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Civil Society Review of the Oyu Tolgoi audit and Operational Management Plans

November 13, 2013

The Oyu Tolgoi (OT) copper/gold mine in the South Gobi *aimag* of Mongolia, which is one of the International Finance Corporation's (IFC) largest and most complex infrastructure investments, poses a significant environmental and social risk to the local community of Khanbogd *soum* in the South Gobi, as well as to the country at large. As presented in our collective submissions before the Board approval in February 2013,¹ the Project's ESIA was incomplete and retroactive, a situation that was partially remedied with the recent, but much delayed, publication of the project's Operational Management Plans (OMPs).

While we are pleased that the plans, as well as the April 2013 audit of the project, have finally been published, we are concerned that the OMPs and the audit fail to address many of the key issues we flagged to the IFC and the European Bank for Reconstruction and Development (EBRD) back in February. In the absence of an opportunity for formal public comment, we take this opportunity to provide some initial thoughts regarding the audit and the OMPs and rearticulate the concerns we share with the impacted herder community in Khanbogd.

We ask the Board to hold disbursement until it can ensure that (i) critical components of the OMPs, such as the Biodiversity Monitoring and Evaluation Programme and Water Monitoring Plan among others, and other unreleased reports, such as the Aquaterra groundwater monitoring report, are disclosed and an opportunity for public comment is provided; (ii) the ongoing processes related to the CAO complaints on the compensation package and Undai River diversion and the EBRD Project Complaint Mechanism complaint on roads and dust impacts are more effectively taken into account; and (iii) herders are guaranteed access to clean water, clean air, and adequate pastureland, which is dependent on the previous two asks. We also ask that a clear process and timeline for reviewing the OMPs be established, especially since the OMPs envisage the expansion of block-caving and Gunii Hooloi water abstraction north of the existing indicated areas.

These key asks are supported by the following observations on the disclosed audit report and OMPs, as well as the most recent updates from the communities themselves. As a reflection of our previous recommendations, these observations relate to seven areas of concern: (1) OT's failure to properly implement important social and environmental commitments; (2) water scarcity; (3) the Undai River diversion and replacement of the Bor Ovoo Spring; (4) Stakeholder Engagement and impacts on herder livelihoods; (5) waste management and mine closure; (6) the proposed coal-fired power plant; and (7) biodiversity.

¹ These include our February 11, 2013 letter to WBG President Kim and February 15, 2013 letter to EBRD President Sir Suma Chakrabarti (available at: <http://www.bicusa.org/wp-content/uploads/2013/03/CSO-letter-to-Dr-Kim-on-Oyu-Tolgoi.pdf>; <http://bankwatch.org/sites/default/files/letter-EBRD-OT-15Feb2013.pdf>), as well as our February 26, 2013 reply to OT LLC and the IFC (available at: <http://www.bicusa.org/wp-content/uploads/2013/02/CSO-Reply-to-OT-LLC-and-IFC.pdf>).

1. OT's Failure to Properly Implement Important Social and Environmental Commitments

- The audit found a total of 108 instances in which OT had failed to comply with its own social and environmental commitments since September 2012, more than half of which (64 in total) OT has still failed to address.²
- It is clear from the audit that while OT has addressed a substantial number of the least critical compliance issues, it has failed to fully address nearly 90% of the non-compliance issues that, according to the auditors, are “reasonably likely” to cause negative impacts, material damage or even irreversible harm to sensitive resources.³
- With regard to the OMPs, we fear that if such a pattern continues, OT may fail to properly implement the commitments outlined in the OMPs in a timely manner, with resulting serious, negative impacts on the herders and the environment of the South Gobi.

2. Water Scarcity

- The audit confirms that OT has not adequately responded to declining water levels of several herder wells.⁴
- The audit confirms the existence of several “cascading” wells that “indicat[e] possible cross connectivity” between the shallow aquifers used by herders and the Gunii Hooloi aquifer used by OT.⁵ The planned mitigation is to abandon the wells once permission is obtained from local authorities, but neither the audit nor the OMPs discuss repairing or replacing affected herder wells.
- The audit does not include a comprehensive audit of OT's water balance – its use and reuse of water – and while the OMPs commit to future external audits of the site water balance, there is no indication that comprehensive reviews of the monitoring results will be conducted regularly or made public.⁶ Regular auditing of OT's water balance is vital to understanding OT's impact on water scarcity in the region, as well as whether it is fulfilling its water conservation commitments.
- The Water Monitoring Plan, described as “[t]he principle procedure” for implementing OT's water management plans,⁷ is still not available for review. The release of this document is critical, as the available OMPs do not address the impact of toxic leachate on surface and ground water sources that improper waste rock management may cause.⁸

3. Undai River Diversion and Replacement of the Bor Ovoo Spring

- Although the OMPs indicate that the Undai River diversion will not be completed until Q3 2014,⁹ the diversion is already in place. The audit confirms that OT made changes to the diversion project without properly notifying lenders or adequately considering impacts to biodiversity.¹⁰ Neither the audit nor the OMPs mention how findings of the independent expert panel convened under the CAO process to investigate impacts of the Undai diversion will be integrated into future management plans.

² ERM April 2013 Audit Report (available at: http://ot.mn/sites/default/files/documents/ESIA_Audit_report.pdf), Table 3-1 at p. 12.

³ Ibid, Tables 2-2 & 3-2. This may be exacerbated by the conflict between aimag and soum regulators and OT on how to implement Bank standards, as suggested by the audit report.

⁴ Ibid, Table 3-2 ##1.11 & 1.12 at pp. 18-19.

⁵ Ibid, Table 3-2 #1.15 at p. 21. In addition, GHW 4x6 bore construction shows the use of gravel for fill around the pipe, raising the question of whether this was an instruction to the contractors.

⁶ See Water Resources Management Plan (available at: http://ot.mn/sites/default/files/documents/ESIA_OT_OMP_Water_Resources_Management_Plan_EN.pdf), p. 29 (indicating only that Project Lenders can request a comprehensive presentation of monitoring results no more than once per year).

⁷ Ibid, p. 13.

⁸ The current Water Resources Management Plan refers only to monitoring bottled drinking water quality and effluent waste water, which is to be treated and discharged to the Tailings Storage Facility (TSF). In view of the reported lack of rigor in separating acid-forming rocks and the planned discharge to the TSF of waste with high acidifying levels of ammonia [at 30 mg/l], the potential for leachates containing toxic metals/metalloids escaping to surface and groundwater is troubling. The Water Resources Management Plan also references the 2003 WHO DW Guidance [updated in 2006, 2008, 2009 and re-issued in 2011] which flags universal mining waste concerns with arsenic and selenium, of which there is evidence in the South Gobi (see http://londonminingnetwork.org/docs/Purevdorj_B_Olkhanud_Capstone.pdf).

⁹ See Environmental and Social Management Plan (available at: http://ot.mn/sites/default/files/documents/ESIA_OT_OMP_ESMP_ENG.pdf), p. 53.

¹⁰ ERM April 2013 Audit Report, pp. 54-55.

- The audit confirms that OT's interim Bor Ovoo spring replacement does not fulfill OT's commitment to create a replacement spring that mimics the ecological function of the original.¹¹
- Herders report that construction of the permanent replacement spring has not been completed due to the company's inability to demonstrate that the current proposed design can replicate the original spring's important ecological service of preventing soil and water contamination by flushing/cleansing animal droppings from around the spring and downstream areas. As Governor T. Buyan-Ulzii stated, the local government will not issue the land permit until the herders are satisfied with the proposed design of the artificial spring.

4. Stakeholder Engagement and Impacts on Livelihoods

- The audit verified the resolution of grievances submitted by herders to OT, but it did so without attempting to find out whether herders were satisfied with OT's "resolution."¹² The same problem exists regarding the auditors' statement on resettled households.¹³ Similarly, both the audit and the Stakeholder Engagement Plan praise OT's consultation practices while only briefly acknowledging the complaints raised about this issue to the IFC, the CAO, and the EBRD.¹⁴
- The OMPs note that OT selected an 11 member panel to help develop and implement the Pastureland and Livelihood Improvement Strategy,¹⁵ but it is unclear if and how OT took measures to avoid conflicts of interest in selecting panel members; neither the TORs for the panel nor the list of panel members has been disclosed. The Strategy also fails to explain how the panel will draw on the findings generated by the investigation of the Undai diversion impacts being undertaken as part of the CAO process.

5. Waste Management and Mine Closure

- The audit is critical of OT's failure to put in place effective methods to sort or segregate different types of waste rock, saying that OT's methods "did not reflect a precautionary approach to the management of these materials."¹⁶ OT must relocate stockpiles and do additional sampling/testing per the recommendations of the auditors.
- The Integrated Mineral Waste, Acid Rock Drainage and Dump Management Implementation Plan, which would presumably address some of the auditors' concerns, is not yet available.
- The Mine Closure Plan, dated June 2012, is too conceptual and lacks detail. For instance, the tailings dam cross-section is shown as a conceptual drawing, rather than as built.¹⁷ To be relevant, the plan must be updated as facilities are constructed.

6. Coal-fired Power Plant

- The OMPs scarcely mention the proposed coal-fired power plant and do not identify a timeline for the Power Plant ESIA.¹⁸ The OMPs fail to commit OT to a comprehensive study of the combined impacts of a captive coal-fired power plant and the mine. It is unacceptable to issue a supplemental ESIA for the coal plant, which

¹¹ Ibid, Table 3-2 #6.06 at p. 42; see also *ibid*, Table 3-2 #1.10 at p. 17 & #1.19 at p. 23.

¹² *Ibid*, p. 88.

¹³ *Ibid*.

¹⁴ See *ibid*, pp. 102-103; Stakeholder Engagement Plan (available at:

http://ot.mn/sites/default/files/documents/ESIA_OT_OMP_Stakeholder_Engagement_Plan_EN.pdf), pp. 22, 60-62. Rio Tinto has fashioned itself as a "leader in stakeholder consultation" while at the same time destroying the sole source of surface water in Khanbogd soum without community consent, as evidenced by the complaint to the CAO on the Undai River diversion.

¹⁵ Pastureland and Livelihood Improvement Management Plan (available at:

http://ot.mn/sites/default/files/documents/ESIA_OT_OMP_Pastureland_and_Livelihood_Improvement_Strategy_EN.pdf), p. 12.

¹⁶ ERM April 2013 Audit, Table 3-2 #1.16 at p. 21.

¹⁷ Mine Closure Plan (available at: http://ot.mn/sites/default/files/documents/ESIA_OT_OMP_Mine_Closure_Plan_EN.pdf), pp. 55, 57.

¹⁸ See Environmental and Social Action Plan (available at: http://ot.mn/sites/default/files/documents/ESIA_OT_OMP_ESAP_Sep2013_EN.pdf), p. 1.

will lead to critical decisions being made before the full impacts, particularly impacts on the scarce water supply, are known.¹⁹

- While OT has pledged to do a full alternatives analysis, the documents still appear to assume that the power will come from a new coal plant.²⁰

7. Biodiversity

- Fundamental components of the Biodiversity Management Plan (BMP),²¹ such as the Biodiversity Offsets Management and Biodiversity Monitoring and Evaluation Programme (BMEP), are still not available, and will not be available until 2014 and 2015, respectively.²²
- There are no data supporting many of the key mitigation measures proposed in the BMP. For instance, baseline data for the BMEP should have been collected long before construction and operations commenced but was only scheduled to begin in Q2 of 2013.²³
- The targets proposed in the BMP are unrealistic or highly improbable. For instance, the target of eliminating wildlife deaths attributable to OT does not outline any incentives for the target to be maintained or for reporting of the number of incidents, nor does it plan for the chance that wildlife deaths may increase.²⁴ To comply with the ESIA's adoption of the precautionary principle in assessing biodiversity impacts,²⁵ OT must develop contingency plans to address the possibility of missing BMP targets, especially since the audit indicates that OT is behind in its commitments to install wildlife underpasses on the unfinished OT Gashuun Sukhait road.²⁶

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¹⁹ Although the latest Power Plant DEIA suggested that it would have low water-use, the tailings storage facility will have to contain its ash, adding to both the volume and toxic contents of the TSF during operations and afterwards. This is another example in which the impacts of the mine and the power plant must be analyzed together in a comprehensive study.

²⁰ See Environmental and Social Management Plan, pp. 16, 53.

²¹ Available at: http://ot.mn/sites/default/files/documents/ESIA_OT_OMP_Biodiversity_Management_Plan_ENG.pdf. The newest version (October 14) is available at http://ot.mn/sites/default/files/documents/ESIA_OT_OMP_Biodiversity_Management_Plan_EN.pdf, and omits much of the tables found in the original Biodiversity Register (Annex D).

²² Ibid, pp. 7, 23.

²³ Ibid, p. 23. It is unclear whether this Core Biodiversity Monitoring Programme has begun as scheduled or what the methodology is, as documents related to this program have not been disclosed.

²⁴ Ibid, p. 22.

²⁵ See ERM April 2013 Audit, p. 55.

²⁶ See ibid, Table 3-2 #6.13 at p. 46.