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**Research Report**

## Proceeding with River Basin Management: legal, financial and political dimensions in Mongolia

Briefing Paper, No. 6/2017

**Provided in Cooperation with:**

German Institute of Development and Sustainability (IDOS), Bonn

*Suggested Citation:* Rodríguez de Francisco, Jean Carlo; Houdret, Annabelle; Dombrowsky, Ines (2017) : Proceeding with River Basin Management: legal, financial and political dimensions in Mongolia, Briefing Paper, No. 6/2017, Deutsches Institut für Entwicklungspolitik (DIE), Bonn

This Version is available at:

<https://hdl.handle.net/10419/199794>

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## Proceeding with River Basin Management: Legal, Financial and Political Dimensions in Mongolia

### Summary

As competition for water resources grows, a holistic management approach is required. Integrated Water Resources Management (IWRM) provides a coordinated, participative management framework to maximise economic and social welfare equitably, without compromising the sustainability of vital ecosystems. IWRM requires coordination at the national level for effective decision-making. Often IWRM is based on River Basin Management (RBM), which takes the river basin as the working unit for water management.

Implementing RBM is not an easy task and levels of success differ between countries. This policy brief analyses the challenges that Mongolia faces as it continues down the IWRM/RBM path. Mongolia is an interesting case because of its rapid legal adoption of IWRM, its transition towards political decentralisation in its post-socialist era, and the tensions caused by a push for economic growth through mining activities. In particular, we analyse how to move from de jure to de facto RBM implementation. We structure our analysis and recommendations based on the political, legal, and financial dimensions that characterise water management decentralisation under the principles of IWRM.

First, we find that regarding the legal dimension, Mongolia has made considerable progress in advancing the legal framework for IWRM/RBM and defining institutional responsibilities, both horizontally across sectors, as well as vertically across government levels.

However, vertical coordination between the national and the river basin levels still needs improvement. The Ministry

of Environment (MEGDT) and the National Water Committee (NWC) can further harmonise vertical coordination through different levels of government. Regulations for the implementation of water pollution fees need to be developed.

Second, regarding the financial dimension, there is still ambiguity in some respects:

- In practice, River Basin Authorities (RBAs) remain underfunded and their financial resources are barely enough to cover their fixed costs.
- River Basin Councils (RBCs), as important as they appear to be in legal terms – allowing stakeholder participation in watershed management and decision-making – remain “paper tigers”, as they are not financially supported. Thus, stakeholder participation is marginal and in practice often only includes the participation of province (*Aimag*) and district (*Soum*) representatives, if any.
- Financing strategies related to the River Basin Management Plans (RBMPs) are needed.

Third, on the political dimension, the development of the legal framework is an expression of the political will to implement RBM. This political will, however, remains half-hearted when it comes to enforcing environmental law, sparking participation, prioritising funding for respective water organisations and providing those organisations with the equipment required to fulfil their tasks.

Aware of the current payment crisis, this paper argues for securing proper environmental conditions that sustain economic and social development in the long run.

## Introduction

In the past three decades, Mongolia has undergone a deep and swift transformation from a socialist state to a democratic market economy. This transition has meant significant changes, including the rapid development of the mining sector, the expansion of domestic water use due to urbanisation, and an increase in livestock farming, irrigation projects and deforestation. These changes, together with climate change, have caused difficult socio-political and environmental challenges for the water sector. The demand for water is increasing, as is water pollution, while water use is insufficiently monitored and water availability is partly unknown.

Taking Mongolia as an example, this briefing paper has two goals. The first goal is to reveal challenges that the country faces in further implementation of IWRM/RBM. The second goal is to propose reasonable recommendations for Mongolian policy-makers and supportive donors to improve de facto implementation of RBM.

Consequently, we structure our analysis with respect to the legal, financial and political dimensions of RBM. There is an inherent overlap between these nodes so clear identification of practical problems and solutions is not always possible.

The legal dimension refers to the creation of a legal environment in which the law allocates water management responsibilities among various levels of administration and provides adequate mandates for new organisations, such as RBAs.

The financial dimension refers to the financial empowerment of decentralised water organisations through central budgets or by allowing them to create their own income sources.

The political dimension refers to political will, that is, the determination of political actors to do and say things that will produce a desired outcome. In the case of RBM, it may also refer to the transfer of political power and authority to sub-national levels of government, as well as increased stakeholder participation.

The following sections summarise key challenges concerning the three dimensions of RBM in Mongolia and present possible solutions. This briefing paper builds on long-term (2009-2018) research within the context of a project funded by the German Federal Ministry of Education and Research (BMBF) called: Integrated Water Resources Management in Central Asia: Model Region Mongolia (IWRM MoMo).

## Legal dimension

In 2004, Mongolia adopted a water law that established for the first time the goal to implement IWRM and instituted the RBCs. Unfortunately, in the application of the law several legal shortcomings and inconsistencies became evident (Houdret et al., 2014). For instance, given that the

law did not allot funding for RBCs, they were only established in a few basins and with donor support. The failings of the 2004 water law drove the creation of a whole range of new environmental laws including: the new water law (2012); the law to prohibit mineral exploration and mining operations at headwaters of rivers, protected zones and water reservoirs (2009); the law on natural resource use fees (2012); the law on water pollution fees (2012); the guidelines for RBMPs (Ord. 187 of 2013); and the guidelines for setting up RBCs (Ord. 124 of 2014). Both the 2004 and the 2012 water laws were geared towards the decentralisation of water resource management from the national level to the river basin level. According to the 2012 water law, RBAs are now responsible for planning the development and protection of water and water-related ecosystems and for monitoring water use at the river basin level. RBCs are to serve as fora for stakeholder consultation. The MEGDT oversees licensing for large-scale water abstractions and is responsible for providing management guidelines on water-related issues to RBAs. The NWC facilitates horizontal coordination among different water using ministries at the national level.

Despite the progress made so far in addressing legal shortcomings and inconsistencies, there are several unresolved issues that need to be worked out to improve the implementation of RBM. First, it is not entirely clear how national water management decisions and the NWC's coordination activities relate to RBA's actions and their priorities regarding measures within RBMPs. Since 2010, 13 of the 29 water basins in Mongolia have developed an RBMP. Despite this success, decisions made by local and basin authorities in their RBMPs are not yet reflected in decisions made at the national level. Clear communication between local and national decision-makers is necessary for the harmonisation of decision-making between the basin and national level. To this end, the NWC and the MEGDT could be the coordinating organisations linking RBMPs, RBAs and different ministries. This would require an NWC that focuses not only on horizontal coordination but also seeks to facilitate vertical coordination.

Second, the legal framework needs to be implemented at a faster pace so that revenue raising instruments can swiftly support funding for the operation of water organisations. For example, although the law on water pollution fees has been approved in Mongolia, the development of regulations for implementation is lagging. Moreover, financial revenues stemming from the fiscal decentralisation process have been allocated to environmental issues at the local level, but have not yet been mobilised for RBM.

Third, overlaps of responsibilities of different environmental authorities need to be reduced. For example, at the subnational level, both RBAs and province environmental agencies (AEAs) perform monitoring and enforcement tasks while competing for funds derived from natural resource use fees. If those overlaps were to be reduced, the

distribution of natural resource use fees could be done more transparently.

	<b>River Basin Authority (RBA)</b>	<b>River Basin Council (RBC)</b>
<b>Members</b>	10 professional employees (in Kharaa River Basin, for example)	31-45 members; local administrators, AEAs, water users, NGOs, citizens, academics, RBA
<b>Mandates and activities</b>	Designs and implements RBMP Gathers and disseminates information about the river basin Issues water licenses (i.e. 50-100m <sup>3</sup> /d) Partly fixes (waste) water use charges Monitors water use and pollution Prohibits illegal water use	Supports, advises and supervises RBA in RBMP design and implementation Coordinates public involvement in water protection, rational use Monitors water use and pollution Can request to override RBA decisions
<b>Funding</b>	Mainly from state (+ resource use fees)	No funding
Source: Authors		

### Financial dimension

Financially empowering water organisations to fulfil their mandates with respect to RBM is a main objective in this dimension. Table 1 presents the responsibilities and sources of financial support of RBAs and RBCs de jure. De facto, RBAs' funding remains low and unstable as it is very vulnerable to the nation's economic performance. It only covers salaries and office space, but does not pay for car rental or the fuel required to carry out the monitoring and surveillance of water use in the basin. There have been recent instances where in the face of fiscal deficit, the government has seriously considered closing RBAs (MEGDT staff member, pers. comm., February 2016). Limited funding causes environmental control and monitoring to be irregular and RBAs cannot fulfil their mandate, further undermining their credibility.

Although the preparation of RBMPs is the responsibility of RBAs, their development relies on donor funding and on the support of the MEGDT. In the case of the Kharaa RBMP, an external consultant was given responsibility by MEGDT for preparing the plan. That decision, which was made on the basis of funding availability and the idea that the RBA lacked capacity to prepare the plan, was implemented in a way that relegated any knowledge or input from the RBA. Thus, it is important for MEGDT to connect from the beginning consultants preparing RBMPs with the authorities that will ultimately implement them.

There is no clear strategy for funding RBMPs' implementation, as funding sources are conditional on the nature of each particular measure included in the plan and on the implementing organisations. Potential sources may include financial support transfers, donor grants or loans, natural resource use fees, and possibly Local Development Funds introduced with the 2011 Budget Law. In this sense, it would be important for the MEGDT to compose a set of guidelines explaining which sources may apply for which type of measures under which conditions.

Despite the great importance that the Mongolian government impresses on public participation, RBCs, which are intended to represent all local stakeholders, have no clearly defined funding sources (Table 1), causing their constitution and operation to rely on donor support. This situation creates a lack of stakeholder empowerment, ownership and participation. The Mongolian government is encouraged to devise a legal and financial strategy for securing funding for RBCs. One possibility for securing their funding is to include them in the central transfers' budget, using the appropriate legal adjustments and anti-corruption safeguards.

### Political dimension

The 2012 reforms that brought the adoption of IWRM showed a clear political will from the side of the Mongolian government to improve environmental protection and implement RBM. One important indicator of this political will was the positioning of the MEGDT as a strategic ministry for the nation's development in 2012. This implies that since then, the MEGDT must be involved in any decision-making affecting the environment. Political will is manifested in the legal and fiscal reforms that the water sector has undergone in recent years. Despite these efforts, and considering the aforementioned legal shortcomings, there are concerns about the implementation of political and fiscal decentralisation and about environmental protection. Regarding the latter, the Mongolian government needs to be more determined to balance the protection of the environment with the economic growth it pursues. The genesis of the law protecting riparian zones from mining showed that citizen mobilisation can actually contribute to the improvement of water management. However, the weakening of this law and the imprisonment of some of its proponents are glaring examples of how economic interests can undermine political will to protect the environment and public participation. Many critics of this law argue that its implementation caused a decrease in foreign investments that in turn caused Mongolia's GDP growth to drop from 17 per cent in 2011 to less than 1 per cent in 2016. However, what the critics fail to mention is that the decrease in foreign investment was mostly related to the fall of commodity demand and prices.

Further, monitoring and enforcement of environmental laws is very weak throughout the country (Hofmann et al., 2015). Therefore, the capacity, the equipment and the financial resources of local environmental authorities, as

well as their access to certified laboratories need to be considerably strengthened.

### Discussion and conclusion

The momentum of RBM in Mongolia is strong. Signs of this momentum include: the formation of RBAs (to be complemented by RBCs), the making of RBMPs with time-bound and measurable targets, the introduction of natural resource use fees (to be complemented by water pollution fees and others) and environmental protection laws (that require better enforcement). These constitute integral parts of the legal framework.

Many observers recognise the important progress the country has made in recent years with the implementation of RBM. The Mongolian government should not let this momentum decline because the wellbeing of their people and their potential to achieve sustainable development rely profoundly on protecting water resources and securing coherent and inclusive water and environmental management, especially as climate change is expected to add further stress on water resources.

At the local level, RBAs are to be further supported, while public participation should be promoted through financial and political empowerment of RBCs. RBAs' funding requirements need to be assessed so that they can suffice institutional mandates. Greater stability and clarity has to be gained on funding sources for RBMP development and implementation.

At the national level, NWC and MEGDT should seek to harmonise national priorities with RBMP priorities. In synthesis, we suggest that the Mongolian government urgently focus on the following actions: ensuring public participation, and balancing mining and ecosystem protection; securing funding for RBA operation and RBMP implementation, and for equipment and mobility improvement; and strengthening law enforcement.

From a wider perspective, the challenges that the Mongolian case illustrates are quite similar to those of other developing countries that have started to walk the IWRM/RBM path. Still, there is not a single blueprint solution to tackle those challenges and the recommendations presented here are potential ways forward.

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Published with financial support from the Federal Ministry of Education and Research (BMBF)



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