



**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](http://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](http://www.cao-ombudsman.org).

## Table of Contents

Table of Contents.....	3
LIST OF ACRONYMS.....	4
1. Overview .....	5
2. Background.....	5
2.1. The Project.....	5
2.2. The Complaint .....	6
3. Assessment .....	6
3.1. Methodology.....	6
3.2. Findings.....	8
3.2.1. Summary of Issues.....	8
3.2.2. Summary of Stakeholder Goals and Interests.....	8
3.2.3. Conclusion and Next Steps .....	9
Annex A. CAO Complaints Handling Process .....	10

## **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 MIGA<sup>1</sup>.

## 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.

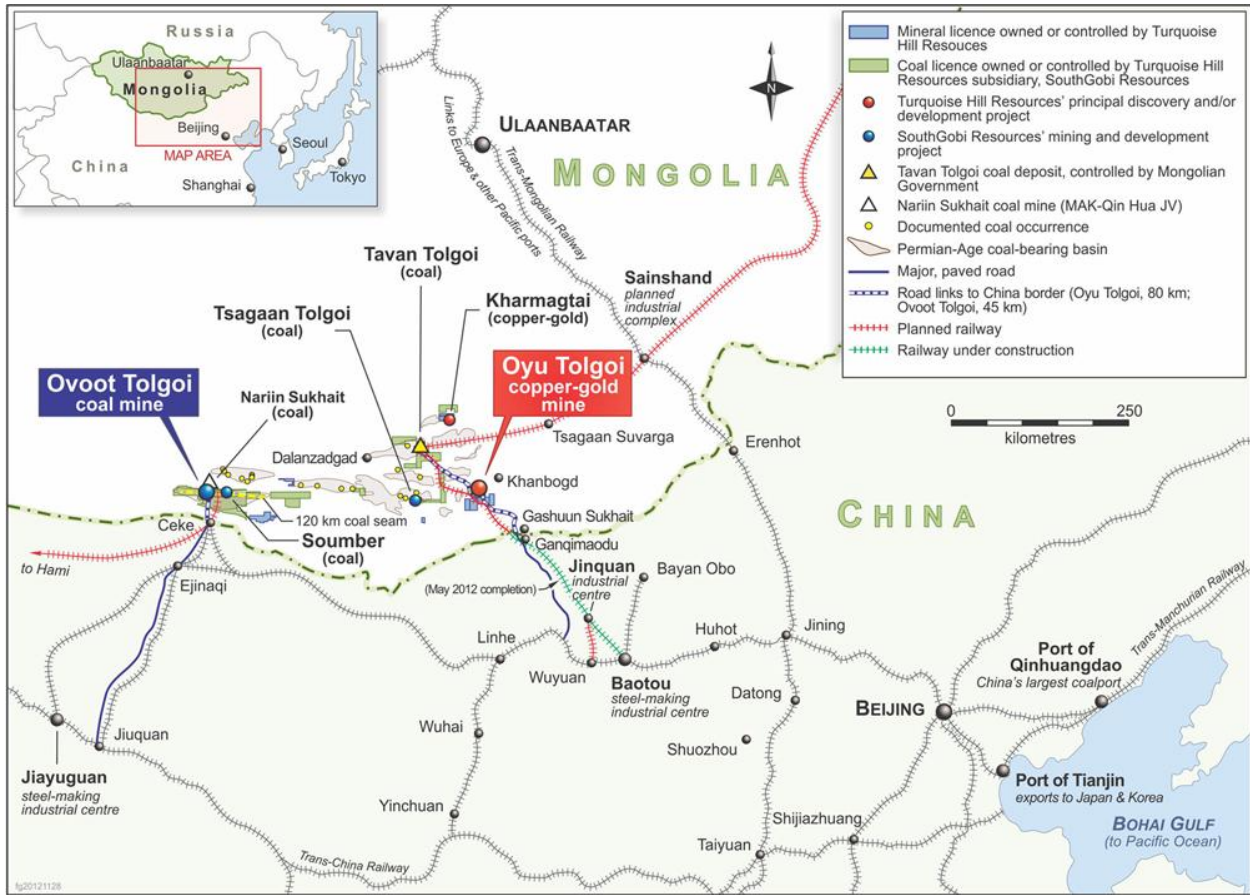
According to the "Undai River Protection and Partial Diversion Project" Detailed Environmental Impact Assessment (DEIA) Report:

"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.

---

<sup>1</sup> 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)<sup>2</sup> 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.

---

<sup>2</sup> Please see [http://www.cao-ombudsman.org/cases/case\\_detail.aspx?id=191](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,<sup>3</sup> 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 affected<sup>4</sup>.

OR

---

<sup>3</sup> 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>

<sup>4</sup> 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