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Digging to the roots of poverty

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CATEGORY A SUBMISSION: EFIC proposal to provide project finance to Oyu Tolgoi Copper-Gold mine, Mongolia.

Jubilee Australia is pleased to provide this submission. We thank EFIC for its efforts to solicit public concerns arising in relation to its operations, especially funding proposals for Category A projects.

We note that it is currently not EFIC's practice to publish on its website the category A submissions received during the disclosure period. We ask that EFIC re-consider this practice, in the interests of transparency and accountability. Opening to the Australian public and project affect communities a range of views on Category A funding proposals has the potential to build trust, promote further engagement with stakeholders, improve the design and implementation of projects, and lead to better development outcomes. To this end, we urge EFIC to consider publishing on its website this and other submissions received in relation to the Oyu Tolgoi Mine funding proposal.

Whilst we understand and trust that EFIC will carefully read and address the concerns outlined in the submissions it receives, we also suggest it would be good practice for EFIC to respond to submissions point by point. Further, we encourage EFIC to make such responses available on the EFIC website prior to reaching a decision on providing EFIC products or services to proponents of Category A projects.

1. Introduction

1.1 In the brief period available for public consultation on the Oyu Tolgoi Mine proposal Jubilee Australia has been in communication with a range of non-governmental organisations that support good governance, transparency and best practice in the development, funding and operation of ECA-backed mining projects. Our submission echoes concerns raised by these project observers: Urgewald, OTWatch, London Mining Network, Bank Information Centre, Accountability Counsel, ECAWatch, and CCE Bankwatch Network.

1.2 We commend their forthcoming detailed and expert analysis¹ of the Oyu Tolgoi Environmental Social Impact Assessment (ESIA) and endorse the view that approving funding for this project on the basis of what has been provided by Oyu Tolgoi LLC to date is premature.

1.3 The Oyu Tolgoi copper/gold mine in southern Mongolia (OT) will exploit one of the world's largest copper and gold deposits, has cost USD6 billion to date and is expected to be one of the world's three largest mines when it reaches full production in 2018.²

1.4 Exploration associated with OT commenced in 1997. The ESIA was published on 31 July 2012 and made publicly available on 23 August 2012.

2. The ESIA

2.1 Under the EFIC policy for environmental and social review of projects EFIC commits to the use of the IFC Performance Standards for risk evaluation and benchmarking. Jubilee Australia is concerned that on the issues noted below, the EISA fails to comply with the IFC standard:

2.2 The purpose of the ESIA is to facilitate the process undertaken by project proponents (and their financiers) of researching, establishing and addressing the serious impacts of Category A projects. Since many serious impacts will occur during project construction, the ESIA needs to be completed during the design phase and before construction begins.³ 2.4 The OT ESIA was released at the point when mine construction was a few months from completion. The ESIA says mine construction is in line for completion by December 2012, with operations expected to commence in 2013.⁴

2.3 At this point in time critical decisions about mine design and development have already been made. Alternative project design and development approaches that might mitigate environmental and social impacts are no longer possible.

2.4 Large-scale, green-field mining projects can be expected to impact the environment, people and communities through all project phases: exploration, design, construction, closure and post-closure. The OT ESIA covers primarily the construction phase of the project; it includes no material disclosures or impact assessments related to the operations or closure of the mine.

2.5 ESIA's are expected to include impact assessments for all project phases, as well as action plans for impact avoidance and mitigation.⁵ The IFC Performance Standards (IFC PS) require the publishing of action plans to indicate in detail how project proponents will mitigate the damage from the impacts that they have identified.⁶

¹ These civil society groups are producing a document called "Review of the Oyu Tolgoi Copper/Gold Mine Environment and Social Impact Assessment". It is expected to be submitted to EFIC by 2 November 2012 and subsequently to the other international financial institutions proposing to provide funding to the project. Many of our comments are taken from observations included in drafts of that document, in addition to desk top research and communications with OTWatch observers on the ground and elsewhere.

² Mongolian Nomadic Herders Worry about impact of Rio Tinto's Gold Mine, Corpwatch Blog 24 Sept 2012.

³ IFC PS 1 para 7.

⁴ ESIA Section A, Chapter A4.

⁵ IFC PS 1 para 4.

⁶ IFC PS 1 para 16.

2.6 It is troubling that the OT ESIA is based on the “initial construction of the open pit mining operation”⁷ and lacks a complete discussion of the social and environmental impacts during the post-construction stages, as well as the subsequent action plans (identified in the OT ESIA as Management Plans). It appears the proponents also expect to commence the operations stage ahead of the presentation of the relevant impacts assessment and action plans.

2.7 Over time Jubilee Australia has expressed its view that it is essential that EFIC review action plans established to address social and environmental impacts prior to the approval of funding proposals. The omission of the impact assessments and action plans for OT’s post-construction stages raises critical concerns.

2.8 Jubilee Australia reiterates its view that EFIC can only ensure that the project proponents are addressing the mitigation of project impacts if impact assessments and action plans are presented for examination prior to funding approval. We recommend that EFIC withhold its approval of project funding until these materials are provided and reviewed.

2.9 The ESIA does not present a satisfactory assessment of the development and operations impacts of the OT associated facilities⁸ – the international airport and the coal-fired 450 megawatt power plant, both required to service the mine. Commentary on the associated facilities, as well as the Undai River Diversion and the pastureland impacts, appear in sections throughout the ESIA rather than in one chapter, where the impacts can be easily found, analysed and understood.

3. Water Resource Management

3.1 The issue of water resource management is one raised throughout the OT ESIA - a particularly acute issue for a project in a desert environment. NGO observers with specialist skills in hydrology have noted the following concerns⁹ about OT’s plans in the ESIA for water resource management.

3.2 There appear to be inadequacies in the project design for servicing OT’s considerable water requirements from the Gunii Hooloi aquifer.

3.3 The ESIA includes no discussion of water requirements if, as expected, the project expands daily extraction levels; in addition there is no detail provided on the water demands of the airport, coal-fired power plant or mine staff/housing.

3.4 It is concerning that the World Bank has acknowledged there is insufficient water in the region to support the life of the project; data in the ESIA suggests there may be inadequate water for the project beyond 2020.

3.5 Further, the ESIA lacks a discussion of the cumulative and aggregate impacts of other coal mining projects in the region, which will place competing demands on South Gobi water sources.

⁷ ESIA Section A, page 5

⁸ IFC PS 1, para 8.

⁹ OT Watch et al draft “Review of the Oyu Tolgoi Copper/Gold Mine Environmental and Social Impact Assessment”.

3.6 The ESIA suggests OT is designed to use wet tailings rather than dry tailings, which reflect best practice in mines subject to arid conditions and very low temperatures. The use of dry tailings reduces water requirements plus mitigates the risk of ground and surface water pollution. As the cost of using dry tailings is higher than for wet tailings it is presumed that the project may have been designed for short term cost efficiency rather than long-term efficiency in water consumption and environmental protection.

4. Environmental Impacts and Sustainability

4.1 The risks to people and the environment from increased dust in the region, climate change and greenhouse gas emissions produced by the coal-fired power plant are not explored in the ESIA in a way that enables OT to establish action plans and outline safeguards for public health, water and biodiversity.¹⁰

5. Community Consultation

5.1 The main communities impacted by OT are traditional nomadic herders who depend on this land for their livelihood. They have reported the following in relation to the OT construction stage¹¹:

- dust and pollution which harms herd grazing,
- exacerbation of respiratory disease which already is high,
- less water availability for herds and construction, and
- disruption of nomadic movements by mine-related roads and railways.

5.2 Proponents of Category A projects like OT that are anticipated to have material adverse impacts on people, communities and the environment are expected to consult on project design, development and operation with those who will suffer from project impacts. Successful consultations – applying the principles of free, prior and informed consent - are respectful, culturally-sensitive, in-depth and undertaken over time.

5.3 Jubilee Australia's discussions with Sukhgerel Dugersuren, Executive Director of OT Watch, which works with OT's directly affected nomadic herders, suggest that Rio Tinto's community consultations failed to apply the principles of free, prior and informed consent.

5.4 "Rio Tinto has not organised meaningful, participatory and culturally appropriate public consultations with the affected herders," explained Ms Sukhgerel in comments published by Bank Information Centre. She listed the following flaws in the OT Informed Consultation and Participation Process¹²:

- Rio Tinto organised a meeting with affected communities in Khanbogd, Mongolia. The company issued notices of the meeting 2 days prior, prohibiting attendance by affected families many of who live 20-60km away.

¹⁰ OT Watch et al draft "Review of the Oyu Tolgoi Copper/Gold Mine Environmental and Social Impact Assessment."

¹¹ "Oyu Tolgoi: Comments to Rio Tinto", OT Watch et al, 16 October 2012.

¹² Bank Information Centre, "World Bank and Others Poised to Invest in Rio Tinto's Flawed Mongolian Mining Project, 24 September 2012.

- Copies of the Mongolian translation of the ESIA for discussion were not distributed prior to the meeting, preventing individuals from reviewing the document in advance.
- Rio Tinto provided only two copies of the Mongolian translation of the ESIA during the meeting.
- Rio Tinto has approached individuals to discuss the project on a one-on-one basis, which can be intimidating and can inhibit an open exchange of views.

5.5 Herders have advised that they feel frustrated with company representatives and feel uninformed or under-informed about what is going on at the mine site. Adverse community impacts have already been recorded¹³ by 80 or so herder households whose livelihood, security and cultural heritage depend on the ability to continue to engage in herding, including:

- Herd loss due to forced resettlement as a result of OT¹⁴
- Economic displacement caused by the loss of and fracturing of pasture land,
- Decline in herd quality due to loss of pasture land, competition for water and increased dust following the start of construction.

5.6 Herders report that the company has been largely unresponsive to their concerns about the threats to their livelihoods.

6. Human rights

6.1 The UN Working Group on Business and Human Rights recently concluded an official country visit to Mongolia to examine the human rights impacts of business activities there, especially mining industry projects.

6.2 The Working Group's findings are outlined in the submission being made in response to the OT funding proposal by our colleagues at Oxfam Australia.¹⁵ Oxfam has likewise outlined concerns it heard from project impacted groups and civil society observers in Mongolia. Jubilee Australia strongly endorses Oxfam's recommendation that EFIC assess the OT funding proposal with robust regard to protections for pasturelands, water resources, livelihoods, health and traditional lifestyles and cultures.

7. Recommendations

7.1 In the interests of enhancing transparency and accountability in the credit review process for Category A funding proposals, Jubilee Australia asks that EFIC give consideration to the following recommendations:

¹³ Media release "World Bank and Others Posed to Invest in Rio Tinto's Flawed mining Project" by Urgewald, OTWatch, London Mining Network, Bank Information Center, Accountability Counsel CEE Bankwatch Network, 24 September 2012.

¹⁴ Rio Tinto says there has been no forced resettlement of herders yet the ESIA states that 10 herder households (16 families) were physically displaced in 2004 from the mine site area. ESIA Ch D15, P106

¹⁵ Oxfam Australia expects to tender its Submission on the Oyu Tolgoi Copper-Gold Mine Project by 2 November 2012.

- Unless confidentiality is requested, publish submissions provided to EFIC during the Category A register's period of public disclosure.
- Provide, to the greatest extent practicable, point by point responses to issues raised in Category A register submissions.
- In the case of the EFIC board's approval of the Category A transaction, publish a summary of the results of EFIC benchmarking under the Policy for environmental and social review of projects.

7.2 Jubilee Australia has undertaken a desktop review of the OT ESIA, project advice, published and unpublished materials¹⁶ and materials expected to be provided to EFIC by 2 November 2012¹⁷.

7.3 As a result of this review, Jubilee Australia is of the strong opinion that approval of funding for this project by international financial institutions and export credit agencies, including EFIC, on the basis of what has been provided by Oyu Tolgoi LLC to date is premature.

7.4 Before the EFIC board considers granting approval to this transaction, Jubilee Australia urges EFIC to undertake the following due diligence in relation to the OT funding proposal:

- Obtain and benchmark the OT ESIA for the operations, closure and post-closure stages of the project.
- Obtain and benchmark action plans for avoiding, addressing and mitigating project environment and social impacts for all OT project stages and for any future OT expansions.

Thank you for the invitation to make this submission.

Kind regards,

A handwritten signature in black ink, appearing to read "Carmelan Polce".

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¹⁶ For published and unpublished sources please see End Note I.

¹⁷ For sources expected to be provided to EFIC by 2 November see End Note II.

End Notes

I. Published Sources:

- “Australia to help Mongolia expand latter’s mining boom”, International Business News, 4 October 2012.
- “Foreign firms dig deep for Mongolia’s commodity riches”, The Guardian, 20 August 2012.
- “Mongolia keeping Rio Tinto deal puts focus on Tavan Tolgoi Coal”, Yurly Humber, Bloomberg, 4 October 2012.
- “Goat herders take on Rio Tinto demanding ‘just compensation’”, Daily Mail, 12 October 2012.
- “Huge disaster in the making? Oyu Tolgoi Project Briefing” CEE Bankwatch Network, OTWatch, Bank Information Center, Londong Mining Network, Accountability Counsel, September 2012.
- Media Release “World Bank and others poised to invest in Rio Tinto’s flawed Mongolian mining project”, Urgewald, OT Watch CEE Bankwatch Network, Accountability Counsel, London Mining Network, Bank Information Centre, 24 September 2012.
- “Mining boom in Mongolia has given the country the fastest-growing economy in the world”, FollowTheMoney blog, 25 August 2012.
- “Mongolia: The Oyu Tolgoi Copper & Gold Mine Project Comments on Chapter D1 of the ESIA”, Robert Goodland, 25 October 2012.
- “Mongolia: Unclear responsibilities between government and business and weak enforcement threaten to leave human rights on the sidelines says human rights expert group”, United Nations Human Rights Office of the High Commissioner, 17 October 2012.
- “Mongolian nomadic herders worry about impact of Rio Tinto’s gold mine”, Corpwatch Blog, 24 September 2012.
- “Mongolia’s new government faces old problems”, Oliver Belfitt-Nash, Business News Europe, 27 September 2012.
- Press Release “Turquoise Hill Resources rejects request from Mongolian Government to renegotiate Oyu Tolgoi Investment Agreement”, Turquoise Hill Resources Ltd, 15 October, 2012.
- “Spirited Away – Mongolia’s mining boom and the people that development left behind”, Urgewald, Bank Information Center, OTWatch, CEE Bankwatch Network, December 2011.
- “The EBRD in Mongolia: Economic diversity is something else”, CEE Bankwatch, 18 September 2012.
- “Though not yet open, a huge mine is transforming Mongolia’s landscape”, New York Times, 13 September 2012.
- “Turquoise hill selling off after Mongolia officially says it wants more of Oyu Tolgoi”, Bloomberg, 15 October 2012.
- “Unearthing the IFC’s links to mining abuses,” Bretton Woods Project, 3 October 2012.
- “World Bank and others poised to invest in Rio Tinto’s flawed Mongolian mining project”, Bank Information Centre, 24 September 2012.

Unpublished Sources:

- “Oyu Tolgoi Project Herder Relocation Agreement”, Ivanhoe Mines, September 2004.
- “Oyu Tolgoi - Comments for Rio Tinto” CEE Bankwatch Network, OTWatch, Bank Information Center, Londong Mining Network, Accountability Counsel, September 2012.
- “Rio Tinto response to concerns about Oyu Tolgoi”, Rio Tinto, 9 October 2012.

II. Sources to be provided to EFIC by 2 November 2012:

- “Oxfam Australia submission on the Oyu Tolgoi Copper-Gold Mine project”, Oxfam Australia. Expected to be submitted to EFIC on 2 November 2012.
- “Review of the Oyu Tolgoi Copper/Gold Mine Environmental and Social Impact Assessment”, Urgewald, OT Watch CEE Bankwatch Network, Accountability Counsel, London Mining Network, Bank Information Centre. Expected to be submitted to EFIC by 12 November 2012.