs do not get support because of not doing any rehabilitation work, and destroying the pasture and exaggerating the social negative occurrences
- It is not possible to conclude a contract due to ASMs being disorganized
- It is difficult to organize due to ASMs coming from different parts of the country
- There won't be much complication if we can organize them
- No initiatives from the citizens, soum authorities, and other involved parties
- It is difficult to get the permission from MRPAM
- Can not find the land

13. Do you think the Law is required for regulation & coordination of ASM related activities?

Table 11

Answers	No	%
Yes	48	80
No	1	1.7
It is possible to coordinate by regulation	8	13.3
Not answered	3	5
Total	60	100

80% of the participants have answered as “yes”, 13.3% of the participants have answered as “It is possible to coordinate by regulation” and it shows that there is extreme necessity of creating the ASM law.

3.2.2 Sub-conclusion

1. By approving the “Temporary regulation on artisanal and small scale mining operations”, 46.7% of all survey participants felt that favourable legal environment set for ASM operations is established and 41.7% of the participants have answered as not established such an environment. From here we can see that in some aimag and soums the local self governance and administrative institution authorities who are responsible and hold the full power for organizing the advertisement on regulation and prepare for the implementation and control on the accomplishment are not fulfilling their duties well. And also 23.3% of the participants have answered that “Soum/District Government & Citizen Representative's Khural's authorities, officials do not have good understanding on the regulation”, and 6.7% of the participants answered that there is not any activity on coordinating the ASM operations according to the

regulation due to the Soum/District Government & CRKh authorities have lack of legal understanding & knowledge, and 20% of the participants did not answer and it reveals that there is a lack of knowledge and understanding of the regulation amongst the local self governance and administrative institution authorities.

2. 66.7% of the participants have answered that the artisanal miners are not organized into partnerships according to the regulation shows that the ASMs except from the SAM project sites not so much came into organizing unregistered partnerships.

3. 25% of the participants of the questionnaire have answered that “They do not know how to be organized”, and 21.6% of the participants answered that “They do not clearly understand the importance of being organized into partnerships” and it reveals that there was not sufficiently organized training and workshops to deliver the information and advertisement.

4. 40% of the participants answered that, an issue how to regulate ASM operation was discussed on khurals, and it shows that the local authorities started paying the attention towards the ASMs operations more or less.

5. 61.7% of the participants were answered that the ASM partnerships did not make contracts on mining of mineral resources with their soum governors, and 21.6% of the participants did not answer the question. It shows that the land allocation process as indicated in the mining of mineral resources contract is not in progress. In the other hand, the 38.3% of the participants were answered that the partnerships are not able to prepare all documentation necessary for making contracts, and another 30% of the participants were answered that partnerships are not initiative or active. And it reports that the ASMs got not much information about the regulation and do not understand fully its benefits, and there is no initiatives from the ASMs about the issue and all these facts are affecting to the land allocation problem.

6. The one of the answers to the question of “Please write down what constraints/difficulties the artisanal miner face in terms of organization into partnerships?” was as “Most of the ASMs came from the other parts of the country, so it is difficult to organize them”. And it shows that there is not much interest in registering the ASMs who came from the other parts of the country as a resident of the given local community. Because there is a threat of overcoming number of population than capacity of the social service and also there is a possibility to increase the number and form of crimes. In the other hand, the ASMs are rather interested in working for a short period just to mine than leave their native community to going to another aimag and soum. This traditional nomads culture affects in implementing the clause that says “The ASMs shall be registered as permanent inhabitant of the respective Soum and District”.

7. 80% of the participants were answered that the Law is required for regulation & coordination of ASM related activities.

3.3. Additional assessment

The SAM project and ASM division staffs made an analyse on implementation of temporary regulation. To complete the assessment the two team members paid field visit in targeted areas and organized interviews and meetings with relevant stakeholders. In parallel working team did field observations and obtained information which conceptually contributed for identification of strengths and weaknesses in implementation of temporary regulations. In the SWOT analyse grid, displayed the points that were not mentioned above.

Strength	Weakness
<ul style="list-style-type: none"> - To organize officially into partnerships according to the regulation - The local government was given more 	<ul style="list-style-type: none"> - It has not much possibility to accomplish due to the land allocation decision was not made

<p>authority</p> <ul style="list-style-type: none"> - Included articles on occupational safety issues 	<ul style="list-style-type: none"> - The collective fund must be created to start organizing into partnership and it shuts-down the interest of ASMs to joining in - Limitation on time-contract and 1 years extension obligations made the ASMs to lose confidence - The article 7.2 is not possible to implement
Opportunity	Threat
<ul style="list-style-type: none"> - The government has accepted the ASM sector - It created the possibility for ASMs of becoming the responsible members of the society - If established a condition to work and live in peace if they follow the regulation 	<ul style="list-style-type: none"> - It has put a barrier to develop in terms of economical activity by allocating economically not beneficial land - They are not receiving the right to run the mining business in full meaning due to the need of contract extension in every year - It encourages the interest of the big mining companies to divide into several small scale mine by given them financial and economical possibility

4. CONCLUSION

This assessment was made based on the findings of the questionnaire of group of ASMs, local self governance and administrative institutions, central authority officers and the assessment of international experts, observations from the field trips, and the analysis of the SAM project and ASM division staffs.

This assessment was designed to identify the challenges and difficulties on the process of implementing the temporary regulation on the gold deposits where 87% of the gold small scale miners are working throughout Mongolia, and also aimed to assess the further need of developing ASM draft Law.

a. The first method of the assessment was to gather the feedback of the local people from four target areas of SAM project by conducting the discussion meetings(WS) with the ASMs on the temporary regulation, and organizing group works with related questions. The findings of this work led us to conclude as follows:

- By approving the temporary regulation the first legal enabling environment to the small scale mining activities was established and the State and government officials attitude has been changed towards ASM communities started to direct attention to them
- Having a local registration and involved into health and social insurance packages, creates an opportunity for ASMiners to receive governmental care and service, and get settled their social issues. Therefore, the articles that indicated about the registration and insurance are possible to implement and it needs to be inserted to the ASM draft law.
- The government provides support on establishment of ore processing factory in Bornuur. And the ASMiners were very grateful for it as it gives an inspiration for them to believe in to the future and it shows that the article 32 of the regulation was compatible to the real life.
- It positively influences on local economy through sustaining ASMiners income who are working under legal regulation and negative impacts of the illegal mining activities are decreased as a result of ASMiners organizational formation. Although there are some positive indicators, it is not proposed the flexible version of organizing that is suitable to the individuals who have different status. Thus it is needed to research on what other possibilities can be used for organizing ASMs except for unregistered partnership formation.
- It appears that the limitation on mining equipment engine capacity not exceeding to 500cm³ or using hand equipments is needed to be changed up to acceptable possible capacity. Therefore it is needed to make the changes to the article 4.3 that are not compatible to the real life and it will contribute to the developing ASMs operations into small scale mining activity.

- The issues of decreasing the maximum limitation number of the partnerships, and the article that prohibited the mothers who have children under 3 and a person who lost the working ability up to 70% to work as ASMiner and the article that required IDs and documents of family members to join the partnership were discussed several times. And it reveals that there is a need to do research on the articles 14, 21.1, 31.1 of the regulation if they are harmonizing with the other relevant laws and if necessary to remove them or make the changes and insert to the draft law.

b. The second method of the assessment was a questionnaire method. The questionnaire was prepared with 13 questions on the regulation and its implementation and involved the local self governance and administration institutions officials and state organizations. To select the participants of the questionnaire, we aimed to involve the representatives of aimags and soums where the ASMiners are concentrated.

- By approving the “Temporary regulation on artisanal and small scale mining operations”, 46.7% of all survey participants felt that the favourable legal environment set for ASM operations is established and 41.7% of the participants have answered as not established such an environment (Table 1). And also 23.3% of the participants have answered that “Soum/District Government & CRKh authorities do not have good understanding on the regulation”, and 6.7% of the participants answered that there is not any activity on coordinating the ASM operations according to the regulation due to the Soum/District Government & CRKh authorities have lack of legal understanding & knowledge, and 20% of the participants did not answer (Table 6). From here we can see that in some aimag and soums the local self governance and administrative institution authorities who are responsible and hold the full power for organizing the advertisement on regulation and prepare for the implementation and control on the accomplishment are not fulfilling their duties well. And it reveals that there is lack of knowledge and understanding of the regulation amongst the local self governance and administrative institution authorities.
- 66.7% of the participants have answered that the artisanal miners are not organized into partnerships according to the regulation (Table 2), 25% of the participants of the questionnaire have answered that “They do not know how to be organized”(Table 3), and 21.6% of the participants answered that “They do not clearly understand the importance of being organized into partnerships” (Table 3). And it shows that the ASMs except from the SAM project sites not so much came into organizing unregistered partnerships, and there was not sufficiently organized training and workshops to deliver the information and advertisement.
- 61.7% of the participants were answered that the ASM partnerships did not make contracts on mining of mineral resources with their soum governors, and 21.6% of the participants did not answer the question (Table 10). In the other hand, the 38.3% of the participants were answered that the partnerships are not able to prepare all documentation necessary for making contracts, and another 30% of the participants were answered that partnerships are not initiative or active (Table 11). It shows that the land allocation process as indicated in the mining of mineral resources contract is not in progress. Therefore the process of getting the allocated land needs to be decreased as much as possible and inserted into the draft law.
- When asked that “What constraints/difficulties the artisanal miner face in terms of organization into partnerships?” the one of the answers was as “Most of the ASMs came from the other parts of the country, so it is difficult to organize them”. And it shows that there is not much interest in registering the ASMs who came from the other parts of the country as a resident of the given local community. Because there is a threat of overcoming number of population than capacity of the social service and also there is a possibility to increase the number and form of crimes. In the other hand, the ASMs are rather interested in working for a short period just to mine than leave their native community to join to another aimag and soum. This traditional nomad’s culture affects in implementing the clause that says “The ASMs shall be registered as permanent inhabitant of the respective Soum and District”.
- 80% of the participants were answered that the Law is required for regulation & coordination of ASM related relations.

c. The fourth method of the assessment is an observation method. As a result of the observation in the sites the following conclusion was made:

- It seems that there is no support from the local Environmental Agency and the State and Local Specialised Inspectorate Agencies towards ASM operations. Because there was not made any rehabilitation work in the areas where ASMs operated. And also there was no possibility to implement the article 6.9 of the temporary regulation due to not having special regulation to monitor the expenses of rehabilitation work in the areas where the partnerships operated. Therefore, this is not an issue of settling through the temporary regulation, but issue of getting approved by central governmental organization of Environmental issues.
- In the article 7.2 of the temporary regulation it was indicated as, “In cases, when geological survey data and findings on mineral reserves of the proposed Land are regarded as “insufficient”, a professional team/working group with more than 2 members shall be appointed and sent to the site for geological survey and assessment. Results and findings of the survey shall be presented within 30 working days”. And this gives to the government a big burden and requires very large budget and it is not possible to implement in the real life. Therefore, it is only right to remove this article from the regulation.
- In the article 8 of the temporary regulation it was indicated that “Perform inspection and supervision of the enforcement of this temporary regulation made by the State and Local Specialised Inspectorate Agencies, State Inspectors, NGOs and local communities”. For this course, the officials from these authorized organizations do not pay much attention, but have rather negative attitude. The reason of this kind of attitude is that they consider the ASMs operations conflict with several laws that are related to the environment and mineral resources. And also without making the law settlement it is clear that there is no possibility to increase the number of staff and structure in these organizations. Therefore, it is necessary to develop special ASM law to refine the legal regulation of ASM operations.
- As for now there is no mechanism to sell the gold for the ASMs according to temporary regulation. This is because of 68% tax duty of “Wind fall tax law”, and in the other hand the implementation of article 35 of the temporary regulation that says “Precious metals and gem stones extracted by Partnerships shall be purchased by accredited local tellers, who permanently reside in the areas, according to the regulations and procedures established by the Bank of Mongolia” is not in progress. The reason of not implementing this article is that the Mongol bank still not approved these regulations. In the article number 2 of the “Law of Central bank” on the relationship between Mongol bank and the Government, it is indicated that “The Mongol bank will be independent from the Government”, and in the article 4, “The president of Mongol bank shall attend the cabinet meeting and shall exercise power of consulting on the issues related to the bank procedure”. Therefore, it is not possible to urge the Mongol bank to develop and approve regulation on gold buying procedure from ASMs. Thus, it is considered that this kind of settlement can be done only by reflecting it into draft law.

5. COMMENTS AND RECOMMENDATIONS

- 5.1. Activate all relevant parties that are involved for intensifying the implementation of temporary regulation
- 5.2. Submit report of assessment to the relevant parties
- 5.3. Research on the International ASM laws
- 5.4. Establish work group on developing the ASM draft law
- 5.5. Develop the ASM draft law