

OYU TOLGOI COPPER-GOLD-SILVER MINE, SOUTH GOBI, MONGOLIA

The story of Oyu Tolgoi copper-gold project is a long list of illegal acts by government and the companies associated with it. Below is the list of legal issues that the civil society organizations raised since the early 2000:

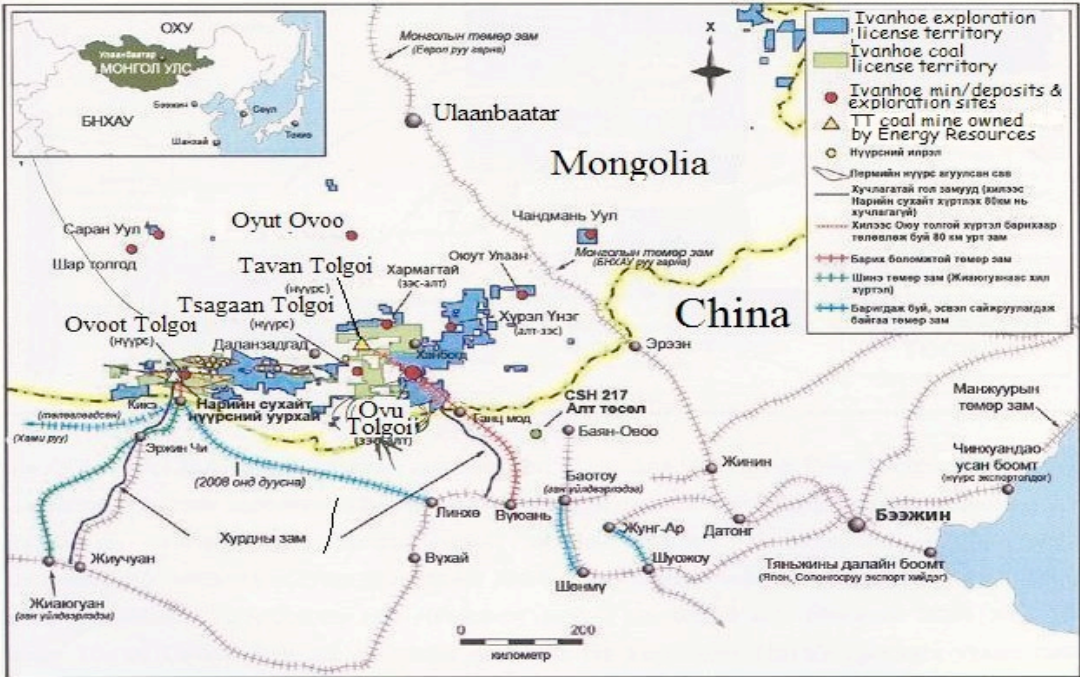
- BHP Billiton sold to Ivanhoe Mines Ltd its exploration license for \$5 million in March 2000, which had expired on February 17, 2000 as per the law in force at the time. The process of filing the complaint related to license expiration, and its extension on June 21, 2000 was carried out also in violation of existing law and procedures.
- Utilization licenses 6708A, 6709A, 6710A and 6711A have been issued to Ivanhoe Mines Mongolia Inc on December 15, 2003 before a technical and economic feasibility study (TEFS) was accepted and filed by government.
- The Investment Agreement for Oyu Tolgoi Project was signed on October 6, 2009, before a feasibility study had been accepted by government.
- On December 16, 2010 the Minerals Expert Council discussed and rejected the TEFS submitted by Ivanhoe Mines Mongolia Inc. and Entrée LLC.
- The Shareholders' Agreement, which is an integral part of the Investment Agreement, has not been made public to date.

The above issues constitute violation of provisions 30.1, 30.2, 30.3¹ of the Law on Minerals allowing violation of the sequence of licensing process and negotiation of an investment agreement. Citizen petitions and complaints have and are being filed with the relevant courts, including the Tssets (Constitutional Court), which however continue to refuse to initiate cases or constitutional debate on these issues. This refusal of the judiciary again evidences the lack of independent judiciary to counter the unlawful acts of lawmakers, who are at the same time are members of the executive government. In addition to violation of laws in getting the license and negotiating an investment agreement the process of review and approval of technical feasibility and environmental impact assessment were breached to allow a mining project, which may have serious environmental and climate change consequences not only for Mongolia but for the region and beyond.

- The Investment Agreement for Oyu Tolgoi Project was signed on October 6, 2009 before a technical and economic feasibility study (TEFS) had been accepted by government as prescribed by law.
- On December 16, 2010 the Minerals Expert Council discussed and rejected the TEFS submitted by Ivanhoe Mines Mongolia Inc and Entrée LLC. On March 26 the Council granted conditional acceptance regardless of the fact that Ivanhoe Mines failed to demonstrate availability and access to water resources necessary for production, infrastructure and social needs of the project.
- Oyu Tolgoi gold/copper deposit is one of world's largest and is expected to be mined for at least 30-60 years. Oyu Tolgoi deposit lies in the Gobi Desert in close proximity of the Gobi Small and Galbyn Gobi Strictly Protected Area (SPA) zones overlapping Important Bird Area and Critical Natural Habitats. This fragile arid ecosystem does not have enough water to carry this huge mine. Oyu Tolgoi has approval to pump 870 litres per second rate from existing water reserves. In order to extract 100,000 tons per day it needs to pump water at 671 l/sec, while its total need in water is 3,801 l/sec. TEFS allows increase of production rate to 150,000 tons.
- Discussion and research around Oyu Tolgoi project's water needs and ways to address include a possibility of turning rivers Herlen and Orhon/Onon from north to south. There is much resistance by scholars and local residents to these ideas, which will have adverse affect on the ecology, economy and livelihoods of people living in these areas.

¹ www.legalinfo.mn

- World’s largest coal mine at Tavan Tolgoi, Ivanhoe Mines’ other coal and gold/copper sites at Ovoot Tolgoi and Oyut Ulaan are all located in this same region. Lack of access to water is a common problem for all these mines. Lack of roads is also a common problem in this vast region supplying raw coal to the world’s largest GHG emitter – China. Coal is stored and trucked through Gashuun Suhait port through the Gobi Small SPA.
- These are mostly open pit mines extracting coal and other minerals trucked by 80-100 ton trucks to China over 240 km long and 36 m wide dirt tracks, which produce huge amounts of coal and sand dust with major adverse impact on the environment, biodiversity and human health. Gobi dust storms have gained more power and reach much farther these days than in the “before mining” past.
- Another common feature is lack of environmental and social impact assessments compliant with international standards. None of the studies, assessments and the TEFS were audited for accuracy and/compliance with international norms and standards.

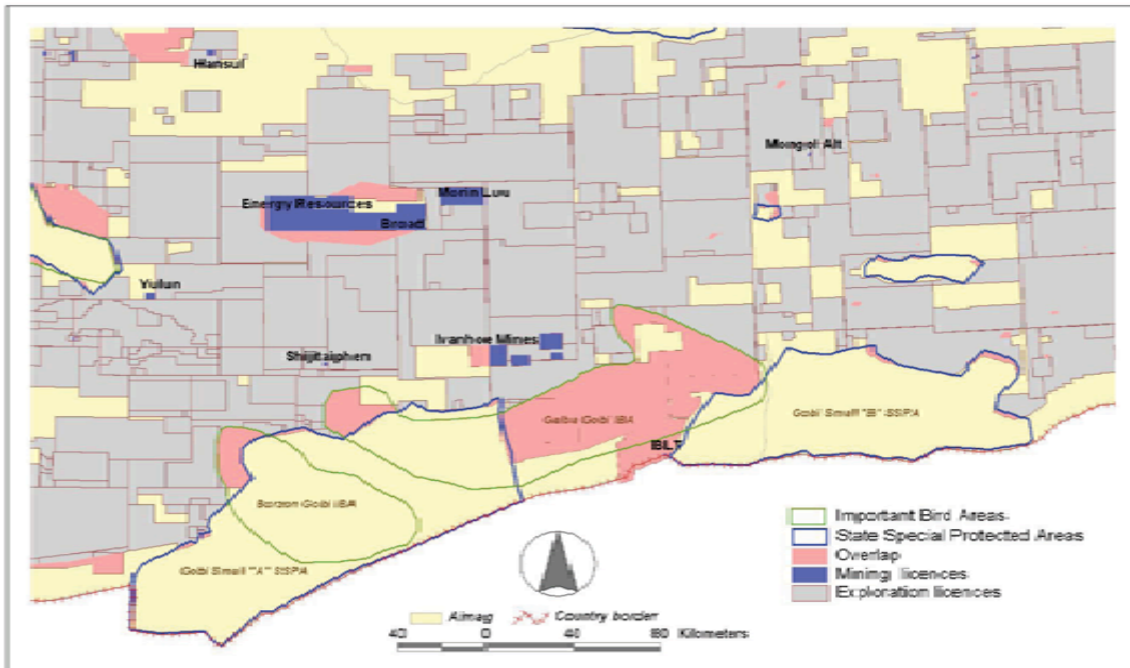


It is believed that the above concerns provide strong justification for delaying the start of mine building until environmental, social and economic, water impact assessments are carried out in compliance with international norms and standards applicable to large scale mining.

Impact on Protected Areas: The Technical Council recommended IVN to include in the Technical and Economic Feasibility Study an assessment of ecological impact of the proposal to transport copper concentrate and construction materials through Gashuun Suhait port located in the Gobi Small Strictly Protected Area and that the transportation plans are in compliance with the Land Law, which prohibits building of roads in protected areas. In response, Ivanhoe reiterates its intent to use this road for the first five years of mining justifying its plan by the fact that this “road” is already being used by other companies and that they intend to use only 8.75 km through the Gobi Small SPA². According to specialists any type of improved road will crumble under 80-100 ton trucks in no time bringing all back to driving on bare desert soil. “Emissions of air pollutants and CO2 will increase at a rate that is higher than one that would be directly proportional to the increases in traffic volume, at least on the road from

² Response to Technical Review of the TEFS by Technical Council, para 2.3, page 21 (unfortunately available only in Mongolia).

Tavan Tolgoi to Gashuun Sukhait”³ concludes the World Bank funded Southern Gobi Regional Environmental Assessment.



Rio Tinto/Ivanhoe Mines have carried out EIAs as they stress “in compliance with EIA Law of Mongolia”. According to a UNDP assessment, “the existing EIA Law lacks operational procedures and national criteria for EIA and procedures for agencies to follow when undertaking EIA, and the types of activities that must conform to EIA procedures. The EIA requirements of Mongolian law should be binding on any activity that will take place under the natural resource laws or other any law where there is a potential for environmental damage or harm, or where there is potential to cause an adverse impact on the environment, e.g. activities under forest law, special protected areas law, land law, minerals law, hazardous chemicals law, pastureland law, water law.”⁴

This allowed Rio Tinto/Ivanhoe not to carry out chemical exposure and health impact assessments for this project and to date the local communities of nomadic herders and rural residents do not have information on what risks they face with this project.

CURRENT ISSUES HUMAN RIGHTS:

Health risk assessment: A HIA was carried out in late 2010 as part of “upgrading” old EIAs with international standards in order to obtain IFC/EBRD/EDC loan. This assessment does not include chemical exposure and health impact associated with this risk. It identified the following health risks as top three for the local communities: 1) HIV/AIDS (note that Mongolia is a unique case that has less than 100 HIV/AIDS cases as compared to high rate of STDs); 2) TB and respiratory disease and 3) Alcohol induced accidents.

³ <http://siteresources.worldbank.org/INTEAPREGTOPENVIRONMENT/Resources/SouthernGobiREAtext.pdf>

⁴ Ian Hannam, Assessment of Environmental Laws: Final Report. Section 3.1.5, page 16

Local communities and especially nomadic herders are not aware of the chemical exposure and health risks that this mine will have for them and their livestock. They can only guess that their own insides look the same as the black spotted insides of animals they slaughter for food. But they do not know the components of toxic particles in the air or the impact of contaminated water and air on their health. They guess that the meat of animals they consume may also be contaminated but have no information and no choice.

While it may be argued that the nomadic herders in the South Gobi region are indigenous as defined by the UN in relevant human rights documents, they are the carriers of an ancient culture known to the world as Mongolian nomadism. However, Rio Tinto and its investors are not recognising them as people indigenous to this area and carriers of a traditional nomadic culture and lifestyle that is under threat of extinction. In fact, the World Bank and ADB are supporting Mongolia's move from nomadic livestock-breeding to intensive livestock farming. This is aimed at reducing the size of rangeland for livestock (or freeing land for mining) as nomads require larger rangeland to allow the seasonal moves.

Labour issues: Attempts to establish an independent trade union section has not been accepted by the company and the mining sector labour organizations. There is no collective bargaining mechanism. The company established a workers representative unit, which proved ineffective and was not accepted by workers.

There are complaints about long working hours of 10-12 hours per day for most categories of workers; lack of sufficient lunch break time and hot meals for workers at the mine construction site and those working underground. According to some workers eat cold lunch at their workplace, e.g. in the cabin of the bulldozer or other machinery. It gets below $-35C^0$ in the winter in Mongolia and hot, calorie rich meals are essential for maintaining the energy at the levels necessary to resist the cold.

Relocation: Ivanhoe/Rio Tinto have relocated nomadic herders providing only structural compensation consisting of a wooden plank house and animal shelters. No compensation for provided for economic or social relocation. 18 households have been relocated so far and a discussion of relocation has been initiated with a group additional dozen families. According to company letter dated April 12, 2011 a group of households have been made to submit "written requests" to relocate.

No relocation policy has been provided to OT Watch, regardless of several iterations of this request. Relocation "package" is negotiated with each family separately on a case by case basis, in most cases getting the family to sign a letter stating agreement and closing any opportunity to re-open or challenge.

– Prepared by Oyu Tolgoi Watch, April 12, 2011