



## **CAO Dispute Resolution Conclusion Report - Oyu Tolgoi 01 & 02/Southern Gobi, May 2020**

*This report summarizes the combined CAO dispute resolution process for two complaints lodged in relation to the IFC and MIGA-supported Oyu Tolgoi Project in Mongolia (IFC #29007 & MIGA #7041)*

---

### **BACKGROUND**

#### **IFC/MIGA Financing**

Oyu Tolgoi is a copper and gold mining project located in Southern Gobi, Mongolia. Oyu Tolgoi LLC (the “Company”) is 66 percent owned by Turquoise Hill Resources, a Canadian company listed on the Toronto Stock Exchange, and 34 percent is owned by the state-owned Erdenes Oyu Tolgoi LLC, representing the Government of Mongolia. The largest shareholder in Turquoise Hill Resources is the international mining company, Rio Tinto. The project has a total investment of US\$12 billion. As a part of the project debt financing of \$4.4 billion, IFC’s investment is comprised of an A loan of up to \$400 million and a B loan of up to \$820.625 million to be provided by international commercial banks. In addition to IFC financing, MIGA is providing a guarantee of up to \$1 billion for Breach of Contract, Expropriation, Transfer Restriction and War and Civil Disturbance.

#### **Complaints**

In October 2012, a group of 37 herders, representing households who live near the project site, lodged a complaint with CAO supported by OT Watch, a national non-governmental organization (NGO), and Goviin Gazar Shoroo (or “Gobi Soil” in English), a local NGO. The complainants expressed concern that the project has affected their nomadic lifestyle through the use of land and water, and threatens traditional culture and livelihoods. They believe that Oyu Tolgoi’s 2004 resettlement process and 2011 economic displacement compensation process were inadequate and not properly implemented. In particular, the complainants expressed doubt about sustainable and effective use of water at the project site, where water is scarce.

In February 2013, seven herders filed a second complaint with support of OT Watch and Gobi Soil regarding impacts of the Undai River diversion as part of the Oyu Tolgoi Project in the Southern Gobi. The complainants contended that the river diversion jeopardized their traditional nomadic lifestyle and livelihood. Specifically, they were worried that the diversion would lead to several water systems drying up, would deteriorate pastureland yields, diminish water supply to forests, and have a cultural impact to what they view as a sacred river.

### **CAO ASSESSMENT**

After finding the complaints eligible, the CAO team visited Mongolia several times from November 2012 to March 2013 to conduct an assessment of the complaints. CAO does not collect information regarding the merits of the complaint during the assessment phase, but instead aims to clarify the concerns raised by the complainants and find out whether, and how, the parties would like to resolve the issues.

Based on stakeholder discussions during the assessment, both groups of complainants and the company agreed to address the issues through a voluntary dispute resolution process facilitated by CAO. As a non-judicial, non-adversarial, and neutral forum, CAO’s Dispute Resolution function provides a process through which parties may find mutually satisfactory solutions to the issues raised in the complaint. The parties opted for a single process to address both complaints. The herders who had filed the two complaints selected a team, the “Elected Herders Team” (EHT), which was democratically elected at large public community meetings, to represent them in the process.

## DISPUTE RESOLUTION PROCESS

In March 2013, the CAO team began facilitating joint meetings between the company and the affected herder communities, who were represented by the Elected Herder Team and advised by Gobi Soil, OT Watch, and two international NGOs, Accountability Counsel and Bank Information Center (BIC). CAO also provided training to both sides in negotiation, conflict resolution, and communication skills. As a result of the initial meetings, the company accepted the herder's request to provide information regarding the environmental and social impacts of the project, to organize thematic meetings to address the issues at stake, and to provide access to the project sites. Furthermore, the parties agreed to engage an Independent Expert Panel to assess the project's impacts on three important water sources and consequent impacts on the herders' pasture, access to water, and water quality through a joint fact-finding process<sup>1</sup>. In 2014, the parties agreed to request the participation of the Khanbogd Soum Government in the dispute resolution process.



*Elected Herder Team (EHT) participates in negotiation capacity-building, March 2013.*

---

*“We are capable of negotiating any issues based on consensus—focusing on the solutions for resolving those issues rather than pointing fingers at anyone or any party.”*

*L. Battengel, Herder's Representative,  
Gaviluud Bagh, Khanbogd Soum*

---

In June 2015, after two years of negotiation and discussion, the parties agreed to the creation of a Tripartite Council (TPC), equally composed of representatives of the herders, the company, and the Khanbogd Soum Government. The TPC is responsible for addressing any issues related to the herders, pasture, water, and other relevant matters raised in the complaints to CAO. It is also responsible for the exchange of information regarding the process, providing recommendations regarding the issues, ensuring implementation of agreements, and submitting requests and recommendations to other relevant organizations.



*Herders and OT Watch visit the mine site with company representatives, November 2014.*

---

<sup>1</sup> Joint fact-finding (JFF) is a collaborative process in which parties in conflict work together with experts to address disputes of fact, differing expert opinions, or disputable scientific information. Typically, the parties jointly identify the issues, define the scope of the engagement, select the experts, provide inputs to the

design of the process, and participate in fact-finding activities. See Reflections from Practice 3: Joint Fact-Finding, CAO (2019), [http://www.cao-dr-practice.org/reports/CAO\\_3\\_JointFactFinding.pdf](http://www.cao-dr-practice.org/reports/CAO_3_JointFactFinding.pdf), accessed April 28, 2020

In July 2015, the parties engaged in a second joint fact-finding process to assess Oyu Tolgoi's impacts on the livelihoods of the herders and the adequacy of OT's compensation processes. They selected an additional multi-disciplinary team composed of researchers from JSL Consulting, the University of Oxford, and the Institute for Geography and Geo-Ecology of the Mongolian Academy of Sciences to conduct this work. The assessment had three components: the first evaluated changes in access to, and quality of, pasture and herd water; the second component analyzed impacts on the household livelihoods of the herders; and, based on this information, the third component evaluated the adequacy of the project's 2004 resettlement and 2011 economic displacement compensation processes. This assessment also included a second phase of work by the original Independent Expert Panel. After conducting this work for a year and a half, the experts submitted their final report and recommendations to the parties in January 2017. The parties accepted the recommendations and agreed to jointly develop an implementation plan.



*Company, herders, local government, and independent experts participate in joint fact-finding (JFF) training, February 2016.*



*Multi-disciplinary Team experts meet with herders as part of the joint fact-finding process, May 2016.*

---

*“Cooperation of all parties made the TPC negotiation possible and successful. From the beginning, OT aspired to collaborate with local stakeholders, understand each other, and promote any creative and constructive proposals that can bring long-term benefits to all parties. And we endured to the end in order to reach into a consensus. This was one of the driving factors, which led us to the success.”*

*G. Sugar, Senior Manager Communities,  
OT LLC*

---

## **DISPUTE RESOLUTION OUTCOMES**

In May 2017, the parties reached two final agreements to resolve the complaints related to the Undai River diversion and the 2004 and 2011 resettlement and compensation processes. The assessments conducted by the multi-disciplinary team and the Phase I and II expert studies on the indirect impacts of Undai River diversion by the Independent Expert Panel were instrumental to the resolution of the complaints. As a result of the recommendations of these studies, the TPC agreed on actions to resolve the complaints.

The Agreements resulted in the implementation of over 60 action items related to pastureland, water, compensation, and the Undai River, including the following:

- the Company acknowledged the inadequacy of the 2004 resettlement process and agreed to work through the TPC to resolve the issues related to herder households that resettled in 2004;
- The TPC, acting as a Compensation Claims Committee and applying an agreed set of criteria, would assess the eligibility of claims submitted by herder households regarding the 2004 and 2011 compensation processes;
- the Company agreed to cancel the confidentiality clauses of the 2004 and 2011 compensation process agreements so those who had been compensated would be able to disclose information if they chose to do so;
- the Company agreed to implement short- and long-term measures for collective compensation for all Khanbogd Soum herder households, including sustainable livelihood support projects, capacity building for small and medium enterprises (SMEs); school tuition coverage for herders' children; and health services;
- the Company agreed to provide opportunities to herders residing along the Undai River, including scholarships, vocational trainings, and paid monitoring jobs; and
- additional actions to resolve issues related to pastureland, water, monitoring, and overall cooperation, such as developing a Khanbogd Soum pastureland management plan; building new deep wells based on geophysical study results; implementing improved participatory monitoring carried out jointly by local herders and the company.

The parties agreed that the resolution of issues raised in the original complaints would be subject to the complete, effective, and satisfactory implementation of commitments in the agreements by all the parties.

The parties also agreed to develop a comprehensive plan for each action, setting the timeframes required, and that the Company would provide necessary resources and funding to implement them.



*Oyu Tolgoi Chief Operating Officer presents apology letter to herder representative, March 2015.*



*CAO Vice President attends signing of the Tripartite Council Memorandum of Understanding, June 2015.*

In May 2017, following the signing of the two final agreements, the mediation phase concluded and CAO started monitoring the settlement. The parties agreed that CAO would monitor the implementation of the agreements for 12 months from the signing date to ensure the terms were met.



*Khanbogd Soum Governor signs final agreements, May 2017.*

In June 2017, TPC members participated in IFC's Sustainability Exchange in Cartagena, Colombia. Representing the TPC, a Khambogd herder, the Khanbogd State Environmental Inspector, and Oyu Tolgoi's Environment and Community Partnership and Assistance Managers participated in a panel session as the main speakers to share their experiences of cooperation to resolve the dispute, and the challenges they encountered during the process. CAO moderated the discussion.

## **MONITORING IMPLEMENTATION OF THE AGREEMENTS**

After signing the settlement agreements, the TPC coordinated implementation of the agreed actions, holding regular meetings. After the first year of implementation, TPC members concluded that over 70 percent of agreed actions either had been completed or were in the process of being implemented. The TPC also agreed to focus on intensifying implementation of agreed actions and reiterated that successful implementation of the agreements would provide long-term benefits to herders' households in Khanbogd.

By December 2018, the TPC reported the following progress on implementation of the agreements:

- A total of 20 university students from herders' households were entitled to scholarship support until their graduation and Mongolian Tughrik (MNT) 79,583,485 (approximately

\$32,187) of scholarship funds had been provided;

- Within the framework of collective compensation, 10 wells had been equipped with solar-powered pumps under the agreed project "Connecting Herders Wells To Renewable Energy Sources". This project was implemented with a funding of MNT 150 million (approximately \$60,668).
- The Compensation Claims Committee had reviewed a total of 174 claims, out of which 114 claims qualified for compensation and 60 were considered ineligible. A total of MNT 2,363,600,000 (approximately \$955,000) was being paid to the 114 eligible claimants.
- As part of the mutually-agreed sustainable livelihood support for Khanbogd herders, seven projects were being developed, including the creation of a herder market and supply chain for livestock raw material producers, planting livestock fodder, building a permanent slaughter line, and forming a well maintenance team and livestock shelter maintenance team. At the time of writing, many of these projects were in the early stages of implementation or were subject to feasibility studies.
- A new local NGO, "Munkh Nagoon Galba" (Eternal Green Galba), was established to carry out environmental monitoring.

Pursuant to the Agreements, independent experts had also been contracted by the Company in October 2017 to evaluate the impact and outcomes of Oyu Tolgoi's 2011 economic displacement compensation package programs on herders' households, and the extent to which the Company had fulfilled its commitments to restoring their livelihoods.

The experts conducted field research in and around the mine site and had discussions with the Elected Herder Team, Oyu Tolgoi, government and civil society representatives, as well as with CAO. The draft "Outcome Evaluation Report" was discussed at several meetings of the Tripartite Council. The Company committed to ensure implementation of the report recommendations and the findings were publicly disclosed as a part

of OT's September 2018 Community Resettlement Plan<sup>2</sup>.

The TPC agreed to conduct internal monitoring on a quarterly basis of implementation of the two agreements, related projects, and quality of productive engagement between the parties. They also agreed that an independent organization would evaluate the outcomes of the two agreements at least annually.

TPC members acknowledged the benefits of the dispute resolution process, concluding that they operate as “one team” as a result of the joint work and mutual consultation. They noted that the TPC has become a strong mechanism to have open, honest, and constructive dialogue in an environment of trust. TPC unanimously concluded that the dispute resolution process progressed with the proactive engagement of all parties, in particular, thanks to continued support and assistance provided by the Khanbogd Soum government, the dedicated and consistent involvement of herder representatives, and the continued efforts and support of Oyu Tolgoi. They underlined the importance of all parties strengthening their collaboration and trust beyond the CAO process through proactive and concentrated engagement.



*The Tripartite Council and CAO share their experience with mining companies at IFC's South Gobi Water and Mining Industry Roundtable, September 2016.*

## CASE CLOSURE MEETINGS

In March 2019, CAO and the TPC convened a formal case closure meeting in Khanbogd and a knowledge-sharing event in Ulaanbaatar, Mongolia, which included participants from private sector, civil society, government, and international donor and development organizations. The TPC also released a video about their experience in the CAO mediation process<sup>3</sup>.

## INSIGHTS FROM THE PROCESS



*CAO mediator in joint session with parties, December 2014.*

### Importance of Local Mediators

For most dispute resolution cases, CAO typically finds a local mediator from the country or region where the parties are located. This helps ensure better understanding of the local culture, context, and languages, as well as facilitating easier access and availability of the mediator to the parties. CAO was initially unable to find an experienced Mongolian mediator for the Oyu Tolgoi cases, and proceeded with a lead mediator from Kyrgyzstan. Fortunately, early in the dispute resolution process, CAO discovered that one of the interpreters had previous experience in group facilitation and delivering training related to mining and sustainability. CAO senior mediators from Kyrgyzstan and Ukraine were able to co-mediate and mentor the Mongolian mediator, and she was also able to get formal mediation

<sup>2</sup> See [https://www.ot.mn/media/ot/content/esia-audits/201911/2018\\_OT\\_Resettlement\\_Action\\_Plan\\_ENG.pdf](https://www.ot.mn/media/ot/content/esia-audits/201911/2018_OT_Resettlement_Action_Plan_ENG.pdf) (accessed 4/21/20)

<sup>3</sup> See [https://youtu.be/\\_yiY6rgdRP0](https://youtu.be/_yiY6rgdRP0) (accessed 4/21/20)

training. Eventually, the Mongolian mediator was able to mediate most of the process by herself. This was immensely helpful to the parties and the process, as it reduced the need for interpretation and the Mongolian mediator was able to be more directly accessible to the parties, as well as establish a rapport with them, and navigate cultural nuances. The Mongolian mediator has subsequently proceeded to establish herself as a world-class professional neutral, mediating other cases in Mongolia and abroad. Building and strengthening local mediator capacity can therefore be an important by-product of a CAO dispute resolution process.

### Joint Fact-Finding (JFF)

JFF can be an important tool to help resolve conflicts when facts are in dispute. The JFF work and findings in this case greatly helped the parties narrow the scope of disagreement and make informed decisions in resolving the two complaints. CAO has utilized JFF in a number of dispute resolution cases as it provides parties an opportunity to explore ways to jointly collect, analyze, and interpret information in a manner that is mutually credible and agreed upon. It typically involves the parties working together to explore technical and scientific issues in a way that ensures information is jointly trusted and understood. The process may involve a number of elements, including access to information that was previously not shared, reviewing the credibility of existing information, or even generating new information through scientific inquiry. The results of a JFF process are more likely to be considered credible and trustworthy by other stakeholders, such as government, civil society, and other private sector companies that may be involved in, or influential with respect to the dispute.

### Role of Local Government

The primary parties in a CAO dispute resolution process are the complainants (affected community members) and the IFC/MIGA client (or project operator). In many cases, as in Mongolia, the parties find that they cannot resolve all the issues by themselves and need to invite other stakeholders to participate in the process. In Mongolia, the primary parties realized that the involvement of the local Khanbogd Soum government was critical to finding solutions and agreed to approach the local authorities about participating in the mediation. The local government agreed and the three parties formed the Tripartite Council, with mutually agreed ground rules and a Charter. This helped to ensure access to local government expertise and resources, coordination with larger Soum-wide development plans, securing relevant permits, and overall credibility of the process and outcomes.



Representatives from the TPC, Accountability Counsel, and IFC participate in the IFC Sustainability Exchange moderated by CAO in Cartagena, Colombia, June 2017.

---

*“Today’s success of the TPC is the sum of hard work and collaboration of the Elected Herder Team and their advisors, OT, local government, the multidisciplinary team, the Independent Expert Panel, and CAO.”*

U. Battogtokh, Herders’ Representative,  
Javkhlant Bagh, Khanbogd Soum

---



The CEO of Oyu Tolgoi, TPC representatives, and CAO team at the Knowledge Sharing Event in Ulaanbaatar, March 2019.

## Sharing Experience

CAO is grateful to the parties in Mongolia for their willingness to share their experience, lessons, and knowledge with other companies, communities, governments, civil society and related stakeholders around the world. CAO dispute resolution processes provide confidentiality protections for the parties, and for a variety of reasons, some details cannot be publicly released in many CAO cases. Fortunately for those engaged in other mining and development projects, the Mongolia parties have made a great deal of information publicly available, such as their mediation agreements, joint fact-finding results, TPC Charter, and meeting summaries, and they are willing to speak publicly about their experience.

## Lessons from the TPC

The TPC provided the following lessons learned to CAO for inclusion in this report:

- The parties have understood that productive relationships are based on trust. A fair and open relationship regulated by rules and procedures, not an individual relationship, strengthens trust.
- It is understood that seeking a temporary and easy solution in order to “eliminate” a problem can never be efficient. Spending time to find an appropriate solution which is acceptable to all parties is beneficial in the long run.
- It is crucial to strengthen relationships through communicating openly and honestly,

discussing and negotiating complicated issues, and concluding long-term agreements, which all parties are jointly responsible for implementing.

- In-depth investigation and understanding of local people’s goals and aspirations, and the local social and cultural context, are necessary preconditions to resolve their concerns and bring about sustainable development.

---

*“I have been involved in the process from the beginning representing the local government.... As a young professional, I have learned a great deal in resolving disputes and cooperating with various stakeholders....I highly value the dedication and commitment of [the herders].... We see our future very promisingly. Together, we can implement many useful works overcoming any challenges. We are proud that our experience in this process is the pioneer in Mongolia.”*

B. Altangerel, State Environmental Inspector, Khanbogd Soum

---

## Lessons from IFC and MIGA

IFC provided the following lessons learned to CAO for inclusion in this report:

- **Joint Fact-Finding (JFF):** IFC acknowledges the important value of the JFF work undertaken by the parties in generating mutually credible data and conclusions related to technical aspects of the parties’ disagreements about project impacts.
- **Participatory environmental monitoring, including water:** In arid environments defined by highly variable annual precipitation and habitat condition, participatory environmental monitoring (PEM) programs for project-affected households can be an important risk management tool. In these environments, it is particularly challenging to assess whether variations in water and pasture availability are attributable to project impacts or to natural variability. In this



context, the role of sufficiently resourced PEM programs, supported by adequate professional training, is particularly valuable. PEM programs can help to make scientific data accessible, understandable and build trust. The OT-supported PEM program has now transitioned to a local NGO, the aforementioned “Munkh Nagoon Galba”, which enhances its legitimacy.

IFC Advisory Services also implemented a program between 2012 and 2016 to promote sustainable water use and participatory water monitoring in the mining sector in the South Gobi.

- **Resettlement.** The methodologies for assessing livelihood impacts on herder communities and the subsequent design of compensation programs should be explicitly informed by the attributes of semi-nomadic/nomadic pastoralism. Additionally, ex-post livelihood restoration audits, like those conducted for OT on July 2018, are important to ensure that measures have been effective. IFC also continues to monitor the implementation of livelihood restoration measures and has developed a new Resettlement Handbook based on its experience since the adoption of the IFC Performance Standards. The handbook provides practical implementation strategies as they relate to Performance Standard 5 on Land Acquisition and Involuntary Resettlement, lessons of experience from projects and learning that has resulted from CAO cases.
- **Stakeholder meetings:** Given the complaints, IFC took the decision to have periodic stakeholder engagement meetings to hear directly from stakeholders, including directly affected people and NGOs. IFC held four stakeholder engagement meetings in December 2012 (during appraisal), April 2016, March 2017, September 2018, and October 2019 in both Ulaanbaatar and Khanbogd (near the Oyu Tolgoi mine site). IFC also joined the CAO Case Closure meeting with stakeholders in March 2019 and meetings between a group of World Bank Group Executive Directors and local stakeholders in May 2019. IFC also meets with directly affected herders during the periodic site supervision visits. IFC will

continue to proactively meet with stakeholders periodically as long as warranted.

---

*“Benchmarking open and transparent dialogue, where parties share facts and ideas through fair discussion and make unbiased decisions committing to long-range joint efforts for implementation, is the key success of our team work.”*

Sh. Baigalmaa, General Manager,  
Strategic Community Project, OT LLC|

---

- **Integrated approaches:** In complex projects with significant real or perceived impacts on water, land and biodiversity, the management of those impacts should be addressed in an integrated manner. To foster collaborative planning and joint implementation across OT technical teams, IFC worked with OT to establish an inter-disciplinary ecosystem services working group (ESWG) comprised of OT staff from the communities, biodiversity, and water teams. The ESWG serves as a forum for coordination, management, and decision-making regarding shared technical issues related to water, land, and biodiversity, such as pastureland management, stakeholder engagement, biodiversity offsets, and ecosystem services. The principle of integrated cross-disciplinary approaches, especially the interface between social and biodiversity issues, is a widely encouraged principle in current IFC projects. The specific working group structure in OT is however a function of the complexity and size of OT teams and efforts. In most cases, this can be delivered via simpler means (e.g. regular team meetings between social and biodiversity/environmental teams).

## CONCLUSION AND NEXT STEPS

CAO has officially concluded its involvement in these two cases after monitoring implementation of the mediated agreements to the parties' satisfaction. The TPC will continue the implementation of a number of commitments and projects as part of the mutually-agreed sustainable livelihood support, namely:

- establishment of a Herders' Market, a project to support the creation of a supply chain for producers of livestock originated raw materials;
- building an animal slaughter line with permanent operations;
- a project to improve health services for herders;
- a life skills training project;
- a project to establish a water well, and a camp repair and maintenance team;
- installation of a Unitel antenna in Gaviluud Bagh to increase the communication coverage in Khanbogd Soum;
- a "Young Herder" project to support and assist young herders;
- building of artificial lakes, ponds, and rain water catchment;
- conducting a comprehensive study on pasture and water resources, the essentials for livestock sector development, and developing and implementing a pasture management plan for Khanbogd Soum based on the study;
- restore traditional livestock herding practices, introduce advanced technologies, and improve the qualifications of specialists;
- improve livestock health and breeding to increase productivity;
- develop enterprises engaged in processing of livestock- originated raw materials and producing value-added products.

---

*"All members of the Tri-Partite Council express their deepest gratitude and wish all the success to the CAO team for successful completion of the CAO mediation process on settling herders' complaints and strengthening the Council's capacity and skills to operate independently in the future, as well as for their sincere efforts and skillful mediation provided at the highest level of professionalism during the dispute resolution process that could be recognized as an international best practice."*

Statement from the Tripartite Council,  
March, 2019

---

IFC and MIGA have also committed to continue to monitor implementation of the outstanding items in the mediation agreements as part of their ongoing project supervision.

*All documents related to this process, including joint statements by the Tripartite Council and agreements signed by the parties are available on CAO's website at [www.cao-ombudsman.org](http://www.cao-ombudsman.org)*