EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

PROJECT COMPLAINT MECHANISM

ELIGIBILITY ASSESSMENT REPORT

PROBLEM-SOLVING INITIATIVE – OYU TOLGOI PROJECT

July 2015

COMPLAINT: ENERGY RESOURCES PHASE II & OYU TOLGOI
REQUEST NUMBER: 2013/01

BACKGROUND

1. This Eligibility Assessment Report (EAR) is an extension of an earlier EAR prepared by the Eligibility Assessors in reference to Complaints submitted by 23 herders and two civil society organizations that pertained to two separate projects funded by EBRD: the Energy Resources Phase II Project and the Oyu Tolgoi Project. This EAR focuses only upon the Complaint's eligibility for a Problem-solving Initiative (PSI) with regard to the Oyu Tolgoi Project.[1]

2. The Eligibility Assessment is based upon the following documentation: the original Complaint documents submitted in 2013; interviews with Management, the Client (Oyu Tolgoi) and Complainants; a site visit to Mongolia; additional material submitted in 2014; Management's original response; an updated response prepared by Management based on subsequent Complainant submissions; Oyu Tolgoi's original and revised responses; and subsequent correspondence from Oyu Tolgoi and Complainants. All noted Complaint documents and responses from Management and the Clients (including Oyu Tolgoi) are annexed to the earlier EAR.

KEY ISSUES

3. Since submitting the initial Complaint, the Complainants have continued to express an interest in a Problem-solving Initiative (PSI) in respect of the Oyu Tolgoi Project to address a variety of concerns allegedly related to the Project's roads network. They principally cited four categories of social and environmental impacts which, they maintain, significantly affect herder livelihoods and well-being, including:

- loss of, fragmentation, and contamination of pastures, and access to water resources;
- proliferation of dust and noise from the network of paved and unpaved roads;
- as a result of the above, degradation of the health and well-being of herders and their animal herds on which the herder's traditional lifestyle and livelihood rely; and
- insufficient mitigation and compensation measures commensurate with risks and impacts.

[1] For more detailed information related to the Complaint, including the factual background, a summary of parties' positions and complaint documents, please see the Eligibility Assessment Report posted on the PCM website at http://www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism/pcm-register.html.

DETERMINATION OF ELIGIBILITY FOR A PROBLEM-SOLVING INITIATIVE

4. The Eligibility Assessors find the Complaint does not satisfy the PCM criteria for a PSI as set forth in the PCM 2009 Rules of Procedure (RPs).

5. PCM PR 21(a) notes: "Where the Complaint raises issues appropriate for a Problem-solving Initiative, the Eligibility Assessors will also consider the following factors to determine eligibility: (a) whether a Problem-solving Initiative may assist in resolving the dispute, or is likely to have a positive result...." The Assessors conclude that, under present circumstances, a PSI, with PCM involvement, is not likely to be successful.

6. Among other factors, there was not a consensus among the parties about the value of a problem-solving dialogue. While the Complainants indicated a strong interest in engaging in problem-solving with Oyu Tolgoi, and while the company communicated that they are not opposed to working through the issues in the Complaint, Oyu Tolgoi communicated to the PCM that they did not wish to have the PCM involved because the nature of the Complaint was similar in scope to that of complaints submitted to the International Finance Corporation CAO, for which a dialogue process had been initiated. Moreover, several of the Complainants involved in the Complaint to the PCM were also involved in the CAO process and therefore would have access to a forum to address their concerns.

7. Since Oyu Tolgoi did not find it possible to engage in problem-solving with PCM involvement, for the reasons stated above, the PCM concludes that the Complaint is ineligible for a PSI.