



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