



## Reflections on biodiversity offsetting in Mongolia

From 21-29 April 2015 four European campaigners from Both Ends of Netherlands (Huub Scheele), Re:Common of Italy (Antonio Tricarico), CEE Bankwatch Network (Olexi Pasyuk) and Urgewald of Germany (Regine Richter) cooperating with OT Watch (Sukhgerel Dugersuren) visited Mongolia in order to:

- a) Understand the provisions of the new Mongolian EIA legislation including biodiversity offsetting and the administration's capacity to guide the implementation and current implications for environmental conservation in the country;
- b) Understand Oyu Tolgoi and Energy Resource's approach to biodiversity offsetting, its implications in Mongolia and the implementation of the new EIA law in their offsetting plans.

The fact-finding mission team met the environmental ministry and nature conservation organisations in Ulaanbaatar and then went to the South Gobi to meet the local administration, herders and people in charge of protected areas.

### I. General observations

The fact-finding mission identified serious concerns regarding the implementation of the new law, and in particular the specific provision on biodiversity offsetting:

- Firstly it is evident that literally everyone seems to be confused about what to understand and how to define biodiversity offsetting and how to implement it. This is true for different government authorities, companies, consulting companies and civil society organisations, not to mention local communities and the general public. The environmental ministry reported<sup>1</sup> that some companies used different methodologies from the one adopted by the Mongolian government, because they worked with international consulting companies using their own methodologies. In particular, there seem to be different opinions concerning the location of the offsetting project and its distance from a project site (reportedly this should be of maximum 50 km according to government's technical guidelines<sup>2</sup>). The confusion is highlighted as well by the case of Energy Resources and its Ukhaa Khudag coal mine deposit in Tsogttsetsii. The company reported rehabilitation measures (replanting of trees near the mining site and tree nursery program) as offsetting measures but the relevant authorities would not accept this as offsetting.
- Furthermore, as concerns the specific first biodiversity project to be implemented in Mongolia in the framework of the Oyu Tolgoi mining project (OT), a conflict among competent environmental authorities is emerging. In particular, the issue concerns the sites that could be used for offsetting: In March 2014 a workshop took place in Ulaanbaatar for local, provincial and national authorities, companies and nature conservation organisations to discuss guidelines for the new law implementation. During that meeting, it was agreed that each aimag would define and submit to the central government the list of areas (already protected or to be protected) where biodiversity offsetting projects could take place. This was done recently by the South Gobi aimag, which defined in its decree #55 a list of areas, with the

<sup>1</sup> Meeting with environmental ministry on 21st April 2015

<sup>2</sup> Meeting with TNC on 22nd April 2015

principle that each mining project in the province has to implement offsetting activities within the same province. The aimag's environmental specialist illustrated the problem he sees with offsetting in another area: "If the shirt of person A is destroyed, it wouldn't help this person if a person B would get a new shirt, while B's shirt might still be perfectly fine." This provision apparently conflicts with the environment ministry's intention to allow cross-province offsetting, including in the specific case of OT. In particular, some offsetting is under consideration by the project sponsor and its consultants in conservation of the Eastern Grasslands in Dornod aimag<sup>3</sup>.

- All levels of government (national, regional and local level) in Mongolia stressed, when asked, that they clearly lack capacity to monitor the implementation of offsetting projects. The national ministry says the monitoring obligation lies with the local administration while the local administration lacks simple means in terms of vehicles, fuel and technical expertise to properly monitor. Offsetting without strong monitoring risks allowing companies to do poor measures and get away with it.
- The hierarchy of first avoiding negative impacts, then mitigating, and thirdly rehabilitating or restoring negative impacts where possible and only use offsetting as a last resort, seems not to be clearly enough regulated. This leaves too much discretion and potentially could be an incentive for companies to use biodiversity offsets as a cheaper way than mitigation and rehabilitation. Also there is no regulation about the liability of companies in the long run: whether the offsetting works correctly for the period foreseen and under which obligations.
- So far biodiversity offset trading seems to be a far cry, since the environmental ministry official clearly stated that today there is no common understanding on how to do an economic valuation. However, the official also said that they are about to agree on a new GEF-sponsored project in the Western Aimags. This project is supposed to consist of five pilot conservation projects, where knowledge on offset credits could be tested. So far only a desk study has been reportedly<sup>4</sup> carried out about the possibility to generate biodiversity credits through offset projects, which could then be traded among mining companies to meet requirements under the new environmental law. The FFM team regards this option as highly problematic on principle level and definitely premature for the current situation.

It is unclear how all uncertainties, lack of capacity and institutional conflicts will be resolved around proposed biodiversity offset projects, which, however, present on their own several significant controversies and hurdles as reported below.

## **II. The specific case of Oyu Tolgoi**

Oyu Tolgoi (OT), the largest mining investment ever licensed in Mongolia, has been the first project to include a biodiversity offset action in its EIA and related biodiversity management plan - under the guidance of The Biodiversity Consultancy of Cambridge, UK. The Project EIA has been approved by the lenders and the Mongolian environmental ministry. Oyu Tolgoi formulated a biodiversity strategy claiming:

*"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."*<sup>5</sup>

Consultants developed a biodiversity offsets strategy for the Oyu Tolgoi project to achieve this goal. They identified as offset objectives, among others, the reduction of illegal hunting and the

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<sup>3</sup> As confirmed by a meeting of the FFM team with TNC in Ulaan Baatar on 22nd April 2015

<sup>4</sup> As mentioned in meeting with Environment Ministry in Ulaan Baatar on 22nd April 2015

<sup>5</sup> ESIA Appendix 1, Oyu Tolgoi LLC Biodiversity Strategy, December 2011, p.1

improvement of rangeland management.<sup>6</sup> Activities carried out so far thus concern the reduction of illegal hunting, the improvement of rangeland management and research that might feed into “strengthen[ing] protected areas management” objective, concretely monitoring a few endangered species in the project impact area – namely the Khulan, and the black tailed gazelle.

While OT boasts about its biodiversity offsetting activities and approaches, the FFM team collected strong evidence that no real offsetting activities are taking place so far, but that there are only preliminary pilot activities and research.

### II.1. Endangered species

In fact, OT is financing research on the population of the Khulan and black tailed Gazelle, which is not completed. Senior consultants carrying out the research clearly acknowledged that several more years of studies would be needed in order to properly understand how these species would be impacted by OT mining operations – and related cumulative impacts associated with OT planned expansion project and other projects already implemented in the same region. In particular the FFM team got the impression that the consultants carrying out baseline studies and assessment of potential impacts of endangered species felt some pressure from project sponsors to shorten the timing of this difficult research taking place on a very large territory.<sup>7</sup>

Since no baseline study was completed before the project operations started, while the operations are already creating an impact on the species in the region, as clearly detected by the mission during its talks and travel to the project site and surroundings, it is now impossible to understand what are the overall impacts to be eventually offset. 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 less burdensome and less costly offset measures. It would be very unfortunate if mining companies in the future could conduct baseline studies covering harm already caused by their activities and have measures assessed against this baseline recognised as biodiversity offsetting.

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 environmental impact assessment law. As a matter of fact they demand that the offset measures coincide with the duration of the project.<sup>8</sup>

### II.2. Anti-poaching

On this topic 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. Project sponsors surprisingly 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 one anti-poaching unit only after his repeated requests.<sup>9</sup> When asked whether the teams caught any poachers, the local representatives explained that due to funding coming late, the poaching season was over by the time they got fully equipped, so no poachers could be caught. Several meetings were held in 3 soums and 4 bakhs to raise awareness among the local population on the urgency of eradicating poaching, in particular of endangered species.

After this pilot phase, no other activity has been implemented. The offset strategy aims to build awareness among the local population, which is deemed primarily responsible for poaching in the region. However the FFM team learned from rangers and environmental local authorities<sup>10</sup> that the

<sup>6</sup> 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

<sup>7</sup> Meeting with WCS on 23rd April 2015

<sup>8</sup> Mtg with TNC on 22nd April 2015

<sup>9</sup> Meeting at the office of South Gobi A and B natural reserves in Khan Bogd, on 24th April 2015

<sup>10</sup> 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

influx of workers linked to OT operations contributed to the increase of this phenomenon as well as a higher demand for meat and organs of endangered species from China (120 km from the OT site). Local poachers seem to mainly be part of a wider network aimed at exporting these goods to China, more than using them for local consumption. More generally, several meetings with local herders<sup>11</sup> and discussions with local employees of protected areas actually showed the FFM team that there is a common understanding that mining operations and related infrastructure are already impacting on endangered species and livestock through destroying and fragmenting habitats, which is seen as a more important factor than poaching.

It seems unclear whether the anti-poaching programme, as defined so far, will be physically extended to other aimags, however, only the extension would be rather an offset than a mitigation measure. As mentioned above, the issue remains problematic in terms of involvement of all local competent authorities as well as future sustainable funding for all operations needed. In the direct OT vicinity rather than focussing on the herders as the “main culprits”, the anti-poaching should explicitly target the OT workforce and subcontractors as well as migrant workers.

### II.3. Improvement of rangeland management

On the rangeland management improvement, several herders had heard about it, but had no real clue what it implied. One herder had participated. He explained that experts came and discussed with herders and concluded that only 30% of the herded grassland was not at all impacted by mining operations and roads and that in order to better protect the grassland and leave more time for regeneration the grassland should be used less. The herder found this proposal rather frustrating as there is no alternative area herders could use in the very fragile and limited ecosystem of the Gobi. Therefore the proposal basically means herders should significantly reduce their herds. This is basically a transfer of responsibility and burden from the mine operator responsible for the deterioration of the grassland to the herders, who then should compensate for this deterioration by reducing their numbers of animals. Rather than imposing responsibility on the herders, OT (along with other mining companies) needs to put more effort into countering habitat fragmentation.

Finally, the costs and the financing of the offset projects remain unclear too, and thus ultimately who will be responsible in practice of project implementation and monitoring for a long time, possibly several decades in the future (as long as mining operations will be on). 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, the mission 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 then could potentially be contracted for implementing some of the same projects.

### **III. Situation in Europe and controversies about modifying environmental legislation**

Changes in environmental legislation in order to allow biodiversity offsetting have been discussed too in several European countries and the EU as a whole in the last two years. Nevertheless the issue is still seen controversial by many stakeholders and limited changes got implemented so far.

In particular, the UK government advanced a green paper on biodiversity offsetting with a proposal of law<sup>12</sup>, which was put on hold after criticism about its feasibility by different stakeholders at the end of 2014<sup>13</sup>. Only two out of the six pilot biodiversity offsetting projects that were planned got implemented by the UK government and they had dubious outcomes. Efforts to define a biodiversity equivalence matrix by government officials are still in the making and have encountered serious conceptual difficulties<sup>14</sup>.

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<sup>11</sup> Meetings which took place between 24th April and 26th April in the eastern area of the project up to a distance of about 100 km from OT project site.

<sup>12</sup> <https://www.gov.uk/biodiversity-offsetting>

<sup>13</sup> <http://www.planningresource.co.uk/article/1287961/biodiversity-offsetting-delayed-until-pilots-assessed?HAYILC=RELATED>

<sup>14</sup> <http://thestudyofvalue.org/wp-content/uploads/2015/02/WP11-Carver-2015-Measuring-what-value.pdf>

At the same time the European Commission postponed to 2016 plans to introduce stand-alone legislation on biodiversity offsetting and beyond. Biodiversity offsetting and related trading schemes were made only voluntary at national level in the EU biodiversity strategy from 2012 and plans to develop a regional biodiversity bank are still unclear, despite recommendations published in mid 2014 by an expert group on the so-called “No net loss initiative”.

France has recently modified its national environmental legislation to allow more biodiversity offsetting within the country. However plans to offset impacts of the Notre Dame des Landes airport faced significant resistance by local communities and European NGOs.

#### **IV. Conclusions**

Several years after the beginning of OT operations on the ground the offset plans are still in preparation. At the same time the feasibility of an offset project in the Gobi region is in doubt, given the considerable impacts before proper baseline studies were done and the on-going effects mainly through the fragmentation of the habitat of endangered species and the impacts of mining infrastructure on grasslands.

Even where some alternative options are presented – as recently agreed by the aimag council of South Gobi in Dalanzadgad in its decree no. 55 – the principle of additionality is highly questionable. In fact, it is unclear why a commitment to contribute to the protection of already existing protected areas in the region would constitute an actual offset of project impacts at mining site – given that in any case the government is bound by the law to support the functioning of these reserve areas.

Mongolian stakeholders should reflect upon the problems occurring with the new legislation and OT’s specific case:

- confusion around the definition of biodiversity offsetting projects,
- conflict of views over regulation within different authorities in the country,
- lack of capacity among administration to monitor the offsetting,
- potential conflict of interest in offset implementation
- baseline definition when first impacts have already happened,
- transfer of responsibility from OT to the herders.

While it is generally questionable whether the “Net positive impact” concept on biodiversity offsetting can work out, it will for sure not work with so many unsolved problems.

In any case the trading of biodiversity offsets should not be considered as an option. As mentioned above there is no common understanding on how to do economic valuation, which is at the base of the trading. Beyond these uncertainties the case of the European Emission Trading scheme shows that the initiative hasn’t helped to achieve its stated goal - the reduction of emissions - but rather laid the ground for questionable offset projects and serious fraud.

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