



FROM PAPER TO PROGRESS

Tracking agreements between nomadic herders
and Mongolia's largest copper mine

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EXECUTIVE SUMMARY

In 2012 and 2013, herders in Khanbogd Soum filed complaints to the International Finance Corporation (IFC) concerning impacts from the Oyu Tolgoi mine on local water and pasture resources and impacts to herders' livelihoods. The IFC's independent accountability mechanism, the Compliance Advisor/Ombudsman (CAO), facilitated a dialogue process between Oyu Tolgoi LLC (OT) and the local herders to resolve these concerns. This led to the establishment of the Tripartite Council (TPC), a freestanding body of representatives of the mine, herders and the local government mandated to handle issues related to herders, water and pasture. In May 2017, after years of negotiation, the parties reached two Final Agreements to resolve herders' complaints.

In the 18 months since the 2017 Agreements were signed, the parties have made some notable progress towards implementation. TPC representatives agree that implementation has begun in earnest, and they have earned each other's trust that they intend to fulfill the Agreements. Progress to date includes:

- Construction of Khanbogd Soum's first animal laboratory;
- University scholarships provided to 37 herder children;
- 10 herder wells furnished with solar-powered pumps; and
- 114 new compensation packages approved for households that were physically or economically displaced by the mine, totaling approximately US \$945,000 in new compensation.

Despite these achievements, progress has been slower than anticipated. Only 58% of the Agreement commitments have moved past initial planning stages and begun implementation in earnest, while 53% of commitments have fallen behind the TPC's own timeline. Because of these implementation delays, many households have not yet seen any tangible benefits from the Agreements. Some particularly vulnerable families are still struggling to feed their families and keep their herds alive. The Agreements have the potential to improve livelihoods and alleviate such desperate circumstances, but rapid and effective progress is needed.

To achieve successful implementation that will be truly valuable to local herders, the TPC must:

- **Increase transparency and improve communication with the local community**, including through regular updates on implementation status and expected timelines. Without improvement, poor information flow will continue to lead to suspicion and confusion and may prevent the most vulnerable herders from sharing in Agreement benefits.
- **Ensure that all Agreement commitments are implemented in line with their agreed purpose and intent**, even where unforeseen challenges may require modifications.
- **Closely monitor and maintain control over commitments funded or carried out by third parties**, to avoid the risk of projects drifting from their intended purpose, timeline and scope.
- **Continue to improve capacity and commitment of TPC representatives**, including by improving awareness of TPC activities within the local government and regularly cycling out representatives who are not actively contributing.
- **Establish a robust, independent monitoring and review mechanism**. The CAO has served as a monitoring body in the early stages of agreement implementation, but now another monitoring body is needed to ensure the TPC remains accountable to its goals.



INTRODUCTION

In May 2017, herders in Khanbogd Soum reached two negotiated agreements with OT and the local government to resolve complaints about the impacts of the Oyu Tolgoi copper and gold mine on herders' livelihoods and the area's scarce water and pasture resources. This Report evaluates the first 18 months of progress toward implementing those agreements.

In October 2012 and February 2013, herders raised formal complaints to the CAO, the accountability office of the World Bank Group's IFC and Multilateral Investment Guarantee Agency (MIGA). The IFC and MIGA supported the OT mine by arranging \$2.2 billion in debt and guarantees for the project, including a \$400 million loan from IFC and a \$1 billion risk guarantee from MIGA.¹ The herders' complaints claimed that OT's 2004 and 2011 compensation programs were flawed and insufficient, raised concerns about the mine's use of land and water resources, cited failures to mitigate health risks and account for impacts to herders' traditional nomadic lifestyle, and raised particular concerns about OT's diversion of the Undai River, an important subterranean river that ran directly through the mine site.

Following these complaints, the CAO convened a dialogue process between OT and local herders to negotiate a resolution. In 2015, this process led to the creation of a Tripartite Council ("TPC") between OT, local herders and the local Khanbogd Soum government.² The TPC has since convened regular meetings with

a primary goal to consider and resolve herders' complaints about the OT mine and any future issues related to the mine's impacts on herding, pasture and water. Through the TPC, the parties hired two teams of independent experts to research and answer key questions related to the impacts of the mine and the adequacy of OT's past compensation programs.

In May 2017, after more than four years of negotiation, the parties reached two Final Agreements, based on the independent experts' findings and recommendations. These Agreements include 60 separate commitments to fill gaps in OT's past compensation programs, improve herders' livelihoods, including their access to water and pasture resources, and strengthen their ability to access information and raise concerns about future mine impacts. The Agreements themselves are a significant achievement, yet their value to local herders depends on their timely and meaningful implementation. The parties decided that if the Agreements are fully and effectively implemented, they will resolve the original complaints. This Report assesses progress made in the first 18 months toward carrying out agreed commitments, to examine what is going well, what is not, and how the parties can overcome barriers to a swift and meaningful implementation. It also seeks to shed light on the perspectives of local herders, as the ultimate intended beneficiaries of those commitments.

1 IFC and MIGA to Provide More Than \$2.2 Billion for Oyu Tolgoi, Engine of Mongolian Jobs and Growth, <https://ifcextapps.ifc.org/ifcext%5CPressroom%5CIFCPressRoom.nsf%5C0%5CC64D74678BB89E2985257F1C0050C813>.

2 A Soum is the second-smallest administrative unit in Mongolia, equivalent to a county. Each Soum is divided into Baghs (the smallest subdivision).



ROADMAP AND METHODOLOGY

This Report assesses the implementation of the 60 commitments listed in the May 2017 Final Agreements.³ As the original Agreements listed some commitments in multiple locations, this Report re-numbers the list and deletes repeated commitments to improve readability and provide a more accurate progress assessment.

Progress on each commitment is tracked using a standard set of benchmarks:⁴

- Development of a detailed plan for implementation
- Approval of funding
- Initiation of implementation process
- Completion of implementation process

Initiation of implementation means that identifiable steps have been taken beyond the planning stage. For projects that require physical construction, i.e. establishing a slaughter line, implementation will initiate once construction works have begun. For social programs, such as the elderly herders' knowledge sharing project, this may mean that the first knowledge sharing session has been held.

Completion of implementation in most cases means that a commitment has been fulfilled and no more work remains to be done. Ongoing commitments are tagged as complete once they have been running for long enough that it is clear they are working well and sustainably. For example, for the participatory environmental monitoring program, this may mean that the first cycle of activities has been completed to the satisfaction of the TPC and there are no known barriers to continuing the program.

The chart also tracks whether commitments have fallen behind their original timeline. Once a commitment is behind schedule, it continues to be counted as behind schedule until the TPC provides an updated timeline or the commitment is complete.

The following section provides a standardized tracking of progress on each commitment, using the above criteria, along with a narrative discussion of progress to date. The next section lists success factors and challenges, followed by a summary of perspectives shared by the broader community of herders on Agreement implementation. The final section provides a set of recommendations to overcome each identified challenge and improve implementation in the future.

All assessments are based on a series of interviews, conducted in June–November 2018, with a diverse set of stakeholders including TPC representatives, the CAO mediator, affected herders who have benefited or stand to benefit from Agreement implementation, and an independent NGO that was hired to assist with implementation of major commitments. In total, over 25 hours of interviews were conducted. Information was also derived from: first-person observation of TPC and committee meetings in June 2018; review of TPC meeting minutes and joint statements from May 2017 to present; and review of other documents relevant to implementation progress. A draft of this Report was shared with all parties to the TPC and with the CAO, inviting comments to ensure accuracy and completeness.

³ All commitments are listed in Annex 1 to Complaint Resolution Agreement #1 (available at https://www.accountabilitycounsel.org/wp-content/uploads/2017/11/Complaint-Resolution-Agreement-1_ENG.pdf) and Annex 1 to Complaint Resolution Agreement #2 (available at https://www.accountabilitycounsel.org/wp-content/uploads/2017/11/Complaint-Resolution-Agreement-2_ENG.pdf).

⁴ As noted in the chart, not all benchmarks apply to all commitments. For example, implementation of certain commitments does not require any funding approval. Percentage calculations in the Report account for this.



FINDINGS

In the 18 months since the Agreements were signed, the TPC has made some notable progress towards implementation. This section includes a chart with the results of our implementation tracking exercise, as well as a narrative description detailing progress to date, with an emphasis on major achievements and on commitments that have the most potential to benefit local herders. There is broad agreement among TPC representatives that implementation has begun in earnest, and the parties have gained trust with each other, proving their intent to fulfill the Agreement commitments. Nonetheless, some representatives believe that progress so far is “not good enough,” noting that only a small number of commitments are fully implemented and have started to provide benefits for local herders. These sentiments match our overall findings, which show that progress has been varied, and that some of the most important commitments still require significant work, with successful implementation across all commitments far from guaranteed. As shown in the chart below, our implementation tracking exercise found that:

61%
of commitments requiring
planning have a detailed
plan developed

29%
of commitments
are complete

60%
of commitments
requiring funding have
funding approved

25%
of commitments have
not achieved any tracked
implementation milestones

58%
of commitments have
started implementation

53%
of commitments are behind
the TPC’s self-imposed
implementation timeline

FINDINGS

Commitment	Original timeline**	Detailed plan?	Funding approved?	Implementation has begun?	Complete?	Actions to date / comments
AGREEMENT 1						
Pasture						
1. Re-establish a grazing system to adjust for lost pasture	Plan developed by Q4 2017 	Y	N/A	N	N	Pasture use plan prepared; not yet adopted by citizens representatives khural
2. Reduce herder actions to lock wells / limit pasture access (signed user contracts)	237 signed contracts by Q3 2017 	Y	N/A	N	N	Contracts developed and approved by citizens representatives khural
3. Open additional pasture use through well building program (#12); clarify herder rights to possession	Irrigate all reserve pastures by 2018 	N	N/A	N	N	No progress on clarifying herder rights to possession; see #12 for status of well building
4. Support local government on pasture management (technical trainings, provision of experts)	Send 5 experts to trainings by Q3 2017	Y	Y	Y	N	5 soum government staff trained in pasture mapping; unclear what further steps will be taken
5. TPC to actively support herders, existing institutions, and traditional ways to resolve herding conflicts	Q3 2017 	N	N/A	N	N	TPC should support enforcement of: Governor's decree on open access to water points and prohibition on use of winter pastures during summer months
6. Document and secure herder customary land and resource use rights (camp cadaster)	2018	Y	N	N	N	Developing map of all winter and summer camps
7. Detailed analysis of increased livestock numbers and absentee livestock ownership	List of livestock owners by Q4 2017 	N	N	Y	N	Counting of livestock in process; no detailed plan for this analysis
8. Consider and decide whether to build speed bumps around animal crossings on OT-KB road	N/A	N/A	N/A	N/A	N/A	Decided not to build speed bumps

Commitment	Original timeline**	Detailed plan?	Funding approved?	Implementation has begun?	Complete?	Actions to date / comments
9. Rehabilitate pasture in sites disturbed by past OT activities	2017–2027 in phases	Y	Y	Y	N	Reclamation plan is underway with some sites prioritized before others; will take years to complete
10. Continue to implement 2015 protocol allowing temporary livestock grazing within OT fence	Ongoing	Y	N/A	Y	Y	OT received no requests to graze in the fenced area in 2018
Water						
11. Request national government to allocate 50% of OT's water use fee to KB Soum Government	Receive response by Q3 2017 	N	N	N	N	No progress
12. Construct new hand wells across 4 baghs, based on findings of hydrological studies (see #17)*	Begin well construction in 2018 	Y	Y	N	N	Awaiting results of hydrological studies
13. Establish well maintenance team to build, repair and monitor condition of wells (see #37)	Proof of restored wells by Q4 2017 	N	Y	N	N	200 million MNT (US \$78,100) approved beginning in 2019; independent NGO hired to look into program design options
14. Gradually stop OT water delivery after resolving new well creation needs	2018 	N	N/A	N	N	Planned to happen after new wells are built (#12)
15. Close all leaking boreholes in Gunii Khooloi area; equip 2 fountaining boreholes for herders' water use	2016	Y	Y	Y	Y	Completed in 2016
16. Provide 12 boreholes, equipped for herder water use, to KB Government	Q3 2017	Y	Y	Y	Y	Completed; certificate of acceptance has been issued
17. Hydrogeological study (study of water reserves under pasture)*	Q2–Q3 2017 	Y	Y	N	N	Contractor bidding underway in June 2018

FINDINGS

Commitment	Original timeline**	Detailed plan?	Funding approved?	Implementation has begun?	Complete?	Actions to date / comments
Monitoring, reporting and community relations						
18. Replace outsourced environmental monitoring with local monitoring; include paid positions for herders*	Begin to implement in January 2018	N	Y	N	N	240 million MNT (US \$93,590) provided to newly created herder-run NGO; Detailed monitoring plan is under development
						
19. OT reports on progress of retrospective compensation arrangements	Quarterly	Y	N/A	Y	N	OT reporting quarterly to TPC; many affected herders are not receiving regular updates
20. OT reports annually to KB Soum on performance and plans, including employment, taxes & fees paid, local procurement, environmental impacts and management, support to vulnerable people, trainings & business development, Cooperation Agreement projects and donations	Annually	N	N	N	N	A working group was established to develop these reports. First report has not been released yet.
						
21. Expand OT community relations work (i.e. household visits, attend bagh meetings)	Annual household visits; quarterly reporting	Y	Y	Y	N	OT reports progress in team capacity and community-centered approach; some herders still report issues like poor communication or unresponsiveness
22. Improve OT's grievance mechanism, clarify options for recourse to outside body	Q2 2017	Y	Y	Y	N	OT released updated grievance procedure in September 2017; herders say they are being told to take their concerns to the TPC
Individual compensation						
23. OT formally acknowledges problems with 2004 resettlement	22 March 2017	N/A	N/A	N/A	Y	Included in March 2017 TPC joint statement
24. Establish Compensation Claims Committee (CCC)	Q3 2017	Y	Y	Y	Y	CCC established in May 2017

Commitment	Original timeline**	Detailed plan?	Funding approved?	Implementation has begun?	Complete?	Actions to date / comments
25. Adopt CCC Operational Guidelines	Q2 2017	Y	N/A	Y	Y	Completed in May 2017
26. 2004 resettlement: discuss newly eligible claims & compensate	Begin in Q3 2017	Y	Partial	Y	N	Compensation still needs to be provided for some claims
27. For the 2004 resettled households without a fulltime job at OT: engage in 1-year training program with stipends	Begin in Q2 2017	Y	Y	Y	Y	The 2 qualifying households without an OT job were included in a 1-year training program starting in 2017
28. For all 2004 resettled households: engage in the Sustainable Livelihoods Program (#36–42)	Begin in Q2 2017 	N	N/A	Y	N	Still working to include all 2004 households in these benefits
29. 2011 economic displacement: discuss newly eligible claims & compensate	Begin in Q3 2017	Y	Partial	Y	N	Compensation still needs to be provided for some claims
30. Conduct Outcome Evaluation & implementation audit of 2011 compensation program	Complete Outcome Evaluation in 2017 	Partial	Partial	Y	N	Outcome Evaluation completed in July 2018; OT has no plans to conduct a separate implementation audit
31. Decide and implement any additional actions for households that received 2011 compensation, based on Outcome Evaluation findings	Complete Outcome Evaluation in 2017 	N	N	N	N	OT is creating household-specific development plans for 16 households found to have unrestored or unsustainable livelihoods
32. CCC to resolve claims of incomplete provision of compensation	Complete Outcome Evaluation in 2017 	Y	Y	Y	N	CCC has reviewed these claims; eligible households will receive business support packages
33. Cancel confidentiality clauses of 2004 and 2011 compensation agreements	22 March 2017	N/A	N/A	N/A	Y	As of March 2017, each herder is free to share their own compensation agreement, at their own discretion

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Commitment	Original timeline**	Detailed plan?	Funding approved?	Implementation has begun?	Complete?	Actions to date / comments
Collective compensation – Prioritizing a “target group” of indirectly impacted households						
34. Implement Khanbogd Soum Animal Husbandry Sector Development Program through 2024	2017–2024	Y	Y	Y	N	Initial projects underway or complete (i.e. animal laboratory constructed Spring 2018.)
35. Provide tuition scholarships to children of herders attending university*	From June 2017	Y	Y	Y	Y	Ongoing – to be provided each school year
Sustainable Livelihoods Program						
36. SLP Project 1: Life skills training program + Young herder promotion program*	Begin to implement Q4 2017 	N	Partial	N	N	Half of needed funding has been approved
37. SLP Project 2: Well, fence and shelter maintenance team + artificial pond and water collection points*	Begin to implement Q4 2017 	N	Y	N	N	Initial funding approved; NGO consultant advised on design options; TPC to make final decision
38. SLP Project 3: Establish herders' market and supply chain for livestock raw materials*	Begin to implement Q4 2017 	N	N	N	N	Feasibility study developed; TPC developing a business plan
39. SLP Project 4: Improve herder health services*	Begin to implement Q3 2017 	Y	Y	N	N	32 million MNT (US \$12,147) approved; will be implemented in 2019
40. SLP Project 5: Livestock fodder planting program*	Begin to implement Q4 2017 	N	N	N	N	Feasibility study identified challenges; project temporarily halted, and TPC is considering other options

Commitment	Original timeline**	Detailed plan?	Funding approved?	Implementation has begun?	Complete?	Actions to date / comments
41. SLP Project 6: Connect deep wells to renewable (solar) energy*	Begin to implement Q4 2017 	Y	Y	Y	N	150 million MNT (US \$58,500) approved; first 10 wells received solar connections in September 2018
42. SLP Project 7: Build livestock slaughter line*	Begin to implement 2018 	N	N	N	N	Feasibility study developed; TPC developing a business plan
43. Support (training and micro loans) for SME businesses	Begin to implement Q4 2017	Y	Y	Y	Y	Merged with a broader project to be implemented by IFC, GIZ and Gobi Oyu Fund; 5.9 billion MNT (US \$2.3M) financing approved for first 3 years; center built at Dalanzadgad; at least 4 Khanbogd residents have received support
44. Refer to KB Development Committee requests for road paving, clean water and sewage hook-ups	Q4 2017 	N	Partial	N	N	Funds provided for road paving; drinking water and sewage system to be negotiated
45. Install a Unitel telecommunications antenna in Gaviluud Bagh	Q4 2017 	N	N	N	N	No progress

FINDINGS

Commitment	Original timeline**	Detailed plan?	Funding approved?	Implementation has begun?	Complete?	Actions to date / comments
AGREEMENT 2 – commitments in previous sections that are marked with an asterisk (*) are listed in both Agreements 1 and 2						
Undai River diversion						
46. Present official apology letter to herders regarding Undai Diversion	20 March 2015	Y	N/A	Y	Y	Apology letter published in March 2015
47. Re-design waste rock dump to avoid touching the sacred Bor Ovoo area	22 Sept. 2016	Y	Y	Y	Y	Designs revised in September 2016
48. Vegetation plan for new Bor Ovoo Spring	May 2016 – Aug. 2018 	N	N	N	N	Little to no progress made
49. Information board about original Bor Ovoo Spring placed at new spring	Q3 2017	Y	Y	Y	Y	A monument was erected to memorialize the original Bor Ovoo spring; a ceremony is scheduled in December 2018
50. Photo of original Bor Ovoo Spring placed in the Soum Museum	20 March 2015	Y	N/A	Y	Y	Completed in March 2015
51. Gobi Grove-tree planting project implementation	Complete by October 2019	Y	Y	Y	N	Partially complete but may be re-designed after completion of environmental impact assessment
52. Measures to release blocked Undai river flow at 3 locations within Mine License Area	During rainy season	Y	Y	Y	N	Measures completed during 2017 rainy season have proven ineffective; TPC looking into new measures
53. Improve integrity of Khaliv-Dugat diversion channel to reduce erosion	During rainy season 	N	N	N	N	TPC still deciding which actions are needed
54. Provide drainage mechanisms to reduce ponding and evaporation of Khaliv-Dugat River	During rainy season 	N	N	N	N	TPC still deciding which actions are needed

Commitment	Original timeline**	Detailed plan?	Funding approved?	Implementation has begun?	Complete?	Actions to date / comments
55. OT Independent Technical Review Board to report on Tailings Storage Facility seepage & design changes	Q3 2017 	N	N	Y	N	ITRB provided a 2-page summary report to TPC in August 2018; parties disagree on need to provide a full report
56. Creation of artificial pond & vegetation in Ust Bag Mod Quarry area	August 2018 	Y	Y	Y	N	Further rehabilitation works needed; long-term implementation
57. Add additional pasture monitoring points to OT's participatory monitoring program	August 2016	Y	Y	Y	Y	Completed in August 2016
58. Prepare list of herders living in Undai River Basin. These herders will form a "target group" eligible for benefits under Agreement 2.	June 2017	Y	N/A	Y	Y	List is prepared; may be updated
59. Implement project on cascading elderly herders' knowledge of traditional livestock breeding practices to younger herders	Begin to implement Q4 2017 	Y	Y	Y	N	Initial funding of 36 million MNT (US \$14,060) approved; Soum elderly association began implementation in Q4 2018
60. Explore opportunities for on-the-job vocational training by OT	Discuss by July 2017	Y	Y	Y	Y	OT has organized additional professional training programs

Totals:***

35 / 57

27 / 45

33 / 57

17 / 59

* Denotes commitments listed in both Agreement 1 and Agreement 2.

** Red text indicates commitment is behind schedule.

*** Totals count "yes" answers only.

For the latest updates on Agreement implementation, visit TPCprogress.com.

Collective compensation: scholarships, animal laboratory, renewable water pumps, and other community development projects

The Agreements include a number of commitments for the benefit of all herder households in Khanbogd Soum. These commitments are intended as a form of collective compensation, recognizing that the OT mine impacts the whole community. Collective compensation commitments include a program to provide scholarships to herder children, as well as a variety of community development projects designed to make herding easier and more profitable, including connecting wells to renewable energy, establishing a herder market and slaughter line and planting fodder to serve as a collective resource during hard winters and times of drought.

The *Herder Children's Scholarship Program* is an example of an early success in the first year of implementation. Under this commitment, OT agreed to provide full tuition scholarships to herder children currently attending college or university, maintaining at least a 2.7 GPA and majoring in subjects likely to contribute to Soum development. After the Agreements were signed, the parties worked quickly to develop a list of qualifying students and submit and approve their scholarship requests. As a result, 20 qualifying herder children benefited from this scholarship support in the 2017–2018 school year. These children will continue to benefit from scholarship support for each year of their studies.

Progress has also been made in implementing the *Khanbogd Soum Animal Husbandry Sector Development Program* until 2024. While this program pre-dated the 2017 Agreements, it was later incorporated into the Agreements, bringing it within the oversight of the TPC. TPC representatives we interviewed believe that this has helped to ensure that its projects are adequately prioritized and funded. As an example, the government completed construction of an animal laboratory in Khanbogd Soum center, which is one of the first planned activities in this broad set of long-term local development projects. Its construction and commissioning had been scheduled for 2017 and

were completed only slightly behind schedule in early 2018. The next step is to staff the laboratory with a team of trained experts. This too has been delayed and full staffing will be subject to government budget constraints. Once fully operational, the laboratory is expected to conduct health and safety testing of local animals and animal products to facilitate their sale to commercial markets, as well as other livestock testing and research initiatives.

Collective Compensation also includes a Sustainable Livelihoods Program, a set of community development projects negotiated by the TPC. One of these projects — a commitment to connect deep wells to renewable energy sources — has made noteworthy progress. This commitment was intended to relieve financial and social pressures caused by the need to install and maintain diesel-powered pumps to access water in deeper wells. The diesel needed to run these pumps represents a significant expense for many herders, leading to accusations that some herders locked their diesel-powered pumps to prevent others from depleting their fuel. These dynamics have contributed to worsening issues of water availability. In the first year of implementation, the TPC received 150 million Mongolian Tugriks (MNT) (US \$58,500) to fund solar energy connections to power an initial batch of 10 wells. These first installations were finally completed in recent months and reactions from herders have reportedly been positive. It is unclear how many additional wells will be connected to renewable energy under this project, but a TPC representative reported that any herders who apply for a solar energy hook-up for a qualifying well should receive one. This should be confirmed through future monitoring and review.

The remaining six projects in the Sustainable Livelihoods Program are all progressing more slowly than anticipated, and none of them has advanced from the planning stage into implementation. Among them are some of the largest Agreement commitments with perhaps the most potential to improve livelihoods of local herders, such as a fodder planting project, establishment of a slaughter line and herder market and promotion of an accessible supply chain for local livestock products. In line with their importance to herders, the TPC assigned these projects relatively short timeframes, and most are now well behind schedule.



Director Tsend-Ayush at the new animal laboratory

In discussing these delays, TPC representatives reported that it took time to build momentum and understand the implementation challenges of these larger projects, and as a result they did not see much progress in the first 6 months. An initial fodder planting pilot was planned to begin in June 2018. Meanwhile, a feasibility study, prepared for the TPC in July 2018, identified significant challenges to carrying out a fodder planting project in the local context, especially given the high water use needs for irrigation. The TPC recently decided to replace this commitment with an alternative project that is more viable in the local environment. The herder market and slaughter line are both still in the planning stage, and the TPC is still determining their ownership structure and developing a detailed implementation plan.

These collective compensation commitments have the potential to bring important benefits to local herders as implementation advances. Herders will undoubtedly be watching these commitments take shape in the coming months, making it particularly important to keep these efforts on track and ensure quick, effective, well-communicated progress.

FINDINGS

Individual compensation

The Agreements provided for the establishment of a Compensation Claims Committee (CCC) to receive and adjudicate claims from herders who believed they were inappropriately left out of OT's 2004 or 2011 compensation programs, designed to support households that were physically or economically displaced by the mine. As planned, the TPC established this body in 2017, and developed Operational Guidelines explaining the body's eligibility criteria and what type of compensation it would provide. The agreement to establish a CCC, and the eligibility criteria used, are based on independent experts' finding that some families were mistakenly left without compensation, or forced to share compensation packages between multiple families, during the original compensation programs.

In late 2017, the CCC began accepting compensation claims from households who believed they were inappropriately left out of OT's original compensation programs. To date, 174 herder households have submitted claims, of which 114 have been found eligible for new compensation packages. The total amount of new compensation comes to approximately US \$945,000. Despite this significant progress, the CCC fell woefully behind schedule in its final step: providing new compensation packages to the eligible households. After months of delay, OT disbursed the first compensation packages to an initial two households in August 2018. The TPC has since reported that 58 newly eligible households have now received compensation. The TPC recently announced a cut-off date of January 15, 2019 to receive additional compensation claims.

For herder households who already received compensation packages in 2011, the Agreements also included commitments to carry out an Outcome Evaluation of the 2011 compensation program and develop and implement any additional actions needed to fully restore herder livelihoods to their original levels. A final Outcome Evaluation released in July 2018 found that out of 92 households, 16 require additional support: the livelihoods of seven households have declined since 2011, four more are living below the poverty line,



Herder representative Battsengel talking with local family

and a further five households are dependent on OT water deliveries and thus have not achieved sustainable livelihoods. The TPC has agreed that individualized livelihood support plans must be developed for each of these 16 households. This result will likely be disappointing for many of the remaining 76 households, as we repeatedly heard calls for additional support from households who had received 2011 compensation packages during our June trip. For any households that feel they were inappropriately categorized as having fully restored livelihoods, the TPC should prioritize clearly communicating the report's findings and discussing the implications with each household, including by highlighting any other benefits available through other Agreement commitments.

Individual compensation packages are perhaps the most immediate and tangible type of benefit available from the Agreements, and they can also be a sensitive and emotionally charged topic, particularly for households struggling to maintain their livelihoods and those that feel they have been unfairly excluded. Satisfactory completion of individual compensation commitments will require a thoughtful and compassionate approach that recognizes the importance of this issue.



Commitments related to OT environmental impacts: pasture, water, monitoring and Undai River commitments

Agreement commitments related to pasture, water, improved monitoring and impacts to the Undai River are all centered around environmental impacts from the OT mine. Some commitments focus on improving herders' understanding of these impacts and better mitigating them. Others include measures to improve pasture and water availability for the whole soum. Although the parties to the TPC continue to disagree about OT's role in contributing to local pasture and water scarcity, all parties agree that these resource constraints must be addressed to enable local herders to continue their traditional livelihoods.

Pasture commitments

The main area of progress on pasture-related commitments has been on training local government personnel in pasture management. To date, five Soum government staff members have received trainings on pasture mapping. Many of the other commitments to address pasture impacts are delayed or behind schedule. TPC representatives suggested that these delays may be due in part to the recent death of the Soum Head of Veterinary & Animal Breeding Unit and other changes in Soum government personnel. Regardless, better progress must be made on pasture commitments over the next year.

Water commitments

Among the measures in the Agreements to address water resources are a study to identify currently untapped water resources in Khanbogd Soum and a related commitment to build new herder wells where adequate water resources are found. These commitments were often a topic of discussion in our meetings with herders, especially given that Khanbogd Soum was suffering from a drought at the time of our interviews, and water resources were extremely scarce. The timeline in the Agreements called for well construction to begin in 2018. As of June 2018, a funding proposal covering both the water study and

well construction had been approved by the Gobi Oyu Fund,⁵ and a bidding process was underway to select a contractor to carry out the study. While the original commitments did not specify the number of wells to be constructed, the proposal indicates a plan to build just 12 wells in Khanbogd Soum. We have since heard that well building is not expected to start until 2019. As discussed in later sections, it is unclear whether this proposal will meet the purpose and intent of the Agreement commitments, nor is it clear that the TPC has enough of a role in its implementation.

Monitoring commitments

The participatory environmental monitoring program is slowly progressing. Local herders established a herder-run non-governmental organization (NGO) called Munkh Nagoon Galba (Eternal Green Steppe), which has a mandate to carry out the monitoring works. In June 2018, the NGO received 240 million MNT (US \$93,590) in initial funding from the Gobi Oyu Fund, and in July 2018, it developed a plan of activities. This NGO will be tasked with overseeing a series of environmental monitoring activities, including water, air quality, vegetation and wildlife monitoring, while providing paid monitoring jobs to herders. While the progress to date is significant, the project is already more than 6 months delayed when compared to its original timeline, and the scope of monitoring works is more limited than what was originally envisioned (discussed further below).

Undai River commitments

Progress on commitments related to Undai River impacts have also stalled. OT had committed to commission its Independent Technical Review Board (ITRB) to review seepage from the mine's tailings storage facility and its potential for downstream impacts in the Undai river basin, propose design modifications to avoid these impacts, and report results to the TPC. OT had also committed to implement the proposed modifications. To date, OT has shared with the TPC a brief PowerPoint presentation and a 2-page summary "report" from an October 2017 ITRB visit to the mine site. These do not include any detailed findings regarding the seepage from the tailings storage facility or its potential for downstream impacts. While the PowerPoint slides do describe a design modification

⁵ The Gobi Oyu Fund, formally called the Development Support Fund, was established through the 2015 Cooperation Agreement between OT and the Mongolian Government. OT has committed to placing US \$5 million into the fund each year to support development projects in Umnugobi Aimag.



Torrential rains in August 2018 led to sudden flooding

that OT plans to implement in response to a March 2017 study, they do not include any information about the study findings that led to the proposed modification. Through our interviews with TPC representatives, we understand that the parties do not agree about the level of detail needed to fulfill this Agreement commitment. To date, OT has not offered to share any further information to satisfy this commitment.

Commitments to improve the integrity of the Haliv-Dugat River and re-establish the free flow of the Undai River have shown even less progress. These commitments seek to reduce erosion, convey floodwaters more efficiently, and ensure natural river flow despite mine-related obstructions. To date, the parties still have not agreed on specific measures to improve Haliv-Dugat River flow. Measures were taken in 2017 to improve the flow of the Undai River, but these have since proven ineffective. In August 2018, both rivers experienced a major flood event following heavy rains, resulting in large areas of floodwater ponding within the Mine License Area, including near the tailings storage facility. Ponding such as this during past flood events was precisely what prompted these

Agreement commitments, as it may affect surface runoff, shallow groundwater or evaporation. The August 2018 flood event shows that there is a continuing need for solutions to improve the integrity of both rivers.

Understandably, the herding community tends to prioritize immediate needs and concerns regarding the future of traditional herding livelihoods in Khanbogd Soum over other issues, such as future environmental risks. This results in less pressure on the TPC to make progress on commitments related to forward-looking environmental concerns. Nonetheless, full and careful implementation of Agreement commitments related to environmental impacts — past, current and future — is important and may help to head off future conflicts between the OT mine and local herders, saving the TPC time and resources in the long term. As the OT mine expands its operations, and as it is operational for a longer time, local herders are more likely to prioritize environmental concerns. When this happens, it would be to the benefit of all parties if adequate measures to address environmental impacts are already in place, understood by all parties, and monitored through a trusted, joint monitoring process.



Herder representative Namsrai at OT's artificial spring

CHALLENGES AND SUCCESSES

Our research uncovered a number of challenges the parties have faced and are likely to face in future stages of implementation, as well as a number of successful strategies that contributed to the progress achieved to date. This section calls out the real and potential roadblocks parties must confront and discusses strategies for successful implementation.

Inaccurate timelines and progress reports risk creating disappointment and mistrust in the broader community

Out of 60 commitments, 31 are behind the TPC's self-imposed timeline as stated in the Agreements, and most of these are behind by many months. The processing of individual compensation claims is a useful example. Some families waited over 9 months to receive new individual compensation packages after they were determined eligible, whereas the CCC Operational Guidelines indicate that compensation will be provided within 45 days of an eligibility determination. Similarly, as noted above, nearly all of the projects in the Sustainable Livelihoods Program are significantly behind their original timeline. The fodder planting project and herder market were both scheduled to begin implementation by the end of 2017, with the slaughter line scheduled to begin implementation in 2018. Progress has been slow, and a detailed plan has not yet been developed for any of these projects. Additionally, the recent decision to scrap the fodder planting project and replace it with another, as yet undecided project was likely appropriate given water usage concerns, but will almost certainly result in further delay.

In interviews, the TPC representatives overwhelmingly admitted to being overly ambitious in their original time estimates, which is likely true for at least some commitments. However, it is difficult to believe that this is the cause of delay for all commitments that are behind schedule. For instance, a commitment to re-allocate part of OT's water tariff to the Soum Government's budget has made no progress at all; it is hard to imagine that 18 months would not be enough time to have developed at least a detailed plan for approaching this type of campaign. Likewise, some smaller commitments, such as the installation of a telecommunications antenna, have made little to no progress over the past 18 months.

Regardless of the reason, wildly inaccurate timeframes set unrealistic expectations and can lead to frustration and mistrust among local herders expecting benefits. Unfortunately, this problem is likely to continue: while the TPC has developed a more realistic sense of the time and effort needed to implement large projects over the last 18 months, it has failed to update the timelines set in the original Agreements. Thus, local

herders do not have access to accurate, up-to-date information about implementation timeframes.

Far from providing updated and realistic implementation timeframes, the TPC's June 2018 Joint Statement appears to gloss over what work still remains to be done and risks once more creating unrealistic expectations among local herders. The Joint Statement reports that 70–79% of the work on both agreements has been completed or will be in the near and long term.⁶ The TPC's method for recording implementation progress involves categorizing a commitment as “to be completed in the short term” or “to be completed in the long term” as soon as any concrete action has begun towards implementation and beyond “planning”. This means that those two categories include commitments that have barely begun implementation as well as those that are nearly complete. Using this framing, the TPC is obscuring actual progress and giving the impression that it considers 70% or more of commitments to be complete or nearly complete, while the local herder population has seen very few tangible benefits to date.

Moreover, even taking into account that their 70–79% estimate includes all initiatives for which any implementation has begun, it is notably more positive than the results of our tracking endeavor, which found that implementation has started for only 58% of commitments. This difference may be attributable in part to the TPC's method of counting some commitments twice where they appeared in the original Agreements in multiple locations. The TPC is also likely more generous in their categorization of commitment progress than our tracking exercise. In other words, the TPC may be giving itself more credit than it is due for its progress on certain commitments, which may in turn contribute to a discrepancy between the TPC's progress reports and the lived experiences of local herders.

Additionally, the TPC's “fully implemented” category includes both commitments implemented in the past 18 months and commitments that had been agreed to and fully implemented long before the May 2017 Final Agreements. These older commitments were included in the May 2017 Agreements to create a record of every agreed action to resolve the herders' original complaints. Including them in TPC public progress reports without explaining this timeline once again gives the impression that implementation is progressing faster than the reality reflects. According to

⁶ Joint Statement from 4–5 June 2018 Meetings of the TPC and CCC.

CHALLENGES AND SUCCESSES

our count, nearly half of the 17 completed commitments were already accomplished before the May 2017 Agreements were reached. This means that only 9, or 18%, of the post-May 2017 commitments have been fully implemented to date.

Without doubt, the TPC's progress to date is a significant accomplishment. However, an overly rosy outlook risks creating unrealistic expectations for herders whose fragile livelihoods may depend on accessing Agreement benefits in a timely manner. This may contribute to increased issues of herder suspicion and mistrust of the TPC process (discussed further below). It may also provide a false basis for closure of the CAO's monitoring of Agreement implementation, insofar as the parties agree that closure hinges on implementation progress.

In order to give a more accurate and meaningful impression of implementation progress, the TPC should further differentiate between commitments that have only just begun implementation and those that are nearly complete, as well as publicly reporting updated implementation timelines for each commitment that is not yet complete.

Outside experts selected and overseen by all parties can play an important role in successful implementation of complex commitments

The Agreements include so many different projects that, understandably, the TPC has delegated some work on implementation to working groups or other entities. Reliance on outside experts and other parties can be helpful to allow for progress on many commitments at the same time, but the TPC must set appropriate conditions on these relationships to ensure that it maintains ultimate control and responsibility for successful implementation.

After the TPC made little progress on large community development projects in the first six months of implementation, it identified a need for outside expertise to move past initial questions regarding feasibility, ownership structure and sustainability. The TPC turned to a Mongolian NGO, Development Solutions, for advice. This rural development organization had already been working in Khanbogd



Affected herders Gambat and Byamba watching their herd

Soum assisting local community members to establish small businesses, and it agreed to conduct initial feasibility studies for the herder market, slaughter line, fodder planting project and well maintenance project. These feasibility studies will now form the basis of the TPC's detailed planning decisions for each project.

A less successful example is the environmental monitoring program. The TPC assigned this project to an NGO before the scope of monitoring was fully determined, which has already led to conflicts between the NGO's proposed plan and the goals and intent of the original commitment. This project is unlikely to satisfy the Agreement commitments without close supervision by the TPC.

Turning to outside NGOs, experts and other contractors for support can be helpful, and in some cases even necessary, to enable successful and timely implementation, but it does create challenges. Each of the three parties to the TPC must have an equal opportunity to participate in the selection of external consultants. This promotes fairness and enables all parties to trust the experts and their findings. The TPC must have a clear and specific memorandum of understanding (MOU) or other instructional document with any individual or entity contracted to assist with implementation, even if a separate contract for payment is made directly with OT or the Gobi Oyu Fund. An MOU or similar document must clearly define the scope of work in line with relevant commitments and provide the TPC with ultimate control and oversight to ensure the goals of the Agreements are met. The MOU should also set out what will happen in the event that a contracting entity fails to execute a project in line with the Agreement commitments.

The TPC should take a progressive approach to implementation

A “progressive approach” to implementation means interpreting Agreement commitments in a way that best achieves their intended purpose, even where unforeseen challenges arise, and that promotes long-term and sustainable results. The May 2017 Agreements are intended to address complex and longstanding issues that have made traditional nomadic herding in Khanbogd Soum increasingly difficult. These challenges are not easily addressed and any lasting solutions will likely take time to identify and develop. Challenges are also likely to shift over time, and with them, the solutions needed may shift. In this context, successful implementation must be flexible enough to respond to shifting on-the-ground realities, going beyond the letter of the Agreements to focus on carrying out their underlying purpose and intent.

For some commitments, the TPC has done this. For example, when herders experienced difficulty participating in OT training programs provided as part of individual compensation packages, an NGO contracting with the TPC took steps to identify and address challenges and open the potential program benefits to more herders. (See Box 1, *Successes and challenges of skills training programs*.)

Further, our research found indications that OT is willing to take a progressive approach in seeking ways to make some Agreement commitments more beneficial to local herders. An OT representative indicated that, where useful, commitments originally designed to help a target group of herders may be expanded to benefit more herders. This conversation arose in the context of the elderly knowledge-sharing project, which will provide a stipend to elderly herders to teach young herders about traditional livestock breeding practices. Under the Agreements, this program is only open to those elderly herders who were affected by OT’s diversion of the Undai River, but an OT representative indicated openness to expanding the program to other elderly herders in Khanbogd Soum. Based on our interviews, the TPC should also consider increasing the stipend for participating seniors, which is currently set at 100,000 MNT (about US \$40) per month. Elderly herders are particularly vulnerable to increasing pasture and water scarcity, and are not well-placed to benefit from many of the livelihood development opportunities in the Agreements, such as trainings geared towards learning new skills and developing alternative livelihoods. As the only commitment

uniquely designed to help elderly herders, the project should be expanded to include more herders and provide a stipend that will make more of a difference for elderly herders’ livelihoods.

The TPC should consider where a progressive approach to implementation is needed to accomplish the goals of particular commitments and bring long-term, sustainable impacts. Where a commitment discusses short-term or one-off actions, the TPC should consider whether ongoing actions are needed in light of the commitment’s underlying purpose. OT’s commitment to commission a study of tailings impacts on the Undai River Basin provides a relevant example. As discussed above, this commitment has to date only produced a 2-page summary report and a brief PowerPoint presentation. These documents are significantly less informative and less detailed than the herders had anticipated, yet OT has indicated that it believes this information is enough to meet the commitment. The TPC should agree on an interpretation that best serves the underlying purpose of the commitment (to provide herders with more information about tailings seepage and its impacts) and the Agreements as a whole (to resolve herders’ complaints, including those concerning impacts on the Undai River and water resources generally). This may mean providing more detailed information to the TPC and local herders on a regular basis, rather than a one-off presentation.

Similarly, while the commitment to build new herder wells based on the results of a hydrological assessment did not specify a minimum number of wells to be constructed, the best interpretation of the commitment, in light of the underlying complaints that the Agreements are meant to address, would be to develop as many new wells as are needed in the short term to support sustainable herding in Khanbogd Soum.

In any Agreement implementation process, unexpected challenges are likely to arise along the way. Expanding the TPC’s progressive approach would allow the TPC to react to changing situations and real needs on the ground. Given that full implementation is likely to take years, this type of flexibility is critical to promote meaningful impacts for herders struggling to maintain their traditional livelihoods amidst mounting challenges.



Herder-owned sewing cooperative

BOX 1

Successes and challenges of skills training programs

Beginning in late 2016, 12 female herders participated in a year-long sewing training program designed to help economically displaced herders transition to sustainable livelihoods. Seven of the program participants established a sewing business to turn their skills into an income source. They established the business with a cooperative ownership model, using a start-up business grant provided by OT. These women found the training program very useful and were pleased to report that their business had already received its first contract from OT to sew sample bags and sweatshirts for the company. While they are still working through the challenges of running a business, they believe theirs is a success story – an example of herders using the skills training they received to successfully start a business with high hopes for long-term success and profitability.

Not all participants in the sewing training had such a positive experience. Some participants whose households relied on them to actively engage in herding found the trainings burdensome to attend and believe that any business opportunities that use those skills would conflict with the demands of a herding lifestyle, which while flexible, can also be unpredictable, and require fairly constant availability and ability to travel to the herd. Notably, one woman who participated in the sewing training described it as essentially useless to her. All participants we

interviewed identified that whether participants live in the Soum Center, and whether they are actively responsible for managing a herd, are major factors in their ability to benefit from the training.

Recognizing this significant gap in benefits from skills training, Development Solutions, the NGO that ran the training program, is trying to establish a system where herders trained in sewing can participate in and benefit from the cooperative without needing to be physically present on a regular basis. The idea is to allow herders who are unable to actively participate in the sewing cooperative to invest some money and thereby become co-owners in the cooperative, eligible for dividends from any net profits. Their share would be proportional to the money or work that they put in, to ensure that more active participants are remunerated fairly and proportionately. The OT start-up grant that helped to establish the cooperative was provided to the entire group of 12 training participants, so it could provide the cash basis for each herder to contribute some start-up investment, even if a herder has no additional funds available to invest. In taking steps to identify and address challenges that limit herders’ participation in these new businesses, the NGO is working to ensure that the training programs actually meet their underlying goal of assisting households to achieve sustainable livelihoods.



OT's ineffectively constructed winter shelter next to traditional shelter

Lack of clarity in original Agreements may lead to challenges down the road

When the parties to the TPC signed the Agreements in May 2017, they included some commitments that are based on untested assumptions that may prove false. This may lead to unforeseen implementation challenges and even unfulfilled expectations and disappointments for both the TPC and local herders expecting to benefit from the Agreements.

For example, the fodder planting program was an important commitment that the TPC had hoped would produce significant, tangible benefits for local herders, but had not studied prior to including it in the Agreements. Unfortunately, recently developed feasibility studies raised questions about the feasibility of planting fodder in the local environment, given limited water resources and other expenses. The original Agreements did not discuss what would happen were this project found non-viable. The TPC has now decided that it cannot move forward with this project and must re-negotiate an alternative project that fulfills a similar purpose and provides equivalent benefits to the herder community.

Likewise, the Agreements do not grapple with the question of what will happen if the hydrology study, discussed above, is unable to identify sufficient water resources to address water scarcity

issues. The Agreements call for new wells to be built in less-used pastures, but this assumes that adequate water will be identified. If the hydrology study ultimately finds inadequate water resources to build the proposed new wells, the TPC may need to renegotiate this commitment.

Additionally, at the time of Agreement signing, the parties left a number of questions to be decided at a later time. This decision may have reflected an eagerness to reach an agreement as quickly as possible and begin implementation. This is understandable, given the more than four years already spent in negotiation and considering that only through swift implementation would local herders start to reap benefits. However, in their haste, the parties set a course for a challenging implementation, with many questions left for future negotiation. A number of examples are outlined in Box 2, *Expert Reports: Interpreting the Agreement Commitments*.

Moving forward, the TPC should seek to clarify any ambiguities in the Agreements before they lead to conflicts or other challenges. The TPC should also commit to re-negotiating any commitments that are not feasible or that fall far short of their intended purpose, in order to ensure that the Agreement actually address herder complaints. Finally, any changes to the Agreements should be communicated promptly and effectively to the herder community, with accompanying explanations and opportunities to consult on proposed changes before they are finalized.

BOX 2

Expert reports: the importance of clear interpretation

The May 2017 Agreements were developed by the TPC based on findings and recommendations from reports commissioned by the TPC and carried out by independent experts: the Independent Expert Panel Report (IEP Report) and the Multidisciplinary Team Report (MDT Report). These reports made findings and recommendations about the impacts of the OT mine on the Undai River and on other water and pasture resources and the adequacy of past OT compensation packages.

Many Agreement commitments stem from these recommendations, but the Agreements failed to fully and specifically define what would be done to realize them. As a result, the actual implementation of these commitments may fall short of fulfilling the original recommendations and the actual needs of herders.

For example, the MDT Report recommends a program to build new herder wells and suggests that at least 75 new wells would be needed throughout Khanbogd Soum to improve water and pasture access.⁷ As discussed above, the Agreements include a commitment to build new wells based on the results of a groundwater study, without specifying how many wells should be built. Now, a project approved through the Gobi Oyu Fund provides for just 12 wells to be built in Khanbogd Soum.⁸

The participatory monitoring program is another example. The MDT Report substantiated a need for a re-designed environmental monitoring program that provides robust, credible, long-term data on a variety of topics, including well water quantity and quality, dust, pasture quality, soil moisture and water quality monitoring downstream of the mine's tailings storage facility.⁹ Despite this clear scoping statement, the Agreements defer key decisions, including the purpose, scope and type of new monitoring to be undertaken.¹⁰ A monitoring activity plan presented in August 2018 covers only water, wildlife, vegetation and air quality and includes only a few superficial monitoring tasks

for each. A total of six monitoring tasks are scheduled to take place monthly or more frequently, while others will be conducted only occasionally (i.e. annually). The participatory monitoring program was originally envisioned as a source of paid jobs for herders, but with so few regular activities, it is difficult to imagine this program providing a meaningful source of employment for more than a handful of herders. The TPC has since requested a more detailed and robust monitoring plan, which is still in development. The parties should take care to create a well-thought-out program plan that involves the necessary training and expertise to achieve the program's ambitious goals.

Other commitments stemming from the MDT Report similarly risk falling short. A recommended study of alluvial water sources aimed to: provide a better understanding of shallow groundwater dynamics; strengthen groundwater modeling; provide a baseline against which to measure future changes in water resources; and better quantify OT's impacts on water resources. Such a study would help to address questions about OT impacts that have persisted since the herders' original 2012 and 2013 complaints to the CAO. However, the planned water study as approved by the Gobi Oyu Fund does not appear to accomplish any of these goals, nor is the TPC planning any other study to answer these questions. This important recommendation seems to have fallen off of the TPC's agenda, yet TPC representatives that we interviewed were not sure how this happened.

The TPC must do more to meet these commitments. Otherwise, the Agreements may prove much less meaningful for herders than they originally appeared. As many of these commitments are still in early stages, it is not too late for the TPC to take a more ambitious approach to their implementation, in line with independent experts' recommendations.

7 MDT/IEP Report, p. 11.

8 Project Overview, IMPROVEMENT OF PASTURE LAND IRRIGATION "WISH GRANTING JEWEL" PROJECT, Project Outcomes, p. 2.

9 MDT/IEP Report, p. 25, Recommendations relating to monitoring #1

10 Agreement 1, Annex 1, sec. 3.11.

Funding through the Gobi Oyu Fund is likely to lead to further delays and scope drift

Many of the Agreement commitments require significant financing, which OT intends to secure in large part through the Gobi Oyu Fund. This funding model comes with a potentially significant risk of implementation delays, changes in the scope of commitments, and lack of oversight by the TPC. It adds an additional hurdle to projects moving forward and can also add a political dimension, especially given that the Fund was established to provide development funding for the whole Umnugobi Aimag, not just Khanbogd Soum.

The Fund's board, which includes representatives from OT and soum- and aimag-level governments, approves funding for projects on a quarterly basis.¹¹ Thus, while OT can present funding proposals and may in some cases be able to expedite their consideration, OT is not in a position to promise or ensure that any given proposal will be approved, nor does it have full control over its implementation timeline or prioritization vis-à-vis other development projects for Umnugobi Aimag. This situation has already led to some implementation delays. For example, the healthy herder program was originally scheduled for implementation in 2018, but it has been delayed until 2019 because a separate program on reproductive health was considered a higher priority.

Similarly, the proposal for the water study was rejected at least once before it was approved. The approved version specifies that, pursuant to the study, wells will be built in Khanbogd Soum by Q4 of 2018,¹² but there have been further delays, and well building is not expected to begin until sometime in 2019. Moreover, the water study and well building project also raises a question as to whether funding commitments through the Gobi Oyu Fund can lead to changes in the scope of some projects. As discussed in Box 2, the approved project includes only 12 wells in Khanbogd Soum, far



OT water delivery tank

fewer than the 75 wells discussed in the MDT Report. Meanwhile, the proposal adds three other nearby Soums to the well building project, which was likely a needed compromise to achieve approval through a fund that is intended to serve the whole Aimag.

Additionally, as this project is being run through the Gobi Oyu Fund, the contractor implementing the project does not have a signed MOU directly with the TPC. Therefore, the options for changing the scope of the project at this point may be more limited, and the TPC cannot exercise oversight over important issues such as a timing and location of well building.

Agreement commitments should only be financed through the Gobi Oyu Fund where this arrangement can reasonably meet the needs of the commitments – in terms of timeline, project scope and TPC oversight – and where such an arrangement does not conflict with the broader Aimag-wide development goals of the Fund. Where the TPC continues to rely on the Gobi Oyu Fund, OT and the local government must use their roles on the Fund's board to ensure that the projects that are ultimately approved maintain the originally envisioned timeline and scope and that the TPC has a recognized oversight role.

¹¹ More information on the Gobi Oyu Fund is available at <http://www.goviinoyu.mn/eng/>.

¹² Project Overview, IMPROVEMENT OF PASTURE LAND IRRIGATION “WISH GRANTING JEWEL” PROJECT, Project Outcomes, p. 2.

The capacity and commitment of the parties to the TPC must be strengthened

In interviews, a number of individuals noted that the lack of capacity of some parties has contributed to implementation delays and other challenges. Capacity issues particularly affect the government and herder representatives.

Government capacity

The Khanbogd Soum government appoints personnel to serve as TPC representatives on top of their standard job responsibilities. Within the Soum government, implementation of the Agreements is largely considered the responsibility of individuals representing the government on the TPC. We heard through interviews that beyond those individuals, there is neither a broad understanding of nor commitment to the objectives of the TPC within the local government. This relatively weak institutional knowledge and commitment within the government inevitably makes carrying out Agreement commitments more challenging and means that any turnover in government TPC representatives has a greater impact on the government's overall capacity to engage.

Given this context, recent turnover in government representatives to the TPC has caused significant challenges. One of the government's long-standing representatives, the Director of the Soum's livestock breeding unit, passed away in early 2018. This likely contributed to delays, particularly on pasture commitments that require government leadership. Additionally, in the first half of 2018, the Khanbogd Soum government underwent a restructuring, resulting in turnover of top Soum leadership positions, including the Deputy Governor, who serves as a TPC representative. Such government restructuring is reportedly a relatively common event, as it can be brought on by political re-shuffling within a party as well as local elections. The next elections scheduled for 2020 will likely cause changes, but even before then, changes in power within the ruling political party may result in further upheaval. To avoid further issues caused by government personnel changes, and to encourage the burdens of implementation to be more evenly spread out, the TPC should proactively ensure that all departments of local government, not just the government's TPC representatives, are aware of and actively following Agreement implementation.

Many interviewees also agreed that lack of funds contributes to implementation delays by the Khanbogd Soum government. Khanbogd Soum bears the burden of hosting one of the world's largest copper mining operations in its backyard, bringing a temporary population of workers that far exceeds the permanent population of the soum. This leads to many social and environmental challenges, such as the trash, dust and exhaust fumes created by the constant stream of mining trucks transporting ore to China. Nonetheless, the local government's allocated budget and personnel resources do not account for this. One of the Agreement commitments, to negotiate with the Aimag government to re-direct part of OT's water use fee to the Soum government, is meant to help ease these capacity constraints. The TPC should prioritize making progress on this commitment soon, as increased funding for the Soum government may speed up and improve implementation of other commitments. If this commitment ultimately fails, the parties should consider alternative actions to improve the Soum government's capacity and resources.

Capacity of the Elected Herder Team

Of the three parties to the TPC, only the Elected Herder Team (EHT), which represents the herders of Khanbogd Soum, participates in a manner that is unattached to any paid job duties. EHT members must make time for extensive TPC responsibilities on top of their income-earning activities. This can be particularly difficult while actively herding, as herding typically requires traveling long distances away from the Khanbogd Soum Center, where TPC meetings are held.

When EHT members find themselves too busy to fulfill their responsibilities, one option is to replace inactive members or to elect additional members to share responsibilities more widely. EHT members are typically elected or re-confirmed by local community members at quarterly bagh meetings, but recent government restructuring caused bagh meetings originally planned for the winter of 2017 and Spring of 2018 to be skipped. When bagh meetings were finally held in September 2018, the local community elected three new EHT members to join the team. Shortly after that, the TPC dismissed three EHT members who had become inactive and stopped attending meetings. Long-standing EHT members will need to work together with new members to pass along their extensive knowledge of the TPC and its working practices and find the best ways to use each individual's particular skill set to further implementation goals. All EHT members,

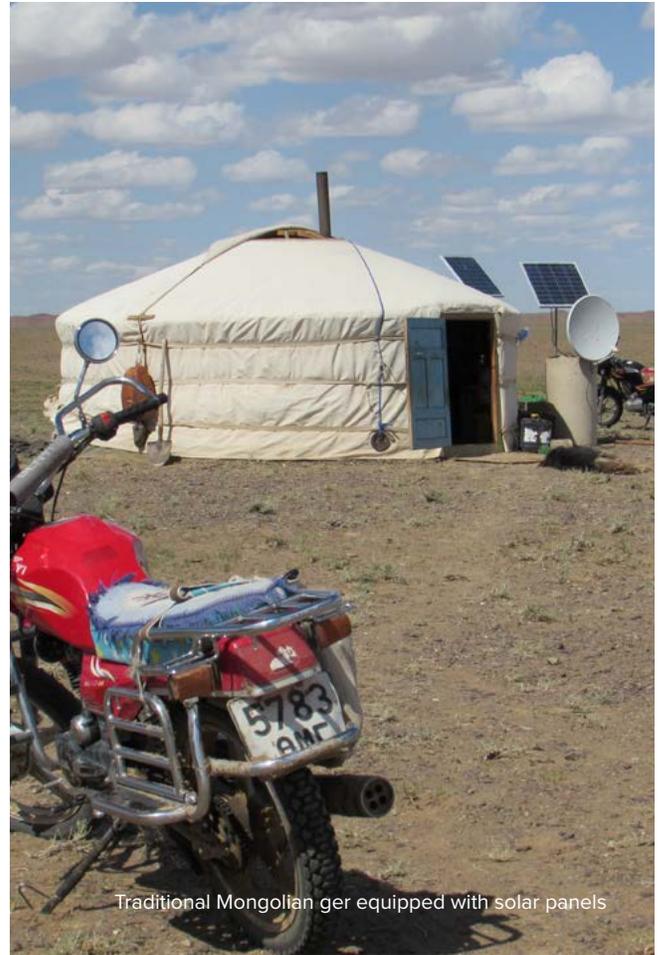
regardless of their length of tenure, will need to actively collaborate to represent the voices and needs of the larger herding community.

A second issue, raised particularly by herders hoping to benefit from the Agreements, is the lack of membership on the EHT by individuals who are still actively herding. Some herders fear that this scenario may lead to a lack of understanding of concerns and considerations particularly relevant to active herders. This fear feeds into suspicions, discussed further below, that Agreement implementation favors households more interested in and better placed to develop alternative livelihoods. However, participation by active herders is difficult given the many responsibilities and time commitments of the role. The TPC should consider organizing a Herder's Advisory Council consisting of active herders who have a designated role in overseeing Agreement implementation and other TPC activities. This would allow active herders to play a greater role in TPC activities without the high time commitment of EHT membership.

TPC has made progress in building a trusting relationship

The parties broadly agree that the trust and relationship building among TPC representatives has improved greatly over the past 18 months. At least some parties believe that this increasing trust has contributed to faster recent progress on implementation, as compared to some of the serious delays experienced in the first six months.

Building a trusting relationship is a big achievement, but maintaining it is equally important. The TPC has much work ahead of it to complete Agreement implementation. Beyond that, the TPC is a semi-permanent body that will continue to exist for the 50+ year life of the OT mine and has a broad mandate to resolve issues that arise between herders and the mine. Continuing to build and maintain trust between the TPC representatives will be crucial to the TPC's ability to overcome new challenges along the way. For the relationship to be truly sustainable, the trust being built needs to extend beyond the current TPC representatives to the whole local community.



Traditional Mongolian ger equipped with solar panels

As discussed in the next section, the TPC still has significant work to do to earn the trust of the larger community. Herder households hold a diverse array of perceptions of the OT mine, the TPC and the Agreement implementation process. In the coming months, the TPC should focus on building a trusting relationship with the local community, especially by showing them the benefits of successful Agreement implementation, while continuing to improve trust within its own membership.



Affected herder Tseven

HERDER PERCEPTIONS

On the whole, herders are feeling less universally positive about implementation progress in the first 18 months than TPC representatives. This difference in perception is likely attributable, at least in part, to a lack of publicly available information about the Agreements and their implementation. Additionally, some herders voiced specific concerns about who will be able to access Agreement benefits. Nonetheless, after we explained some of the major Agreement commitments, most herders agreed that *if they are implemented well*, the Agreements will likely bring useful benefits to local households across a variety of economic statuses and occupations.

The impact of poor TPC communication

Our study found that the TPC's external communications with the broader community are a point of weakness. Many of the herders we spoke with in June 2018 were unfamiliar with the Agreements. Even those who knew about them were not familiar with all of the commitments or with the full range of benefits for which they themselves would be eligible.

Based on our stakeholder interviews, there may be a number of reasons for the herders' lack of familiarity with the Agreements and implementation status. First, local conditions and the herders' traditional, semi-nomadic lifestyles create serious communication challenges. A primary method for providing updates on implementation has been through ger-to-ger visits to individual households, but travel between households takes a lot of time, in addition to the expenses of gasoline and wear and tear on vehicles, which can be significant costs in the Gobi. At least one TPC representative indicated that time and money are limitations to better information dissemination. The TPC has also provided updates at quarterly bagh meetings, which represent some of the few occasions in which herders gather in relatively large groups. However, a nearly year-long gap in holding meetings worsened the already significant barriers to effective communication with the herder community.

Second, some TPC representatives feel that their ability to convey information about Agreement implementation is limited by the TPC's practice of relying on official joint statements. At each TPC meeting, the parties may agree to publish a short, joint statement that provides updates on the progress of the TPC. These statements are typically between a half page to two pages long and provide only brief descriptions of each activity. They are supposed to be produced following each quarterly TPC meeting, but their release is often severely delayed. If TPC representatives feel themselves limited to sharing only the information contained in these statements, they are unlikely to be able to answer all herder questions or discuss particular herder situations, nor are they able to convey up-to-date information about the status of every commitment at any given time, all of which seriously hampers effective communication. During the negotiation of the Agreements, there may have been good reasons to put certain limits on communication about what was said during TPC meetings, to reduce rumors and allow the parties an opportunity to make

progress towards an agreement. These justifications are largely inapplicable to the implementation stage, yet the sense of confidentiality around TPC activities has been slow to change.

Poor external communication is a big problem for a number of reasons. Our interviews revealed that poor communication about implementation status (perhaps combined with the initial, unrealistic timelines for many commitments, as discussed above) is causing some herders to question the effectiveness, and even the good faith, of the TPC and the Agreement implementation process. Additionally, the general lack of transparency with no robust, systematic process for external communication can set the stage for real or perceived favoritism in the distribution of Agreement benefits. Without a proper system for communicating updates, it is natural for TPC members to communicate more frequently with those community members who they are already close to, or those who proactively seek out information. This can lead others who are not in these groups to feel intentionally excluded. Some herders already feel suspicious about how decisions regarding the distribution of benefits have been made.

Finally, lack of information about the scope of particular commitments as they are being implemented can lead households to hold unrealistic expectations of what they will receive from the Agreements, which may cause unnecessary disappointment later. For example, many herders indicated an interest in the commitment to build new wells in Khanbogd Soum, but it is not clear whether the small number of wells currently proposed for construction in unused pasture areas will satisfy herders' expectations.

The TPC needs to make a significant investment in transparency and external communications. It should provide regular updates to herders that include detailed statements of the status of each commitment. Information about implementation progress should be presumed public unless the TPC identifies a reason not to share particular information. Herders we spoke with had varying preferences for methods of communication, including both verbal and written formats, through Facebook messages, ger-to-ger visits and bagh meetings. Multiple communication formats should be used together to form a systematic approach to external communications.

Agreement benefits must be accessible to those who need them most

Setting aside issues of poor communication, it is clear that some herders are feeling better-placed to benefit from the Agreements than others. This is likely for a variety of reasons. Some herders who are interested in continuing their traditional livelihoods expressed concern that many of the Agreement benefits are hard for those living in the countryside to access, thus favoring local community members living in the Soum Center — typically those who are not actively herding or have hired another person to care for their herd. This critique applies to many of the commitments that are designed to benefit herders by promoting diversification of livelihoods, such as the loan support for small and medium sized enterprises and job skills training programs (see Box 1 for discussion of this issue in relation to training programs).

Some interviewees also raised questions about the accessibility of programs meant to benefit individuals and households that want to continue herding, such as jobs related to well building and maintenance and participatory environmental monitoring. Similar questions are likely to arise about where new wells are built or which wells are selected for maintenance works. For all such programs designed to benefit selected herder households, it is critical that the TPC substantiate and clearly communicate a fair, transparent process for selecting who will benefit.

Elderly herder households also expressed concern that they may be left behind by Agreement implementation. Elderly herder households may be the most limited in their ability to benefit from alternative livelihood programs, as they are less well positioned to learn new skills or engage in new livelihood activities and may be less mobile. For example, one elderly herder who has been found eligible for a new compensation package expressed concern that the types of benefits available to choose from will not help her. The packages allow herders to select from various forms of non-monetary benefits, including a training program, start-up business support, or additional herd animals. This herder felt her only real option was to ask for herd animals, since her age makes it difficult to participate in a training program or start a business. However, she is also unable to actively herd animals and acknowledged that this is not an ideal form of assistance. Her children would have the burden of caring for the animals, and she was



also concerned about the animals' survival given lack of available water and pasture. Recent studies have found that this part of the Gobi is already suffering from unsustainably large herd sizes, especially considering the deteriorating pasture and water availability. Adding more herd animals will only heighten this problem, and may even leave herders with dead animals that have no value whatsoever. The elderly herder indicated that she would much rather have received money to pay her medical bills.

Households who are left in a vulnerable position because of emergency conditions, such as a drought, flood event or dzud, may also be less well positioned to benefit from the Agreements. See Box 3 for a discussion of this issue.

Active herding households, and particularly elderly and other vulnerable households, may in fact be the households most at risk of being left out of consideration for benefits. This issue is tied to the communication problems discussed in the previous section, as communication is typically most challenging with herders located outside of the Soum Center who do not have the resources to travel often. The TPC should seek out information from herders about obstacles that prevent them from accessing Agreement benefits and proactively find ways to address these challenges.



Camels suffering from lack of water and pasture

BOX 3

Emergency needs and the Agreements

During our trip to Khanbogd in June 2018, the area was experiencing severe drought conditions, with little to no precipitation since the previous August, when the area experienced flood-level rains. Most herders we spoke with believed that the mine's high water needs and its use and degradation of former pasture lands had intensified issues of water and pasture scarcity.

Many households we spoke with were visibly struggling to keep their animals alive and their livelihoods afloat. Some of the hardest hit households that we interviewed were unable to commit any resources to understanding the Agreements and how they may benefit. Others also expressed anger with the slow speed of implementation and lack of tangible progress in the midst of a crisis.

For example, we conducted one interview over the sound of cries from the household's small herd of starving camels. The family explained that this is the second year in a row that their camels are extremely thin and in poor health due to lack of pasture. As a result, their herd had experienced incredible losses. Another family described their pasture as littered with animal carcasses this year. Their goats and sheep

birthed 70–80 baby animals in 2018, and all but 6 of them died, as had approximately 150 adult animals. They had also been forced to sell around 110 horses and camels due to a lack of water and pasture to sustain them. This situation contrasted greatly with our memories of this household from a visit several years earlier, when they had had a thriving herd with lots of healthy baby animals and had been hopeful about their ability to thrive alongside OT. Both of these families reported that there are not enough pastures or water sources in their immediate area to sustain their herds. They conveyed a sense of hopelessness, explaining that herding is the only livelihood they have ever known, but in recent years, it has not provided a sustainable way to feed their families or make a living.

The TPC should consider ways to tailor its support to bridge any gaps between the immediate needs of vulnerable households in a time of crisis and the Agreement benefits. A good starting point would be a targeted communication campaign that focuses on 2-way communication about the opportunities provided by the Agreements and the needs and challenges experienced by the most vulnerable households.



An interview with affected herder Munkhchuluum

CONCLUSION & RECOMMENDATIONS

The TPC set out 18 months ago to implement a historic set of Agreements, negotiated in good faith between a major mining company, the Mongolian herders it has impacted and the local government. Implementation has undoubtedly made substantial progress, and as the TPC's hard work begins to sow real benefits for local people, the parties have many reasons to take pride in their efforts. Still, the TPC has much work ahead of it. Only 29% of commitments have been fully implemented, and nearly half of these were already completed before the parties signed the Agreements in May 2017. A further 53% of commitments have fallen behind the TPC's own implementation timeline.

The challenges that have arisen are significant and are unlikely to improve without concerted and collaborative action. If left unchecked, challenges such as poor external communication or projects that do not meet the original intent of the Agreements risk seriously undermining the TPC's efforts and may lead to a final result that falls short of what the parties had envisioned when they signed the Agreements in May 2017.

The IFC's CAO played a crucial role in helping the parties to reach the Agreements, and its support throughout the implementation process has been equally important. As the accountability office tied to

one of OT's major financiers, its monitoring role has motivated the TPC to keep implementation on track and provided ongoing help to resolve tricky problems as they arose. Yet, the TPC recently voted to close the CAO's monitoring phase. Unless the TPC establishes a new independent monitoring and review process soon, it is unclear how the parties will hold themselves accountable to the goals of the Agreements and achieve their full potential.

To achieve a meaningful and complete implementation, the TPC must:

- Define new, realistic implementation timelines for all Agreement commitments. Timelines should be made publicly available and updated on a quarterly basis;
- Develop a systematic process for distributing information publicly and allowing two-way communication with herders, incorporating multiple formats and mediums appropriate to different groups, such as Facebook and written and verbal updates communicated at bagh meetings and through individual household visits. Updates should be frequent and provide detailed information on the status of each commitment;
- Where commitments are designed to benefit only selected individuals, clearly communicate a fair, transparent and substantiated process for selecting those beneficiaries;
- Where a commitment ultimately cannot be accomplished, for any reason, substitute it with a new commitment of equivalent value to local herders. A substitution or modification to any commitment must be clearly and promptly communicated to the herder community;
- Expand on its progressive approach to implementation of certain commitments and apply this mindset to all commitments. This should include expanding the interpretation of commitments designed to help elderly herder households and other vulnerable households, to ensure that implementation meets herders' underlying needs;
- Only turn to the Gobi Oyu Fund for implementation funding and assistance where OT and the Khanbogd Soum government can ensure that this arrangement will reasonably meet the terms of the commitments, including project timeline and scope, and the need for TPC oversight, and where such an arrangement does not conflict with broader Aimag-wide development goals;
- Identify where implementation would benefit from expert assistance and establish an MOU or similar with any entity or individual contracted to assist that clearly defines the scope and timeline of the project, provides the TPC with ultimate responsibility for ensuring that the goals are met, and sets out what will happen if the contractor fails to execute a project in line with the Agreements;
- Continue to improve capacity and commitment of TPC representatives, including by improving awareness of TPC activities within the local government, regularly cycling out representatives who are not actively contributing and considering establishment of a Herder's Advisory Council to the TPC; and
- Establish a robust monitoring and review process to replace and build on the role of the CAO. The process should involve professional experts in program evaluation and should incorporate both a monitoring function, to track and record progress, and a review function, to analyze whether the agreements are achieving intended outcomes for herders and recommend needed changes.



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