

**Request for Review Submitted to the Canadian National Contact Point Pursuant
to the OECD Guidelines for Multinational Enterprises, 14 March 2012**

***Centerra Gold's Operations at the Boroo Mine
and at the Gatsuurt gold deposit, Selenge Province, Mongolia***

Notifiers

United Mongolian Movement of Rivers and Lakes (UMMRL), established in 2008, is a coalition of eight environmental movements whose members are Mongolian citizens who seek to protect their rivers and lakes from the impact of mining. Contact: Tsetsegee Munkhbayar, Chair, Board of Directors, UMMRL (onggi_river@yahoo.com or rivermovements@gmail.com).

OT Watch is an Ulaanbaatar-based organization established to monitor compliance with international norms and standards of the investment agreement and operations particularly in relation to the Oyu Tolgoi gold-copper-silver mine. Contact: Sukhgerel Dugersuren, Executive Director OT Watch (dsukhgerel@gmail.com or otwatch@gmail.com).

MiningWatch Canada is an Ottawa-based organization that advocates for responsible mining in Canada, and by Canadian companies operating overseas. Contact: Catherine Coumans, Co-Manager and Asia-Pacific Program Coordinator at MiningWatch Canada (catherine@miningwatch.ca).

Respondent

Centerra Gold Inc. is a Canadian-based gold mining and exploration company. It is the parent company for Centerra Gold Mongolia (CGM) and its Boroo Gold Company (BGC) which operate in Mongolia. Centerra Gold Inc. owns 100 per cent of the Gatsuurt property currently being developed to become a mine¹.

¹ Centerra Gold Gatsuurt Factsheet at http://www.centerragold.com/sites/default/files/2011-boroo_mongolia-fact_sheet_english-2011_0.pdf, visited 4.03.2012, page 3

Stakeholder Interest

Munkhbayar Tsetsegee, Chair, Board of Directors, a 2007 winner of the prestigious Goldman Environmental Prize. Since establishment of the Onggi River Movement, Munkhbayar has been instrumental in supporting river and lake movements around the country bringing them under a coalition, the UMMRL, in 2008. One of key achievements of this movement was the development and approval of the Law on Prohibition of Mining in Headwater and Forest Resource Areas in 2009.

Sukhgerel Dugersuren is Executive Director of OT Watch, a member of the newly established Regional Rivers without Boundaries coordinating body and the Environmental Civic Council and OECD Watch. In these capacities OT Watch engages with relevant parties on issues related to protection of the environment, specifically the use and protection of water resources in Mongolia.

Catherine Coumans is Asia-Pacific Program Coordinator with MiningWatch Canada. As such, part of her responsibilities are to monitor the activities of Canadian mining companies in this region and to respond to requests for assistance from communities who feel their interests have been harmed by the activities of a Canadian mining company.

Advisors

Patricia Feeney is the Executive Director of Rights and Accountability in Development, a British non-governmental organization (NGO). She is a founding member of OECD Watch, the international network of NGOs working on the OECD Guidelines for Multinational Enterprises.

Paul Robinson is the Research Director of Southwest Research and Information Center, Albuquerque, New Mexico, USA.

I. Introduction

Based on the information provided in this request for review, and pursuant to the OECD Guidelines, the petitioners maintain that Centerra Gold in Mongolia has violated and continues to violate the OECD Guidelines by: (i) continuing to develop the Gatsuurt gold mine in violation of Mongolian law; (ii) seeking exemptions from the law to enable the Gatsuurt gold mine to operate in a protected zone; (iii) failing to take due account of the need to protect the environment and remedy adverse impacts of its mining operations by dealing with leaks at the Boroo Mine, which is where it proposes to process ore from the Gatsuurt river valley; and (iv) failing to carry out requisite due diligence to identify, manage and mitigate risks arising from their activities in order to promote sustainable development and protect the rights of the nomadic communities in the mine impacted areas of Selenge Province. The OECD Guidelines for Multinational Enterprises engaged in this request for review are listed below.

The notifiers seek the good offices of the Canadian National Contact Point to bring Centerra Gold into compliance with the Guidelines and Mongolian Law. Centerra Gold Inc. is the parent company for two organisations that are registered in Mongolia. These are Centerra Gold Mongolia (CGM) and Boroo Gold Company (BGC). The Boroo Gold Company operates the Boroo Gold Mine in Bayangol and Mandal. Centerra Gold Mongolia has been the exploration group for the parent company Centerra Gold Inc.² The issues in this request have been raised by one or more of the notifiers, in writing and/or in person, on a number of occasions with Centerra Gold's Mongolian subsidiaries, Boroo Gold LLC (BGC) and Centerra Gold Mongolia (CGM). The notifiers ask the NCP to offer its good offices to bring about a dialogue between their representatives and advisors, and those of the company, Centerra Gold Inc. in particular for the purposes of ensuring that Centerra Gold and its Mongolian subsidiaries adhere to the 2009 Mongolian Law on Prohibition of Mining in Headwaters and Forest Resource Areas and respect other Mongolian laws as well as the international standards for responsible corporate conduct that are promoted by the OECD Guidelines.

Mongolia is multi-party democracy with constitutional protection for human rights and has ratified ICCPR, ICESCR, ICERD, CRC, CAT and CEDAW. The UN Universal Periodic Review (UPR) of the status of human rights in Mongolia was carried out from October 2010 through March 16, 2011. Recommendations from this review process include improvement of quality and timeliness of the government reports to the UN treaty bodies. Mongolia is not an OECD member country.

² Centerra Gold Mongolia Fact Sheets 2011 http://www.centerragold.com/sites/default/files/2011-boroo_mongolia-fact_sheet_english-2011_0.pdf, visited 4.03.2012, p. 3

Specific Provisions of the OECD Guideline Engaged

- **I. Concepts and Principles** – Paragraph 2 states that *“Obeying domestic laws in the first obligation of enterprises.”*
- **II. General Policies** - Paragraph 1 states that enterprises should, *“contribute to economic, environmental and social progress with a view to achieving sustainable development.”*
- **II. General Policies** – Paragraph 5 states that enterprises should *“refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to human rights, environmental, health, safety, labour, taxation, financial incentives, or other issues.”*
- **II. General Policies** – Paragraph 10 states the enterprises should *“Carry out risk-based due diligence, for example, by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts...”*
- **II. General Policies** – Paragraph 11 states that enterprises should *“Avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.”*
- **IV Human Rights** – Paragraph 1 states that enterprises should *“Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse impacts with which they are involved.”*
- **VI. Environment** – The Preamble states that enterprises should *“take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development...”*
- **VI. Environment** – Paragraph 1 states that *“[Enterprises should] establish and maintain a system of environmental management appropriate to the enterprise, including; a) collection and evaluation of adequate and timely information regarding the environmental, health and safety impacts of their activities.”*
- **VI. Environment** – Paragraph 2 (a) states that *“[Enterprises should] provide the public and workers with adequate, measureable and verifiable (where applicable) and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance....”*
- **VI. Environment** – Paragraph 4 states that *“[Enterprises should] consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage.”*

II. Obeying host country laws is the first obligation of companies

Centerra holds a 100 per cent equity interest in the Boroo Mine, which is located 110 km west northwest of Ulaanbaatar and 40 km northwest of the Gatsuurt Central Zone area. The Gatsuurt Project development will cover two separate sites; the Gatsuurt mine and associated facilities, and the modifications in and around the Boroo mill. According to the Technical Report for the project, the site infrastructure will comprise new facilities at Gatsuurt and expanded facilities at Centerra's Boroo Gold Mine (Boroo). The Gatsuurt mine operation is planned to operate as a satellite of Centerra's existing Boroo mining operation. The mine development is planned to proceed in two phases, with the first phase involving the mining and recovery of the oxide ore materials that exist in the near surface zones of the deposits. This oxide ore material is to be transported by overland truck haul to the existing Boroo mill for processing.³

(i) Location of the Gatsuurt Project and the Water and Forest Law

The fact that Centerra's Gatsuurt mine is located in a protected area where mineral exploration and mining operations are prohibited is a clear breach of Chapter I (2) requiring companies as the first obligation to obey domestic laws. The Law to Prohibit Mineral Exploration and Mining Operations at Headwaters of Rivers, Protected Zones of Water Reservoirs and Forested Areas (the Water and Forest Law) was passed on 16 July 2009. Article 1.1 of the law states:

*The purpose of this law is to prohibit mineral exploration and mining operations at headwaters of rivers, protected zones of water reservoirs and forested areas, and to regulate rehabilitation activities carried out in the above-mentioned areas.*⁴

Evidence that the Gatsuurt mine is situated in the river headwater and in a forested area of Mongolia can be obtained from a Google Earth map, which clearly shows the river valley morphology and forested vegetation pattern around Gatsuurt (Annex 11). The Google Earth image dates from 2006 and some idea of the current situation may be ascertained from looking at aerial photographs included in a Fact Sheet posted on Centerra's website (Annex 5).

Tunhel Morning, (NGO member of UMMRL) reported to the Forest Authority that on 11 August 2009, one month after the Water and Forest Law had been approved, Centerra Gold started cutting forest at the

³ Roscoe Postle Associates (RPA), Technical Report on the Gatsuurt Gold Project Northern Mongolia; prepared for Centerra Gold Inc., May 2006 (hereinafter 'Technical Report'). pp 1-13

⁴ Law to Prohibit Mineral Exploration and Mining Operations at Headwaters of Rivers, Protected Zones of Water Reservoirs and Forested Areas; Mongolian Parliamentary Resolution No. 55

Gatsuurt site. The Forest Authority experts, B. Tsogtbaatar and N. Purevdorj, accompanied by an Environmental Civic Council member, B. Jiandorj, a member of Tunhel Morning, D. Battulga, and a television reporter from TV9 Channel, D. Gongor, were sent to inspect the site. Their inspection report of 26 August 2009 confirms that Centerra Gold had hired a Mongolian company, Nature Friendly LLC, to prepare a forest reclamation program. On the basis of this program Centerra had already started cutting 70 hectares of forest in preparation for road and mine construction.⁵

Images of the Gatsuurt site from June 2010 illustrate the extensive areas of forest cutting and disruption of the Gatsuurt River at the Centerra Gatsuurt project. [See Annex 13].

During period June 2009 through June 2010 UMMRL had engaged with the Government in initiating the implementation of the new law. In 2010, as a result of the combined efforts of UMMRL and local governments the boundaries of areas to be protected under the law were established. Consequently, 1,782 licences have come under scrutiny, which has triggered threats by foreign companies to take legal action against the Mongolian Government if their licences are revoked. All companies, including Centerra Gold, have demanded substantial “compensation” from the government. At the same time the mining industry has stepped up pressure and entered into discussions with the Mongolian Government to try and have the law amended. The proposed amendment to the law will allow companies currently holding licences to continue their operations. (Annex 2)

The Water and Forest Law could result in the revocation of the Company’s mineral licences in Mongolia. The legislation provides a specific exemption for “mineral deposits of strategic importance”, and the company expects that the main Boroo mining licences will not be subject to the Water and Forest Law.⁶ However the Boroo Stability Agreement is due to expire in 2013.

Centerra has been in discussions with the Government of Mongolia to obtain an investment agreement for the development and mining of the Gatsuurt project which would stabilize the tax regime applicable to Gatsuurt, and including whether such new mineral laws will apply to Gatsuurt. In April 2010, the Ministry of Mineral Resources and Energy (MMRE) indicated to Centerra that further discussions and negotiations with respect to any investment agreement would be postponed until the MMRE re-

⁵ Mongolia’s television Channel 9 filmed the impact of forest cutting. See Youtube: “Mongolia Mining Impacts on Forests and Rivers ‘Boroo Gold’ TV9 2010.06.25.mpg”, http://www.youtube.com/watch?v=h_Se3o6fDU, visited 4.03.2012.

⁶ Centerra Gold Inc. ‘Management’s Discussion and Analysis’ (hereinafter MDA) for the fiscal year ended December 31, 2011. p 58

ceived clarification on the application of the Water and Forest Law on the Gatsuurt project.⁷

There are concerns that the powerful mining industry lobby is exerting undue pressure on the Government of Mongolia in order to delay implementation of the Water and Forest Law. On October 20, 2011 the Supreme Court of Mongolia delivered a verdict obliging the Cabinet of Mongolia to implement Resolution Number 55 of the State Great Hural, providing guidance on the implementation of the law.⁸

(ii) Previous Attempts to Engage with Centerra Gold Mongolia

The United Mongolian Movement of Rivers and Lakes (UMMRL) and its member, Tunhel Morning, have raised the issues with Centerra Gold on several occasions. During 2010 they made a number of peaceful attempts to engage with Centerra Gold and explain to them the implications of the law on its proposed operations in mining at Gatsuurt. In the summer of 2010, in the face of the Government's inaction to implement the law, UMMRL sent out teams to enter into direct discussions with mining companies. On June 24, 2010 an UMMRL delegation met Centerra Gold and told the company that it had an obligation to comply with the 2009 law. On 2 July 2010 UMMRL sent reminders to senior members of the Government and to mining companies about the need to implement and respect the law. It was not until September 2010 that UMMRL took direct action. It had waited several months to give Centerra Gold an opportunity to cease construction of the mine, but the company failed to do so. On 2 September 2010, two members of UMMRL fired warning gunshots at company property - an empty fuel tank - located on the Gatsuurt exploration site. While this action has not stopped the company from building the mine, it led the Mongolian Cabinet to issue a list of 254 licences to be revoked in the first phase of implementation of the 2009 law. Centerra Gold's licences for the Gatsuurt deposit is one of the 254 licences listed for cancellation. In 2011 Centerra Gold's management report confirmed this: 'Of the Company's 55 mineral licences, 36 licences (including the Gatsuurt hard rock licences) are included in the 1,782 licences referred to in the cabinet announcement as subject to staged revocation'.⁹

(iii) Evidence of Centerra Gold's Continuing Disregard for Mongolian Law

⁷ MDA. p. 57

⁸ Supreme Court Judgment No 687 of 20 October 2011 in a petition brought by "United Movement of Mongolian Rivers and Lakes" (UMMRL) NGOs. The court dismissed the first four petition demands, but it considered that the Sections 11, 12, Provision 2, Article 3, Provisions 16, 26, 32, 49, of the Law on Environmental Protection, Article 56, of the Law on Mineral Resource, and Provision 1, Article 3, of the Law on Government, had been correctly interpreted by the petitioners and that they did apply to the respective case. [Annex]

⁹ MDA p. 40

On 24 July 2011 UMMRL and OT Watch visited Centerra Gold's Boroo and Gatsuurt sites. The company refused to allow the delegation onto its property. However, two members of UMMRL accompanied by a foreign journalist managed to gain access onto the Gatsuurt site through the mountains. They have recorded further evidence of continuing mine construction work at Gatsuurt which demonstrates that Centerra Gold is continuing to build the Gatsuurt mine in violation of the 2009 Water and Forest Law, despite formal notifications from the Government of Mongolia, and notwithstanding the company's official denials. Therefore the company is in clear breach of Chapter I (2) of the OECD Guidelines.

(iv) Centerra Gold's record of non-compliance with Mongolian laws and regulations

In its report to the Canadian Securities Administrators, Centerra Gold, while it claims that it is 'in material compliance with the Mongolian laws, has nonetheless disclosed that it has been subject to a number of regulatory measures, including fines and suspension of mining activities.¹⁰ BGC, for example, was required to pay a substantial fine after the Mongolian authorities had found deficiencies in the operation of the Boroo mine.

- On 6 December 2006 Gatsuurt LLC commenced arbitration before the Mongolian National Arbitration Court (MNAC) for alleged non-compliance by Centerra's subsidiary, CGM, with its obligation to complete a feasibility study on the Gatsuurt property by end December 2005¹¹ and seeking the return of the licence. Centerra disputed the impartiality and competence of the MNAC. Subsequently Centerra and Gatsuurt LLC agreed to terminate proceedings. The provisional settlement included the payment of \$1.5 million to Gatsuurt LLC. A final settlement with Gatsuurt LLC is subject to CGM concluding an investment agreement with the Government of Mongolia in respect of the Gatsuurt project after which Centerra will make a further non-refundable payment of \$1.5 million to Gatsuurt LLC.¹²
- On 12 June 2009 the main operating licences at the Boroo mine were suspended by the Ministry of Mineral Resource Authority of Mongolia (MRAM) following inspections of the Boroo mine operation conducted by the Mongolian General Department of Specialized Inspection (SSIA). In its report, the SSIA expressed its view that a number of deficiencies existed at the Boroo

¹⁰ Centerra Gold 2009 Annual Information Form (hereinafter 2009 AIF); p. 75

¹¹ Centerra on its website states that a feasibility study for the Gatsuurt project had been completed in December 2005. But it also reports that 'An updated feasibility study was completed for the Gatsuurt project in the first quarter of 2006...' Centerra Gold website updated on 24.11.2011.
<http://www.centerragold.com/operations/gatsuurt-exploration-activities> Visited 25.02.2012

¹² 2009 AIF; pp. 75-76

mine. After discussions by Centerra and its subsidiaries with the MRAM and the SSIA, the suspension was lifted on 27 July 2009. Despite the lifting of the suspension, several issues arising from the inspections continue to be discussed by Centerra and the Mongolian regulatory authorities.¹³ The 2011 MDA reports that the SSIA inspections in 2009 had ‘raised concern about the production and sale of gold from the Boroo heap leach facility’, which had been operated under a temporary permit between June 2008 and April 2009.¹⁴

- In January 2012 Centerra’s subsidiary, Boroo Gold LLC paid ‘a very significant claim’ (\$2.6 million) from the SSIA relating to the Boroo project. The non-compliance issues date from 2009.¹⁵

III. Refrain from Seeking Exemptions

With respect to governance and corporate conduct,¹⁶ the OECD Guidelines provide that enterprises should “*refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation, financial incentives, or other issues.*”¹⁷ This review request maintains that Centerra Gold is in breach of the OECD Guidelines by virtue of its lobbying of the Mongolian Government to have the Water and Forest Law amended and of its disregard for the above-mentioned Supreme Court decision so as to ensure that its Gatsuurt project may go ahead.

In its 2009 Annual Information Form, filed in accordance with the regulations of the Canadian Securities Administrators, Centerra Gold notes that ‘Mining operations and exploration activities are subject to extensive laws and regulations’.¹⁸ It refers to the law prohibiting mineral prospecting, exploration and mining in water basins and forest areas in Mongolia, which would have the effect of revoking any issued licences covering such areas. It adds that while the Boroo mine’s Stability Agreement ‘affords Boroo protection against these laws, but Centerra’s Gatsuurt project does not yet have any such benefits’.¹⁹

¹³ AIF p. 72

¹⁴ MDA p. 58

¹⁵ MDA p. 38

¹⁶ Chapter II, Paragraph 6.

¹⁷ Chapter II. General Policies. Paragraph 5.

¹⁸ 2009 AIF p. 71

¹⁹ 2009 AIF p. 72

In April 2010 negotiations regarding the Gatsuurt investment agreement were stopped when the Company received a letter from the MMRE indicated that the Gatsuurt licences were within the area designated, on a preliminary basis, as land where mineral mining is prohibited under the Water and Forest Law.²⁰

In November 2010, the Company reported that it had received a letter from Mongolia's Ministry of Finance indicating that operations at the Gatsuurt project could not be commenced until the scope of the Water and Forest Law had been resolved.²¹ Construction of the 55-kilometre haulage road from Boroo to Gatsuurt was completed in 2010. But according to Centerra Gold, work on the planned bio-oxidation facility has been halted pending receipt of final approvals and regulatory commissioning.²² But as discussed above in Section II (i) and (iii), construction work at Gatsuurt has continued.

Foreign extractive industry investors have a record of attempting to change the laws of Mongolia to suit their needs.²³ The crucial importance for the company of obtaining an exemption for the Gatsuurt mine from the Water and Forest Law is evident from Centerra Gold's 2011 MDA report:

If the environmental laws and regulations relating to the Company's operations were to change, or the enforcement of such laws and regulations were to become more rigorous, the Company could be required to incur significant capital and operating expenditures.²⁴

Evidence that Centerra is lobbying hard to amend the legislation comes not only from the company's own reports to shareholders but also from public statements. In an interview with Mongolian television Channel 9, John Kazakov, the CEO of Centerra Gold Mongolia, in response to a question about UMMRL demands (that the company should halt construction of the Gatsuurt mine) openly stated that Centerra was working to change the Water and Forest Law.²⁵ His comments were also reported in the on-line Mongolia business news site:

On a visit to Centerra's 'Boroo Mine' site in June, 2010 Mr. John Kazakov, director of Centerra's Boroo Gold personally warned UMMRL partners that the mining association and mining corporations were working to pass a new law to neutralize the 2009 law that prohibits mineral exploration at the headwaters of rivers, protected zones or water res-

²⁰ MDA p. 57

²¹ AIF pp. 66-67

²² MDA p. 24

²³ This is explicitly demonstrated in the letter of the Minister of Mineral and Energy Resources D. Zorigt to the parliament of Mongolia in the case of Oyu Tolgoi investment agreement (Annex 8).

²⁴ MDA p. 59

²⁵ Channel 9 interview with John Kazakov is available in "Mongolia Mining Impacts on Forests and Rivers 'Boroo Gold' TV9 2010.06.25.mpg", http://www.youtube.com/watch?v=h_Se3o6fDU, visited 4.03.2012.

ervoirs and forested areas. “We have a lobby group in the Parliament,” he promised, “and hope that law will be passed very soon.”²⁶

IV. Sustainable Development and Human Rights

Living conditions in the Special Mine Lease area are incompatible with OECD Guidelines on sustainable development.

With respect to sustainable development, the OECD Guidelines provide that Centerra Gold has a responsibility to “*contribute to economic, environmental and social progress with a view to achieving sustainable development*”²⁷ and should “*conduct their activities in a manner contributing to the wider goal of sustainable development.*”²⁸ This request for review maintains that the proposed Gatsuert gold mine will harm the economic and social progress of nomadic communities living within the mine impact area. The project does not comply with the Water and Forest Law which is meant to protect the sustainability of these forest areas and of the communities that rely upon the resources of these areas.

There are other problems associated with Centerra Gold’s activities which are not compatible with the OECD Guidelines.

(i) Contamination of water sources

The forest cutting, digging and use of explosives in the Gatsuert project area have released arsenic and other heavy metals into the river. This has affected the health of the local population and the animals that live along the river within a range of 500 metres to 5 km of the mine site, many have fallen ill as a result of the contamination of the water supply.

According to Lhajav, a local herder, water is contaminated to such a degree that the company has closed off the rivers at their site. “They [the company] allow the water to run every couple of days so that animals are able to drink... Or like today, the river is running because you are here with TV. People cannot

²⁶ ‘Goldman Prizewinner Shoots Up Foreign Mining Firms In Mongolia’ Business-Mongolia.com, posted 10 March 2011. <http://www.business-mongolia.com/mongolia/2011/03/10/goldman-prizewinner-shoots-up-foreign-mining-firms-in-mongolia/>

²⁷ Chapter II. General Policies. Paragraph 1.

²⁸ Chapter VI. Environment. Preamble.

drink this water. The company trucks in water every other day. Sometimes the water is not clear, so we do not know where it comes from, whether it is from their wells or the river.”²⁹

Lhajav, a Gatsuert Valley resident herder, was interviewed again in July 2011 by Mongolian NGOs and a journalist. His statements have been transcribed verbatim from a video recording and translated into English:

Animals have skin disorders in form of lesions, which we think is from drinking contaminated water. We sent water samples for lab tests but never received a formal response. We sent samples of animal skin to laboratories via our local veterinarian also without a response. Local vets just say they don't know such a disease. They [the company] set up this fenced area to perform some washing treatments on our animals but I don't believe it is going to help.

People also have skin rashes, which according to doctors is “hamuu” a skin disease usually manifested on hands, between fingers. But what people have here is on the trunk, mostly over the stomach area. We think it is because sometimes we are forced to use water from the river for personal hygiene. These problems began when the company started working in our valley. So the living conditions are not good for people and animals. We don't have anywhere to go. This is happening everywhere. We've moved here 10 years ago but now moving isn't that easy, people don't want others crowding their pastureland and water wells.”³⁰

As Amnesty International has stated the collection, analysis and disclosure of information are critical to ensuring that human rights are protected in many contexts. In respect of pollution, failure to capture and monitor data – on pollutants and their human impacts – can contribute to serious human rights violations. For example, failure to monitor levels of toxicity or the health implications of pollution may result in failure to become aware of and deal with the risks posed to the population, leaving people exposed to potentially serious and long-term health impacts.³¹

(ii) Denial of human rights

Delays in implementing the Water and Forest Law is leading to increasing frustration on the part of nomads and civil society groups. In June 2011 environmental activists were arrested after holding demonstrations in Sukhbaatar Square, Ulaan Baatar's main square calling on parliament to implement the law. At the same time four UMMRL members were arrested after they had accepted an invitation to attend a public meeting issued by a local government official of Uvurkhangai *aimag*. In the case of Mr. Ts.

²⁹ Interview recorded in June 2010. The video clip is available as: “Mongolia Mining Impacts on Forests and Rivers ‘Boroo Gold’ TV9 2010.06.25.mpg”, http://www.youtube.com/watch?v=h_Se3o6fDU, visited 4.03.2012.

³⁰ English transcript of video interview with Lhajav, a Gatsuert Valley resident herder which was conducted in July 2011 by Mongolian NGOs.

³¹ Amnesty International Submission to the Review of the International Finance Corporation (IFC) Sustainability Framework May 2010.

Munkhbayar, one of the four UMMRL members arrested, a warrant for his arrest had been issued for alleged criminal damage. This related to an incident that had occurred in September 2010 when Mr Munkhbayar and three other UMMRL members had fired shots with their hunting rifles at gold mining equipment belonging to Centerra Gold and Puuram LLC in the mountains of Selenge.

Furthermore the notifiers wish to draw attention to the way in which Centerra Gold is breaching other aspects of the human rights provisions of the OECD Guidelines³² by failing to respect the right to religious freedom of the local community.³³ Mount Noyon is a sacred mountain that is worshipped by the local people as the cradle of the Hun State. As a result of Centerra Gold's activities they no longer have any access to Mount Noyon and the important *Naadam* festival. "*Naadam*" in Mongolian means festival. A *naadam* is held every year to mark various significant occasions. For important mountains such as Noyon, it is customary to have a religious ritual followed by a *naadam*. Mongolian archaeologists and other international experts have agreed that the historical and cultural sites at Mount Noyon meet the criteria of the Law on Protection of Cultural Heritage for rare finds and should be protected. In July 2011 at the invitation of the Prime Minister of Mongolia, Ms. Irina Bokova, Executive Director of UNESCO, visited the country to attend the Cultural Heritage of the Huns scientific conference. At that time the government presented an application for Mount Noyon to be designated a UNESCO World Heritage site.³⁴ But this was subsequently withdrawn because of Centerra's mine projects in Mount Noyon's valleys and because of the alleged involvement of the Prime Minister in the company.

Without consultation with the local population, Centerra Gold expanded its territory by at least 2km thereby fencing off the sacred mount and the *naadam* horse race territory. In the summer of 2011, Centerra Gold in an exceptional gesture allowed the local communities access to Mount Noyon to worship on a special anniversaries. Interviews recorded in June 2010 provide information about the religious and cultural significance of Mount Noyon.³⁵

The commentary to Chapter IV of the OECD Guidelines notes that enterprises can have an impact on virtually the entire spectrum of internationally recognised human rights. It adds that "enterprises should

³² Chapter IV, Human Rights.

³³ Article 18 (i) International Covenant on Civil and Political Rights:

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

³⁴ Dr. N. Erdene-Ochir 'Brief Introduction to the Historical and Cultural Value of Mount Noyon' Unofficial English translation. Archeology Institute, MAS

³⁵ "Mongolia Mining Impacts on Forests and Rivers 'Boroo Gold' TV9 2010.06.25.mpg", http://www.youtube.com/watch?v=h_Se3o6fDU, visited 4.03.2012.

respect the human rights of individuals belonging to specific groups or populations that require particular attention, where they may have adverse human rights impacts on them. In this connection, the United Nations instruments have elaborated further on the rights of indigenous peoples; persons belonging to national or ethnic, religious and linguistic minorities...³⁶ The UN Declaration on the Rights of Indigenous Peoples which was adopted in 2007 recognizes that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment.³⁷ The UNDRIP requires states to seek free, prior and informed consent from Indigenous Peoples.

V. Environment - Effects of Boroo tailings seepage on ground water quality

With respect to the environment, the OECD Guidelines provide that Centerra Gold has a responsibility to “*take due account of the need to protect the environment, public health and safety.*”³⁸ The notifiers maintain that Centerra Gold is not meeting the recommendations of Chapter VI on the environment in preparing the Gatsuurt mine in an area protected which will have serious environmental consequences, consequences for human safety and human health, and potential consequences for community livelihoods.

The Gatsuurt technical report identifies arsenic as being associated with the Gatsuurt ore in high concentrations relative to gold. Independent research shows arsenic contamination exceeding applicable Mongolian standards in groundwater downstream of the existing tailings dam at Boroo.³⁹ A large fraction of Gatsuurt ore is to be processed at a new mill built for that purpose at the Boroo site and Centerra proposes to dispose of the spent ore at the existing tailings pile where the arsenic release to groundwater has already been detected.

³⁶ OECD Guidelines for Multinational Enterprises (2011) Commentary to Chapter IV; paragraph 40

³⁷ UN *Declaration on the Rights of Indigenous Peoples* (2007)

Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

Article 12

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

³⁸ Chapter VI. Environment. Preamble.

³⁹ Edu Inam et al ‘Geochemical distribution of trace element concentrations in the vicinity of the Boroo gold mine, Selenge Province, Mongolia’ published online November 2010 (slides)

Centerra Gold is in breach of Chapter VI (2a) by failing to provide the public with adequate and timely information on the actual and potential environment, health and safety hazards and impacts of the company's activities.

Minewater inflows to the pit are expected to range from 500 m³/d to 3,000 m³/d. This water will be directed to the sedimentation pond located down gradient of the waste pile and will overflow to a monitoring pond prior to discharge into the Gatsuert River. It is expected that mine water, before settling, will contain elevated levels of suspended solids, residual explosives, and possibly some residual arsenic. The ore and waste rock contain arsenopyrite, which will oxidize when exposed to air and potentially release arsenic into water flowing over these materials. Based upon meteoric water tests, leaching is not expected to be a significant issue, and an allowance for treatment has not therefore been included in the current study. RPA understands that these estimates will be revisited once humidity cell tests (in progress) have been completed.⁴⁰

But Centerra Gold has not made the humidity cell tests results concerning Gatsuert available to the public or to any other environmental monitoring or assessment reports. The arsenic concentration in the Gatsuert ore is more than a thousand times higher than the gold content.⁴¹

According to an independent scientific study there has been seepage of arsenic, uranium and other contaminants from the Boroo tailings.⁴² (see Annex 10).

Human rights monitoring bodies and international, regional and national courts are increasingly recognizing poor environmental quality as a causal factor in violations of human rights.⁴³

VI. Conclusion and Remedies Being Sought

To conclude, the notifiers believe that Centerra Gold is failing to respect the laws and regulations of Mongolia and is seeking in particular to amend the 2009 law, designed to protect the environment so

⁴⁰ Technical Report pp 1-21

⁴¹ Technical Report pp. 16-11, Table 16-8 shows that gold in the ore (feed) is in the 27 grams/ton range – equivalent to 0.0027% and the arsenic content is 4.7% - equivalent to 47,000 parts per million

⁴² Edu Inam et al “Geochemical distribution of trace element concentrations in the vicinity of Boroo gold mine, Selenge Province, Mongolia” Available at: www.springerlink.com/index/1VJ0L76161132373.pdf.

⁴³ See for example: Declaration of the United Nations Conference on the Human Environment, para 1, available at: <http://www.unep.org/Documents.multilingual/Default.asp?DocumentID=97&ArticleID=1503>; African Commission on Human and Peoples' Rights, Decision on Communication of The Social and Economic Rights Action Center (SERAC) and *Center for Economic and Social Rights (CESR) v Nigeria* (155/96), para 54. The decision was adopted at the 30th ordinary session of the African Commission of Human and Peoples' Rights, Banjul, 13-27 October 2001. *SERAC and CESR v Nigeria* available at <http://www1.umn.edu/humanrts/africa/comcases/155-96b.html>.

that its gold mining ventures can proceed. Centerra Gold has also failed to take adequate steps to prevent contamination from seepage at its Boroo mine and is persisting in the construction of the Gatsuurt mine despite official notification that all work should cease. Furthermore, the Gatsuurt project impinges on Mount Noyon, a site of outstanding cultural, historical and religious significance and local communities have been denied access to their customary place of worship and traditional celebration. There is a risk of increasing social tension in Mongolia as a result of the rapid expansion of mining activities. The apparent failure of the Government to find a balance between the interests of mining industry and the rights of the wider population to an adequate standard of living and a healthy and safe environment are leading to conflict. Indeed the concerns about the human rights impact of mining was raised in a submission signed by a group of civil society organizations during Mongolia's Universal Periodic Review:⁴⁴ For all of these reasons, the notifiers call upon Centerra Gold Inc. to take the following steps:

- Cease forthwith all activities at its Gatsuurt project aimed at developing a mine in an area that is prohibited for mining according to the 2009 Law on Prohibition of Mining in Headwaters and Forest Resource Areas.
- Relinquish its mining claim in Gatsuurt.
- Desist from lobbying directly or through others the Government of Mongolia to amend the Law on Prohibition of Mining in Headwaters and Forest Resource Areas (2009) in order that its Gatsuurt project may proceed.
- Make publicly available environmental monitoring data for ground and surface water at Gatsuurt and the Boroo tailings site.
- Provide a remediation and reclamation plan and full financial assurance to accomplish that plan – through a bond or other enforceable guarantee – to ensure that funds are available to remediate contamination and provide for full reclamation after closure before additional wastes are added to the tailings site.
- Undertake to remediate problems caused by leakage from the tailings facility at the Boroo Mine.
- Disclose to affected communities and their representatives and advisors environmental data and arrange for meetings with them and the notifiers to review the data.
- Restore Gatsuurt site including streams, the forest and the Mount Noyon sacred site

⁴⁴ Environment-Mining-Human Rights Mongolian Stakeholders' Joint Submission to UPR of OHCHR

ANNEXES

1. Mongolian Parliamentary Resolution No. 55 concerning the *Law to Prohibit Mineral Exploration and Mining Operations at Headwaters of Rivers, Protected Zones of Water Reservoirs and Forested Areas*, of July 16, 2009
2. Unofficial translation of the proposed industry amendment to the *Law to Prohibit Mineral Exploration and Mining Operations at Headwaters of Rivers, Protected Zones of Water Reservoirs and Forested Areas*.
3. Supreme Court Judgment No 687 of October 20, 2011 in a petition brought by “United Movement of Mongolian Rivers and Lakes” (UMMRL) NGOs. Unofficial English Translation.
4. Roscoe Postle Associates (RPA), Technical Report on the Gatsuurt Gold Project Northern Mongolia, prepared for Centerra Gold Inc., May 2006. Available at: http://www.centerragold.com/sites/default/files/gatsuurt_tech_report.pdf.
5. Boroo, Gatsuurt Factsheet: at http://www.centerragold.com/sites/default/files/2011-boroo_mongolia-fact_sheet_english-2011_0.pdf.
6. Centerra Gold 2009 Annual Information Form (AIF).
7. Mongolian TV Channel 9 interview with John Kazakov, CEO of Centerra Gold Mongolia. Available at: “Mongolia Mining Impacts on Forests and Rivers ‘Boroo Gold’ TV9 2010.06.25.mpg”, http://www.youtube.com/watch?v=h_Se3o6fDfU. June 25, 2010.
8. Letter from the Minister of Mineral and Energy Resources D. Zorigt to the Mongolian Parliament concerning the Oyu Tolgoi Investment Agreement, February 10, 2010.
9. Centerra Gold Inc. ‘Management’s Discussion and Analysis’ (MDA) for the fiscal year ended December 31, 2011.
10. Edu Inam et al ‘Geochemical distribution of trace element concentrations in the vicinity of the Boroo gold mine, Selenge Province, Mongolia’ published online November 3, 2010. <http://www.ncbi.nlm.nih.gov/pubmed/21046434>. [Slides]
11. Google Earth map, August 18, 2005.
12. Images of the Gatsuurt Open Pit Gold Mine Site – June 24, 2010, photos by Paul Robinson.
13. Dr. N. Erdene-Ochir, Mongolian Archaeology Institute (MAS) ‘Historical and cultural value of Mount Noyon’, February 1012. Unofficial English Translation.
14. Letter from RAID to H.E. Gombojav Zandanshatar, Ministry of Foreign Affairs and Trade, July 3, 2011 re: UMMRL Arrests.