

When the dust settles

Impacts of the Tayan Nuur iron ore mine on nomadic herders' lives in the Gobi Altai mountains of Mongolia



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CEE bankwatch network

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OT WATCH

When the dust settles – The Tayan Nuur iron ore mine's impacts on nomadic herders

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Executive summary

This report presents the findings of the second fact-finding mission to Tseel soum, Gobi Altai aimag, Mongolia in August 2014. The mission follows an earlier trip to the region in March 2014 to assess the environmental and social impacts of the Tayan Nuur iron ore mine, which is operated by the Mongolian mining company Altain Khuder. Altain Khuder received debt and equity financing from the EBRD. The fact-finding team consisted of four civil society organizations, which conducted interviews with stakeholders in Tseel soum and Ulaanbaatar.

The fact-finding mission heard testimonies from approximately 25 individual stakeholder about a number of serious environmental and social impacts related to the Tayan Nuur mine and its surroundings. The key findings include:

- Impacts of the road used for iron ore transportation from the mine to the Chinese border, including dust pollution, increased risks to human and animal health, fragmentation of pasture, a loss of income, and traffic accidents;
- Impacts from resettlement and displacement, including issues of compensation and absence of relocation sites;
- Impacts of water depletion and contamination as a result of the mine's water use;
- Inadequate stakeholder engagement, a lack of information disclosure, and intimidation and harassment of critics including filing criminal cases against them.

Those interviewed during the mission identified measures that Altain Khuder should implement in order to address these impacts, namely:

Fact-finding mission team:

OT Watch (Mongolia)

Centre for Research on Multinational Corporations (SOMO, the Netherlands)

CEE Bankwatch Network (Czech Republic)

Lawyers for Environment (Mongolia)

Mission period:

10/08/2014 – 16/08/2014

Location:

Gobi Altai aimag, Tseel soum, Derstei and Bayangol baghs.

Topic:

Tayan Nuur Iron ore mine project of Altain Khuder LLC

- Construct a black top road with adequate passageways, and cease all transportation of ore until a road that meets relevant standards is completed;
- Ensure land for the resettled and displaced herders, ensure adequate compensation and implement a livelihood restoration programme;
- Monitor and disclose information about the mine's use of water and ensure access to water for the herders and their livestock;
- Restore all land that has been altered, destroyed or polluted by the mine and its associated facilities;
- Compensate herders for the loss of their animals; and
- Refrain from all forms of intimidation and harassment, and instead improve dialogue with the stakeholders through increased transparency, consultations and an effective grievance mechanism.

The company has disputed the findings of this report. It maintains that it provides regular environmental reports to the Gobi Altai authorities and that investigations into dust pollution had been conducted and concluded that dust levels were within limits. The company also said that four passageways had been constructed and that the mine does not use water for industrial purposes, as water use for domestic purposes is monitored and the data shared with local governors. With respect to resettlement, the company said that it does not have the authority to allocate new lands and that all compensations were provided based on negotiations with herders in accordance with relevant Mongolian legislation. On stakeholder engagement and consultation, the company responded that it is in regular communication with local authorities and herders and discloses important information on a regular basis to local authorities.



Introduction

Tayan Nuur mine project background

In January 2012, the EBRD approved debt financing of up to USD 30 million and equity financing of up to USD 25 for the Mongolian mining company Altain Khuder LLC to develop its Tayan Nuur iron ore mine in Tseel soum of the Gobi Altai aimag. Tseel soum is located in southwest Mongolia and has a population of around 2100 people who survive by herding animals. The licence area is 162 hectares, and the communities closest to the mine and its facilities (including roads) are Derstei and Bayangol baghs.

The Tayan Nuur project was labelled “Category B” by the EBRD under the assumption that environmental and social risks could be mitigated through an appropriate commitment to good environmental and social practices. The bank justified its involvement in the project on the grounds that it is part of a broader approach to support the sustainable development of the Mongolian mining sector and would contribute to ‘key transition impacts’ such as setting corporate and industry standards on transparency and disclosure, as well as corporate, environmental and social management practices.

As part of its contract with the EBRD, Altain Khuder commissioned the consultancy firm ERM to conduct an Environmental and Social Review & Action Plan (action plan) for the Tayan Nuur mine. The action plan was published in December 2011 and outlined a number of steps that needed to be taken in order to mitigate the adverse impacts of the mine and to bring the Tayan Nuur project in compliance with the Performance Requirements of the EBRD’s Environmental and Social Policy.

Description of the mission

This mission follows an earlier visit to the area by OT Watch, Lawyers for Environment and the Council of Natives of Tseel soum in March 2014. The August 2014 mission included visits to Tseel Soum, and Bayangol and Derstei baghs in the Gobi Altai region. The team had meetings with the Tseel soum governor’s office, the governors of Derstei and Bayangol baghs, a local cooperative leader and over 20 nomadic herders from these baghs who are affected by dust pollution, water depletion, fragmentation of pastures and physical and economic displacement as a result of mine operations. The team also visited the project sites of Altain Khuder: the black

top road currently under construction that is being used to transporting iron ore from the mine to the Chinese border, and the site of a kindergarten in Tseel soum. Additionally a meeting with EBRD's Mongolia office was held in Ulaanbaatar. Despite sending a list of questions and an invitation for a meeting to Altain Khuder, the team was unable to arrange a meeting with the company in August. After the mission, the company replied to a request for comments to this reports, which have been included accordingly.

Aims of the mission

The fact-finding mission aimed to:

1. Follow-up on the previous fact-finding mission of OT Watch and Lawyers for Environment conducted in March 2014: document recent developments and testimonies, collect supporting evidence and verify the identified impacts.
2. Assess the extent to which Altain Khuder as the project developer of the Tayan Nuur mine, and the EBRD as the financier of the mine, comply with EBRD's Environmental and Social Policy and have fulfilled their respective responsibilities towards mitigating adverse impacts and supporting the development of the region as outlined in the action plan.
3. Inform herders about the EBRD Project Complaint Mechanism and assess their interest in filing an official complaint.
4. Collect audio-visual documentation to highlight different issues facing communities and the role of the EBRD in the project.

Interviews

The fact-finding team conducted the following interviews in these locations:

Tseel Soum

- Governor of Tseel soum, Chief of the Governor's Chancery; the chief police inspector; the chief veterinarian, ranger (group interview).

Derstei bagh:

- Affected herder (individual interview).
- Local cooperative leader and community representative (individual interview).
- Affected herders from Derstei bagh: at least 15 herders and their families (group meeting and mapping exercise).

Bayangol bagh:

- Resettled herder (individual interview).
- Affected herder (individual interview).
- Bayangol bagh governor and three resettled herders (group interview).

Other:

- Head of the Peoples' Representative in Tseel Soum (individual interview).
- Representative of the Council of Natives (individual interview).
- Representative of Lawyers for Environment, Mongolia (individual interview).
- Representative of OT Watch, Mongolia (individual interview).
- EBRD office in Mongolia (group interview).

The company did not reply to an initial set of questions, submitted by e-mail prior to the FFM, nor to the request to meet the FFM team during the August mission. The company was invited to comment on the draft of the report and provided comments in writing, which have been incorporated accordingly.



Tseel soum

Key findings

Key finding 1: Impact of the road: dust pollution and animal and human health impacts

Altain Khuder exports iron ore from its mine in Tseel soum to China via the Burgastai border post, located 168 kilometres from the mine. As of August 2014 the roads that are being used to transport the ore are made of dirt and gravel, which results in dust pollution and noise. The company was in the process of constructing a black top road, which would allow it to export ore to China faster and at a lower cost compared to using the dirt and gravel roads. This road is also expected to reduce the amount of pollution and noise and is said to improve transport infrastructure for locals in the area.

While in March 2014 the team observed that the company was not building a blacktop road but instead one of cement blocks, during the August 2014 trip a blacktop road was indeed under construction. The governor of Tseel soum then confirmed that 30 kilometres of the black top road had been constructed, with 59 kilometres in total expected to pass through the soum.

The section below outlines the impacts from transportation of the iron ore on the existing road and the construction of the new paved road in the Tseel soum area, as documented during this mission.

Dust pollution and increased risks to animal and human health

All herders interviewed in the Tseel soum and the administration identified dust pollution as created by three main sources: the trucks transporting ore, explosions during mining, and the processing of iron ore using 'dry' techniques. Transportation of ore to the border appears to be the most polluting, as the road covers a large stretch of land (from the mine to the Chinese border) and cuts through animal pastures.

According to the interviewed herders, dust from the road and mine covers the pasture, allegedly causing illnesses when animals graze, including goats, sheep, cattle, camels, yaks and horses. Herders reported having lost up to several dozen animals (mainly goats and camels) due to

dust-related illnesses. The Tseel soum governor maintains that all three sources of dust pollution need to be addressed separately in order to reverse these impacts and guarantee the safety of livestock and herders as the mine continues to operate.



Dust rising from the Tayan Nuur iron ore mine.

As early as 2011, the Environmental and Social Review & Action Plan identified ore stockpiles, the mine pit, processing facilities and the road to the Chinese border as significant sources of 'fugitive dust', while noting that existing controls include speed limits (20 km/h) for trucks travelling to the border. During the mission, the team observed that these speed limits are not followed.

Herders whose camps are near the road or in the mine's area of impact reported that since the mine started its operations, their animals are increasingly sick. Animals suffer from fluids in their nostrils, diarrhoea and congenital disorders. Herders also noticed that slaughtered animals have dark spots on their lungs, and that animals returning from grazing have black mouths from the dust that sticks to vegetation. Although the Tseel soum authorities said that they had not detected rising levels of fatally-sick animals, they recognised the increased risk of lung diseases, if dust pollution is not reduced.

In response to complaints from herders about the health impacts of the ore transportation on their animals, a series of veterinary and laboratory tests have been administered to the animals

by the relevant administrative bodies. Several herders from Derstei bagh reported that their animals were tested – once on the initiative of the Council of Natives and at least twice on the initiative of Altain Khuder. According to several herders, Altain Khuder agreed to compensate them for any animal losses if it was proven that this was caused by the company's actions.

The results from the first test were published in a newspaper and confirmed that lung diseases were caused by the dust pollution. According to the herders, the results from the company tests were never publicly disclosed, and they have not been informed about the findings. One herder reported that a lab officer informally confirmed during a telephone call that dust pollution was the reason for his animals' sickness. Altain Khuder has not formally answered requests by the herders to publish the results of their tests and has not paid compensation for any animal losses.

In reaction to the draft of this report, Altain Khuder stated that the test results showed that the level of dust pollution is within official limits, and that

'not only the results of the inspection but the overall environmental inspection report is submitted to the local authorities on a quarterly basis. These reports include the results of the inspections on dust, local livestock etc. However, we haven't received any request for the report from local herders.'

The company added that it *'purchases meat from herders who are located in its close vicinity'* and that the health inspection of the meat has not identified symptoms of lung disease.

Despite the perceived health risks, the affected herders continue to use the polluted pastures. Pastures that are sufficiently fertile to sustain a herder's livestock are scarce in desert areas like Gobi Altai, so herders cannot easily migrate to other locations. Finding alternative pastures is difficult; there are no vacant fertile pastures with adequate water resources and migrating to occupied pastures has implications for the herders and livestock that already inhabit a particular area. Land that is not in use is of inferior quality, and migrating to those areas would result in the loss of herds and reduced quality of animal products.

In addition, herders are attached to their seasonal camps and corresponding pastures because of their strategic location, favourable climate, and because they have used these camps for generations. The type of pasture depends on the animals they breed: for instance, one herder noted that camel breeding requires a specific type of vegetation that grows only in a particular valley.

Some of the interviewed herders also said that they and their families have experienced skin rashes, chronic sneezing and sinus infections. The high cost of seeking medical assistance prevents them from consulting a doctor, meaning that these reports of illness cannot be confirmed by medical records.

Fragmentation of pasture and lack of passageways

Both herders and the Tseel soum government consider the construction of the black top road as a potential solution to the problem of dust pollution. However, the construction of the road has been implemented without adequately consulting the herders, despite the fact that the road cuts through their pastures, and their needs and recommendations have not been taken into account. The main problem herders say they face is a lack of passageways. The new road is slightly elevated, and without accessible and safe passageways, the animals are obstructed from grazing as they normally would.



Construction site of the new black top road. The steep mound of the road can be seen in the background on the left.

In addition, herders have difficulties crossing roads as they migrate to their seasonal camps with their animals. They are forced to make detours of several miles in order to bypass the road, which costs additional fuel and time and creates stress for the animals. This is especially difficult during the harsh weather months.

In response to the report, Altain Khuder commented that a

'total of 4 passages are being constructed [and] all passages [locations] were identified upon consulting with the Tseel soum authorities and local herders'.

Various herders contested this and said that no passages are being built. According to the herders, the company is constructing slopes for animals, although these are too steep for safe passage.

Impacts on grazing land

The construction of the road requires significant amounts of gravel. The raw materials for the gravel are retrieved from a number of stone, gravel and sand quarries alongside the road. The company has also created a gravel production site. Interviewed herders said that these quarries not only create a lot of dust, but are also located at what used to be fertile grazing land. The size and quantity of these quarries has impacted the amount of grazing land available, affecting animal health and the quality of their products.

In response to these findings, Altain Khuder states that *'the gravel production site land permits was granted by the Tugrug sum authority until 1 March 2015'*, however, it should be noted that the availability of permits does not address the negative impacts of quarries and gravel production.

Noise pollution from truck traffic

Several of the interviewed herders, whose camps are within a few kilometres of the road, complained that the noise from the ore transportation disturbs their family life and frightens their animals.

The fact-finding team witnessed trucks with heavy loads travelling from the mine in the direction of the border around every 15 minutes. Their movements were indeed accompanied by sounds from loud engines and clouds of dust. While herders generally agree that a black top road will reduce the noise from the trucks, they are less certain about whether the new road will be sufficiently wide to sustain two-way traffic, meaning that in the future the noise and dust pollution will not be reduced.

Altain Khuder responded that

'the road width is 7m, which enables the trucks to have at least 1m distance. Paved road will completely remove dust creation. The one and only household along the road is on the 96th km of the road which does not own any livestock.'

Loss of income due to dust pollution

Herder families from the Derstei bagh area complained that as a result of the dust pollution, the quality of wool and cashmere from their animals, which for many is the main source of income, has decreased. The local cooperative leader, who mediates the sale of animal products for a community of 200 herders, reported lower quality cashmere and reduced market demand since the mine started operating. Reportedly, Chinese merchants recognise that the cashmere comes from a mining area and offer reduced prices or refuse to buy the product altogether. The company denied that these reports have *'any basis or evidence'*.



A truck transporting ore from the mine.

Key finding 2: Involuntary resettlement and displacement at the mine's impact area

During the first phase of Altain Khuder's activities between 2007 and 2011, a number of herder families who had land use rights to their winter camps at the site of the proposed mine were resettled by the company. Winter camps are the only type for which herders have land titles. These camps are 0.7 hectares on which herders set up their ger (a traditional tent with which they move to different pastures according to the season) and permanent structures to protect animals from the harsh winters. The land title does not include the pasture that corresponds to the camp. The size of a pasture needed to herd livestock varies from 5 to 30 kilometres, depending on the type of animal and the weather conditions. In total, 22 families were resettled and received compensation for the loss of their winter camp, according to the company.



An abandoned winter camp with the permanent animal shelter construction.

Some herders said that displacement continues to this day to make way for the mine's expansion, with an unknown number of displaced herders who once had grazing lands in the

area where the mine is now located. Altain Khuder's resettlement programme included cash compensation but not the allocation of new land.

The Environmental and Social Review & Action Plan from December 2011 identified several key shortcomings in relation to the land acquired for the mine and the subsequent displacement. It proposed various corrective actions (see pg.16: *Post-resettlement survey has not been conducted*).

Compensation negotiated with individual herders

Altain Khuder paid cash compensation for the resettlement directly to the herders, as negotiations took place on an individual basis. According to the Environmental and Social Review & Action Plan, *"All land attachments (i.e., human and animal shelters) were compensated for on the basis of negotiated settlement, with compensation at market price for lost assets being used as the principle for the negotiation"*.

The company said that it had *'written report evidencing the fact that during the relocation program besides the Altain Khuder LLC representative and the local herders, Tseel soum land official, bagh governors were all present.'* However, according to the Tseel soum governor, the administration was unsure of their role in the negotiations, as they had never faced issues of resettlement and compensation before. The governor argued that the soum administration cannot interfere in bilateral agreements between Altain Khuder and the herders. Rather they see a role for the soum government in ensuring that agreements between the company and herders are respected, yet remain unsure how to do so.

Without the competent involvement of local governments and with negotiations being conducted on an individual basis, herders were unable to negotiate on an equal and informed basis. One resettled herder indicated that she was not fully aware of her property rights and the value of her land when the company started the negotiation. She thought she had no other option but to hand over her property rights and was unaware of the exact implications. She thought that the mining operation would proceed regardless of her decision, and she felt she only had a choice between accepting the proposed compensation or receiving nothing at all. She did not realise that the agreement with the company meant that she would have to vacate her land, as she was under the impression that the company would only want to make use of it. The herder was asked by the company to bring her permit and she would receive a cash payment in exchange. Given the remoteness of the area and the fact that land is democratically awarded rather than bought, the herder had no means to assess whether the compensation had been fair. Later, she was told by a relative who works in the aimag administration that the value of her property was 14 times higher than the compensation she received.

Some herders reported that the compensation payment was delayed or not transferred. The Tseel soum governor reported that a number of herders had to travel to Ulaanbaatar in order to complain about the compensation.

Altain Khuder commented that

'local herders requested in writing by themselves to relocate their spring and winter camps. The related expenses and compensations were negotiated and provided. There hasn't been any other resettlements to date and we haven't received any requests.'

Cash payments – ineffective compensation for resettlement

The Tseel soum governor does not believe that Altain Khuder recognises its responsibility to provide alternative land to herders through a resettlement programme. The company also does not have a policy to restore incomes of resettled and displaced herders, as stated in the Environmental and Social Review & Action Plan.

Regardless of whether the compensation amounts reflected the true value of the herders' camps, a different issue is that cash payments are not effective means of compensating and resettling herders in the first place. As explained by the Bayangol bagh governor, available land in the bagh is democratically appointed to herders at quarterly bagh meetings and cannot be purchased, meaning that herders cannot use the compensation to purchase new land to construct alternative winter camps. Cash compensation thus does not enable resettled herders to find new land, since Altain Khuder's resettlement programme does not include the allocation of land. One interviewed herder said that her applications for new land were rejected by the other herders at bagh meetings, as they consider all land to be communally-owned and thus allocated by bagh decision. Accepting cash compensation for lands is therefore seen as wrongfully selling communally-owned land to the company.

Additionally, the Tseel soum government does not consider itself responsible for providing alternative land to the resettled herders. The soum has a general procedure for issuing new land permits every year, and the soum government stated that there is enough land available to relocate the herders. However, the herder communities disagree, explaining that land with sufficient pasture to sustain their animals is already occupied. Vacant land often remains unused because it is not suitable for grazing.

This leaves resettled herders in a position where they cannot use the cash compensation to buy new land for winter camps, while remaining unable to obtain new land as other herders refuse to grant them access. As neither the soum government nor the company has undertaken any action to relocate these herders, they have nowhere to go. While herders still have their gers and are not considered homeless, without adequate land and pasture this is precisely what they are. As a result, several herder families have tried to return to the winter camps that they sold to the

company. According to the soum governor, Altain Khuder has requested his assistance in removing herders who have returned to the mining site, disrupting mining operations and exposing themselves to health and safety risks. These were all families who had been resettled before.

In response to these findings, Altain Khuder said that they do not have the authority to allocate new land and that the Tseel soum governor has the authority to issue new land permits upon request:

'The herders upon revoking of the land permits of their old camps, are more than able to provide requests for new land to the local governor. We receive numerous complaints from the local herders through our PR representative that the local authorities are hesitant in issuing new land permits to the locals. The local authorities stated that the relocated families do not need new land. For instance the Bayangol bagh governor Bayartungalag refused to provide new land for the relocated families. Altain Khuder also approached the governor with the requests to provide new lands.'

Additionally, the company said that cash was not the only form of compensation, with other support activities provided like drinking water, transportation, scholarships for students in the Tseel soum school, training and employment for citizens of Tseel soum.

Post-resettlement survey has not been conducted

The Environmental and Social Review & Action Plan from December 2011 identified several key shortcomings in relation to the land acquired for the mine and the subsequent displacement, proposing various corrective actions:

1. identify the number of physically and economically displaced households at each project site (mine, camp, road, etc.) for past and future displacement;
2. demonstrate through a post-resettlement survey of displaced households that livelihoods (i.e. incomes) of displaced households are equal to or higher than pre-displacement level;
3. undertake a survey and demonstrate that the compensation paid for the loss of assets was at full replacement value.

These actions were to be completed by May 2012 and were the responsibility of Altain Khuder's public relations officer and the ESHIA (Environmental, Social and Health Impact Assessment) contractor. **However none of the people interviewed during the mission were aware of such surveys. None of the Tseel soum governor, bagh governors or the herders had been contacted by EBRD officials, the company's public relations officer or an ESHIA contractor.**

At the same time, interviewed herders said that since the start of the mining project their lives have changed for the worse. One resettled herder indicated that her herd is now half the size as before resettlement, and that she is now dependent on relatives, sharing their land so her herd can graze in their pasture. At the time of the mission, she was residing at the summer camp of her relatives and planned to go to the winter camp of her son-in-law later in the year. However, since the winter camp of her son-in-law is also located in the mining area, he will have to vacate it as well. The herder was unsure whether she would still be able to access it, and if this will be the case, she will have no other options.

Altain Khuder reacted to these findings by saying that all actions related to the relocation programme are now complete. Additionally,

'in 2011 a company specialized on post-resettlement surveys "Sanity Watch" LLC was hired to conduct a comparative analysis on the livelihoods of the resettled households before and after the resettlement'.

The company claims that this assessment did not reveal any loss of assets and that the loss of livestock is not necessarily a result of the mine operations, as other factors contribute to the reduction of livestock, such as the loss of a family member responsible for attending the livestock, family members moving to cities or gaining employment at the mine.

Physical and economic displacement not assessed

According to the Environmental and Social Review & Action Plan, the number of herders with grazing land in the area where the mine is now located was unknown at the time of the mine's development. Altain Khuder committed to taking action to identify the number of physically and economically displaced households at each of the project sites and to demonstrate that displaced herders' livelihoods were equal to or higher than pre-displacement level. According to the herders, no such actions have been taken.

Key finding 3: Water depletion

In the initial phase of the mine activity, Altain Khuder used the soum's public water sources as per its agreement with the Tseel soum government. With the completion of its own well, the company now uses its own water sources for the mine operations. Most people interviewed during the fact-finding mission reported that the use of water by the company had negatively affected their access to water. According to the Tseel soum governor the static water level of the community wells has reduced from three to four meters depth since the commencement of the mining activities. The governor of Bayangol bagh said that for the first time this spring the bagh did not have sufficient water to sustain the herders' livestock. A resettled herder from the same bagh said that Altain Khuder used around 100 tonnes of water per day and was concerned about the quantity of water pumped from the underground sources.

The Environmental and Social Review & Action Plan states that comprehensive hydrogeological information on the aquifers from which water is abstracted (such as total capacity and connectivity between aquifers) is not available and considered it unlikely that robust assessment of the potential impacts of the mine's water use on water resources, water users and the environment had been conducted. As part of the Action Plan, Altain Khuder committed to installing water meters at each extraction point and disclose information to the community on water use, including the volume of extracted water and measures to minimise water use.

According to the Tseel soum governor, the company installed water meters at the request of the government and inspectors check the water level regularly, but herders are unaware of such measures.

In addition to water depletion, herders reported contaminated water in the pit lakes that are not fenced off. These pits are ponds where wastewater that is collected during the road construction. As they are not fenced-off, animals drink the water and get sick according to interviewed herders.

Altain Khuder said that it uses water for domestic consumption and not for industrial purposes. The company says that water consumption is monitored and consumption data shared with local governors and disclosed to the public via the information board at the Tseel soum governor office. A hydrogeological consulting company Aquaterra conducted studies on the boreholes, and the company said it is unaware of any pit lakes or contaminated water in its areas of operation.

Key finding 4: Inadequate stakeholder engagement

According to the Environmental and Social Review & Action Plan, *'engagement with the community in Tseel soum was initiated from the early stages of the project'*. The report noted that Altain Khuder lacked a formal grievance procedure and did not disclose sufficient information. The company subsequently committed to preparing a stakeholder engagement plan, monitoring dust deposits, establishing an effective grievance mechanism and disclosing information on dust pollution and water use to Tseel soum communities. These steps were to be completed by 2012 and were the responsibility of the company's Environmental Department, PR Department and Community Relations.

Lack of information disclosure and stakeholder engagement

Based on the interviews with affected individuals and local government bodies, the mission concluded that they lack sufficient information about Altain Khuder and the Tayan Nuur mining

project and its impacts. Herders and local authorities reported that they were not consulted prior to the start of the mining project when company, EBRD or related consultants assessed or surveyed the impact of the mine on their livelihoods. The soum and bagh governing structures admit that they lack knowledge and capacity to effectively protect the rights of the people impacted by the mine, and are uncertain about the company's and their respective responsibilities since the Tayan Nuur mine is the first mining project in the area. All interviewed herders were unaware that the company disclosed information about dust pollution and water use.

The herders from Bayanghol and Derstei baghs also reported that they had no knowledge about the involvement of the EBRD in financing the project and what this means in terms of ensuring safeguards on behalf of both the EBRD and Altain Khuder.

Intimidation and harassment

Altain Khuder is notorious within the Tseel soum for intimidating people who criticise its activities. The company has filed up to seven lawsuits against people who openly or allegedly voiced criticism against the company and expressed their grievances. The lawsuits allege 'the organised crimes of defamation', which can result in up to 22 years in prison. Bagh governors, healthcare workers and citizens' representatives who voiced or allegedly voiced criticism against the company were sued and had to appear in front of the Gobi Altai court.

When the charges were dropped for lacking substance, the company continued to pursue the case at higher instance courts in Ulaanbaatar, leading to travel expenses and reputational damages for defendants. In May 2014 the final stage court acquitted the cases. The seven defendants are currently preparing to file a counterclaim for cost incurred and reputational damages.

Altain Khuder commented that given the serious allegations made against the company, '*we had no other choice but to seek legal actions*'. In addition, it noted that before entering the mining site a prior request is required for the safety of those who want to enter the mine site.

Several of the interviewed herders reported that when they approach the mining site to talk to representatives about their grievances, they were intimidated by security personnel and prevented from entering the site. The Council of Natives reported similar treatment by the company, relating one experience where their camera equipment and mobile phones were confiscated and never returned.

The fact-finding team itself was stopped twice when passing on a public road and along the road construction site and the mining facilities on its way to Derstei bagh. The team was questioned about its presence, and security staff requested evidence about the mission and its

members while the head of security took photos of the team's business cards and correspondence with Altain Khuder.



The mine's security service questioning the fact-finding mission team.

Ineffective grievance mechanism

According to the Tseel soum governor, Altain Khuder has placed a suggestion and complaint box in the Tseel soum administrative building. During interviews, locals added that the company appointed a contact person responsible for communication with the communities. However, apart from one herder, none of the herders were aware of the complaint box. The herder that did know about it once submitted a complaint in the box but never received a response. The company's grievance mechanism therefore seems inadequate and ineffective in providing communities with a platform to voice their concerns. This is aggravated by Altain Khuder's intimidation against those who openly criticise the company.

Insufficient progress of the community development projects

According to the Bayangol bagh governor, the foundations for the kindergarten Altain Khuder committed to construct in Tseel soum were laid in summer 2013. Since then no progress was made, despite the company's promise to continue construction in spring. The location of the kindergarten is also a disputed issue: as it has been built on a hill a few kilometers from Tseel soum, it is not easily accessible to local people. Part of the community wants the entire soum settlement to move to the area of the kindergarten as the land there contains less rocks and is therefore more suitable for the construction of buildings.

According to Altain Khuder, the construction of the kindergarten *'is not an obligation'*, but that it did initiate a new kindergarten facility after observing that the existing one had too limited capacity. The location of the kindergarten was advised by the local authorities, while the construction is almost finished, according to the the company.



*The unfinished kindergarten in August 2014.
The rocky hills of Tseel soum are barely visible in the background.*

Demands of the herders

In summary, the mission identified a number of issues at Altain Khuder's Tayan Nuur mining project that have impacts on the herders in the Tseel soum area that were interviewed during this fact-finding mission. These include:

- dust pollution and increased risks for human and animal health;
- inadequate assessment and compensation for resettlement and economic displacement of herders;
- insufficient information disclosure and lack of adequate consultation with impacted stakeholders;
- intimidation and harassment of critics.

The approximately 25 herders and local government representatives that were interviewed expressed concerns about the future of Tseel soum and its people.

In order to address these impacts, they expressed the following demands:

- Complete the black top road immediately and use only this road for company trucks traffic;
- Ensure sufficient passageways on the new road for the migration of herders and their livestock;
- Make accessible the black top road for herders, free of charge;
- Restore lands polluted and altered by the company (quarries, bulldozed vegetation, etc.);
- Fence off all contaminated water sources and gravel pits;
- Disclose the results of animal health examinations, and compensate for lost animals and medical expenses as a result of dust pollution
- Ensure land for resettled and displaced herders and adequate compensation for the loss of their camps and structures;
- Monitor water levels and water quality by independent experts and disclose the results;
- Ensure a clean and safe environment free of dust and noise created by the mining project and the transportation of iron ore; and
- Termination of the mining project if negative impacts are not addressed and positive developments remain absent for the Tseel soum communities.

Recommendations

Recommendations for Altain Khuder:

- Assess the impacts of the mine operations in consultation with the herder communities and address their concerns and demands.
- Update the Environmental and Social Review & Action Plan, to ensure the mine's compliance with EBRD standards.
- Complete the black top road, and ensure that company trucks only use this road, and that the road is accessible and available for use by the herders without paying tax.
- Construct sufficient passageways, in consultation with the herder communities.
- Ensure resettled herders are properly compensated for the loss of their camps, and relocated to new land in accordance with their needs.
- Implement a comprehensive livelihood restoration program in consultation with all stakeholders involved.
- Restore all land altered and polluted by the mine and its activities.
- Make publicly available all animal testing, ensure independent animal testing, and compensate for the loss of animals and medical expenses as a result of dust pollution and water contamination.
- Ensure independent water use monitoring and disclose the results, restore lost wells and other water access points no longer available or sufficient to sustain the herders and their livestock.
- Use Best Available Technology for ore processing to decrease dust emissions from the mine.
- Abstain from all forms of harassment and intimidation of affected people and their representatives, and stop judicial actions against them. Ensure an effective form of stakeholder engagement and act upon complaints and grievances by communities and individuals.
- Develop in consultation with local communities a mine exit plan, which includes reclamation plans and clean-up, in compliance with EBRD standards.

Recommendations for the EBRD:

- Monitor Altain Khuder operations and ensure that Altain Khuder complies with the bank's policies.
- Encourage the company to proactively disclose information about its impacts on the affected environment and local communities and to carry out meaningful consultations with affected and interested stakeholders about on-going activities like road construction and dust management.

