



Mongolia:  
Enhancing Resource  
Management through  
Institutional Transformation

## A Practical Approach to Local Benefit Agreements

# Key Issue Statement

## ISSUE

Extractive Sector has mostly negative image in Dornod

Lack of social license may impair development of the mining sectors, which is a key Government objective

Centralized structure of Mongolian Law and Tax/ license fee/royalty provide limited or no benefits from resource extraction to local people and communities

## (PARTIAL) REMEDY

Increase local benefits by means of Local Benefit Agreements

Local Benefit Agreements are mandated by Mongolian Law and Government has issued Local Benefits Agreement template.

But .. Limited number of Agreement.

# Legal Basis for Local Benefits Agreement

## Petroleum Law 2014

- Article 11.2.17: Mandates Local Benefit Agreements
- Article 7.1.13: Government to set format of the Agreement

## Petroleum Template 2015

- Government Resolution 430: Environmental Protection and Local Development Support Agreement

## Local Benefit Agreements

- To be developed

# Template is Flawed, but Law

## MANY CRITIQUES

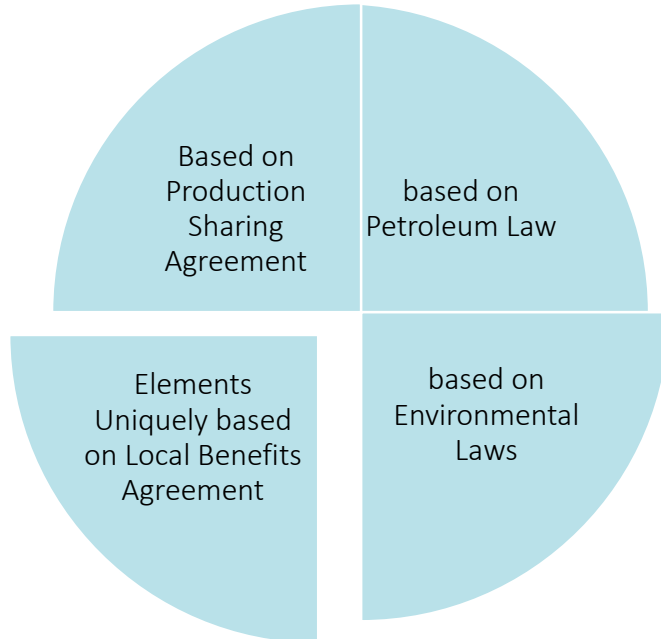
- Mixes in elements of existing laws and production sharing agreement
- Not clear if applicable to exploration licenses
- No guidance re. consultation
- No guidance re. size (in Tugriks or number of projects/programs)
- Narrow in scope
- *excludes e.g. worker health and safety, cultural heritage protection, resettlement)*
- Ineffective compliance mechanism
- *No link to license approval*

## MERIT APPROACH

- Focus on elements not dealt with in other laws/agreements.
- Focus on production licenses following MRPAM interpretation
- Includes simple consultation
- Is guided by historical precedent regarding size
- Retains narrow scope
- *Ignores Agreement elements covered by e.g Production Sharing Agreement*
- Includes compliance system
- *focus on persuasion in absence of enforcement mechanism*

# Merit Practical Approach

## TEMPLATE ELEMENTS



## FOCUS ON ELEMENTS UNIQUE TO TEMPLATE

- Focus on the Spirit, not the Letter of the Template
- *Template Implementation is in its Early Stages: Nothing is Fixed*
- *Weak compliance provides room for site-specific solutions and experiments*
- *Getting Local Benefits is the Goal*
- Start with mandated narrow focus areas; expand over time.

# Scope of Agreement

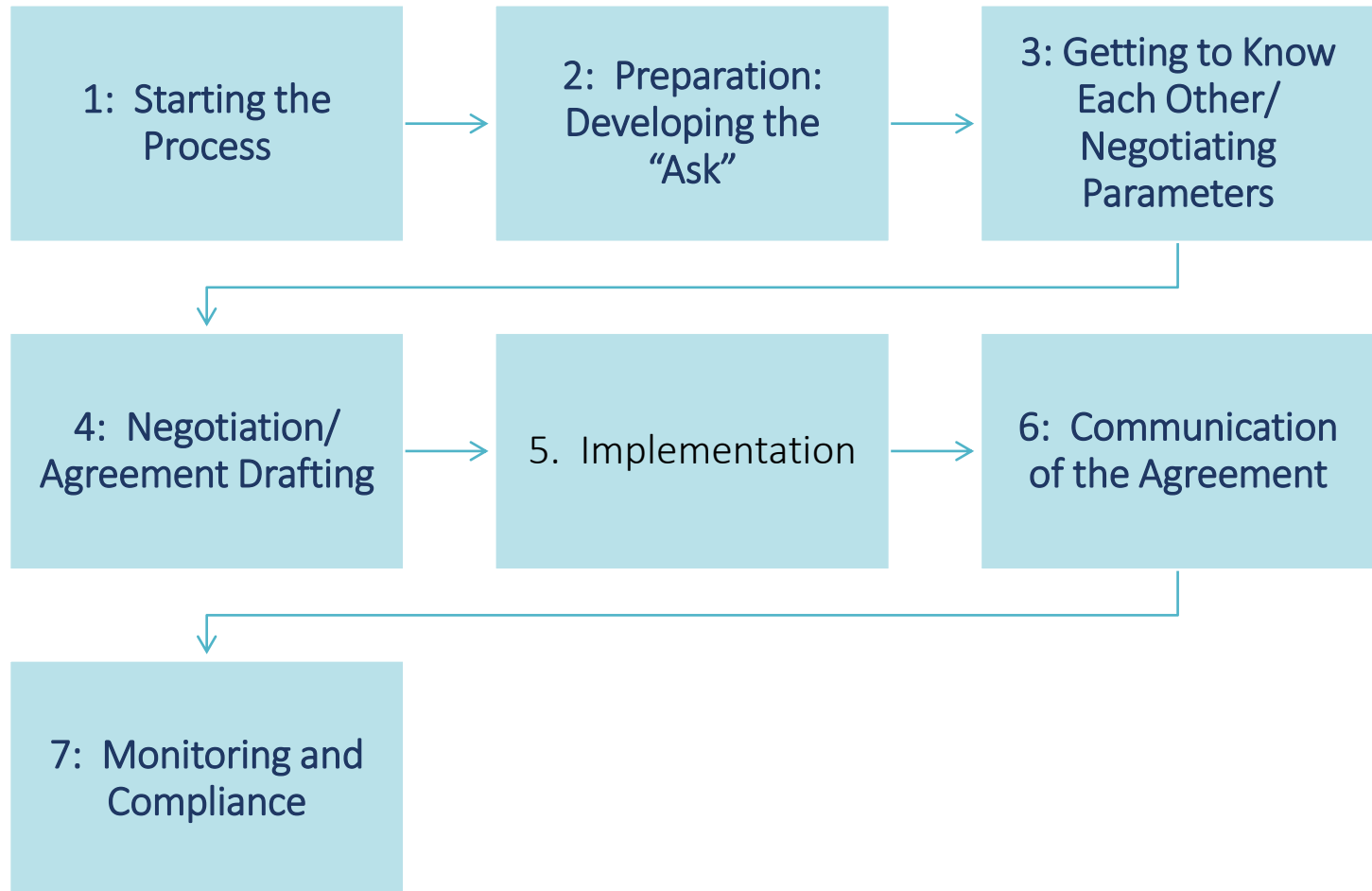
## TEXT OF THE TEMPLATE

- Legal Text (Article 1.3): Licence Holder to support
  - *Local Community Environment*
  - *Local Community Infrastructure*
  - *Increased Employment*
  - *Soum-level Environmental Protection and Reclamation*
- Plain Language Scope Statement
- *Agreement will increase employment, develop local community infrastructure and protect the environment*

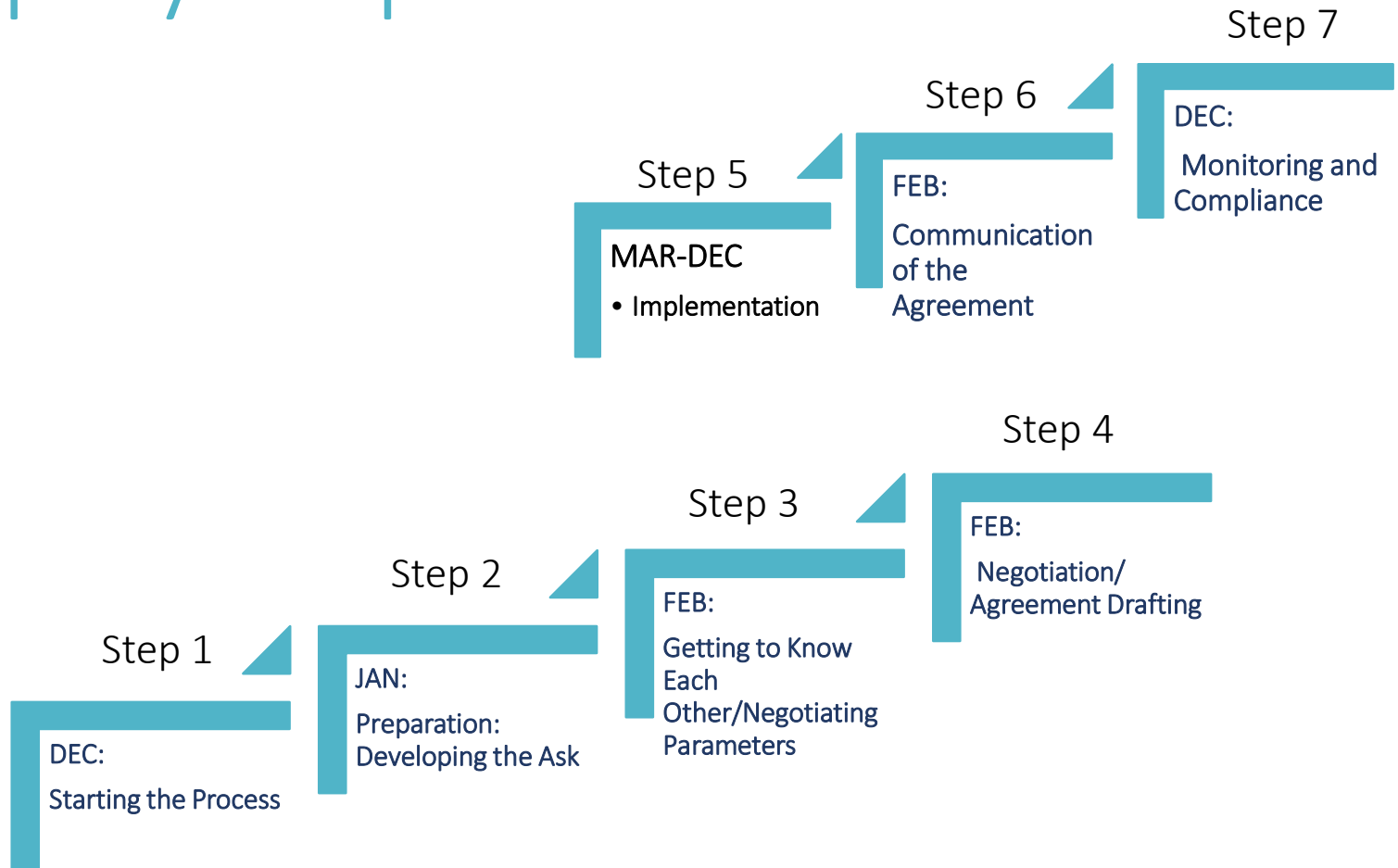
## SPIRIT OF THE TEMPLATE

- Benefits to Local Community Members
- Nice but not necessary to have projects/programs in all parts of the Agreement Scope
- More important to be guided by Community priorities
  - *Strong link with Community Development Plan*
- Employment may be with License Holder or with Supplier/Contractor
  - *Education/Training are captured under the employment clause*

# Step-by-Step Guideline



# Step-by-Step Timeline





# Step 1: Starting the Process

## IDENTIFY LICENSE HOLDERS

Soum administration draws up a list of operating mines and petroleum production facilities:

- *Name of company*
- *contact information for site manager*

Sources:

- *Local knowledge*
- *Previous contacts and direct inquiry*
- *Aimag Tax Office and MRPAM*

## INVITE LICENSE HOLDER TO NEGOTIATING PROCESS

Soum Governor invites License Holder to Agreement Process as per Mongolian law

- Short description of Process
  - *At least two formal meetings*
    - *meeting to get to know each other and establish ground rules*
    - *meeting to negotiate and sign Agreement*
  - *Soum administration to present a list of projects and programs; the "Ask"*
- Action Request:
  - *Ask License Holder to acknowledge the need to conduct Local Benefit Agreement discussions and a timeline for these discussion*

# Step 2: Preparing the “ASK”

## NEGOTIATING STANCE

Soum Governor and Khural Chair determine how to approach the negotiation

- Small vs. large “Ask”

## PRIORITY PROGRAMS/PROJECTS

Administration builds a list of projects and programs

- Link to Community plan (if any)
- Reflective of community priorities
- *Should have been subject of public discussion and Khural approval*

## PROJECTS BY AGREEMENT CATEGORIES

Soum administration reviews key areas of focus of Template

- *increase employment*
- *develop local community infrastructure*
- *protect the environment*

Soum administration sorts each one of the priority list of projects/programs by focus area

# Step 3: Getting to Know Each Other/Negotiating Protocol

## GETTING TO KNOW EACH OTHER

Short presentations by Soum and License Holders

- *Background info*
- *Challenges and opportunities*

Soum/License Holder presents their views of legal requirements

Soum/License Holder presents their views of Motivation for engagement

- *Soum: Benefits to Community and its members*
- *License Holder: Social license and business advantage*

## NEGOTIATING PROTOCOL

Streamlines actual Negotiations

Principles

- Positive stance: aimed at reaching an Agreement, not thwarting it
- Respectful communication: respectful and temperate discussion.
- Timely actions: adherence to agreed upon timeline, meeting dates and times.
- Process efficiency: clarity re. authority to make decisions re. what type /resource commitment
- Transparency

# Negotiating Protocol

## PROTOCOL ELEMENTS

### Reporting

- What report(s) will be generated under the Local Benefits Agreement

### Approach to Communication

- How the Agreement and Reports will be communicated to Stakeholders, including community members

### Compliance Model

- How non-compliance with the Agreement will be dealt with

### Timeline

- When negotiations, implementation, assessment and reporting will take place

# Step 4: Negotiations and Agreement Signing

## FORMAL “ASK”

Two weeks prior to Negotiation, Soum Governor sends out copy of the “Ask”

- The “Ask” and the Soum’s approach to the negotiations are determined in Step 2

## NEGOTIATING MEETING

The Soum Governor and the representative of the License Holder meet and negotiate a Local Benefits Agreement

- Negotiation protocol (Step 3) guides the process and determines what needs to be agreed on:
  - *Soum Projects/programs to be supported by License Holder and how*
  - *Approach to Communication and Compliance*
  - *Timeline of Agreement process (implementation, assessment, reporting)*

# Step 5: Implementation

## IMPLEMENTATION APPROACH

Determined as part of the formal negotiations (Step 4)

## IMPLEMENTATION

Not addressed in the context of this Local Benefits Agreement process initiative

# Step 6: Communication

## REPORTING UP

Soum administration provides a copy of the signed agreement (Step 4) and Implementation Assessment (Step 7) to:

- Aimag Governor
- Aimag Khural
- MRPAM (Legal Department)
- EITI Representative

## REPORTING LOCALLY

Soum administration broadcasts the signed agreement (Step 4) and monitoring report (Step 7) by:

- Providing a copy to the Soum Khural
- Posting on a bulletin board, accessible to the public
- Posting on Soum website (if available)
- Presenting it at first public meeting after signing

# Step 7: Monitoring and Compliance

## MONITORING

Soum administration monitors implementation against timeline in the Agreement

Soum administration, in cooperation with the representatives of the Licence Holder:

- gather data on Agreement Implementation
- produce monitoring report on Local Benefit Agreement implementation

## COMPLIANCE

the Soum administration applies pressure on License Holder if non-compliant with Agreement

- Public pressure (linked to widely publishing the Agreement and Monitoring Report)
- Administrative pressure (e.g. delay or withholding of Soum-level approvals, stepped up environmental monitor)