

MEMORANDUM OF UNDERSTANDING RELATING TO THE ESTABLISHMENT OF A TRI-PARTITE COUNCIL

This memorandum of understanding (the **MOU**) is entered into on the date shown below between the following parties:

1. Khanbogd Soum (referred to as **Khanbogd Soum**);
2. Herder representatives from the Baghs of Khanbogd Soum (collectively referred to as the **Herders' Representatives**); and
3. Oyu Tolgoi LLC (**OT**),

(collectively referred to as the **Parties**, separately referred to as a **Party**).

1 Purpose

- 1.1 The Parties enter into this MOU with the aim of establishing a tripartite council (the **Council**) between Khanbogd Soum, the Herders' Representatives and OT.
- 1.2 The Tripartite Council shall adopt and function in accordance with the terms of the charter annexed to this MOU as Annexure 1 (the **Charter**).
- 1.3 The Charter will also govern the Council's operation, membership, competence, decision making processes and funding.

2 Background

- 2.1 In October 2012, herders impacted by OT's Oyu Tolgoi Project, supported by Gobi Soil NGO and OT Watch NGO, filed a complaint concerning OT's Resettlement Agreement (2004) and Compensation Agreement (2011) respectively with the Office of the Compliance Advisor Ombudsman (**CAO**) for the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA) of the World Bank Group, which addresses environmental and social concerns of people affected by IFC/MIGA funded projects. At the beginning of 2013, a further complaint was submitted to the CAO concerning the Undai river diversion and the Bor Ovoo spring relocation (together the **Complaints**). (Annexure 2 – Redacted copies of the complaints with the CAO Assessment report)
- 2.2 Through bagh meetings the Herders Representatives were elected to participate in resolution of the **Complaints**. Negotiations between the Herders' Representatives and OT have been ongoing since 2013 and have resulted in agreement on certain issues which have been or are currently being implemented / actioned.
- 2.3 Furthermore, an assessment was conducted by an independent panel of experts on the impacts of the Undai river diversion and Bor Ovoo spring relocation and recommendations (the **Recommendations**) were submitted to the Parties.
- 2.4 In order to implement the **Recommendations** as well as address any other issues relating to herders, pasture and water, the Parties have agreed to establish the Council.
- 2.5 The Parties agree that establishment of the Council does not end the CAO process. The

Parties will attempt to resolve the Complaints through the operation of the Council. If the Complaints are not resolved through the Council, the herders may continue to pursue the Complaints with the CAO.

3 Parties' responsibilities

3.1 Each Party shall:

- 3.1.1 mutually respect and equally cooperate with each other Party;
- 3.1.2 approve and comply with the Charter;
- 3.1.3 report to the Council the performance on respective areas of responsibility;
- 3.1.4 implement decisions validly taken at Council meetings;
- 3.1.5 appoint their own representatives to the Council; and
- 3.1.6 perform their duties ethically and free from political influence.

3.2 Khanbogd Soum shall disseminate information related to the Council's activities to the Khanbogd Soum Citizen Representatives' Khural, officers of the Governors' Office and citizens.

3.3 OT shall:

- 3.3.1 disseminate information related to the Council's activities to its management, relevant departments, units and officers; and
- 3.3.2 be responsible for the reasonable operational costs of the Council as set forth in the Charter.

3.4 Herders' Representatives shall:

- 3.4.1 disseminate information related to the Council's activities to herders; and
- 3.4.2 summarize herders' ideas and initiatives and submit them for the Council's consideration.

4 Cooperation Agreement

4.1 The Parties unanimously agree that the Council, beyond resolving the Complaints, to operate as a Working Group within the framework of the Cooperation Agreement entered into by, amongst others, OT and Khanbogd Soum and Umnugobi Aimag governments on 22 April 2015 (the **Cooperation Agreement**).

4.2 In order to effectively implement paragraph 4.1, the Parties may make relevant amendments and changes to the Charter in accordance with recommendations of the Relationship Committee established by the Cooperation Agreement. Notwithstanding any language to the contrary in the Cooperation Agreement, the Relationship Committee shall not have the power to amend or change the Charter. The Parties will consider, but are not required to adopt, amendments or changes to the Charter recommended by the Relationship Committee.

5 Validity

5.1 This MOU shall come into force from the date of signing by the Parties and shall

remain in force until it is terminated in accordance with paragraph 5.2.

5.2 The Council shall be terminated and the validity of this MOU shall immediately cease if the Parties unanimously agree that:

5.2.1 the purpose of the Council has been fulfilled; or

5.2.2 there is no longer any need for the Council to exist.

5.3 To the extent of any inconsistency between the terms of this MOU and the Charter, the terms of the Charter shall prevail.

5.4 Amendments and changes may be introduced to this MOU with the Parties' unanimous consent.

Agreed between the Parties on this the 8th day of June 2015

Signed for and on behalf of the **Herders of Khanbogd Soum:**

Battsengel Lkhamdoorov ←

Battogtokh Uulii ←

Namsrai Dolgorsuren ←

Gunsmaa Tsevegdelger ←

Narankhuu Danzanshadav ←

Signed for and on behalf of
Khanbogd Soum:

**Speaker of the Citizens’
Representatives Meeting**

Nekhiit Khurgaa
Speaker of Khanbogd Soum ←

Governor of Khanbogd Soum

Buyan-Ulzii Tavanjin
Governor of Khanbogd Soum ←

Signed for and on behalf of
Oyu Tolgoi LLC:

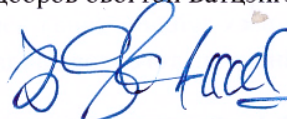
Baigalmaa Shurka
General Manager for Communities,
Oyu Tolgoi LLC ←

Талууд зөвшөөрч 2015 оны 6 сарын 8-ны өдөр гарын үсэг зурав:

Ханбогд сумын Малчдыг төлөөлөн:



Лхамдооров овогтой Батцэнгэл ←



Өөлий овогтой Баттогтох ←



Долгурсүрэн овогтой Намсрай ←



Цэвэгдэлгэр овогтой Гүнсмаа ←



Данзаншадав овогтой Наранхүү ←

Ханбогд сумыг төлөөлөн
Ханбогд Сумын Иргэдийн
Төлөөлөгчдийн Хурлын Дарга



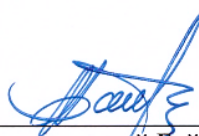
Хургаа овогтой Нэхийт
Ханбогд сумын ИТХ-ын дарга ←

Ханбогд сумын Засаг дарга



Таванжин овогтой Буян-Өлзий
Ханбогд сумын Засаг Дарга ←

Оюу Толгой ХХК-ийг төлөөлөн



Шурка овогтой Байгалмаа
Оюу Толгой ХХК-ийн Орон Нутаг, Бүс
Нутгийн Хөгжил, Нийгмийн Харилцаа
хариуцсан Ерөнхий Менежер ←

Annexure 1

Khanbogd Soum – Oyu Tolgoi LLC – Herders’ Representatives’ Tripartite Council Charter

1. Purpose

- 1.1 The functions of the Tripartite Council (the **Council**) are to consider, address, resolve, exchange information about, make proposals and recommendations in respect of, implement and relay to the appropriate levels, any issues relating to herders, pasture and water and any other relevant issues, complaints, proposals, initiatives or recommendations regarding the Complaints submitted to the Office of the Compliance Advisor Ombudsman (**CAO**) as stated in the “Background” chapter of the Memorandum of Understanding (**MOU**) signed on 8th day of June 2015 between the Khanbogd Soum government, Oyu Tolgoi LLC and the Herders’ Representatives.

2. Membership

- 2.1 The Council shall have 15 members (each a **Member**). Each of the local herders (the **Herder Representatives**), Khanbogd Soum (**Khanbogd Soum**) and Oyu Tolgoi LLC (**OT**) shall be entitled to appoint 5 Members to the Council, from time to time.
- 2.2 Each Member will serve as a member of the Council for a fixed term of 2 years. After 2 years their term as a Member will automatically expire, unless extended by their appointing Party (as stated in Article 2.6), and they will cease to be a Member.
- 2.3 OT's Members shall be appointed or dismissed, from time to time, by the relevant authorized person of OT.
- 2.4 The Herder Representatives' Members shall be appointed or dismissed, from time to time, by resolution of the Bagh Citizens’ Meeting.
- 2.5 Khanbogd Soum's Members shall be appointed or dismissed, from time to time, by resolution of the local governor of Khanbogd Soum (the **Governor**) through consultation between the Khanbogd Soum Citizen Representatives’ Khural and the Governor.
- 2.6 Each of the Herder Representatives, Khanbogd Soum and OT (each a **Party**) may replace any Member appointed by them by providing written notice to the other Parties. The Party replacing a Member does not need to obtain the approval of the other Parties. Recognizing that frequent substitution and change of Members may disrupt the progress of the Council, Parties shall endeavour to avoid unnecessary and frequent substitution and change of Members.
- 2.7 Each Party that appoints or replaces a Member shall ensure that the Member is prepared to fully participate in the Meetings (defined in Article 3.8.1) and work of the Council.

- 2.8 Members shall disseminate information regarding issues discussed at, or decisions made during Council meetings to their respective appointing Party in a timely manner.
- 2.9 Notwithstanding Article 2.1, the Parties may, by mutual agreement, appoint additional members, so long as the number of Members from each Party remains equal.

3. Chairperson and Management Unit

- 3.1 Each Party shall nominate a lead Member (a **Lead Member**) by notifying the other Parties in writing. The 3 Lead Members shall form the Council's management unit (the **Management Unit**).
- 3.2 The position of chairperson of the Council (the **Chairperson**) shall, at all times, be filled by a Lead Member who shall serve for a maximum consecutive term of no more than 12 months or as otherwise agreed by the Parties.
- 3.3 The position of Chairperson of the Council shall be rotated between the Lead Members nominated by each Party, from time to time.
- 3.4 The initial Chairperson shall be the Lead Member nominated by the Herder Representatives.
- 3.5 The Chairperson will chair meetings with the support of the other members of the Management Unit.
- 3.6 The Management Unit shall have the following rights and responsibilities:
 - 3.6.1 recommend to an appointing Party to replace any Member who fails to attend three (3) consecutive Council meetings without justifiable reasons;
 - 3.6.2 ensure the Members are fully informed, prepared and participating fully in Council activities;
 - 3.6.3 offer advice and provide assistance to the serving Chairperson;
 - 3.6.4 allow a matter not included in an Agenda to be discussed and resolved upon at a Meeting;
 - 3.6.5 review and approve any information to be publicly disclosed by the Council.
- 3.7 Each Lead Member shall have one (1) vote in respect of any decision taken by the Management Unit and unless otherwise stated in this Charter all decisions of the Management Unit must be taken unanimously.
- 3.8 The Chairperson shall have the following rights and responsibilities:
 - 3.8.1 call and convene meetings (regular and non-regular) (each a **Meeting**) of the Council;

- 3.8.2 consult and agree with the Management Unit an agenda for each Meeting (an **Agenda**);
 - 3.8.3 chair and supervise proceedings of each Meeting;
 - 3.8.4 validate and sign the minutes of each Meeting as soon as possible after the Members reviewed and signed;
 - 3.8.5 close a Meeting (or any part of it) to non-Members where issues of a confidential nature are to be discussed by the Council;
 - 3.8.6 provide an Agenda together with information relating to the matters contained in the Agenda to each Member no less than 10 working days prior to each Meeting; and
 - 3.8.7 represent the Council to the extent authorised by the Council.
- 3.9 If the Chairperson is not present at the commencement of any Meeting then the Members must appoint an acting Chairperson from amongst them for the purposes of chairing the Meeting in question.
- 4. Decision-making**
- 4.1 Each Member (including the Chairperson) shall have one (1) vote in respect of each matter which is decided at a Meeting.
 - 4.2 At a Meeting at least 4 Members appointed by each Party (i.e. 12 Members in total) must be present at the commencement of each such Meeting to constitute a quorum (**Meeting Quorum**) for decision making.
 - 4.3 If a Quorum is not present within 30 minutes of the time appointed for the commencement of a Meeting, the Management Unit shall reschedule the Meeting date within 48 hours. In this case, agenda of the meeting shall not be changed. If a Quorum is not present within 30 minutes of the time appointed for the adjourned Meeting commencement, then the Members then present will constitute a Quorum.
 - 4.4 Without affecting Members from casting their votes at their absolute discretion, the Council shall wherever possible practice consensus-based decision-making. Issues where consensus have not been reached may be re-developed and discussed one more time. If, where consensus can not be reached by the Council, decisions shall be made by the votes of no less than 75 % of Members present at a Meeting and entitled to vote provided that at least one Member from each of the Parties must vote in favour of the matter in question.
 - 4.5 Notwithstanding Article 4.4, if all of the Members of any Party present at a Meeting and entitled to vote wholly oppose any matter proposed to be voted on by the Council at such a Meeting, then the Council may not pass any resolution or take any decision in respect of such matter.
 - 4.6 Unless agreed by the Management Unit, voting shall take place in open meeting.

- 4.7 Unless the Management Unit decides otherwise, only those matters set out in the Agenda for a specified Meeting may be discussed and resolved upon at that Meeting.
- 4.8 Undecided matters shall roll over to the next Meeting for further discussion following discussions between Members and their respective appointing Party.
- 4.9 Any Party may propose to amend the Council's charter (**Charter**). However, amendments may only be made to this Charter with the unanimous agreement of all Parties.
- 4.10 Decisions of the Council shall become valid and binding once approved by the Meeting. The Council may pass resolutions by means of a circular written decision (a **Circular Decision**). Circular Decisions shall become valid and binding once they have been signed by all Members of the Council.
- 4.11 The Council's decisions must be included in the minutes of each Meeting.

5. The Council's competencies and responsibilities

- 5.1 Beyond working to resolve the Complaints, the function of the Council may operate as a Working Group of the Relationship Committee established within the scope of the Oyu Tolgoi, Umnugovi Aimag and Khanbogd Soum Cooperation Agreement entered into on 22 April 2015 (the **Cooperation Agreement**).
- 5.2 If and when necessary, the Council may establish working groups with responsibilities for specific issues.
- 5.3 The Council shall work ethically and within the scope of its purpose (as set forth in Article 1) and shall at all times conduct itself in a manner which is independent from any political party, political election activities and international political influences (including any lobbying).
- 5.4 The Council shall have the following responsibilities:
 - 5.4.1 to act and make decisions only within its authorised competency;
 - 5.4.2 to not make a decision on any issue which is outside the scope of its purpose (as set forth in Article 1).
 - 5.4.3 to produce a list of agreed actions allocating responsibility to a Member(s) for implementation along with a deadline for each action; and
 - 5.4.4 to monitor the implementation process for allocated actions and keep the public informed regarding the status of implementation for each action.
- 5.5 The Council shall have the following competencies:
 - 5.5.1 to make proposals, recommendations and decisions on any relevant issues, complaints, proposals or initiatives which relate to herders, pasture or water;

- 5.5.2 ensure the appropriate implementation of any decisions;
- 5.5.3 in circumstances where the Council is not the appropriate body to take decisions or make recommendations in respect of any issue, complaint, proposal or initiative, then to refer them to an appropriate body outside the Council for discussion and/or resolution.
- 5.6 If necessary Members shall be entitled to participate in any Meeting together with the assistance of an advisor (an **Advisor**). Any costs associated with the Advisor (including any fees or travel expenses) will be for the account of the Member or Party who hired him/her.
- 5.7 At Meetings an Advisor shall not be entitled to vote and may only address the Meeting if he/she is specifically authorised by the Chairperson to do so and must obey the ground rules of the Meeting set out in Article 7.1.

6. Communication and information sharing

- 6.1 Information on all matters discussed at Meetings, except confidential information or sensitive personal information relating to an individual, shall be transparently disseminated to the public and each Parties' respective constituents in compliance with the relevant legislation of Mongolia.
- 6.2 Members must endeavour to keep information about the Council's activities transparent and open to the public and where agreed by the Council prepare joint statements to be disseminated to the media.
- 6.3 The form and content of any joint statement or press release issued by the Council and relating to its activities shall be approved by the Management Unit prior to its release.
- 6.4 The Council may authorize a Member of the Council to represent the Council in its dealings with the media and public.
- 6.5 The Council may decide to form an information unit which will act within the bounds of any authorisation given to it by the Council.

7. Ground rules of the Meeting

- 7.1 For the purposes of carrying on Meetings the Chairperson shall apply and the Members must obey, the following ground rules:
 - 7.1.1 switch off mobile phones;
 - 7.1.2 raise hands and speak one at a time;
 - 7.1.3 do not interrupt and fully listen to others when they are speaking;
 - 7.1.4 respect each other at all times;

- 7.1.5 do not take photos or record videos without the permission of those Members concerned;
- 7.1.6 if interpretation is required, then allow enough time for interpreters to interpret;
- 7.1.7 if necessary, take ‘time out’ for the purpose of consulting with the appointing Party;
- 7.1.8 place any items not included in the Agenda in a “Parking Lot” and agree on the further discussion of such items before closing the Meeting or at the next Meeting or refer them to another body;
- 7.1.9 non-Members have observer status only and cannot speak or make proposals unless they have obtained permission to do so from the Management Unit;
- 7.1.10 all Members should be provided with equal information at the same time so that they can discuss and decide on matters in an informed manner; and
- 7.1.11 discuss only those issues which are included on the Agenda or otherwise raised by the Members and approved for discussion by the Management Unit.

8. Meetings

- 8.1 The Chairperson shall finalize the Agenda for each Meeting in consultation with other Lead Members and provide to each Member together with a written notice at least 10 days prior to each Meeting.
- 8.2 The Council shall hold a Meeting at least once every 2 months and, at the request of the Management Unit, the Chairperson must call and hold further Meetings as necessary.
- 8.3 Meetings shall wherever possible be held in person but may also be held using any technology consented to by all the Members (including audio- and video-conference). The consent may be valid only for a particular meeting as the Council decides.
- 8.4 The Chairperson shall record, or arrange for the Council Secretary (see Article 10.1) or another Member or observer to record, the minutes of each Meeting in a format agreed by the Management Unit and have such minutes signed by Members in accordance with Article 4.
- 8.5 Members are free to submit issues to the Management Unit for inclusion in the Agenda for a Meeting and the Management Unit (and Chairperson) must consider in good faith including any such issues on the Agenda for the next Meeting.
- 8.6 Upon written notice to the Chairperson, Council Secretary and the Management Unit, the Members who are unable to attend the Meetings in person, may appoint a delegate to attend and vote at Meetings on their behalf. Recognizing that frequent substitution or change of Members may disrupt the progress of the Council, Members shall endeavour to avoid unnecessary and frequent substitution and change of delegates.

9. Observers or external participants

- 9.1 Any Member may request to invite an observer (an **Observer**) to a Meeting and such Observer may attend such meeting upon unanimous agreement of the Management Unit.
- 9.2 An Observer shall not have any voting rights and shall obey the Meeting ground rules set out in Article 7.

10. Logistics and other issues

- 10.1 The Council may have a secretary (a **Council Secretary**). The Council Secretary may be appointed by the unanimous agreement of the Management Unit. The duties of a Council Secretary may include the following:
 - 10.1.1 Preparing and distributing meeting agendas, minutes, materials referred to in minutes and other correspondence to, from or between Members (after final approval is received from the Chairperson);
 - 10.1.2 Maintaining minutes of all meetings, including all Council meetings in hard copy and electronic form;
 - 10.1.3 Maintaining a book or file of decisions and documentations of the Council;
 - 10.1.4 Maintaining official records, including official correspondence, updated membership records and similar documents;
 - 10.1.5 Receive, verify and document all appointments of Members and their alternates;
 - 10.1.6 Administrative support for the Chairperson and Management Unit; and
 - 10.1.7 Carry out other activities to support the duties of the Chairperson, Management Unit and Members under this Charter as required.
- 10.2 The Council may have a facilitator (a **Facilitator**). The Facilitator shall be appointed by the unanimous agreement of the Management Unit.
- 10.3 The Facilitator shall have the following rights and responsibilities:
 - 10.3.1 make sure that the Members obey the Meeting ground rules;
 - 10.3.2 to be neutral and not show bias toward any Party or Member;
 - 10.3.3 help the Members to clarify and define issues of common concern and assist the Members in developing options to resolve issues in a mutually beneficial manner;
 - 10.3.4 keep discussions focused and facilitate process/meetings;
 - 10.3.5 facilitate and assist Members to effectively communicate during formal Meetings; and
 - 10.3.6 provide support in the drafting of agreements and recommendations involving the Council.

- 10.4 The Facilitator shall have no power or authority to make any binding decision or impose any outcome on the Council, its Members or the Parties.
- 10.5 If and when necessary, the Council may receive presentations, professional assistance and training from outside experts.
- 10.6 The Council shall retain copies of documents relating to the Council, for example notices and minutes of meeting and decisions passed. The Council shall provide copies of these documents to Members where necessary to enable the Members to carry out their duties and upon request by Members.

11. Funding

- 11.1 OT shall be responsible for providing day-to-day logistical support to the Council and its activities (including the provision of office supplies, communications and information dissemination/delivery services) and for the agreed and reasonable travel and training related costs of the Council. OT will not be responsible for any costs incurred by any Party in relation to the appointment of an Advisor or costs related to travel abroad.
- 11.2 The Council may resolve to seek additional funding sources including by jointly developing project proposals to address the capacity building initiatives of any Member.

Upon their appointment, each Council Member shall sign a copy of this Council Charter to record their agreement to apply and obey the rules set out herein.

The Parties acknowledge the participation and contribution of the following persons in the process to develop and agree this Council Charter. These persons record their signature below to recognize this Council Charter and support its purpose and content.

Annexure - 2
Complaints with CAO Assessment Reports

12 October 2012

Megan Taylor
Vice-President, Compliance Advisor Ombudsman
International Finance Corporation
2121 Pennsylvania Avenue NW
Washington, DC 20433 USA
Fax: (+1) (202) 522-7400
e-mail: cao-compliance@ifc.org

Dear Ms. Taylor,

We, the undersigned residents of Javhlant and Gavliut baghs¹ of Khanbogd soum², South Gobi aimag³ of Mongolia, organized into the Gobi Soil NGO, hereby submit this complaint to the Compliance Advisor/Ombudsman (“CAO”) concerning the Oyu Tolgoi copper-gold-silver mining project (“Oyu Tolgoi Project” or the “Project”), owned by the Rio Tinto, Ivanhoe Mines and Erdenes MGL (the “Company”).

This project is currently being considered for financing by the International Financial Corporation (“IFC”) and the Multilateral Investment Guarantee Insurance (“MIGA”), who together will provide a loan package with a total of \$1 billion political risk guarantee funding.

We, the undersigned South Gobi residents, reside in the areas of Javhlant and Gavliut baghs of Khanbogd soum known as: [REDACTED for security purposes]. We have already been negatively impacted by the Oyu Tolgoi Project and will likely be subject to further harm as the Project goes forward.

Nomadic households live one by one in remote areas. Fearing pressure by the company and the local government officials, we do not wish our identity to be disclosed for security reasons and request confidentiality. Due to long distances, sporadic communications and language barriers, this complaint is being lodged in collaboration with the NGO OT Watch, which is authorized to be the first line of contact for this complaint process.

We can be contacted through our local organization:

L. Battengel, Chair
Gobi Soil NGO
Khanbogd soum, South Gobi aimag
Mongolia
Mobile: [REDACTED]
Email: tsengel_5595@yahoo.com

Or through our representative:

¹ Smallest administrative territorial division comprising a population of approximately 500 people. Please note that OT Watch is adding footnotes in the English version of the complaint to help explain words and context that may not be familiar to an audience outside Mongolia.

² Administrative/territorial division of about 3,000 on average. Large mining soums comprise 15,000 people.

³ One of Mongolia’s 22 provinces.

D. Sukhgerel, Executive Director
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Ulaanbaatar 46A
Mongolia
Mobile: +976-99185828, +976- 98905828
Email: otwatch@gmail.com

The Project is completing its construction phase in the South Gobi Desert without proven water resources available for its operations. It is enjoying greater rights than we have over our water and pasture resources causing significant damage to our livelihoods. The intensive exploration phase, which began in 2002, and construction, which started thereafter, were carried out without evaluation and information of possible negative impacts on local community's livelihoods. Since the first negative impacts affecting our lives began, we have approached all relevant parties, none of whom expressed interest or political will to protect our rights.

We have been and are likely to be affected by the social and environmental impacts of the project in the many ways, as described below.

1. 2004 Relocation Program

In 2004, after completing mineral exploration work on our territory, the Oyu Tolgoi Project started fencing off licensed land for mine construction. During this process, a total of eleven herding households from the Javhlant and Gavliut baghs were relocated because their winter camps⁴ were within the licensed land or located in close proximity to the Project. All households were made to select a spot for construction of their new winter camp,⁵ after which the Company provided transportation and relocated the herder households. Many households resisted relocation, but gave in when the local government threatened forced eviction.

Because the selection of the new location was done at short notice, many herders failed to select the best spots for protection from wind and cold.⁶ In addition, the possibility of land freezing under the thin layer of animal droppings in the animal shelters was not taken into account, which led to big losses of livestock in the 2004 zud⁷ for all resettled households, resulting in a drop in living conditions. The ground under animal droppings in our winter camps, which were used for generations by herder households, does not freeze, keeping animals warm during the winter. In addition, the diminished quantity and quality of pasture caused losses in livestock that winter. Most of our pasture was taken away or negatively affected by the Project. The quality of vegetation on the remaining pasture is poor due to dust and dryness near the Project site. Due to a lack of plentiful, high quality pasture, the animals did not gain enough weight during the summer to last through the long and cold winter. Water is another important factor for the animals to gain weight,⁸ but most of the wells and electric pumps provided by the Company stopped working and failed to deliver water within a couple of months after the relocation.

⁴ Herders' winter camps are considered their central place. Winter is at least six months long in Mongolia, sometimes longer.

⁵ At the time of relocation, the herders were told they had to select new winter camp sites that were outside a 10 kilometer radius around the Project site, but not far from their remaining pastures.

⁶ It should additionally be noted that the truly best spots for protection from wind and cold were those spots in which the herders had traditionally made their winter camps, so any alternative site was inherently inferior.

⁷ A winter disaster that kills many animals.

⁸ The animals need a certain amount of water at certain times between grazing in order to properly digest their food.

Since the 2004 relocation, one household has lost all of its animals, on which it depended for its livelihood, and the remaining households have not experienced the average rate of herd growth.⁹ Eight of these households had to purchase more livestock in order to keep their normal income. However, conditions for breeding livestock are worsening: the water level in the wells is falling every year with a trend to go further down and dry up. Pasture covered by dust is causing black lungs and other health problems related to the animals' digestive systems, which consequently leads to the loss of market competitiveness of the animal products.¹⁰ All of this has resulted in a decrease in our livelihood earnings and quality of life.

Seven out of eleven households resettled in 2004 are subjected to further negative impact by the Project infrastructure construction and are eligible for the "compensation without relocation" program of Oyu Tolgoi Project. Their winter, spring and summer camps and pastures are surrounded by the Project facilities, making it impossible to carry on with their nomadic livestock breeding lifestyle in the future.

2. Compensation without Relocation

Throughout the 250 km² Project area, there are 89 herder households, whose livestock breeding infrastructure, including a) winter and summer camps, b) pasture and reserve pastures and c) water wells, are affected by the Project's infrastructure corridor.

The compensation without relocation program, which is meant to compensate the herder households for economic displacement caused by the Project, began in early 2011. To date, however, it is not clear what methodology is being used to determine the type and level of negative impact on herder households. Eligibility is being determined based on the proximity of a herder household's winter camp to the physical source of the negative impacts, when it should be determined based on the *actual* impact to each herder household's livelihood.

Moreover, a herder household is being treated as a family being negatively impacted by the Project, rather than a small herding business and a livestock production unit of Khanbogd soum. Yet, the primary impacts to the herder households are impacts to their animals, which are their primary source of income. Pasture, wells and reserve pasture are the essential production infrastructure, and the quality, quantity, and safe and undisturbed access to pastures and wells are therefore essential to our livelihoods. Yet, no evaluation of the impact of the Project on the herding business was carried out. In other words, there has been no quantification of the negative impacts the degradation of our pasture and water has on the quality of our livestock and the animal products we produce and sell. Nor has the resulting loss of marketability of those products, which reduces our ability to earn income from our herding business, been taken into account. The Company refuses to hear these concerns expressed by herders in the process of discussion of the compensation package.

In the past several months, the Company stepped up the pressure on households using all forms of persuasion to make herders sign the contract. The most popular are scaring herders by saying "you are the only one left and if you do not sign now we will just drop you and move on"; or by promising to consider inclusion of a disability benefit in the package; or by just making older herders sign without giving them the opportunity to read and understand the contract.

⁹ Herders strive to grow the herd by at least doubling the number of female reproductive age animals each year.

¹⁰ For example, dust gets into the internal organs of the animals, making them no longer suitable for sale for human consumption. Additionally, the sick animals do not produce good quality meat, milk or wool/cashmere.

The compensation benefits offered under this package, which does not take into account the above-mentioned essential impacts to our herding businesses, fail to ensure measures to protect and grow our living standards:

1. *Employment or workplace support:* The employment support essentially boils down to temporary jobs as road cleaners, watchmen or members of cleaning crews, with nothing offered in terms of professional or technical skills training. There is no support that would enable members of affected herder households to work towards future sustainable employment.
2. *Scholarships:* The scholarships being offered will cover only the tuition of current students, without support for living expenses. Scholarships are not being offered to members of negatively affected herder households who are not currently in school. Previous experience of such scholarships evidences that these flat rate allowances fail to keep up with price increases and increased cost of living.
3. *School supplies support:* Similarly to the school supplies support offered under the 2004 relocation contract, the support currently being offered does not take into account the change in the number of children needing this support, nor does it consider inflation and price increases.
4. *Monetary compensation:* It is not clear what the monetary compensation being offered is meant to compensate for, nor is it clear what methodology was used in calculating the amount of compensation, or how many times and during what period the compensation will be available. Moreover, even if the monetary compensation offered is enough to set up a micro business, the lack of knowledge and skills training regarding how to set up and run a new business will likely make us dependent on this kind of handout for the rest of our lives. It is also not clear how this monetary offer relates to the business loans available to affected households.

Finally, the above compensation package does not take into account the severity of negative impacts on those households that will no longer be able to continue their traditional nomadic herding, and therefore it is clear that, as was the case with the 2004 relocation contract, the current compensation package will not be able to mitigate and protect us from a loss of livelihood and subsequent fall in living standards. The following essential factors and impacts are not included in the compensation contract:

Loss of livelihood – There are several households that may lose all opportunity to continue their nomadic herding lifestyle at their current location. We believe it is necessary to distinguish the households that will lose all opportunity to continue nomadic herding and develop ways of providing new and sustainable income generation sources for them.

Protecting living standards – There are no provisions for measuring, protecting and monitoring living standards. It is not clear when, how and how often compensation will be granted.

Health impacts and protection - We have raised the health impacts issue with the Company, which needs to include mitigation measures in this contract. Dust, noise and the diminishing quality of the animal products we consume are having a negative impact on our health. There is no information on health impacts or related mitigation measures in this contract.

The traditional lifestyle of Mongolian nomads – We consider ourselves as indigenous to this area, as well as carriers of the ancient tradition of nomadic herding. We are mobile pastoralists dependent on pasture for our livelihoods. These pastures are ours as recognized under the customary law. The Company, however, does not recognize our rights, justifying their decision only by the fact that we are not an ethnic minority. The compensation does not include mitigation or remedy for the loss of opportunity to carry on with our traditional nomadic herding lifestyle and the related loss of property and cultural heritage to be passed on to our descendants.

3. Compensation Contract Provisions

We have made numerous attempts to change specific provisions of the compensation contract, but the Company refers us to the Working Group, in which we herders were underrepresented and therefore had no meaningful participation. We believe that the following changes and/or additions to provisions of the compensation contract are necessary:

Provision 1.2: Add “degradation” to the section on “reduced size of pasture”.

Provision 1.5: Add “month”, “year” or “one-time” to the definition of compensation to be offered during the validity period of this contract.

Provision 1.6: Add “the Company shall take measures to relocate households where health and safety concerns make current household locations unsuitable for continued habitation.

Provision 1.7: Add “shall be agreed based on participation and consultation with herders”.

Provision 2.1.3: A herder family is not just a family but a livestock breeding unit therefore water wells and pasture are essential for determining level of impact.

Provision 2.1.5: Add “sites used for project construction and future maintenance”.

Provision 2.1.7: Add “impact on human health and livestock health”.

Provision 4.1.2: Add to school supply compensation amount “based on current year prices”.

Provision 4.2: It is not clear what method was used to calculate the compensation required and the cost of establishing a new business, as discussed in this provision.

Provision 9.1: Delete. The Company should not seek to be relieved of any responsibility related to the implementation of the compensation contract or deprive herders of the right to seek compensation for damages.

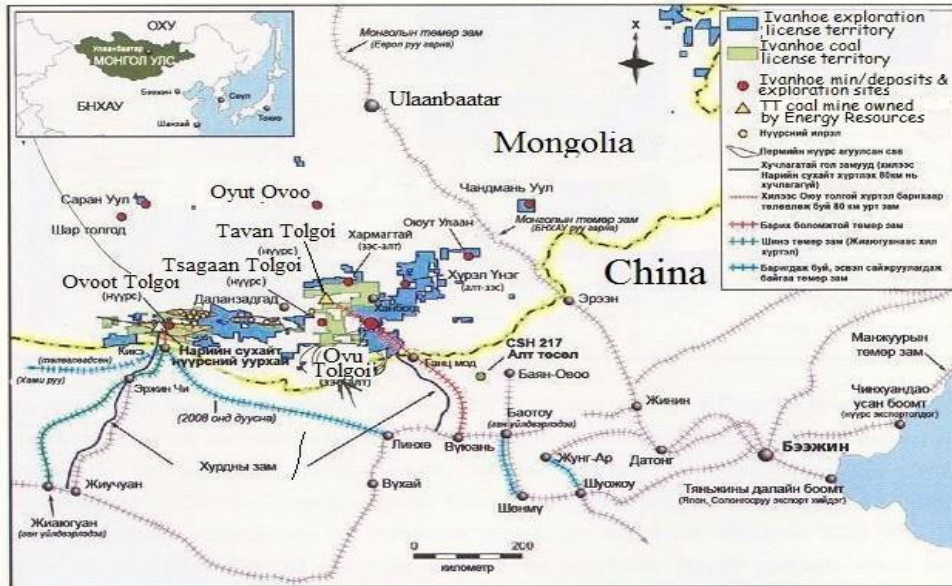
Provision 10: Add “Develop monitoring methodology with the participation of herders.”

Provision 10.7: Delete - Disclosure. Herders should not be made to report to the Company about attempts by organizations and individuals to know the contract content.

The Oyu Tolgoi Project:

The official information about the Project is located at www.ot.mn, website of Oyu Tolgoi LLC.

According to information provided to us, the Project promises to become the 3rd largest copper mine in the world and to grow Mongolia’s GDP by 30%, bringing it to the ranks of middle income countries. It also promises jobs and employment opportunity to all Mongolians. Due to its proximity to China’s border, all minerals will be exported and gold will be processed in China, with no harmful impact on our land. Scholars and experts, however, warn that so far, political and economic pre-conditions have not been created for these promises to become reality. We, the complainants, are losing access to water and land that is essential for us to carry on with our traditional lifestyle, which is the real impact of this Project on our lives.



We are also concerned with the fact that: Oyu Tolgoi mineral deposit resources have not been agreed upon and registered; that the technical feasibility and implementation plan, and lack of demonstrated availability of water resources needed for life of Project have been included in the investment agreement (IA) as conditionalities to be met at a later stage; and as we know now, the amount of investment itself was not determined with a sufficient degree of accuracy. The map created by the Company shows all the mines and licensed land in possession of Rio Tinto/Ivanhoe Mines or their subsidiaries. This concentration of mining projects in our region is also a big concern because of scarce water resources and damage to soil on such vast territory.

We have protested and are still against the use of the Gunii Hooloi and Galbyn Gobi aquifers, the diversion of the Undai River for the purpose of working the open pit mine and the construction of an international airport. We will continue resistance to this huge Project, which is being implemented regardless of the fact that there are no water resources available in the Gobi sufficient to carry out this Project, and if need be, we may be requesting a Compliance Review. In order to achieve this, we first need to protect our livelihood resources.

We propose the following solutions for this complaint:

4. Proposed Solutions

1. Find long term solutions for herding households who have lost their livelihood, are losing it now and those who will lose it as the mine goes into production and further reduces access to adequate pasture and water wells. There are at least 7 herding households that are surrounded by the Oyu Tolgoi mine and its infrastructure and see no future for their nomadic herding lifestyle, considering the already reduced pasture size and quality, and the poor access to already drying wells.
2. The Livelihood Support Program should develop a comprehensive training program that will address the herders' need to develop business skills in a new sector, including skills related to handling business loans, and will help address the pressures of a forced change of lifestyle.
3. Revise the compensation contract to include the recommendations of the evaluation of the 2004 Relocation Contract and Compensation Contract. In doing so, take into consideration recommendations of the review carried out by OT Watch and Steppes without Borders.

We the undersigned complainants:

[REDACTED]

Annex 1
Relocation contract

Annex 2
Compensation Contract

Annex 3

The establishment the Gobi Soil NGO is in itself an outcome or impact of the project and its relocation program. The herders relocated in 2004 have for many years protested against unfair treatment and petitioned to improve their situation without success. Then came the Oyu Tolgoi infrastructure corridor construction work adding more negative impact. Then in 2010 Company decided to provide compensation without relocating us. From the time of the discussion of the first draft of this compensation agreement we expressed our opinion, concerns and protested against problematic provisions but no one listened to us acting separately. This is the reason that pushed us to organize ourselves into an NGO to join force and act together. We are providing a list of letters and petitions sent by Gobi Soil on the issues of concern to relevant authorities.

The list includes letters and petitions related to the 2004 Relocation Contract, 2011 Compensation Contract, Gunii Hooloi water use and pipeline construction; diversion of Undai River; construction of roads and transportation activities causing negative impact, attempting to address these with the listed officials.

We also provide video clips of our public awareness activities broadcast on local and national TV.



CAO ASSESSMENT REPORT

**Complaint Regarding the Oyu Tolgoi Project
(IFC #29007 and MIGA #7041)**

South Gobi Province, Mongolia

April 2013

*Office of the Compliance Advisor Ombudsman
International Finance Corporation/
Multilateral Investment Guarantee Agency
www.cao-ombudsman.org*

About the CAO

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), the private sector arms of the World Bank Group. The CAO reports directly to the President of the World Bank Group, and its mandate is to assist in addressing complaints from people affected by IFC/MIGA supported projects in a manner that is fair, objective and constructive and to enhance the social and environmental outcomes of those projects.

For more information, see www.cao-ombudsman.org.

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LIST OF ACRONYMS

BIC	Bank Information Center
CAO	Office of the Compliance Advisor Ombudsman
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency
NGO	Non-Governmental Organization
OT	Oyu Tolgoi

1. Overview

In October 2012, local herders who claim to be affected by the Oyu Tolgoi project in the Southern Gobi, Mongolia filed a complaint to the CAO with the support of OT Watch, a national NGO, and Gobi Soil, a local Khanbogd-based NGO. At the time, the project was being considered for financing by IFC and MIGA¹. The CAO determined that the complaint met its three eligibility criteria and so began the assessment of the complaint. This Assessment Report summarizes the assessment process and outcomes, including a description of the project, the complaint, the assessment methodology, and findings.

2. Background

2.1. The Project

The Oyu Tolgoi project is a \$12 billion investment to develop a copper and gold mine at Oyu Tolgoi in the Southern Gobi region, Mongolia. Oyu Tolgoi LLC's majority owner (66%) is Turquoise Hills Resources, a Canadian public company listed on the Toronto Stock Exchange. Erdenes Oyu Tolgoi, LLC, a Mongolian state-owned holding company, owns the remaining 34%. Turquoise Hills Resources majority shareholder is international mining major Rio Tinto Plc.

The deposit consists of a near surface (Southern Oyu) copper/gold orebody together with a high grade deposit (Hugo North) suitable for underground mining. The Project is being developed in phases starting with construction of a copper concentrator and associated infrastructure to support production of ore sourced predominantly from the Southern Oyu open pit mine development. In parallel underground infrastructure and mine development is ongoing for the Hugo North deposit.

IFC's proposed investment is a A Loan for IFC's account of up to US\$400 million together with a B Loan of up to \$1 billion to be syndicated to international commercial banks, as part of a proposed \$4.5 billion project debt financing. In addition to the proposed IFC financing, MIGA is providing a guarantee against the risks of expropriation, war and civil disturbance, and breach of contract for a parallel debt tranche of up to US\$1 billion. The project is an Environmental Category A.

¹ The IFC and MIGA proposed projects were subsequently approved by the World Bank Board on February 28, 2013.



Oyu Tolgoi Location
Source: Turquoise Hill Resources

2.2. The Complaint

In October 2012, a complaint was filed by nomadic herders who reside and conduct livelihood activities in Khanbogd Soum (where the project is located), with the support of OT Watch, a national NGO, and Gobi Soil, a local Khanbogd-based NGO. The complainants are concerned about the project's use of land and water, which they claim disrupts their nomadic way of life, and puts in jeopardy their indigenous culture and livelihood. The complainants contend they have not been compensated or relocated appropriately, and they question the project's due diligence, particularly around the issue of sustainable use of water in an arid area.

3. Assessment

3.1. Methodology

The purpose of this CAO assessment is to clarify the issues and concerns raised by the Complainants, to gather information on how other stakeholders see the situation, and to help the Complainants and OT determine whether and how they might be able to resolve the issues raised in the complaint. The CAO does not gather information to make a judgment on the merits of the complaint during its assessment.

The CAO assessment of the complaint consisted of:

- review of project documents, including the ESIA;
- interviews, public and private meetings, and small group discussions; and
- country mission and site-visit.

The CAO team conducted multiple field trips to Mongolia between November 2012 and February 2013. In preparation, and during the field trip, the CAO Ombudsman team reviewed IFC/MIGA project documents, and met with complainants, IFC and MIGA project teams, local Soum and Bagh government representatives, and additional community members from Khanbogd Soum.

The community level meetings included individual interviews and small group discussions held in and around Khanbogd and the project site. Overall, CAO met with approximately 82 herders and community members² who claimed to be affected by the OT project, including two herders who served on the local 2011 Agreement Working Group³. One large public meeting was held with approximately 60 community members in the Khanbogd Cultural Center, organized by OT Watch and the Bank Information Center (BIC). At the public meeting, 18 additional individual letters supporting the complaint were presented to CAO. The CAO team also visited individual herder families at their homes, pasture lands, and livestock shelters.

CAO met with OT staff at their offices in Khanbogd and Ulaanbaatar, as well as visited the OT project site. OT Community Relations staff also provided a tour of the project area, including where project-related construction had taken place (e.g. water pipeline, pumping stations, power transmission lines, etc.).

CAO also met with the following government representatives and members of Parliament:

- S. Oyun, MP, Minister of Environment and Green Development
- B. Gantulga, Director General, Department of Policy Implementation, Ministry of Environment and Green Development
- L. Bolorma, Sr. Officer, Dept. of Economic Cooperation, Loan and Policy, Ministry of Economic Development
- D. Munkhjargal, Assistant Director-General, Dept. of Economic Cooperation, Loan and Policy, Ministry of Economic Development
- Ch. Otgochuluu, Director General, Department of Strategic Policy and Planning, Ministry of Mining
- T. Enkhbayar, Advisor to Minister, Ministry of Construction and Urban Development
- R. Burmaa, Member of Parliament (Great Khural)
- S. Ganbaatar, Member of Parliament (Great Khural)

² The original complainants and several other community members requested that CAO keep their identities confidential.

³ The working group was established under Khanbogd Soum Governor's Directive of April 14, 2011 to "work on reducing impacts and support livelihoods of herder households affected by Khanbumbat Airport, Gashuun Sukhait road and electricity lines and Gunii Hooloi pipelines, road and electricity lines".

The CAO team met with IFC and MIGA representatives in Washington, DC as well as the IFC Resident Representative in Ulaanbaatar.

3.2. Findings

3.2.1. Summary of Issues

Based on the original complaint and further stakeholder discussions undertaken as part of the CAO Assessment, the primary topics and issues that would need to be addressed to resolve the complaint are summarized below:

1. What is the desired long-term future of local communities and OT (including topics such as livelihoods for locals, especially herders who lost pastureland; environmental impacts; regional economic development and local infrastructure development; cultural heritage, etc.)?
2. How can herders have more of a voice and participate in how OT programs are designed and implemented (e.g. pastureland management, water and environmental monitoring, cultural heritage, small business and economic development, training and capacity-building, Gunii Hooloi Committee composition and agendas, impacts of airports, OT – Gashuun Sukhait road and power lines, dust management, land rehabilitation, etc.)?
3. How should any future agreement-making processes between OT and local stakeholders be designed and implemented?
4. How can questions and concerns about implementation and/or monitoring of 2004 relocation agreements and 2011 economic displacement agreements be addressed by the parties to those agreements?
5. What can be done to engage local herders and community members who feel they are impacted by the OT project, but not identified by OT as being impacted?
6. How can accurate and credible data on water use and resources be collected and disseminated in order to (1) keep all stakeholders informed and (2) ensure reliable and sustainable access to water?
7. How might project impacts on herders' and livestock health be monitored and addressed?
8. Generally, how can OT and local herders jointly determine the scope of project impacts and develop methods to measure impacts?
9. How can Oyu Tolgoi (OT) and local communities constructively engage with one another to address issues of common concern?

There was recognition from almost all the stakeholders interviewed by CAO that there is room for improvement in current community-OT engagement and communications. At the same time, community representatives acknowledged positive efforts of OT (assistance with building and/or repairing herders' wells and providing local employment were cited as examples).

Finally, both herders and OT representatives noted the cultural differences that sometime exist between them. For example, as one herder observed, "for the company, it's all about papers and documents; for us, it's about personal contact and talking things through." Thus, as the parties work to improve how they

engage with one another, these differences may need to be mutually understood in order to build trust and to communicate effectively with one another. Another herder quoted a Mongolian proverb, “Upon drinking the water, then follow the customs”.

3.2.2. Summary of Stakeholder Goals and Interests

Based on the discussions with key stakeholders described above, the CAO team heard and understood the following key goals and interests, most of which were shared by all parties:

- ensuring project compliance with IFC/MIGA standards and policies;
- minimizing environmental damage being transparent and keeping all concerned parties informed and educated about the OT project in an accurate and timely fashion;
- honoring and observing traditional and cultural rights of local communities;
- promoting economic growth and local investment;
- ensuring critical information about OT projects and operations is understandable, clear, accurate and available in Mongolian;
- meeting and talking in a safe, honest, and constructive environment; and
- improving relationships and building trust as long-term neighbors.

3.2.3. Conclusion and Next Steps

The complainants and OT have agreed to work with the CAO Ombudsman/Dispute Resolution team to try to resolve the issues raised in the complaint using a collaborative approach.

As soon as possible, CAO will begin holding conversations with the parties to help them make informed decisions regarding how they will work together through the CAO process. For example, topics will likely include:

- What terminology will the parties use to describe the CAO-facilitated, collaborative process?
- What is the purpose of the dialogue process? Which are the substantive issues to be addressed and what is the best order to address them? Which values and principles should inspire the dialogue and its participants?
- What additional stakeholders need to be consulted and/or involved?
- Who are the parties who will sit at the table with decision-making power? Who will represent each of the parties and what decision-making power will he/she have? Who will be allowed to participate as observer and under which conditions?
- How long is CAO assistance expected to last and how often will meetings be convened?
- How will communications and exchange of information be coordinated? What language(s) will be used? How will progress be communicated to the public? What commitments do parties and observers make regarding the use of media (TV, radio, internet, press, etc)?

- How will decisions be made? How much time will representatives have to discuss with their constituencies the information needed to make decisions and reach agreements? How will agreements be documented?
- How will the implementation of commitments and agreements be monitored? What steps will be followed in case of failure in implementation by one of the parties?
- How will possible data and training needs regarding technical information and/or collaborative problem-solving techniques be identified and addressed to promote meaningful and equitable participation?
- How will parties involved in the CAO process interact with the South Gobi Cooperation Agreement⁴ (CA) process?

During CAO's dispute resolution processes, the CAO provides neutral mediation/facilitation and convenes separate and joint meetings as needed.

⁴ The South Gobi Cooperation Agreement (CA) process is a collaboration between local communities and governments, national government, and the development and donor community in Mongolia (that will also include IFC on the Observer Group) working on nine key agreed areas: (1) Khanbogd urban development; (2) Environmental protection and rehabilitation, preservation of ecological balance; (3) National history and culture; (4) Traditional animal husbandry, pasture land management; (5) Pasture and range land water management; (6) Employability, & training and employment; (7) Local & regional government and administration capacity, social services, education, health, infrastructure and information; (8) Local enterprise development, goods, services, procurement; and (9) Aimag Urban Development.

Annex A. CAO Complaints Handling Process

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability and recourse mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), the private sector arms of the World Bank Group. The CAO reports directly to the President of the World Bank Group, and its mandate is to assist in addressing complaints from people affected by IFC/MIGA supported projects in a manner that is fair, objective, and constructive and to enhance the social and environmental outcomes of those projects.

The CAO assessment is conducted by CAO's Ombudsman function. The purpose of CAO's assessment is to: (1) clarify the issues and concerns raised by the complainant(s); (2) gather information on how other stakeholders see the situation; and (3) to help the CAO Ombudsman and the stakeholders determine whether and how they might be able to resolve the issues raised in the complaint.

This document is a preliminary record of the views heard by the CAO team, and explanations of next steps. *This report does not make any judgment on the merits of the complaint.*

As per CAO's Operational Guidelines,⁵ the following steps are typically followed in response to a complaint that is received:

- Step 1: **Acknowledgement** of receipt of the complaint
- Step 2: **Eligibility:** Determination of the complaint's eligibility for assessment under the mandate of the CAO (no more than 15 working days)
- Step 3: **Ombudsman assessment:** Assessment of the issues and provide support to stakeholders in understanding and determining whether a collaborative solution is possible through a facilitated process by CAO Ombudsman, or whether the case should be transfer to CAO Compliance for appraisal of IFC's/MIGA's social and environmental performance. The assessment time can take up to a maximum of 120 working days.
- Step 4: **Facilitating settlement:** If the CAO Ombudsman process continues, this phase involves initiation of a dispute resolution process (typically based or initiated by a Memorandum of Understanding and/or a mutually agreed upon ground rules between the parties) through facilitation/mediation, joint fact-finding, or other agreed resolution process, leading to a settlement agreement or other mutually agreed and appropriate goal. The major objective of problem-solving approaches will be to address the issues raised in the complaint, and any other significant issues relevant to the complaint that were identified during the assessment or the problem-solving process, in a way that is acceptable to the parties affected⁶.

OR

⁵ For more details on the role and work of the CAO, please refer to the full Operational Guidelines: <http://www.cao-ombudsman.org/about/whoweare/index.html>

⁶ Where stakeholders are unable to resolve the issues through a collaborative process within an agreed time frame, the CAO Ombudsman will first seek to assist the stakeholders in breaking through impasse(s). If this is not possible, the CAO will inform the stakeholders, including IFC/MIGA staff, the President and Board of the World Bank Group, and the public, that CAO Ombudsman has concluded its involvement in the complaint, and that it is being transferred to CAO Compliance for appraisal.

Compliance Appraisal/Audit: If a collaborative resolution is not possible, CAO Compliance will initiate an appraisal of IFC's/MIGA's social and environmental due diligence of the project in question to determine whether a compliance audit of IFC's/MIGA's involvement in the project is merited.

Step 5: **Monitoring** and follow-up

Step 6: **Conclusion**/Case closure

Gobi Soil NGO [letterhead]

February 3, 2013

13/02

Khanbogd soum

To: Mrs Megan Taylor
Compliance Advisor/Ombudsman
International Finance Corporation
2121 Pennsylvania Avenue NW
Washington, DC 20433 USA
Fax: (+1) (202) 522-7400
e-mail: cao-compliance@ifc.org

Complaint

Dear Mrs Taylor,

We herders of Khanbogd unified under Gobi Soil NGO lodge this complaint CAO (IFC) concerning Oyu Tolgoi copper-gold mining project implemented by Oyu Tolgoi LLC, which is jointly owned by Rio Tinto, Ivanhoe Mines and Erdenes MGL and located within territories of Javkhlant and Gaviluud baghs of Khanbogd Soum, Southgobi province of Mongolia. Oyu Tolgoi project, jointly owned by Rio Tinto and Erdenes MGL, is actively considering to borrow 1 billion USD and risk guarantee from IFC and MIGA.

We identify ourselves as indigenous to the area and practice traditional pastoral nomadism in Javkhlant bagh of Khanbogd soum, Southgobi province. We lodge this complaint that we face high threats of losing livelihoods from negative impacts to be caused by Undai River diversion work of Oyu Tolgoi project.

As we herders live in a very remote area with underdeveloped telecommunications systems and cannot directly communicate in English, we lodge this complaint jointly with Ulaanbaatar-based Oyu Tolgoi Watch NGO which will also act as the focal point to communicate with your organization.

We can be contacted through the following address, telephone number and e-mail:

L. Battengel, Leader of Gobi Soil NGO
Address: Southgobi province, Khanbogd soum
Phone: +976-8870 5595, +976-99608279
Email: tsengel_5595@yahoo.com

D. Sukhgerel, Oyu Tolgoi Watch NGO
Address: Sukhbaatar District, Baga Toiruu 44-6
Phone: +976-9918 5828, +976-98905828
Email: otwatch@gmail.com

Herders' lifestyle and livelihoods are heavily dependent on pastureland size and quality and water access. It is already clear that Undai River diversion will obviously cause various negative impacts, including declining surface and soil water supply, replenishing Bor Ovoo's pond, springs and rivers, deterioration of pastureland vegetations and other.

While the previous Complaint filed on October 12, 2012 to CAO has not been solved, we face threats of another major negative impact in this regard.

Description of expected negative impacts from Undai River diversion:

Diversion of Undai River will cause the following water systems to be dried out: Bumbat, Khukh Khad, Burkhant, Khuurkhun Ovoo, Sunduuli and Bural ponds, Budaa river, Khad Khad river, Dugat river, Ulaan Tolgoi river and streams, Dugant pond, Naiman pond, Deed khukh khad pond, Bor ovoo pond and springs. River waters and soil water supply play important roles to pastureland of livestock. Water decline will reduce pastureland yields, eliminating arboreous plants, such as Khargana, Khotir, Tsagduul, Buils, Zasgal, Ders and Tsakhildag which collects water and humidity to feed other valuable pastureland herbs, including Bagluur, Budargana, Shar mod and Teseg among others.

Diversion of Undai River will deteriorate pastureland yields of places along the river, including Khanr tolgoi, Ergen shand, Zamyn khuuvur, Tal kharmagtai, Gurvan modon khaliv, Dugat, Builsan khuuvur, Khanan davaa, Khar khad, Durvulj, Ulaan tolgoi, Khukh khad, Bor khoshuu, Bumbatyn ulaan, Tavan tolgoi, Salaagiin tal, Baishint, Burkhant, Tavan ovoo, Naimaa us, Khulsan, Burgasan, Puntset, Zurkhaich, Saglar and Shine Us. Consequently, many herders' families – namely Dolgorsuren, namsrai, Munkhbayar, Battogtokh, Binderya, Battsengel, Shinebayar, Surenkhorol, Iderborgil, Enkhchuluun, Tsogt, Tsend-Ayush, Gombosuren, Shirnen, Nadmid, Odgarig, Sodnomdorj, Tuvsanaa, Altangerel, Dolgorsuren, Adiya and Badamzav who live and pasture their livestock in those places – may lose their livelihoods.

Undai River is the only river with surface flows in the region, starts at the territory of Gaviluud bagh of Khanbogd soum (Southgobi province) and flows to the south-east about 200 km supporting life in the region. This river provides an important water supply supporting aspen and saxaul forests of Galbyn Gobi – one of treasured natural beauties of Mongolia which inhabits diversity of various flora and fauna species.

Undai River has historical and cultural values that we local herders worship, love and protect the river as sacred because the river saved lives of Chingis Khaan's soldiers with its water.

Diversion of Undai River violates our human rights guaranteed by Mongolian and international legislations, specifically:

Water rights
Pasture rights

Livelihood rights
Environmental protection rights
Historical and cultural heritage protection rights

As replenishing water causes dire threats to our life, we local herders request to review violations of above-mentioned rights and stop ongoing diversion activities which are conducted without our consent.

We are already impacted by the project in the following ways and more impacts are threatening us further.

Description of the Project:

Oyu Tolgoi (OT) is the world's third largest gold and copper mine located in Khanbogd soum, Southgobi province and promises to play an important role to socio-economic development of Mongolia through increasing its GDP by 30%.

This project site is located at 100 km from the border and plans to export all excavated minerals to China to process the gold there too. It promises to create a large number of job places, improve livelihoods and contribute prosperity of Mongolia. However, in reality important prerequisites of political, economic, environmental and human resource conditions are not ensured/provided sufficiently, and thus scholars' suggestions assuming herders' access to project benefits would be further minimal, become more evident already.

The project is undergoing its construction phase in the Gobi region with scarce water supply and thus overpowering and domineering to use our water supply and pastureland which cause enormous problems to us herders. When exploration activities of the Project intensified from 2002 and its construction phase started in 2006, local herders had not been properly informed and consented about their activities and potential negative impacts (still now we are denied the right to free, prior and informed consent regarding any Project activities). As soon as negative impacts are observed and started to affect our life, we approached all possible authorities, including the project, no place has stood out to help us and protect our interests and rights.

We Complainants face threats of lack of drinking water, no pastureland to practice traditional nomadic lifestyle and livelihoods and no opportunities to transmit our traditional cultural properties/elements to our children which are all due to real impacts of the Project.

Losing livelihood sources irreversibly: No strategies to provide new livelihood sources to herder families who cannot maintain livelihoods from herding any more, and to help them develop skills to sustain their livelihoods independently.

Monitoring living standards: No established methods to measure, monitor and protect living standards of local people, no mechanisms to provide compensations based on measurement results and/or schedules;

Health protection: Previously herders suggested measures to mitigate negative health impacts to be included in the Compensation Agreement, yet it did not work. Herders' health is deteriorating due to dust, noise and low quality animal-based food products such as meat and dairies (from sick animals also affected by project impacts). There is no information or program [from the Project] which provides health care supports and/or preventative measures against mine pollution and disturbance.

Mongolian traditional pastoral nomadism: We are indigenous people who practice nomadic lifestyle and culture, and make livings from herding livestock that are heavily reliant on pastureland yields and capacity. We are legitimate owners of the pastureland with historical rights supported by traditional customs. However, the company does not accept it, yet it provided no justification to further their position. The company thinks we are not ethnic minorities so that we have no right to claim land access. Pasture rights are essential to support nomadic lifestyle and livelihoods infrastructure, but violations of pasture rights protection lead to collapse of traditional lifestyle based on pastoral nomadism. However, no compensation is provided in such regards.

We would like to see this complaint resolved in the following way:

1. Stop Undai River diversion work;
2. Calculate environmental damages incurred from the river diversion works conducted without free and prior consent of local people, and provide due compensations;
3. Determine the declined amounts of water supply for local people and provide due compensations;
4. Provide compensations for psychological damage suffering from 2009 in relation with Gunii Khooloi and Undai River diversion.

Members of Undai River protection working group:

B. Erdenebayar, member of Soum Citizens' Representatives' Khural
B. Shinebayar, Javkhlant Bagh General Meeting Chairman
L. Battengel, Leader/CEO of Gobi Soil NGO
U. Battogtokh, herder
Nadmid, herder
U. Ser-Od, herder
Namsrai, herder



CAO ASSESSMENT REPORT

**Second Complaint (Oyu Tolgoi-02) Regarding the Oyu Tolgoi Project
(IFC #29007 and MIGA #7041)**

South Gobi Province, Mongolia

July 2013

*Office of the Compliance Advisor Ombudsman
International Finance Corporation/
Multilateral Investment Guarantee Agency
www.cao-ombudsman.org*

About the CAO

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), the private sector arms of the World Bank Group. CAO reports directly to the President of the World Bank Group, and its mandate is to assist in addressing complaints from people affected by IFC/MIGA supported projects in a manner that is fair, objective and constructive and to enhance the social and environmental outcomes of those projects.

For more information, see www.cao-ombudsman.org.

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LIST OF ACRONYMS

BIC	Bank Information Center
CAO	Office of the Compliance Advisor Ombudsman
DEIA	Detailed Environmental Impact Assessment
ESIA	Environmental and Social Impact Assessment
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency
NGO	Non-Governmental Organization
OT	Oyu Tolgoi

1. Overview

In February 2013, seven local herders filed a complaint to CAO with the support of OT Watch, a national NGO, and Gobi Soil, a local Khanbogd-based NGO, regarding impacts of the Undai River diversion component of the Oyu Tolgoi project in the Southern Gobi, Mongolia. At the time, the project was being considered for financing by IFC and MIGA¹.

2. Background

2.1. The Project

The Oyu Tolgoi project is a \$12 billion investment to develop a copper and gold mine at Oyu Tolgoi in the Southern Gobi region, Mongolia. Oyu Tolgoi LLC's majority owner (66%) is Turquoise Hills Resources, a Canadian public company listed on the Toronto Stock Exchange. Erdenes Oyu Tolgoi, LLC, a Mongolian state-owned holding company, owns the remaining 34%. Turquoise Hills Resources majority shareholder is international mining major Rio Tinto Plc.

The deposit consists of a near surface (Southern Oyu) copper/gold orebody together with a high grade deposit (Hugo North) suitable for underground mining. The Project is being developed in phases starting with construction of a copper concentrator and associated infrastructure to support production of ore sourced predominantly from the Southern Oyu open pit mine development. In parallel underground infrastructure and mine development is ongoing for the Hugo North deposit.

According to the "Undai River Protection and Partial Diversion Project" Detailed Environmental Impact Assessment (DEIA) Report:

"The Southern Oyu Pit excavation will extend into the Undai River and the waste rock dumps (WRD) are planned to lie across its course. Given the size of the Undai River and the operational risks (flooding) involved in retaining the current route of the water course on the mine site around the large open pit, OT has determined that the best solution will be to divert the river to the south into one of the Undai river's tributaries (termed the "Western Channel") allowing any flood water to pass safely around the mine operations area and to rejoin the course of the Undai River immediately south of the mining license."

IFC's proposed investment is a A Loan for IFC's account of up to US\$400 million together with a B Loan of up to \$1 billion to be syndicated to international commercial banks, as part of a proposed \$4.5 billion project debt financing. In addition to the proposed IFC financing, MIGA is providing a guarantee against the risks of expropriation, war and civil disturbance, and breach of contract for a parallel debt tranche of up to US\$1 billion. The project is an Environmental Category A.

¹ The IFC and MIGA proposed projects were subsequently approved by the World Bank Board on February 28, 2013.



Oyu Tolgoi Location
 Source: Turquoise Hill Resources

2.2. The Complaint

In February 2013, seven local herders filed a complaint to CAO with the support of OT Watch, a national NGO, and Gobi Soil, a local Khanbogd-based NGO, regarding impacts of the Undai River diversion component of the Oyu Tolgoi project. The complainants include a member of the local Khanbogd Soum Khural (local parliament) and Chair of the Javkhlant Bagh Khural. The complainants contend that the river diversion jeopardizes their traditional nomadic lifestyle and livelihood and have requested that OT stop the diversion work. They are specifically worried that the diversion will lead to several water systems drying up, deteriorated pastureland yields, diminished water supply to forests and a cultural impact to what they view as a sacred river.

3. Assessment

3.1. Methodology

The purpose of this CAO assessment is to clarify the issues and concerns raised by the Complainants, to gather information on how other stakeholders see the situation, and to help the Complainants and OT

determine whether and how they might be able to resolve the issues raised in the complaint. CAO does not gather information to make a judgment on the merits of the complaint during its assessment.

The CAO assessment of the complaint consisted of:

- review of project documents, including the ESIA and the Undai River DEIA;
- interviews, public and private meetings, and small group discussions; and
- country mission and site-visit.

The CAO team conducted field trips to Mongolia in February and March 2013, shortly after the complaint was received. In preparation, and during the field trips, the CAO Ombudsman team reviewed IFC/MIGA project documents, and met with complainants, IFC and MIGA project teams, local Soum and Bagh government representatives, and additional community members from Khanbogd Soum.

CAO met with OT staff at their offices in Khanbogd and Ulaanbaatar, as well as visited the OT project site. OT Community Relations staff also provided a tour of the project area, including where Undai River related construction was under way.

CAO also met with the following government representatives and members of Parliament:

- S. Oyun, MP, Minister of Environment and Green Development
- B. Gantulga, Director General, Department of Policy Implementation, Ministry of Environment and Green Development
- L. Bolorma, Sr. Officer, Dept. of Economic Cooperation, Loan and Policy, Ministry of Economic Development
- D. Munkhjargal, Assistant Director-General, Dept. of Economic Cooperation, Loan and Policy, Ministry of Economic Development
- Ch. Otgochuluu, Director General, Department of Strategic Policy and Planning, Ministry of Mining
- T. Enkhbayar, Advisor to Minister, Ministry of Construction and Urban Development
- R. Burmaa, Member of Parliament (Great Khural)
- S. Ganbaatar, Member of Parliament (Great Khural)

The CAO team met with IFC and MIGA representatives in Washington, DC as well as the IFC Resident Representative in Ulaanbaatar.

3.2. Findings

3.2.1. Summary of Issues

Based on the original complaint and further stakeholder discussions undertaken as part of the CAO Assessment, the primary issues that would need to be addressed to resolve the complaint are:

1. How can the parties ensure mutual understanding of the impacts to the Undai River and how the design of the diversion project prevents and/or mitigates impacts?
2. What additional impacts have not yet been identified by OT and what can be done to address or mitigate them?

The complainants state that local community consent and approval is required for the Undai River diversion, whereas OT contends they have all the legal permissions and rights to proceed with construction to divert the river inside the mine license area (and that the opinion of the community has been captured through various consultation activities and taken into consideration in its mitigation and design plans). For the portion of the project to be constructed outside the mine license area, OT confirms that it needs approval by the local Governor and therefore has not started construction on this portion of the project. The complainants' formal position is that all construction work related to the diversion of the river should be stopped until community consent can be obtained while OT insists the work must continue in order to protect the river for the community and prevent water from following into the mine. Nonetheless, the parties have agreed to work together through the CAO dispute resolution function to try to resolve the complaint in a mutually satisfactory manner.

3.2.2. Summary of Stakeholder Goals and Interests

Based on the discussions with key stakeholders described above, the CAO team heard and understood the following key goals and interests:

Complainant/Herder Interests:

- ensuring drinking water for people, livestock and animals
- repairing any harm done to local herders
- accessing project information that they can understand and trust
- honoring Bor Ovoo shrine, its sacredness and cultural significance
- protecting pastureland from deterioration due to lack of water
- enjoying the ecological effect of Bor Ovoo's late winter freezing
- respecting all impacted herders' legal rights

OT Interests:

- preventing water flow into open pit
- ensuring sufficient water supply for local herders

- keeping public informed about real impacts and mitigation measures in a timely manner
- keeping project on time and moving forward/minimizing delays
- maintaining "social license" to operate (community support and good relations)
- supporting effective communication between herder representatives and larger herder community/constituency

Shared interests:

- protecting the Undai River
- preventing or mitigating negative impacts on local herders
- preventing or mitigating negative impacts on the environment
- complying with Mongolian law and IFC Performance Standards

3.2.3. Conclusion and Next Steps

The complainants and OT have agreed to work with the CAO Ombudsman/Dispute Resolution team to try to resolve the issues raised in the complaint using a collaborative approach. The complainants are in the process of working with other local herders and signatories to the first complaint submitted to CAO (Oyu Tolgoi-01)² to coordinate their efforts and to elect a team of herders to work with CAO and OT in trying to resolve both complaints.

During CAO's dispute resolution processes, the CAO provides neutral mediation/facilitation and convenes separate and joint meetings as needed. CAO will work with the parties to assist them in agreeing on a timeline and process and schedule for meetings.

² Please see http://www.cao-ombudsman.org/cases/case_detail.aspx?id=191 for more details on the first complaint.

Annex A. CAO Complaints Handling Process

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability and recourse mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), the private sector arms of the World Bank Group. CAO reports directly to the President of the World Bank Group, and its mandate is to assist in addressing complaints from people affected by IFC/MIGA supported projects in a manner that is fair, objective, and constructive and to enhance the social and environmental outcomes of those projects.

The CAO assessment is conducted by CAO's Ombudsman function. The purpose of CAO's assessment is to: (1) clarify the issues and concerns raised by the complainant(s); (2) gather information on how other stakeholders see the situation; and (3) to help the CAO Ombudsman and the stakeholders determine whether and how they might be able to resolve the issues raised in the complaint.

This document is a preliminary record of the views heard by the CAO team, and explanations of next steps. *This report does not make any judgment on the merits of the complaint.*

As per CAO's Operational Guidelines,³ the following steps are typically followed in response to a complaint that is received:

- Step 1: **Acknowledgement** of receipt of the complaint
- Step 2: **Eligibility:** Determination of the complaint's eligibility for assessment under the mandate of the CAO (no more than 15 working days)
- Step 3: **Ombudsman assessment:** Assessment of the issues and provide support to stakeholders in understanding and determining whether a collaborative solution is possible through a facilitated process by CAO Ombudsman, or whether the case should be transfer to CAO Compliance for appraisal of IFC's/MIGA's social and environmental performance. The assessment time can take up to a maximum of 120 working days.
- Step 4: **Facilitating settlement:** If the CAO Ombudsman process continues, this phase involves initiation of a dispute resolution process (typically based or initiated by a Memorandum of Understanding and/or a mutually agreed upon ground rules between the parties) through facilitation/mediation, joint fact-finding, or other agreed resolution process, leading to a settlement agreement or other mutually agreed and appropriate goal. The major objective of problem-solving approaches will be to address the issues raised in the complaint, and any other significant issues relevant to the complaint that were identified during the assessment or the problem-solving process, in a way that is acceptable to the parties affected⁴.

OR

³ For more details on the role and work of the CAO, please refer to the full Operational Guidelines: <http://www.cao-ombudsman.org/about/howweare/index.html>

⁴ Where stakeholders are unable to resolve the issues through a collaborative process within an agreed time frame, the CAO Ombudsman will first seek to assist the stakeholders in breaking through impasse(s). If this is not possible, the CAO will inform the stakeholders, including IFC/MIGA staff, the President and Board of the World Bank Group, and the public, that CAO Ombudsman has concluded its involvement in the complaint, and that it is being transferred to CAO Compliance for appraisal.

Compliance Appraisal/Audit: If a collaborative resolution is not possible, CAO Compliance will initiate an appraisal of IFC's/MIGA's social and environmental due diligence of the project in question to determine whether a compliance audit of IFC's/MIGA's involvement in the project is merited.

Step 5: **Monitoring** and follow-up

Step 6: **Conclusion**/Case closure