BLESSED ARE THE LAST FOR THEY SHALL BE FIRST!

How the "last resort" option of biodiversity offsetting has become a key tool for Rio Tinto to legitimise its controversial Oyu Tolgoi copper mine in Southern Gobi Desert in Mongolia

Whether it is global warming, loss of biodiversity, or other environmental crises, the limits of our planet are becoming more and more evident to us. At the Paris climate conference held in December 2015, parties agreed that we urgently need to limit greenhouse gas emissions and mitigate global warming, but there are different approaches to doing this. One is a fundamental transition of the economy away from fossil fuels. A more moderate option relates to the idea of "net zero emissions", a concept that implies that the world can continue to produce emissions, as long as there is a way to "offset" them[1]. It is in fact in climate politics that offsetting is used the most. Though, with very limited success[2]. However, the apparent limitations of this concept, have not prevented the mining industry from quickly incorporating it and promoting it to "offset" the negative effects of mining on biodiversity.

As recently proven by international experts[3], biodiversity is below safe levels across more than half of the world's land. Scientists say that habitat destruction has reduced the variety of plants and animals to the point that ecological systems could soon become unable to function properly, with risks for agriculture and human health. Biodiversity is particularly under threat in those remote areas of the world where mining operations are being increasingly developed in order to extract the last remaining minerals and metals available.

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The Oyu Tolgoi mine in Southern Mongolia is a prominent example of biodiversity offsetting, praised as a set of "first-time ever initiatives" by its main project promoter Rio Tinto. Civil society organisations visited the project area in April 2015, in order to observe what was happening on the ground, but the reality was far from convincing. In spite of the concerns raised by civil society to project financiers, including international public development banks, Rio Tinto decided to move ahead in finalising its offset plans, which still remain questionable both in their logics and feasibility in the Southern Gobi Desert.

Worrying findings coming from new civil society fact-finding missions, and recent plans advanced by project sponsors to expand the mine and build a related coal plant[4] raise the urgency to shed light on how biodiversity offsetting is used to cover up severe environmental, social and development impacts associated with the mining project in Mongolia.

1 http://us.boell.org/2015/12/15/cop-21-and-paris-agreement-force-awakened

2 https://www.theguardian.com/sustainable-business/blog/why-are-carbon-markets-failing

3 https://www.theguardian.com/environment/2016/jul/14/biodiversity-below-safe-levels-across-over-half-of-worlds-land-study

4 http://bankwatch.org/publications/tavan-tolgoi-coal-power-plant

1. BACKGROUND ON OYU TOLGOI, RIO TINTO AND BIODIVERSITY OFFSETTING

THE OT PROJECT

The Southern Gobi region in Mongolia supposedly holds one of the largest undeveloped high-grade copper deposits in the world. The Oyu Tolgoi (OT) open pit and underground copper and gold mining project is also the largest mining investment to ever be licensed in Mongolia. The project company, Oyu Tolgoi LLC, is owned to 66% by the Vancouver-based Turquoise Hill Resources which, in turn, is majority owned (51%) by mining giant Rio Tinto. The remaining 34% of Oyu Tolgoi is held by Mongolian state company Erdenes Oyu Tolgoi. Project costs for the development of open pit and underground mines are estimated at about USD 12 billion. It is believed that, once at full production capacity, the mine will increase Mongolia's GDP by 30-35%[5].

Between 2010 and 2013, Oyu Tolgoi secured support from the European Bank for Reconstruction and Development (EBRD) and the International Finance Corporation (IFC), which committed to provide direct loans and help to arrange further loans. In December 2015, EBRD and IFC, together with Export Development Canada (EDC) and the French bank BNP Paribas, acted as Initial Mandated Lead Arrangers and helped OT putting together a financing agreement worth over USD 4.4 billion. The participants are: EDC, EBRD, IFC, the US Export-Import Bank, the Export Finance and Insurance Corporation of Australia, BNP Paribas, ANZ, ING, Société Générale Corportae & Investment Banking, Sumitomo Mitsui, Standard Chartered Bank, Canadian Imperial Bank of Commerce, Crédit Agricole, Intesa Sanpaolo, National Australia Bank, Natixis, HSBC, The Bank of Tokyo-Mitsubishi UFJ, KfW IPEX-Bank and FMO. World Bank's Multilateral Investment Guarantee Agency (MIGA) provided political risk insurance for the commercial banks[6].

The agreement was preceded by a two year long dispute between OT and the Mongolian government over the development costs of the mine, ownership terms and government revenues accruing from the project. The dispute was settled in May 2015 when parties agreed on a financing plan for the next phase addressing the key outstanding shareholder issues and setting out an agreed basis for the funding of the project[7].

In May 2016, Rio Tinto and its partners approved a USD 5.3 billion expansion investment, that would more than double the output at the Oyu Tolgoi copper and gold mine, as commodity producers race to meet a forecasted global deficit that is supposed to materialise by the end of the decade. At full production, Oyu Tolgoi will rank as the third-largest copper mine in the world, according to Wood Mackenzie Ltd.[8] Furthermore, the 600 MW Tavan Tolgoi power plant is currently under discussion at the government level. Although this plant is considered critical for the future energy needs of the three major mines in the South Gobi region, including Oyu Tolgoi, a recent Bankwatch field visit showed a complete lack of space for local communities' participation in discussions about the project, as well the absence of an assessment of potential alternatives for the water-scarce region.[9]

It is not only its sheer size that makes the Oyu Tolgoi project special. It is also the first project in Mongolia to include a biodiversity offset action in its EIA and related biodiversity management plan - under the guidance of The Biodiversity Consultancy of Cambridge and with the aim to involve a series of conservation organisations during its future implementation. A specific biodiversity offset plan has been agreed between project sponsor and the public lenders.

RIO TINTO AND OFFSETTING

Rio Tinto acts as the OT project manager, and it is therefore promoting OT's biodiversity offsetting as well. The company has a history with offsetting. Back in 2004, at the Third IUCN World Conservation Congress in Bangkok, the Rio Tinto Group launched its biodiversity strategy, committing to achieve a "Net Positive Impact" (NPI) on biodiversity: "*Our aim is to have a*

5 http://ifcext.ifc.org/ifcext/spiwebsite1.nsf/651aeb16abd09c1f8525797d006976ba/d8a67e4647784ed385257a62005d32e1?opendocument

6 www.riotinto.com/media/media-releases-237_16275.aspx

7 www.theguardian.com/global/2015/may/19/rio-tinto-and-mongolia-sign-multibillion-dollar-deal-on-mine-expansion

8 https://www.bloomberg.com/news/articles/2016-05-06/rio-approves-5-3-billion-oyu-tolgoi-copper-mine-expansion

9 http://bankwatch.org/sites/default/files/briefing-TavanTolgoi-08Nov2016.pdf

net positive impact on biodiversity. This means minimising the impacts of our business and contributing to biodiversity conservation to ensure a region ultimately benefits from our presence."[10] Rio Tinto lays out their Mitigation Hierarchy Framework: "*To achieve NPI, we first need to reduce our impacts on biodiversity values through avoidance, minimisation and rehabilitation. We then aim to achieve a positive impact, with the use of biodiversity offsets and additional conservation actions.*"[11]

The claim behind the Net Positive Impact (NPI) concept is that the negative impacts on biodiversity caused by a given project will be compensated for through mitigation and additional conservation activities on biodiversity in non-project areas, to be implemented within the project life-cycle. Through additional conservation activities the general outcome will (supposedly) be positive for biodiversity, hence "net positive impact". For example: Several couples of a bird species might lose their habitat because of mining activities, but additional protection measures for this bird species, carried out in other areas, will increase the total number of birds. Needless to say, the NPI concept is based on several assumptions: That the birds would not flourish without the additional protection measures, but rather their habitat would deteriorate thus decreasing the bird population; That the place where the additional measures are being carried out will not itself be impacted through, for instance, mining activities conducted by other companies, etc. The NPI

Mongolia. Photo © Olexi Pasyuk

approach goes far beyond the more "modest" EU policy goal of a "no net loss" of biodiversity – as defined in the EU Biodiversity Strategy up to 2020[12] - although even that goal is questionable regarding its feasibility and effectiveness.

Rio Tinto itself lays out the motivation for coming up with its biodiversity strategy: "*Our aim to find and develop high value, long life and low-cost mineral resources is being increasingly challenged by changing societal expectations and a growing number of environmental issues such as climate change, water and biodiversity. As the global population moves towards nine billion by 2050, competition for land-based resources is also growing, increasing the tension between mining and other land uses.*"[13]

Introducing the NPI strategy can be seen as a genius PR strike from Rio Tinto, since the biodiversity offsetting, even if portrayed as the last resort in the mitigation hierarchy, adds another argument in favour of achieving mining licenses and broadens the range of instruments of mitigation measures provided for under environmental laws in most countries. Therefore, it is no surprise that Rio Tinto is heavily promoting biodiversity offsetting and NPI not only in Mongolia but in other of its mining projects as well. For example in Guinea (where it operates the Simandou iron ore mine which will impact key areas of Chimpanzees and rare forests[14]), in Madagascar (where it owns the QMM ilmenite mine, whose offsetting plan consists in the protection of forests located tens of kilometres away from the mine, through the introduction of access restrictions on communities living in the area[15]), in Namibia (for the Rössing uranium mine, where the company has carried out an invertebrate monitoring programme[16]), or in South Africa

10 „Rio Tinto and biodiversity – Working towards Net Positive Impact" 2012, p.4 http://edition.pagesuite-professional.co.uk/Launch.aspx?PBID=e2a60f70-54c9-431d-a7ea-471cf2ba01b2

11 ibd., p.13

12 http://ec.europa.eu/environment/nature/biodiversity/nnl/index_en.htm

13 ibd., p.6

14 www.thebiodiversityconsultancy.com/map/simandou/

15 Re:Common, WRM „Rio Tinto's biodiversity offset in Madagascar – Double landgrab in the name of biodiversity?" 2016

16 www.rossing.com/our_environment.htm

(Palabora copper mine, which used to be owned and managed by Rio Tinto, before selling its interests in 2013, and where the project company coordinates several onsite wildlife management and cultural heritage programmes.[17]). A critical look at these pilot projects, often implemented in some of the most remote areas in the world is important to understand the concept of biodiversity offsetting and its shortcomings.

There is little denying that mining operations have massive impacts on nature and that, as Rio Tinto admits itself, extractive companies are increasingly expanding into the few pristine areas where natural resources are still available. Such expansion implies that environmental impacts are set to significantly increase in the coming years, especially within or near to protected areas. The decline in commodity prices until late 2016 may have slowed down this process, but the trend is set to continue, especially since recently prices of e.g. copper went up again. Mining impacts cannot be compensated by on-site minimization and rehabilitation measures alone – which in any case are often inadequately implemented. Therefore, offsetting emerges as the new frontier for compensating (and thus enabling it in the first place!) irreversible impacts taking place at the mining site. This is to be done by carrying out environmental improvement measures in other sites. But to do so it is necessary to establish some equivalences,both biological and economical, between what gets destroyed and what has to be theoretically improved in order to offset intentional nature and biodiversity destruction.

17 www.palabora.com

OFFSETTING INDUSTRY

The revitalized debate on compensation has brought new blood to the offsetting industry, which initially emerged after the ratification of the Kyoto Protocol and the conceptualization of carbon offsetting schemes.
Despite the poor results achieved by carbon offsets and related trading of emission permits, the same mechanism is now being proposed for preserving biodiversity, and Rio Tinto is among its main advocates.

As in the case of carbon trading, once the avoidance option is ruled out – since of course the mine has to be where resources lie regardless of the nature and biodiversity at the site – actual mitigation measures have proved to be quite costly and to affect the design of planned operations. Furthermore, mitigation outcomes have been poorer than what was expected, especially in the light of the increasingly larger scale of extractive projects and their impacts.

Originally presented as the last resort, offsetting has thus emerged more and more as the first option for impacts mitigation. Hence the need for the mining industry to quickly identify flagship offset projects that show that damages related to mining operations can be fully compensated.

It is therefore legitimate for civil society to wonder to what extent the hierarchy of different mitigation options, as provided for by environmental laws, in practice is being changed to the advantage of offsetting. This would be convenient for mining companies, since offsetting is theoretically easier and cheaper to implement, regardless of its effectiveness for biodiversity protection.

Major conservation organizations have been playing a crucial role in helping companies, such as Rio Tinto, in greening their image by embracing the new mantra of biodiversity offsetting. Rio Tinto partnered with Conservation International, BirdLife International, Fauna and Flora International and the Royal Botanical Gardens in the development of its Biodiversity Strategy[18]. In many projects around the world, Rio Tinto is working with The Biodiversity Consultancy, BirdLife International, The Nature Conservancy[19], and Wildlife Conservation Society.

While these organisations might agree that biodiversity offsetting should be regarded as the last option, they seem to have embraced the worrying idea that if the destruction is going to happen anyway… ‘We might as well save what can be saved’. The ostensible pragmatism of this approach – sometimes encouraged by the possibility for conservationist groups to accept financing for their work from mining and extractive corporations - however, fails to recognize that contributing to establish the biodiversity offsetting concept de-facto helps mining companies obtain their much needed social licence to operate, a precious asset for them in light of the increasing tension between mining and other land-uses, which even Rio Tinto admits.

18 „Rio Tinto and biodiversity – Working towards Net Positive Impact“ 2012, p.8

19 In Mongolia for example TNC did a study „Identifying conservation priorities in the face of future development: Applying Development by Design in the Mongolian Gobi“ in 2013 funded by a grant from Rio Tinto.

2. OFFSETTING IN MONGOLIA

In April 2015 four European campaigners from Both Ends (Netherlands), Re:Common (Italy), CEE Bankwatch Network (Central and Eastern Europe) and Urgewald (Germany), in cooperation with OT Watch (Mongolia), have carried out a fact-finding mission to Mongolia, to investigate on the provisions of the new Mongolian EIA legislation, which includes biodiversity offsetting.

The main goals of the field visit were to assess the administration's overall capacity to oversee the implementation and deal with implications of conservation activities in the country and, more specifically, to analyse Oyu Tolgoi's approach to biodiversity offsetting, and understand how the new EIA law was being integrated into their plans.

Initially, the research team met with the environmental ministry and nature conservation organisations in Ulaanbaatar, to then move to the Southern Gobi, where they held meetings with the local administration, herders and people in charge of protected areas.

Follow-up research and interaction with different stakeholders at national and international level confirmed that the offsetting project linked to the Oyu Tolgoi mine was crucial for Rio Tinto's strategy to achieve a "net positive impact" on biodiversity. OT is one of the projects that Rio Tinto needs in order to prove that biodiversity offsetting is a feasible and effective option, even in the most extreme environmental conditions, such as in a desert.

Mongolia. Photo © Olexi Pasyuk

Despite the company's ambition, however, findings collected during this and other missions reveal that Rio Tinto's goal is still far from achieved in the Mongolia's Gobi Desert.

NEW ENVIRONMENTAL IMPACT ASSESSMENT LAW IN MONGOLIA – SOURCE OF GREAT CONFUSION

With support from the World Bank, the Mongolian government has started a process of rationalisation of its environmental laws that began with the approval of the 68th Decree, which calls for the elimination of overlaps, contradictions and gaps in existing environmental laws. Among the revised legislations, there is the Environmental Impact Assessment law, which lays out the implementation procedures for biodiversity offsetting programmes[20]. By doing so, Mongolia has thus introduced the concept of biodiversity offsetting into its law, becoming a testing ground for the implementation of this concept in a resource-rich country.

Civil society organisations identified serious limitations in the new law, especially with regards to the provisions related to biodiversity offsetting.

Firstly, virtually every respondent appeared confused about the meaning, definition and implementation procedures of biodiversity offsetting. Such confusion is widespread among government authorities, companies, consulting companies and civil society organisations, not to mention local communities and the general public. The environmental ministry reported[21] that some companies used different methodologies from the

20 http://beahrselp.berkeley.edu/newsletter/winter-2013-alum-newsletter/mongolias-new-environmental-law-packet/

21 Meeting with environmental ministry on 21st April 2015

one adopted by the Mongolian government, because they worked with international consulting companies that were 'importing' their own evaluation frameworks. In particular, there seem to be different opinions concerning the location of the offsetting project and how distant this should be from the project site (reportedly such distance should be of maximum 50 km according to government's technical guidelines[22]).

But there is also a lack of clarity on what can be considered as offsetting and what not. A case in point is the Ukhaa Khudag coal mine in Tsogttsetsii, run by Energy Resources. The company reported rehabilitation measures, such as planting of trees near the mining site and a tree nursery program, as offsetting measures, whereas relevant authorities would not accept these activities as part of an offsetting plan. After all, they are not because they are clear mitigation/compensation measures.

CONFLICT OVER OFFSETTING SITES

Within the framework of the OT biodiversity offsetting project, a conflict emerged among competent environmental authorities. The issue concerns the sites that might be suitable for offsetting activities. In March 2014, a workshop was held in Ulaanbaatar, attended by local, provincial and national authorities, companies and nature conservation organisations. The aim of the meeting was to discuss guidelines for the implementation of the new law. During the workshop, it was agreed that each aimag (Mongolia consists of 21 provinces, or aimag) would

Mongolia. Photo © Olexi Pasyuk

have defined the areas (already protected or to be protected) where biodiversity offsetting projects could take place, and then submit the list to the central government. This was done in spring 2015 by the Southern Gobi aimag, which defined in its decree #55 a list of areas, with the principle that each mining project in the province had to implement offsetting activities within the same province. The aimag's environmental specialist vividly explained the reasons behind his decisions: "If the shirt of person A is torn apart, it wouldn't help A if a person B would get a new shirt, while B's shirt might still be perfectly fine." His provision, however, apparently conflicts with the environment ministry's intention to allow cross-province offsetting, which is what happened in the specific case of OT, as described below.

All levels of government (national, regional and local level) in Mongolia stressed, when asked, that they lacked capacity to monitor the implementation of offsetting projects. The national ministry said that the monitoring obligation lies within the local administration, while the local administration simply lacks this capacity, whether is in terms of vehicles, fuel or technical experts. Offsetting plans carried out without strict monitoring certainly risk to allow companies to implement poor measures and get away with it.

The hierarchy of first avoiding negative impacts, second mitigating, third rehabilitating or restoring, and only use offsetting as a last resort, seems to have not been clearly regulated. This leaves too much room for discretion and potentially could act as an incentive for companies to use biodiversity offsets, since it is often a cheaper option for the company compared to mitigation and rehabilitation strategies. Also, there is no regulation about the liability of companies in the long run, namely on whether the offsetting works correctly for the foreseen period and under which obligations.

It is still unclear how these uncertainties, the lack of capacity among relevant authorities and the presence of strong institutional conflicts will shape the outcomes of the proposed biodiversity offset projects, especially given that these projects are already affected by numerous controversies and hurdles, as reported below.

22 Meeting with TNC on 22nd April 2015

3. THE CONCEPTION OF OYU TOLGOI BIODIVERSITY OFFSETTING

Oyu Tolgoi was the first Mongolian project to include a biodiversity offset action in its EIA and related biodiversity management plan – developed under the guidance of The Biodiversity Consultancy of Cambridge, UK. The project's EIA has been approved by lenders and the Mongolian environmental ministry. Oyu Tolgoi formulated a biodiversity strategy claiming that:

"*Oyu Tolgoi seeks to ensure that the biodiversity of the southern Gobi region ultimately benefits from the project's presence in the region. In keeping with the Rio Tinto corporate Biodiversity Strategy, Oyu Tolgoi's goal is to have a net positive impact on biodiversity of the southern Gobi region. Oyu Tolgoi aims to reach this goal by mine closure but will seek opportunities to achieve net positive impact as early as practicable in the project life.*"[23]

At first consultants developed a biodiversity offsets strategy for the Oyu Tolgoi project to achieve the goal of Net Positive Impact. They identified a set of actions as offset objectives: Reducing illegal hunting; Improving rangeland management; Reducing the impacts of non-project powerlines (elsewhere in southern Gobi region); Strengthening protected areas management;

Mongolia. Photo © Olexi Pasyuk

Demonstrating and contributing to best-practice regional development; Establishing strong enabling mechanisms; Monitoring and evaluating, and Building Oyu Tolgoi capacity[24].

Activities carried out until the April of 2015, therefore those that the research team was able to observe in person, concerned the reduction of illegal hunting, improvement of rangeland management and research that might feed into the "strengthen protected areas management" or "monitor and evaluate" objectives. OT has been boasting about its biodiversity offsetting activities and approaches, yet in 2015 was not ready to meet this FFM team to discuss the topic: "*Oyu Tolgoi is engaged in numerous biodiversity initiatives in the South Gobi, some of which are first-time ever initiatives (e.g., ungulate aerial survey, black-tailed Gazelle collaring). This work is providing an unprecedented knowledge of biodiversity in the Gobi and providing insights that will help to improve biodiversity management and conservation as well as serve as a goal for biodiversity management for other extractive sector projects around the world. In addition to these ground-breaking projects, Oyu Tolgoi is engaged in dialogue with international experts in the field of biodiversity offsets.*
(…) *The extensive work which has been done and is continuing at Oyu Tolgoi is widely available in the public domain and as such, I do not see the need for a formal meeting with our*

23 ESIA Appendix 1, Oyu Tolgoi LLC Biodiversity Strategy, December 2011, p.1

24 TBC and FFI (2012) Biodiversity Offsets Strategy for the Oyu Tolgoi project. Unpublished draft report of the Biodiversity Consultancy Ltd and Fauna & Flora International, April 2012, p.1

staff members. I thank you for your interest in our efforts and trust you will share our excitement regarding what we are accomplishing in the South Gobi, on many fronts, not just biodiversity."[25]

Notwithstanding OT's 'excitement', the team was all but impressed by the activities carried out by the company.

ENDANGERED SPECIES, OR HOW TO BEST SELL A BASELINE STUDY

As part of the biodiversity offset strategy OT identified certain "priority biodiversity features", among which are the Khulan (a rare wild ass) and other ungulates, such as the black tailed Gazelle. Therefore, among the first activities financed by OT, there was a research on the population of these species, which was not completed yet by April 2015. Senior consultants carrying out the research clearly acknowledged that several more years of studies were needed in order to properly understand how these species would have been impacted by OT mining operations, as well as by those associated with OT's planned expansion project and cumulative impacts due to other projects already implemented in the same region. The civil society fact-finding team had the impression that the consultants carrying out these studies might have been subject to some pressure from project sponsors to shorten the timing of this complex research, taking place on a very large territory.[26]

Eventually, project operations began before the baseline study was completed, and since the industrial activities are already impacting nature at the project site and its surroundings (as clearly witnessed by civil society organisations that went to the field), it is now de-facto impossible to conduct a baseline study, given that the baseline has been altered.

This means that, from now on, any offset will be screened against a baseline which already includes a change in pattern of population and lifestyle of these species, thus potentially favouring project sponsors in implementing lighter and cheaper offset measures. It would be very unfortunate if, in the future, mining companies could conduct baseline studies covering harm already caused by their own activities and get measures assessed against such flawed baseline recognised as biodiversity offsetting, eventually resulting in a net positive impact.

Furthermore, the fact that an offset project will be implemented only in the future, several years after project operations started, would not be in line with the principles highlighted in the guidelines for the new Mongolian environmental impact assessment law. As a matter of fact, they require offset measures to coincide with the duration of the project.[27]

ANTI-POACHING, OR IT IS THE OTHERS, NOT US, OT

Reducing illegal hunting was one of the important issues identified in OT's offsetting strategy. A six-month pilot project took place in 2014, in order to enhance cooperation between different local authorities on the issue. Three anti-poaching units were established and some specific equipment was provided to them. Surprisingly, project sponsors at first did not involve the specialised staff of the Special Protected Areas South Gobi A and South Gobi B, located about 100 km from the project site. One reserve manager was involved in an anti-poaching unit only after his repeated requests.[28] When asked whether the teams did catch any poachers, local representatives explained that due to delay in funding, the poaching season was well over by the time they got fully equipped, therefore no poachers could be caught. Several meetings were held in 3 soums (districts) and 4 baghs (villages) to raise awareness among the local population on the urgency of eradicating poaching, in particular of endangered species.

The offset strategy aims to sensitise the local population, which is deemed primarily responsible for poaching in the region. However the fact finding mission learned from rangers and environmental local authorities[29] that the influx of workers linked to OT operations contributed to the increase of this phenomenon, and so did the higher demand for meat and organs of endangered species from China (the border with China is just 100 km away from the OT site). It would seem that local poachers do not use these goods for local consumption, rather they are part of a wider network aimed at exporting them to China. Moreover, from meetings with local herders[30] and

25 ibd.

26 Meeting with WCS on 23rd April 2015

27 Meeting with TNC on 22nd April 2015

28 Meeting at the office of South Gobi A and B natural reserves in Khan Bogd, on 24th April 2015

29 Meeting at the office of South Gobi A and B natural reserves in Khan Bogd, on 24th April 2015 and meeting with local environmental monitoring office at Khan Bogd soum on 24th April 2015

30 Meetings, which took place between 24th

discussions with local employees of protected areas it emerged that there was a common understanding that mining operations and related infrastructure were already impacting on endangered species and livestock by destroying and fragmenting habitats – and related migratory routes - which is seen as a more important factor than poaching.

It seemed unclear whether the anti-poaching programme, as defined until mid-2015, would have been physically extended to other aimags, however, only the extension could be regarded a not-on-site offset rather than an on-site mitigation measure. As mentioned above, the issue remains problematic in terms of involvement of all relevant local authorities as well as in terms of funding. In the immediate vicinity of OT, the anti-poaching should focus on OT workforce and subcontractors as well as migrant workers, rather than targeting herders as if they were the "main culprits".

IMPROVEMENT OF RANGELAND MANAGEMENT, OR YOU NEED TO REDUCE YOUR HERDS BECAUSE WE, OT, HEAVILY IMPACT ON THE LAND

In 2015 several herders had heard about the rangeland management improvement, but few really knew what it implied. One herder had participated in activities on this issue. He explained that experts came and discussed with herders concluding that only 30% of the herded pastures was not at all impacted by mining operations and roads, and that in order to better protect the pastures and leave more time for their regeneration the pastures should be have been used less. The herder found this proposal rather frustrating as there is no alternative area herders can use in the very fragile and limited ecosystem of the Gobi Desert. Therefore, OT's proposal implies that herders must significantly reduce their herds. Even though the mine is by far the main cause of the deterioration of pastures, it is herders that, according to project proponents, should bear the burden of compensating for this degradation by reducing their animal stocks. Rather than imposing responsibility on herders, OT (along with other mining companies) should put more effort into countering habitat fragmentation.

However, the approach shows a pattern in biodiversity offsets: A field report by Re:Common and the World Rainforest Movement on Rio Tinto's biodiversity offset in Madagascar found that restrictions have been imposed on villagers on the land-use in a forest that is defined as offset site. The villagers felt that this has been done without negotiation and with little regard for their situation. And while the restrictions were imposed very quickly, promised income-generating alternatives to alleviate the loss of access to the forest still had to materialise.[31]

NEBULOUS COSTS AND FINANCING

At the time of the completion of the financial package of the OT project in 2015, the costs and the financing of the offset projects remained unclear, as well as who will be practically responsible for project implementation and monitoring for the long time to come, possibly several decades in the future (as long as mining operations will be running and even afterwards). While the new environmental law makes project companies responsible for the definition of offsetting projects, third parties should implement these and the government should monitor them. However, as mentioned above, civil society organisations detected a clear lack of capacity of national and local environmental officers – as repeatedly stated in meetings at all levels: government, aimag and soum – as well as a potential conflict of interest around nature conservation organisations, which advise companies and government on the definition of offset projects and their regulation and subsequently could potentially be contracted for implementing some of the same projects.

It is worth pointing out that the Independent Audit Report of September 2015 produced by project's independent environmental and social consultant – namely D'Appolonia – had already clearly highlighted the lack of "dedicated resources for OT's biodiversity management programme". In reference to this gap, the updated Biodiversity Action Plan simply states that OT will ensure that the biodiversity management program will be resourced and financed with completion indicator and timeframe "ongoing"[32], which is not exactly a precision.

April and 26th April 2015 in the eastern area of the project up to a distance of about 100 km from OT project site.

31 Re:Common, WRM „Rio Tinto's biodiversity offset in Madagascar – Double landgrab in the name of biodiversity?" 2016

32 Biodiversity Action Plan, p. 1, available at: http://ot.mn/media/ot/content/page_content/commitments/ESIA/2_Operation_Management_Plans/4_Biodiversity_Management_Plan/Biodiversity/4_OT-10-E14-PLN-0004-E-Biodiversity_Action_Plan_v1.1.pdf

4. THE IMPOSSIBLE MISSION OF THE OYU TOLGOI OFFSETS MANAGEMENT PLAN

CONSULTANTS NOT IMPRESSED EITHER

After their field visit in the spring of 2015, civil society organisations engaged with international public development banks financing OT - namely the International Finance Corporation of the World Bank Group and the European Bank for Reconstruction and Development - to share with them their findings and concerns about the feasibility of the offset plan in the Southern Gobi desert[33]. Nevertheless, international financial institutions decided to move ahead and contribute to finalise the financial package for the project.

It is remarkable that some of the civil society's concerns about the biodiversity offsetting plan were echoed by the independent environmental and social consultant (IESC) hired by lenders to review the project. In IESC's words: *"(…) Based on the above and upon the review of the additional environmental, social, health and safety documentation provided by OT and the outcomes of the September site visit conducted by the IESC, D'Appolonia confirms that the Project is in substantive compliance with Lender requirements, apart from with respect to IFC PS6/EBRD PR6. On the basis of evidence to date, the Project's implementation of its commitments and plans for biodiversity and the resources allocated are not commensurate with the level required for assurance of a net positive outcome for species with critical habitat affected by the Project. There are discussions ongoing between the IESC, Lenders and OT to address these aspects (see footnote 6). Key findings identified as part of the IESC periodic audits are presented in in the Issues Table (Section 3 of the IESC report). These are being addressed by the Project through on-going corrective actions whose status and progress is regularly monitored as part of IESC monitoring visits."*[34]

Footnote 6 of the IESC report explains that OT disagrees with the IESC opinion related to non-compliance to IFC PS6/EBRD PR6, which detail specific standards on biodiversity safeguard. OT acknowledges that there are some non-conformances, but insists that since the date of the monitoring visit OT has agreed on a revised biodiversity action plan with the lenders. A new Offsets Management Plan got indeed published in April 2016.[35]

OT BIODIVERSITY OFFSETS PROGRAMME: 5 PROJECTS AND MANY DOUBTS

In its new Offsets Management Plan OT confirmed its commitment to achieve a net positive impact for all critical habitat-qualifying biodiversity features and no net loss for other priority biodiversity features, including natural habitat. OT is committed to reaching net positive impact by 2040 – meaning that in the next 25 years biodiversity losses will likely exceed gains! - and maintaining a net positive legacy, though it is not clear for how long such legacy should last.

"The proposed biodiversity offsets programme consists of a suite of offset projects covering:

* *Anti-poaching activities*, to reduce illegal hunting and collecting, and thus compensate for any indirect OT impacts which might be linked to population/wealth influx to the southern Gobi as a result of OT's presence, and for potential disturbance to wildlife and fragmentation of their habitat due to OT infrastructure across the landscape;

* *Sustainable cashmere initiative* – to reduce livestock overgrazing impacts on Natural Habitat, which might be linked to population/wealth influx to the southern Gobi as a result of OT's presence;

* *Development and implementation of a national power line standard* that requires wildlife-friendly power line design and mitigation – to compensate for residual impacts of OT power lines;

* *Installation of insulation on non-OT power lines with high bird electrocution rates* – to compensate

33 http://bankwatch.org/sites/default/files/briefing-biodiversity-offsetting-MNG-25May2015.pdf

34 D'Appolonia „Report oft he: Independent Environmental & Social Consultant – Oyu Tolgoi Mine Project Mongolia – Site Visit: September 2015", p.5

35 http://ot.mn/media/ot/content/page_content/commitments/ESIA/2_Operation_Management_Plans/4_Biodiversity_Management_Plan/Biodiversity/OT-10-E14-PLN-0007-E-Offset_Management_Plan_v1.0_ENG.pdf and http://ot.mn/media/ot/content/page_content/commitments/ESIA/2_Operation_Management_Plans/4_Biodiversity_Management_Plan/Biodiversity/OT-10-E14-PLN-0007-E-Offset_Management_Plan_v1.0_-_Annex_1_ENG.pdf

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for any residual impacts of OT power lines; and

* *Railway fence removal along the Ulaanbaatar-Beijing railway* – to make available additional habitat in the east for Asiatic wild ass that have been blocked by this (non-OT) railway, to compensate for fragmentation and habitat loss which may be caused by OT."

What is particularly surprising is that the Offsets Management Plan candidly admits that "final offset implementation sites have not been selected because: * The government of Mongolia is still finalising guidance for the 2014 Ministerial Order on offsets; this may include conditions on offset locations, as may similar orders and guidance being passed by soum governments; and * Some offset activities still require piloting to determine how effective they can be, and hence over what scale implementation will be required." Not necessarily what you would expect to be written in a plan set in (desert) stone! This evident uncertainty about the planning and the feasibility itself of the Offsets Management Plan, which OT publicly admits 6 years after the beginning of construction of the mine and 3 years from the beginning of its operations, supports all concerns expressed already to project financiers by international civil society in the spring of 2015.

Despite project sites have not been determined yet, the Offsets Management Plan at least brings some clarity about what OT will try to do in practice over the coming years in terms of biodiversity offsetting, after years of speculation and nebulous documentation produced on this matter. However, it is striking how each of the 5 proposed projects raises serious questions about their rationale, before even questioning their alleged effectiveness and feasibility.

OT recognises the need to "compensate for indirect *(only? Ed.)* OT impacts which might be linked to population/wealth influx to the Southern Gobi as a result of OT's presence, and for potential *(only? Ed.)* disturbance to wildlife and fragmentation of habitats due to OT infrastructure across the landscape"[36]. But it is curious that, in OT's views, **anti-poaching activities** – however under-staffed and under-financed so far – focusing on few selected species should balance all these impacts. Anti-poaching activities will take place only in a few soums, while impacts on the fragmentation of habitats due to mining and ore transport operations – given that the road linking the mine with the Chinese border is heavily used - might extend to a much larger distance.

In the case of the **sustainable cashmere initiative**, OT does not

36 Offsets Management Plan, p.4

just claim that rangeland is over-exploited by herders – after their rangelands have been impacted and reduced to make space to the mine and now compete for the scarcely available land and vegetation – but even tries to reorganise herders and their lifestyle in order to make them produce less cashmere, despite of higher quality. OT might use "Natural Capital Accounting"[37] to measure and communicate the value of sustainable production and sourcing.
However, it remains to be seen whether herders would really be able to sell their products for a much higher price to the few traders that dominate the Mongolian market, and whether that could balance the significant losses that they incurred due to the reduction of their herds.

Concerning **power lines**, both as it concerns the definition of a standard for new power lines and the insulation of non-OT power lines, it is evident that offsets would take place at a very large distance from OT mine, theoretically all over Mongolia. It should be added that it is questionable whether OT has so far developed enough knowledge to produce adequate power lines with reduced impacts on birds, given that ad hoc signals and bird diverters on the new power line connecting the OT mine proved unsuccessful, based on evidence gathered by the fact finding mission on the ground in 2015.

In this regard, it is worth recalling that the Independent Audit Report of September 2015 warned that a proportion of the existing bird flight diverters have failed, leading to incidences of mortality[38]. While OT has developed the idea to set "powerline standards" for Mongolia as a biodiversity offset measure, they themselves think it is unlikely that this will meet the minimum requirement of no net loss for the Houbara Bustard, one of the "high value" protected species potentially negatively impacted by OT[39].

Furthermore, it should be noted that one of the new power line to be built could be a connection between the new proposed coal plant at Tavan Tolgoi and the OT mine. The new coal plant project itself might need an offset according to the new Mongolian environmental law. Thus, beyond the evident conflict of interest of OT in this specific case, it might get very confusing to understand who is offsetting what and where, because the design of the new power line from the coal plant to the mine might offset the power line connecting OT mine, but then some new power line somewhere else in Mongolia with an even better and more futuristic design might offset the power plant line. And so on, while endangered species of birds would likely keep dying when crossing the increasing amount of these power lines.

What is more shocking is the project of **removal of the railway fence** along the Ulaanbaatar-Beijing railway, which is located about a thousand kilometres away from the OT mine. As reported by OT several parties are currently identifying options for facilitating wildlife crossing of this infrastructure. Thus it is legitimate to wonder where the additionality of this offset project is if some institutions, including the World Bank, are already considering supporting such a project regardless of OT operations in Mongolia.

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Secondly, it is remarkable that OT *de facto* admits its failure to facilitate wildlife crossings in the case of the new road connecting the mine with the Chinese border, and thus prefers to focus on improving a project which has existed since decades in another part of the country, whose negative impacts are suddenly recognised as significant and to be mitigated as a national emergency. In particular, concerning the lack of road underpasses for habitat connectivity for wildlife species – as originally discussed and planned - the Offsets Management Plan stresses that "*uncertainty over the technical, financial and political feasibility of wildlife crossings has resulted in the project (in collaboration with biodiversity advisors and lenders) deciding not to install such mitigation at the outset, but instead to monitor impacts and adaptively manage mitigation and offsets in response*"[40]. In practice this means that the fragmentation of the habitats of rare animals due to the road continues and will only be monitored for the time being and not mitigated.

37 "Natural capital accounting" is the process of calculating the total stocks and flows of natural resources and services in a given ecosystem or region. Accounting for such ecosystem goods and services may occur in physical or monetary term. In the last years this concept has been further defined and researched by academia and United Nations specialised agencies, as well as strongly promoted by the World Forum on Natural Capital, including corporations, governments and conservationist groups. The concept has been heavily criticised by other sectors of civil society for its push to commodify, privatise and monetise the commons. See more at: http://naturenotforsale.org/

38 Independent Audit Report, Section 1, p.26

39 Offsets Management Plan, p.38

40 Offsets Management Plan, p. 28

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SOME IDEAS ON OFFSETTING FINANCING, FEW FIGURES ON COSTS

As part of the project finance agreements signed with various lenders in December 2015 to help fund the underground development of the mine, OT will implement a biodiversity Offset Management Plan. This must include a description of the preferred financial assurance mechanism, which will be designed to ensure that OT has sufficient funds and resolve to complete the actions required by the Offsets Management Plan by 2040.

According to OT's Offsets Management Plan "Several potential assurance options were evaluated, including establishment of surety bonds, irrevocable letters of credit, and an internal biodiversity provision. Based on a detailed analysis, the use of surety bonds and irrevocable letters of credit were rejected for two primary reasons:

* There would be no in-country and experienced third-party capable of performing the work, in the unlikely event that Rio Tinto failed to fully implement the Offsets Management Plan. This represents a fatal flaw with these types of external assurance mechanisms; and

* The prohibitively large annual premium, which would likely be required to maintain an unusual external biodiversity assurance mechanism in a developing country such as Mongolia.

Creation of an internal biodiversity provision or contingent liability has been selected as the preferred financial assurance mechanism. This is an established and proven method to account for liabilities related to external legal and constructive obligations. Rio Tinto maintains provisions for closure obligations at most of its properties, so this is a proven mechanism which can be applied to biodiversity-related obligations."

While it is good that OT made clear how it intends to finance its biodiversity offsetting commitments in Mongolia over the next decades, it is still unclear which overall costs the company is talking about. Annex I to the Offsets Management Plan presents a range of potential costs for some of the actions proposed - not all of them - without any clear specification on the timing and no overall figure for each action covering the entire lifetime of Rio Tinto's commitment on biodiversity offsetting in Mongolia. Based on the limited information available, it is thus impossible to get a clear understanding of how burdensome the offsetting programme will be for Rio Tinto and its partners. Consequently, it is hard to determine to what extent biodiversity offsetting will be more economically convenient than traditional environmental mitigation actions for Rio Tinto in Mongolia.

Therefore, there are strong doubts that the supposedly last resort option of biodiversity offsetting, which has soon become the first option in Southern Gobi, might eventually turn out to be much cheaper than other mitigation options that could be implemented on site, and which might have changed the entire design and scope of the mine project, as well as its overall economic feasibility in the long-run.

5. CONCLUSIONS

Several years after the beginning of OT operations on the ground, its offsetting plans are still in the process of being prepared. At the same time, the credibility of offset projects in the Gobi region is strongly compromised, given the considerable impacts occurred before proper baseline studies were carried out and the on-going effects of fragmentation of the habitat of endangered species and the impacts of mining infrastructure on rangeland that are still taking place.

Specific sites for offsetting project implementation have not been agreed yet and there might still be conflicts of views among different authorities in the country and between them and OT. At the same time, there is an evident lack of capacity among local administrations to monitor offset projects, despite OT's vague commitment to enhance local authorities' capacity. Not to mention the little openness from OT toward local civil society, especially where the company continues moving into more remote and fragile areas with their operations, where civil society organisations have even less capacity to monitor projects of this type.

NET POSITIVE IMPACTS?

The case of the Sustainable Cashmere Initiative offset project shows how OT is actively trying to create a narrative that blames local herders for impacts on land and water which are instead caused by mining operations and related infrastructural development. Today OT even strives to adjust herders' life and their livestock management in the name of achieving sustainability.

Similarly, in the case of anti-poaching measures, OT refuses to acknowledge that the increase in the phenomenon is due to its presence and the significant influx of workforce from China that it attracted over the last years. In any case, it is unclear what outcomes they expect to achieve by patrolling the desert with limited resources and personnel. Inevitably, anti-poaching measures will eventually be implemented only in some soum districts, and likely have limited positive impacts.

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While informed about all these shortcomings, the World Bank and other International Financial Institutions backing the OT mining project decided to disburse their funding at the end of 2015 and then to even agree on the expansion plan of OT

As concerns the definition of a new powerline standard in Mongolia to minimise impacts on birds, OT has a clear conflict of interest as these standards will be applied also to a new powerline connecting the proposed Tavan Tolgoi coal plant to the OT mine. However, it is disturbing that OT acknowledges that the existing line powering the mine is having severe impacts on endangered species of birds, despite company's efforts to minimise some of these impacts.

Additionality is a questionable principle in the case of the proposed offsetting project aimed at removing the fence along the decades-old Ulaanbaatar-Beijing railway, given that this new project along the railway line had already been promoted by the Mongolian government in cooperation with the World Bank and other institutions, long before the beginning of OT operations in the country and associated impacts.

With so many outstanding issues and offsetting plans still not well defined, it is generally questionable whether the "net positive impact" concept associated with biodiversity offsetting in Mongolia can actually work out well. So far it is arguable that Rio Tinto and its partners are clearly lagging behind in implementing their offsetting plans, and the original baseline against which the presumed net positive impact had to be calculated has been already irreversibly altered due to the construction of mining infrastructure. This is a clear failure for Rio Tinto against its ambitious policy commitment and such legacy might stay for long.

RESPONSIBILITY OF FUNDERS

While informed about all these shortcomings, the World Bank and other International Financial Institutions backing the OT mining project decided to disburse their funding at the end of 2015 and then to even agree on the expansion plan of OT[41]. This plan, including also the construction of the Tavan Tolgoi coal plant which will power the OT mine, would inevitably increase negative environmental and social impacts in the Southern Gobi Desert and would eventually require more offsetting projects. A vicious cycle which will hardly stop as long as project financiers do not take the responsibility to strongly question why OT has failed so far in implementing a credible biodiversity management plan. And without credible answers the disbursement of public funds should stop.

To conclude, the case of the biodiversity offsetting associated with the OT mine in Mongolia is a clear example of how mining companies prefer to quickly opt for the last option of biodiversity offsetting to compensate the heavy impacts associated with their operations in order to get a timely justification for moving ahead with their devastating investment plans. In short, another form of greenwashing at long distance and spammed in the future. In the end, it does not matter to project promoters whether or not the actual biodiversity offsetting programme will remain a mirage far from reality, in particular, in a desert such as the Gobi. Among several impossible challenges, a major loss of access to water, as often due to mining operations, cannot be mitigated or offset in a desert. Common sense in Mongolia and elsewhere would have soon agreed that such offsetting plans are doomed to become a mission impossible in such a unique, fragile and challenging desert environment.

In the meantime, the OT offsets underline a pattern: consultants keep drafting and producing well paid studies for mining companies, while local communities keep suffering outstanding impacts for a promised net positive impact that is supposed to materialise in 25 years of time. Only ignorant people - or dishonest ones with a direct personal interest in the story - would not agree that the time has come to stop the expansion of mining, in particular in frontier areas, because, among the many valid reasons, biodiversity offsetting is not possible at all and impacts on biodiversity cannot be compensated.

Mongolia. Photo © Olexi Pasyuk

41 http://bankwatch.org/sites/default/files/OyuTolgoi-Phase2.pdf

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