

The Inspection Panel

Report and Recommendation On a Request for Inspection

Mongolia: Mining Infrastructure Investment Support Project (P118109) and Mining Infrastructure Investment Support Project - Additional Financing (P145349)

A. Introduction

1. On February 10, 2015, the Inspection Panel (“the Panel”) received a Request for Inspection (“the Request”) from Mongolian and Russian community representatives and local organizations. These groups raised significant concerns about potential harms from the activities financed under the “Mining Infrastructure Investment Support Project” (P118109) and the “Mining Infrastructure Investment Support Project – Additional Financing” (P145349), hereinafter both referred to as “MINIS” or “the Project.” The Requesters asked the Panel to keep their identities confidential, and appointed two representatives in Mongolia and Russia from the organization “Rivers without Boundaries” to receive correspondence related to the Request.

2. The Request alleges that through the Project, the World Bank is supporting Assessment Studies of the proposed Shuren Hydropower Project (Shuren HPP) and the Orkhon-Gobi Water Diversion Project (OGP), which in their view may have potential irreversible impacts on the Selenge River in Mongolia and on Lake Baikal in the Russian Federation.

3. The Panel registered the Request on March 13, 2015 and notified the Board of Executive Directors (“the Board”) and Bank Management. Management submitted its Management Response on April 21, 2015. During its eligibility visit, the Panel received additional documents in support of the Request from two communities living in Russia and Mongolia.

4. On May 28, 2015, the Panel requested the Board to postpone the deadline for submission of this Report until June 30, 2015 to be able to review a UNESCO World Heritage Programme’s report on risks posed by the proposed Shuren HPP and OGP on Lake Baikal (a World Heritage Site), covering issues similar to those in this Request.

B. The Project

5. MINIS is a Technical Assistance operation financed by an IDA credit of US\$25M equivalent approved by the Board on May 10, 2011 and expected to close in 2016. The additional financing in the amount of US\$4.2M equivalent was approved in 2014. The Project’s development objectives are to “facilitate infrastructure investments to support mining and downstream processing, regardless of the funding source, and to build local

capacity to prepare and transact infrastructure projects.”¹ The Ministry of Finance of Mongolia is responsible for Project Implementation, and is the host of the Project Steering Committee (PSC). One of the main tasks of the PSC is to identify and propose the sub-projects to be assessed under MINIS.

6. MINIS has four components: (i) support for infrastructure investments, (ii) capacity building and knowledge transfer, (iii) strengthening groundwater management, and (iv) project management.² The Request mainly concerns Component (i). Under this component, the Project finances various assessments for proposed infrastructure sub-projects in support of the development of Mongolia’s mining sector, including pre-feasibility, feasibility and environmental assessment studies. According to the MINIS Project Appraisal Document (PAD), eligible projects may be in the following sectors: energy, transport, IT and communications, water, housing, social development, and logistic and border crossing facilities.

7. The PAD notes that since specific sub-projects will be identified during Project implementation, screening for Bank safeguard policies is to be undertaken at the subproject level. During preparation and appraisal, only the Environmental Assessment (EA) Policy was triggered, which led to the preparation of an “Environmental and Social Management Framework” (ESMF) to determine criteria for triggering safeguard policies at the sub-project level and to identify related safeguards requirements. The Project was classified as Category A.

8. Restructuring. On April 14, 2014, the Board approved the restructuring of MINIS.³ The Project Development Objectives remained unchanged, but the following five additional safeguard policies were triggered: Natural Habitats, Physical Cultural Resources, Involuntary Resettlement, Safety of Dams, and International Waterways, which would be applicable to the feasibility stage of the selected sub-projects. In addition, the ESMF was updated, and the groundwater management component of the Project was scaled up.

9. The Restructuring Project Paper indicated that the PSC had identified six sub-projects to be assessed under MINIS. Two of them are the subject of the Request for Inspection: the Shuren HPP and the OGP.⁴ The Paper indicated that assessment studies for the projects would be carried out in three phases: (i) project identification and screening in accordance with the ESMF; (ii) pre-feasibility study, and (iii) feasibility studies including Environmental and Social Impact Assessments (ESIA).

10. Project Status. Phases (i) and (ii) for both the Shuren HPP and the OGP have been completed. Draft Terms of Reference for the feasibility studies have been finalized and an

¹ Project Appraisal Document on a Proposed Credit to Mongolia for a Mining Investment Infrastructure Support Project, April 7, 2011 (PAD): 4.

² PAD: 5.

³ Project Paper on a proposed restructuring to Mongolia for the Mining Investment Infrastructure Support Project, March 18, 2014.

⁴ Project Paper, p 3 para 9.

international bidding process to hire the consultants to carry out these studies is underway. The TORs for the ESIA of each of these sub-projects are currently being finalized.

11. *The Shuren HPP*. During the pre-feasibility study phase, the number of alternative sites for the Shuren HPP on the Selenge River was narrowed down to two, with proposed costs ranging from US\$350M to US\$782M and installed capacity ranging between 160 MW and 240MW. The HPP's area is in the territory of Mongolia, 500 km upstream of Lake Baikal and the Selenge River Delta, both located in the Russian Federation. The HPP's precise location is to be determined through the feasibility study. The catchment area of the dam is part of the area influencing the flow into the Selenge Delta (a Ramsar site) and into Lake Baikal (a UNESCO World Heritage Site). The Shuren HPP is meant to provide a sustainable source of energy for the mining sector, as well as promoting clean energy generation in Mongolia, which currently depends heavily on coal.

12. *The Orkhon-Gobi Water Diversion Project* consists of a proposed dam and reservoir on the Orkhon River to regulate the flow and impound surface water. It would include a pipeline of around 900-1,000 km that would transfer water to the South Gobi region. Proposed costs range from US\$600M to US\$1.0B. The project would provide a sustainable source of water for local communities and the mining sector, and reduce the exploitation of groundwater resources, which are already scarce.

C. The Request

13. The Request is briefly summarized below. The concerns of the Requesters are further elaborated in detail in the Observations section of this Report. The full Request is attached as Annex 1.

14. The Request states that under Component (i) of MINIS, the Bank has financed, and will finance, pre-feasibility and feasibility studies for two sub-projects, the Shuren HPP and the "Rural and Flow Regulation of the Orkhon River" (referred to in project documents as the Orkhon-Gobi Water Diversion Project), which may have irreversible environmental, social and economic impacts on Mongolian and Russian communities and the environment.

15. The Requesters claim that the sub-projects were identified in violation of Bank Policies through a selection process lacking clarity and not based on risk and alternatives assessments, including trans-boundary and cumulative impact assessments. They also claim that Project documents, including the pre-feasibility studies, were not disclosed, and consultations with civil society and communities affected by the sub-projects have been inadequate.

16. The Requesters question the specific selection of the Shuren HPP and the OGP because the Lake Baikal - Selenge Ecosystem is recognized as a "top global conservation priority," and the Selenge and Orkhon Rivers are both critical natural habitats. In addition, they claim that the Shuren HPP is not directly related to the mining sector, since in a 2009

study on energy sources for the South Gobi mining sector, the Bank did not consider hydropower as directly relevant for the mining industry.

17. The Request describes the potential harmful impacts of the Shuren HPP and the OGP on communities and the environment in Mongolia and Russia, including the disruption of the free movement of aquatic animals and decrease in fish stocks, disruption of the flow of nutrients and sediments, reduction of flow volume, change in natural water temperatures (which carries health risks), degradation of critical natural habitats, an increase in greenhouse gas emissions, and degradation of Lake Baikal. The Requesters also raise potential social impacts of both projects, including loss of access to traditional water and pasture resources by nomadic communities in southern Mongolia, the loss of land for crops and pastures as a result of reservoir flooding, the loss of ecotourism opportunities, and the loss of culturally significant archeological and sacred sites, including Lake Baikal.

18. The Request claims that the Bank did not comply with the following policies: Investment Project Financing, Natural Habitats, Environmental Assessment, International Waterways, Access to Information, Water Resource Management, Involuntary Resettlement, and Cultural Physical Resources.

D. The Management Response

19. The Management Response is summarized briefly below. The full Response is attached to this Report as Annex 2.

20. The Management Response notes that the MINIS Project is part of a strategy to support Mongolia to put in place regulatory frameworks and infrastructure to develop mining activities in a sustainable manner, as the country has some of the world's richest deposits of coal, copper, gold, uranium and iron ore. In this context, the MINIS is also meant to help the Government follow international best practices as well as Bank policies and procedures in large infrastructure projects, and to carry out environmental and social impact assessments, including cumulative impact assessments. Thus, according to Management, the Bank's involvement brings transparency, a systematic approach and enhanced capacity to the process of assessing and studying the sub-projects selected under the MINIS. The ultimate objective is to support Mongolia in conducting comprehensive, systematic and scientifically sound studies to make informed and sustainable decisions.

21. An Environmental and Social Management Framework (ESMF) was prepared under MINIS. The ESMF specifies that implementation of future projects and studies with MINIS support are subject to the ESMF. Management indicates that "*the ESMF seeks to ensure that any potential financier addresses and identifies measures to avoid, minimize or mitigate environmental and social impacts [...] following relevant Mongolian environmental and social legislation and the World Bank's Safeguard Policies.*"⁵

⁵ Management Response: 11.

22. *Selection of Sub-projects.* In its Response, Management explains the process through which sub-projects to be assessed with MINIS' support were selected and evaluated. As also noted in the PAD, a Project Steering Committee (PSC) was established to oversee the Project. One of its responsibilities was to identify and decide which sub-projects would be evaluated under MINIS. The PSC selected six sub-projects, among which are the Shuren HPP and the OGP, the subject of this Request. The Bank confirmed in November 2014 that the selected sub-projects were consistent with the objective and scope of the MINIS, and a working group was established with the support of international consultants to oversee the technical studies for each sub-project. The PSC also established the procedure to carry out the activities supported by MINIS for each sub-project. The Shuren HPP and the OGP followed a three phase approach: Phase 1 comprised preliminary technical, financial, environmental and social impact screening; Phase 2 included the pre-feasibility studies; and Phase 3 consists of feasibility studies and environmental and social impact assessments. Management states that during Phase 3 "public consultations with stakeholders will be carried out in accordance with World Bank policies and procedures."⁶

23. *MINIS Scope and Process.* Management disagrees with the claim that the sub-projects selected under MINIS violate the scope of the Project. It argues that the type of infrastructure chosen to be evaluated includes investments that increase the power supply, a necessary step to promote the development of mining activities, as set forth in the MINIS' project objectives. Management adds that the process supported by MINIS is a robust one, as it follows international best practices and Bank policies and procedures for large-scale infrastructure projects. As noted, the studies for the Shuren HPP and the OGP followed a three-phase approach. The first phase developed a screening report and the Terms of Reference for the pre-feasibility studies to be conducted under Phase 2. Management indicates that the procedures include "decision points by the PSC and the Bank." The PSC recommended proceeding with the feasibility phase and the Bank confirmed its approval in November 2014 after the "satisfactory" completion of the pre-feasibility and preparatory studies for the Shuren HPP and the OGP, respectively.

24. The Management Response also notes that consultations with stakeholders will be carried out during the execution of the Assessment Studies, in accordance with Bank policies. Further, a Panel of Experts is to be established to review the proposed sub-projects.

25. *Analysis of Alternatives.* The Response notes that the process to analyze alternatives under the MINIS is an internationally accepted process for large scale infrastructure. For the Shuren HPP, the initial analysis of alternatives was conducted through the Energy Sector Plan, an Asian Development Bank-supported study which reviewed alternative options for increasing power generation in Mongolia. The Plan established that the two main alternatives to the proposed Shuren HPP are development of coal fired plants, and an increase in imports of electricity from Russia. The Energy Sector Plan found that these are the "most probable economically and financially competitive options." The Plan ultimately recommended the development of hydropower on the Selenge River, because it found hydropower a viable and cost effective option, with advantages over coal fired plants. The Plan further considered that

⁶ Management Response: 12.

wind and solar sources could not fully substitute for hydro or coal based energy generation options. Management indicates that this study continues to be a reference point for the options assessment carried out thus far.

26. Coal fired plants and increased electricity imports were compared with the best potential options for the proposed Shuren HPP during the pre-feasibility study. The latter were identified through a separate analysis of alternative sites for hydropower development on the Selenge River. The pre-feasibility study confirmed the recommendation of the Energy Sector Plan to prioritize the development of the Shuren HPP. It identified two potential options for its configuration, and recommended to proceed with the feasibility study to further investigate the two sites. Management notes that the Terms of Reference (TORs) for the feasibility and the ESIA included these recommendations.

27. With respect to the OGP, the preparatory studies provided an opportunity to analyze water demand and groundwater resources in the South Gobi region. The results, which show that groundwater resources are fossil and non-renewable and water demand is increasing, highlighted the importance of assessing further the OGP project, as it has the potential to secure long term water supply in the South Gobi area. The assessment studies for the OGP focused on the project as a water supply source, rather than a power source. Before proceeding with the pre-feasibility phase, a detailed preparatory study was conducted given the complexity and uncertain configuration of this proposed project. Alternative water supply options were analyzed and it was found that a combination of transporting water by pipeline from the Orkhon River, and groundwater from local sources, were the best options available. This study has informed the TORs for the pre-feasibility and feasibility studies for the OGP.

28. *Cumulative Impact Analysis.* Management indicates that the ESIA for the proposed Shuren HPP will assess the cumulative impacts of the proposed project with future infrastructure developments considered on the Selenge River. Management adds that this analysis includes impacts on the downstream flow regime and environmental and social impacts on the Selenge River and on Lake Baikal, resulting from hydropower infrastructure for the next 20 year-period. The ESIA will also include a detailed Environmental Management Plan to prevent, mitigate, and monitor potential impacts of the sub-project if it is implemented.

29. *EISA for the OGP.* The Response indicates that under the ESIA for the OGP, several different assessments will be carried out, including a Regional Environmental Assessment and three separate ESIAs for different elements of the proposed project (water flow regulation structures and reservoirs; water transmission pipelines and pump stations and hydropower facilities; and electrical transmission lines). According to the Response, these analyses will inform the preparation of an environmental mitigation plan, a resettlement plan, and possibly an Indigenous Peoples Development Plan.

30. *Trans-boundary Impacts.* Management notes that the Bank policy on International Waterways (OP 7.50) is applicable to the MINIS project because the proposed Shuren HPP and the OGP will have potential trans-boundary impacts given that Mongolia's Orkhon River is a tributary of the Selenge River, which in turn flows into Russia's Lake Baikal. The riparian

notification requirement of OP 7.50 was not carried out as part of the MINIS. Bank Management approved an exception to the policy “taking into account the nature of activities that the Project was intended to finance.” Management states that the TORs for the two proposed projects’ ESIA include the analysis of the potential riparian issues.

31. Management states that the Government of Mongolia (GoM) and the Russian Federation have engaged in bilateral discussions on the two sub-projects and their potential impacts. Mongolia also signed a Memorandum of Understanding with the Russian Academy of Science in August 2014 to cooperate in the carrying out of the assessment studies. In March 2015, a meeting between a Russian delegation and Mongolian authorities resulted in a protocol to establish cooperation regarding the Shuren studies.

32. *Lake Baikal and the Selenge River Delta.* Management acknowledges the significance of these sites, which are protected respectively under the World Heritage Convention and the Ramsar Convention. Through the MINIS, the Bank is monitoring Mongolia’s actions related to its international treaty obligations. Management states that the activities carried out under MINIS are consistent with the World Heritage Committee’s decision requiring that the potential impacts of the sub-projects are duly assessed and the assessment results are made public. Management adds that if the Assessment Studies determine that the proposed sub-projects will lead to the significant conversion or degradation of critical natural habitats, the Bank’s recommendation to the Government of Mongolia will be not to proceed with the sub-projects, as required by OP 4.04 on Natural Habitats.

33. *Consultation and Disclosure of Information.* Management states that the MINIS has met the requirements of Bank policies and procedures. Project documents were disclosed in English, and the TORs for the sub-projects along with the MINIS ESMF were also translated into Mongolian. While under Bank policies the disclosure of the pre-feasibility studies is a prerogative of the Government of Mongolia, Management has encouraged the government to disclose as much information as possible, beyond policy requirements. The Bank has also facilitated the engagement between the Project Management Unit, local officials and concerned stakeholders, including one of the Requesters.

34. Consultations for the TORs of the ESIA were conducted in January 2015 in Ulaanbaatar. Management indicates that these events were “well attended” by a number of stakeholders and further consultations will be carried out with locally affected stakeholders. The Bank has also supported the Project in creating a “consultation roadmap” for the proposed Shuren HPP, with a timeline of public consultation throughout the ESIA process and an opportunity for the community to engage with the Panel of Experts. According to Management, consultations will also be carried out in Russia based on a stakeholder mapping of the sub-project’s areas of influence, which include affected downstream communities “regardless of national boundaries.”⁷

35. Management further states that it “values continuous constructive engagement of all stakeholders” and “intends to pursue the valid concerns and questions raised by stakeholders

⁷ Management Response: 49.

about the proposed sub-projects precisely by supporting the Recipient to implement comprehensive Assessment Studies.”⁸ It adds that it will ensure that consultations, disclosure and the Assessment Studies “are conducted diligently and in line with Bank Policies and Procedures.”⁹

E. Field Visit to Sites in Russia and Mongolia

36. Panel Chairman Gonzalo Castro de la Mata, Panel Member Zeinab El-Bakri and Senior Operation Officer Tatiana Tassoni visited Russia and Mongolia from May 3-9, 2015. In Russia, the team visited the southern region of Lake Baikal and the Selenge River Delta in the Republic of Buryatia, and met with the Requesters, their representatives, and other potentially affected community members. In Ulan Ude, the team met with local Government officials of the Ministry of Natural Resources and the Minister of Natural Resources of the Republic of Buryatia, and with officials from the Federal Agency for Water Resources, and the Federal Agency for Fisheries. In Mongolia, the team visited Erdenet and the general potential area of the Shuren HPP and met with the Requesters, their representatives, and other potentially affected community members. In Ulaanbaatar, the team met with the World Bank Country Office management and team, with national Government authorities, and with officials of the MINIS Project Implementation Unit (PIU).

37. The Panel wishes to express its appreciation to all those individuals and communities mentioned above for sharing their views, information, and insights. The Panel also thanks the Governments of Mongolia and the Republic of Buryatia in the Russian Federation for the opportunity to meet with them and for frankly sharing their views. The Panel thanks the Requesters, affected people, and the staff in the World Bank Country Office in Ulaanbaatar for their time, and for discussing the issues and providing relevant information. Particular appreciation goes to World Bank country office staff in Russia and in Mongolia for their invaluable assistance with logistical arrangements.

Observations from the visit to the Russian Federation

38. During its visit to Russia, the Panel team met with a number of Requesters including local residents, community representatives, and local authorities who expressed deep concerns about the potential impacts of the Shuren HPP on the Selenge River Basin and on Lake Baikal. The Panel heard a wide variety of strong concerns and fears that the proposed Dam will alter the flow of the Selenge River and reduce the water level of Lake Baikal, especially during the summer season, with consequent harms to the environment, livelihoods, cultural heritage, and the local economy.

39. With respect to ecological concerns, the Requesters and local authorities in Russia fear that the Shuren HPP would alter the natural cycles of the river flow and change and redistribute the annual run-off of the Selenge and its tributaries. In their view, these changes would have damaging effects on the already vulnerable and unique ecosystem of Lake Baikal,

⁸ Management Response: 29, 30.

⁹ Management Response: 30.

as the river's annual run off is one of the main factors that guarantee its ecological integrity. A redistribution of the run off could have highly detrimental effects, including epidemic disease in fish, degradation of the wetlands in the Selenge River Delta, and destruction of the lake shore. They added that any Dam system will necessarily impact the shallow waters of the Selenge River Delta, which plays a key role in preserving the biodiversity of the Lake. These shallow waters act as a water filter, thereby ensuring the purity of the Lake's waters for which Lake Baikal is famous worldwide, but also act as feeding grounds for young fish including the Omul (*Coregonus migratorius*), an endangered and endemic species to Lake Baikal.

40. Requesters in Russia also expressed concerns about the potential impact of the operation of the Shuren HPP on their livelihoods and the local economy. The team met with fishermen concerned that the Dam would further reduce currently low water levels of the river and the Lake in the summer season, thus harming fishing activities, particularly of the Omul. They also believe that the Dam would worsen already worrisome conditions of drying wells on which they depend for access to water, and tourism potential. They also argue that the operation of the Dam in winter would exacerbate flooding in villages, crop fields and grazing pastures, a phenomenon which is already occurring due to the narrowing of the river bed.

41. Regarding impacts on cultural heritage, the Republic of Buryatia holds the largest global community of "Old Believers," a Christian denomination of people that live in the Selenge River Basin and depend on the river and the Lake for their economic activities. They fear that the construction and operation of the Shuren HPP would force many in the community to migrate elsewhere because of the loss of sources of income, thus disrupting their community ties, endangering their traditional way of life, and jeopardizing their cultural and religious heritage.

42. Requesters in Russia also expressed particular concerns about the consultation and participation process during the different phases of the assessment studies carried out under the MINIS project. They claim that Russian stakeholders were not informed about the process because documents were not translated into Russian, and that they were not invited to participate in the recent consultations on the Terms of Reference (TORs) of the third-phase assessments. They stated that they sent comments on the TORs of the Feasibility Study for the Shuren HPP, which they accessed in English, but claim that not a single comment was taken into consideration. They added that MINIS does not have a mechanism in place to receive and address comments by the public, whether in Russia or in Mongolia.

Observations from the visit to Mongolia

43. During the Panel's visit to Mongolia, the Panel team met with representatives of the Mongolian Beekeeping Association who expressed concerns regarding the potential loss of important habitats on the shores of the Selenge River that would be flooded by the Shuren HPP. According to them, these habitats support a very rich floral diversity which in turn is the basis for a large percentage of the Mongolian beekeeping activities practiced by dozens of local people. They also expressed concerns regarding the potential loss of numerous endemic and endangered plant species.

44. The Panel visited the vicinity of the potential sites of the Shuren HPP, and a community that may be flooded should one of the alternatives under consideration be implemented. Community members stated that they had heard rumors about the proposed project and the possibility of having to resettle as a result of it. They expressed concerns about impacts on their lives and livelihoods, and noted that they had no information of any kind on the proposed project or what would happen to their community.

45. In Ulaanbaatar, the Panel met with government officials in the Ministries of Finance, Energy, Environment and Green Development, and with the staff of the PIU. Government officials consistently expressed their strong support for the Shuren HPP in the context of Mongolia's energy requirements and the need to further develop its mining sector. They also declared that the final decision over whether or not the Shuren HPP can proceed will depend on the results of the assessments underway with MINIS support. They also consistently expressed that once the feasibility studies and ESIA were concluded, the project would be ready for investment through a private concession, or through a public-private partnership arrangement. They also expressed that the Government of Mongolia has already approached various sovereign funds to explore financing.

46. The staff at the PIU shared detailed documentation with the Panel team. They informed the Panel team that the TORs for the ESIA of the Shuren HPP are not yet ready as they are still in the process of incorporating comments received during the public consultation held in January.

F. Technical Eligibility

47. Technical eligibility of the Request is determined according to the criteria set forth in paragraph 9 of the 1999 Clarification, and on observations on other factors supporting the Panel's recommendation. In this context, the Panel is satisfied that the Request meets all six technical eligibility criteria, as follows:

- Criterion (a): "The affected party consists of any two or more persons with common interests or concerns and who are in the borrower's territory." The Panel has verified that the Requesters include community members living in the territory of Mongolia who can be affected by activities resulting from the MINIS Project. The Panel has also verified that the Requesters residing in Russia are similarly likely to be adversely affected. The Panel therefore considers that this criterion is met.
- Criterion (b): "The request does assert in substance that a serious violation by the Bank of its operational policies and procedures has or is likely to have a material adverse effect on the requester." The Requesters assert that the assessment studies financed under MINIS may cause harm to the Requesters if the sub-projects are implemented, because they lack robust scientific assessment of risks and mitigation measures, do not analyze project alternatives, do not include cumulative and trans-boundary impact assessments, and support an inadequate selection process of the sub-projects. The Requesters argue that this is likely to cause grave harm to the potentially affected

communities' livelihoods and cultural heritage, as well as the environment in which they live. The Requesters also allege that disclosure of information and consultation with communities potentially affected by the sub-projects assessed with MINIS funds were inadequate. The Request asserts that these failures constitute non-compliance with a number of Bank operational policies and procedures. The Panel is thus satisfied that this criterion is met.

- Criterion (c): "The request does assert that its subject matter has been brought to Management's attention and that, in the Requester's view, Management has failed to respond adequately demonstrating that it has followed or is taking steps to follow the Bank's policies and procedures." The Panel has verified that the Requesters' concerns were brought to the Bank's attention at different occasions prior to filing the Request. The Panel is satisfied that this criterion is met.
- Criterion (d): "The matter is not related to procurement." The Panel is satisfied that the claims do not raise issues of procurement and thus this criterion is met.
- Criterion (e): "The related loan has not been closed or substantially disbursed." At the time of receipt of the Request, the Project was about 31% disbursed. The closing date for the Project is September 30, 2016. Therefore, this criterion is met.
- Criterion (f): "The Panel has not previously made a recommendation on the subject matter or, if it has, that the request does assert that there is new evidence or circumstances not known at the time of the prior request." The Panel confirms that it has not previously made a recommendation on the subject matter of the Request and this criterion is thus met.

48. The Panel notes that its confirmation of technical eligibility, which is based on a set of verifiable facts focusing to a large extent on the content of the Request as articulated by the Requesters, does not involve the Panel's assessment of the substance of the claims made in the Request.

G. Panel's Observations

49. The Panel's review is based on information presented in the Request, the Managements Response, additional documentary evidence, and on information gathered during the field visits to Russia and Mongolia. As indicated in the Panel's Operating Procedures, in making its recommendation the Panel takes into account whether there is a plausible link between the harm alleged in the Request and the Project; whether the alleged harm and the possible non-compliance by the Bank are of a serious character; and whether Management has dealt appropriately with the issues, or has acknowledged non-compliance and presented a statement of remedial actions that address the concerns of the Requesters. These issues are examined below.

Linkage between the MINIS Activities and the Allegations of Potential Harm

50. The Request raises issues on the adequacy of the Assessment Studies and the related consultation process for the proposed Shuren HPP and the OGP. According to the Requesters, harm is likely to arise as a result of non-compliance by Bank Management with applicable operational policies and procedures in the implementation of MINIS activities, particularly the Assessment Studies of the Shuren HPP and the OGP.

51. Management in its Response argues that the Request is “ineligible for investigation” because the Request’s claims focus on the potential harm that could derive from the construction and operation of the sub-projects being studied under the MINIS, rather than from the Assessment Studies the Project supports. Management notes that the Bank is not involved in financing the construction of the sub-projects, nor has it committed to finance them. It argues that the harm alleged in the Request cannot therefore derive from Assessment Studies “as they do not serve to predetermine and/or dictate the decision of the GOM to proceed with the proposed sub-projects. (...). Management cannot see how the financing of these Assessment Studies has violated Bank policies and procedures leading to actual or potential harm as required by the Panel’s Resolution.”¹⁰

52. The Panel has examined the question of the possibility of the existence of a causal link between the Assessment Studies and the allegations of harm. The Panel understands and has confirmed Management’s position that the Bank is not financing, nor has committed to finance the proposed sub-projects, and that the MINIS project only supports the assessment studies of the sub-projects.

53. The Panel is of the view, however, that the Assessment Studies financed under MINIS for both the Shuren HPP and the OGP are functionally equivalent to the standard project preparation activities normally undertaken if the Bank was financing these sub-projects. Furthermore, the Panel heard from Government officials that if the assessment studies demonstrate that the projects can proceed, the Government of Mongolia will move into the final financing phase without the need for additional feasibility or impacts studies. Therefore, **the Panel is of the view that the third phase of the MINIS project is akin to the project preparation phase of a standard Investment Project undertaken by the Bank, and is thus subject to the same standards of accountability.** This view is further elaborated below.

54. The Panel stresses that these assessments financed by MINIS are not broad sector evaluations, country strategies, or wide-ranging analytical work. Rather, they are project-specific feasibility and environmental and social assessments, which will effectively inform the sub-projects’ technical design, should the Government of Mongolia decide to proceed with construction, as the Panel confirmed in discussions with authorities. The ESIA’s will form the basis for the environmental and social programs and mitigation plans that will be developed under the sub-projects, as is evident from the Panel’s review of the TORs for the Shuren HPP. In addition, environmental and social plans will follow the framework and guidelines included in the MINIS ESMF.

¹⁰ Management Response p 15, para 34, 36.

55. In this context, the Panel also notes the statements in the MINIS ESMF that “follow-up feasibility studies, PPP transactions, and the future implementation of identified projects are subject to this ESMF”¹¹ and that the “PMU under the Ministry of Finance will be responsible for ensuring that the full ESMF (including a completed Annex 1 from, project-specific TORs for EIAs as per Annex 5, and other annexes) are incorporated into the contractual documents, which obligate the entities involved in a transaction to prepare safeguards documents and implement them according to the ESMF.”¹²

56. It is therefore the Panel’s view that any shortcomings in the consultations phases or the assessment studies (particularly the ESIA), if not corrected, can lead to shortcomings in the design of the Shuren HPP and OGP projects, without substantive subsequent steps planned or envisioned by the Government of Mongolia to correct these potential shortcomings. **It follows that any potential harm resulting from the implementation of the sub-projects may be plausibly linked to non-compliance with the application of Bank policies and procedures to the consultation phases and the Assessment Studies.**

57. The Panel concludes that the Assessment Studies fall under the purview of the Panel’s mandate and the Request may be eligible for investigation, inasmuch as these studies are not broad sectoral or general studies, but rather represent the necessary and sufficient steps to prepare the sub-projects of concern to the Requesters.

Extent to which the Alleged Harm and possible Non-compliance are of a Serious Character

58. *Potential Harm to Critical Natural Habitats.* The Panel notes that the majority of concerns heard during its field visit emerge directly or indirectly from downstream impacts. These impacts could result from the alteration of water flows in the Selenge River because of the possible construction and operation of the Shuren HPP or of water diversion resulting from the OGP, with consequent impacts on the hydrology and ecology of the Selenge River Delta and on Lake Baikal in Russia. The underlying contention of the Requesters is that the MINIS should not have identified dams in the Selenge River basin as opportunities to be studied because these projects represent a threat to unique and irreplaceable natural habitats. They repeatedly questioned the sub-projects’ selection process claiming that there was no impartial mechanism for the initial identification of the sub-projects, nor impartial assessments at later stages of the process.

59. The Selenge River Delta is a critical natural habitat and it is recognized as a Wetland of International Importance by the “Convention on Wetlands of International Importance Especially as Waterfowl Habitat” (Ramsar Convention) since 1994. According to Ramsar, “the site includes the shallow water area of Lake Baikal, streams and oxbow lakes. The vegetation consists of reed beds, regularly flooded sedge-grass meadows, and willow shrub. The site is an example of a unique type of wetland and supports numerous threatened and endemic species of flora and fauna.”

¹¹ ESMF, p

¹² ESMF, p 17

60. The Delta “serves as an important resource for both biodiversity and human societies. Large concentrations of various species of migrating, breeding and molting waterbirds use the site. The total breeding population of Anatidae (ducks, geese, swans) varies between 20,000 and 138,000 individuals. Up to five million birds pass through the Delta in autumn, with 7,300 to 18,300 birds stopping at the site.” Ramsar sources also stress that “human activities include hay harvesting, livestock grazing, commercial and sport fishing, muskrat trapping, waterbird hunting, and recreation. River regulation resulted in changes in the hydrologic regime, and rising lake levels (Baikal) are a major threat to Delta ecosystems.”

61. The Selenge River Delta is located on the shores of Lake Baikal, a World Heritage Site. According to UNESCO, “the 3.15 million-ha Lake Baikal is the oldest (25 million years) and deepest (1,700 m) lake in the world. It contains 20% of the world's total unfrozen freshwater reserves. Known as the 'Galapagos of Russia,' its age and isolation have produced one of the world's richest and most unusual freshwater faunas, which is of exceptional value to evolutionary science.”

62. The ecological health of the Selenge River Delta and of Lake Baikal depend on complex hydrological flows and cycles which in turn depend on water inflows and outflows. Inflows are provided primarily by the Selenge River, and the main outflows occur through the Angara River in Russia. According to the 2008 comprehensive study by the Korea Environmental Institute “Integrated Water Management Model on the Selenge River Basin,”¹³ the Selenge River provides ca. 50% of all inflows into Lake Baikal, although at the border between Russia and Mongolia this figure is only 23% due to the later addition of flows from various tributaries within Russian territory. The hydrological regime of the Selenge River between the Mongolian border to its point of discharge into Lake Baikal is characterized by fluctuations in flow varying from 30 m³/sec during the winter low-water period, to 7,620 m³/sec during the summer flooding period. Outflows from Lake Baikal through the Angara River are regulated by Russian authorities in order to optimize various forms of water use downstream, including water for electricity generation from several hydroelectric power plants in Russia.

63. Given the importance of the Selenge River flows to the health of the Selenge River Delta and Lake Baikal, and the potential alterations to these flows by the construction and operation of the Shuren HPP and the OGP, **the Panel concludes that the potential harm that may derive from the improper implementation of the proposed sub-projects is indeed of a serious nature.**

64. *Consultations and Disclosure of Information.* During its visits to Russia and Mongolia, the Panel team repeatedly heard concerns about the lack of consultations thus far in the process with CSOs, communities and local authorities who will potentially be affected by the Shuren HPP and OGP. Interviewees lamented that the identification of the sub-projects and the first phases of the assessments cannot be construed as a participatory process. In Russia, the Panel heard many complaints from CSOs as well as local and federal authorities that no document had been translated into Russian in spite of the fact that potentially severe impacts from the

¹³ http://www.unep.ch/etb/areas/pdf/NISD%20partnership%20project_Phase1%20Report%5B1%5D.pdf

construction of the dams will occur in the Russian territory. Furthermore, they stated that no Russian civil society representative or authority was invited to the January 2015 consultation event on the TOR for the ESIA of the Shuren HPP. They acknowledged that one person from Russia was present, but considered that this person, while knowledgeable, may not represent adequately the views and concerns of the affected communities.

65. In both countries, potentially affected people as well as local authorities of the Republic of Buryatia, where the Selenge River Delta and Lake Baikal are located, indicated that scarce information about the Assessment Studies has been released to the public, including the pre-feasibility studies which, as acknowledged in Management Response, were not disclosed. The Requesters added that in various instances they sent their detailed comments on the sub-projects' documents they were able to review, including the TORs for the ESIA, but felt that these comments were ignored. They questioned the lack of a mechanism to systematically gather and take comments into account. In Mongolia, the Panel met with a community potentially affected by the flooding under the Shuren HPP project, they were unaware of the possible plans for the dam and the impacts it may have on their lives and livelihood. The Panel understands from discussions with the PIU that this particular community, Sangaltai, may or may not have to resettle depending on the final technical option chosen as a result of the feasibility and environmental and social studies. No consultation or preliminary information has been provided to them or their representatives.

66. *Issues of Compliance with Bank Policies.* The Panel notes that Bank safeguard policies set forth principles and provisions to ensure that careful environmental and social studies are carried out and adequate measures to avoid or mitigate projects' potential impacts are identified. The policies include strong provisions requiring the participation and consultation of project stakeholders. Particularly relevant to the concerns expressed by the Requesters are the policies on Environmental Assessment (OP/BP 4.01) and Natural Habitats (OP/BP 4.04). The policy on Environmental Assessment includes specific provisions regarding Bank-financed projects involving sub-projects stating that sub-projects' specific environmental assessment must be carried out according to the requirements of OP 4.01. The policy is very specific about the need for meaningful consultations about the project's environmental impacts with affected groups and local non-governmental organizations (NGOs), in a timely manner, and in a form and language understandable and accessible to those consulted.

67. The World Bank policy on Natural Habitats states that the Bank “*does not support projects involving the significant conversion of natural habitats unless there are no feasible alternatives for the project and its siting [...] If the environmental assessment indicates that a project would significantly convert or degrade natural habitats, the project includes mitigation measures acceptable to the Bank [...] In deciding whether to support a project with potential adverse impacts on a natural habitat, the Bank takes into account the borrower's ability to implement the appropriate conservation and mitigation measures.*” OP 4.04 is also very specific about consultation and participation requirements in projects involving natural habitats, providing that the views, roles and rights of local NGOs and local communities should be taken into account, and people should be involved in the planning, design, implementation, monitoring and evaluation of such projects.

UNESCO's World Heritage Programme Mission Report

68. At its 38th session in Doha in 2014, the World Heritage Committee noted that the government of Mongolia “*continues to consider the development of dams on the Selenga and Orkhon rivers.*” It thus requested Mongolia to “*ensure that no dam development on either river proceeds before the potential impacts, including cumulative impacts of these projects on OUV [Outstanding Universal Value] have been duly assessed.*” Upon request of the World Heritage Committee, the World Heritage Programme (WHP) carried out a mission to Mongolia in April 2015 “*to review the scope, scale and status of the dam projects in Mongolia and to have a discussion early in the planning process about the potential impacts of these projects on the Lake Baikal.*”¹⁴ Given that the April mission covered issues very similar to those included in the Request for Inspection, and after discussions with staff from the World Heritage Programme housed in the International Union for Conservation of Nature (IUCN), the Panel decided that it was essential to review the WHP’s report prior to making a recommendation on whether an investigation is warranted and thus, as mentioned earlier, postponed the presentation of this Report and Recommendation.

69. As a result of its mission, the WHP report¹⁵ called for a revision of the Terms of Reference for the ESIA’s for both the Shuren HPP and the OGP to include “a specific assessment of the potential impacts of the projects” on the integrity of Lake Baikal including biodiversity and ecological processes and to assess the potential cumulative impacts of the Shuren HPP, the OGP and a third hydropower project currently under development also on the Selenge river. The report also invited both Mongolia and the Russian Federation to continue and strengthen cooperation on water management for Lake Baikal and develop a Strategic Environmental Assessment jointly for any future hydropower or other project that may impact Lake Baikal.

Management’s Actions

70. The Panel understands that the Assessment Studies supported by the MINIS project have not been completed, and in particular, the feasibility studies and ESIA’s, which primarily cover the environmental and social issues raised in the Request, are yet to begin. In this context, the Panel notes Management’s statement that it “*appreciates the Requesters’ concerns, which contains valid questions regarding the proposed Shuren and Orkhon Gobi sub-projects*” and that “*these concerns can only be addressed and answered through a comprehensive and systematic environmental and social assessment, as mandated by OP 4.01.*” Management adds that “*the Requesters’ valid questions and concerns will be included and reviewed as part of these Assessment Studies.*”¹⁶

71. The Panel notes that the draft TORs of the ESIA for the Shuren HPP requires it to “meet[s] the requirements of World Bank Operational Policy 4.01 and applicable

¹⁴ / (WHC-14/38.COM/16 Doha, 7 July 2014 available at <http://whc.unesco.org/archive/2014/whc14-38com-16en.pdf> last visited on June 15, 2015.

¹⁵ <http://whc.unesco.org/en/documents/137186>.

¹⁶ Management Response: 30.

environmental and social safeguard policies.... supported by a well-structured Public Consultation Program.” The draft TORs include components such as assessing the impact resulting from the interface of the dam with the natural river discharge and the sediment transportation of the Shuren HPP on the UNESCO World Heritage Lake Baikal and the RAMSAR site Selenge delta, and carrying out cumulative impact assessments of the Selenge including “all water and hydropower infrastructures planned in the Selenge River for the next 20 years, and cover a geographic area down to at least the Selenge Delta and the Baikal Lake.” The draft TORs also envision the need for a Panel of Experts who will be “international renowned hydropower experts in the technical, environmental and social fields who will review the results of both the feasibility study and the ESIA.”

72. With respect to consultations, Management indicates that “*detailed consultations with project affected stakeholders will be conducted after the ESIA consultants have been hired*” and the draft TORs stipulate that a stakeholder mapping will be undertaken to determine affected project areas to consult affected downstream communities. In this context, the Panel’s field visit has highlighted that the Requesters in Russia have not been able to participate in the consultation process for the TORs for the Shuren HPP’s ESIA, and to date, do not have access to project documents in their language. The Panel understands that the draft TORs for the ESIA for the Shuren HPP have been recently translated into Russian but have yet to be made publicly available. The Panel notes that translation of documents is an important prerequisite to a meaningful consultation process with these stakeholders, and is a requirement of OP 4.01 on Environmental Assessment. Following its meeting with the PIU, the Panel also understands that the comments provided by the Requesters to the TORs of the ESIA were consolidated in a matrix form and will be reflected in the new version of the TORs.

Panel’s Conclusion and Recommendation

73. The Panel team heard consistent views from Government officials in Mongolia regarding the importance of the Shuren HPP and the OGP to ensure the provision of sustainable and clean energy sources and reliable water supply for the country, and the problems with Mongolia’s heavy reliance on coal for electricity generation. The Panel is also aware of the critical need for energy sources to develop the rich mining resources of the country, and the ensuing large and positive impacts that these resources can have on the country’s economy.

74. The Panel notes the concerns of the Requesters regarding the process leading to the identification of the Shuren HPP and the OGP as projects to study under the MINIS, their position that dams should not be considered on the Selenge river basin, and the lack of consultations to date in Russia and in Russian. The Panel also notes Management’s statement that the selection of the sub-projects has been based on the ADB-financed Energy Sector Plan, commenced prior to the MINIS and completed in 2012/2013, which has been the source of the analysis of energy alternatives. Management adds that the analysis of options continues to be compared with the proposed Shuren HPP during the screening, pre-feasibility and feasibility studies.

75. In line with its Operating Procedures the Panel has established the existence of a plausible link between the potential harm alleged in the Request and the Project, and that the potential harms are of a serious character. Careful analysis of impacts and identification of mitigation measures as provided for in Bank safeguard policies is of the utmost importance to ensure that the harms feared by the Requesters do not materialize, and that these risks are adequately mitigated to meet the standards the safeguard policies set forth.

76. The Panel notes that Bank staff as well as Government officials, in their meetings with the Panel, stressed that whether the sub-projects are environmentally and socially feasible is still to be determined, and that the Bank will make its recommendation purely on the basis of the final results of the Assessment Studies. On its part, the Government of Mongolia indicated that they intend to follow the Bank's recommendation on whether or not the sub-projects can proceed.

77. The Panel considers that Management's commitments, noted in previous sections, to address the Requesters' concerns during the Feasibility and ESIA process, to be of paramount importance to avoid potentially irreversible harm to people and the environment. The Panel stresses the importance of trans-boundary cooperation in situations such as this, where vital waterbodies are shared and resultant environmental and social impacts may not be felt equally and uniformly across countries, and thus the need for meaningful consultations to take place in Mongolia and in Russia.

78. In summary, the Panel stresses the considerations on potential harm and policy compliance noted above, and Management's statements and commitments to ensure that the Requesters' concerns are given the depth of analysis they deserve during the remaining phases of preparation of the TORs and implementation of the Feasibility and ESIA studies for the Shuren HPP and the OGP. The Panel considers that the next stages in project implementation provide ample opportunities to address the Requesters concerns, and to introduce the necessary corrective measures to ensure that meaningful consultations take place with all stakeholders, including in Russia.

79. The Panel is therefore deferring its recommendation as to whether or not an investigation into the Bank's actions or omissions is warranted. The Panel will make this Recommendation within one years' time, and after assessing the progress, scope and coverage of the feasibility and ESIA studies, as well as a determination regarding the quality of the consultation process at that time.