

**Request for Review - The Operations of Centerra Gold Inc.
at the Boroo Mine and the Gatsuurt gold deposit in Mongolia**

**Initial Assessment of the Canadian National Contact Point
For the OECD Guidelines for Multinational Enterprises**

Introduction

On March 14, 2012, the United Mongolian Movement of Rivers and Lakes (UMMRL), Oyu Tolgoi Watch (OT Watch), and MiningWatch Canada, (collectively, the “notifiers”), submitted a request for review to the National Contact Point (NCP) of Canada for the OECD Guidelines for Multinational Enterprises (OECD Guidelines), in relation to the operations of Centerra Gold Inc. at the Boroo Mine and the Gatsuurt gold deposit in Selenge Province, Mongolia. On March 15, 2012, Mining Watch Canada posted the request in its entirety on their web site at <http://www.miningwatch.ca/news/centerra-gold-inc-flouting-mongolia-s-environmental-protection-laws-organizations-file> .

The Boroo Gold Mine is an open-pit gold mining site in Mongolia located about 110 kilometres west northwest of the capital Ulaanbaatar in northern Mongolia. Boroo is owned by the Canadian mining company, Centerra Gold Inc. It began commercial production in March 2004 and produced more than 1.5 million ounces (46 t) of gold through the end of 2010. The Boroo mine was the first hard-rock gold mine established in Mongolia and the largest foreign investment in the country at the time it began production.

The Gatsuurt Gold Mine is a proposed gold mining project in Mongolia, located about 110 kilometres north of Ulaanbaatar. Gatsuurt is owned by Centerra Gold Inc.

The request for review was shared with the company on March 16, 2012. The company provided a reply on April 27, 2012. The NCP reviewed the material from both parties and subsequently sent the notifiers and the company separate letters on May 23, 2012, asking for more information on certain matters. Responses were received from the parties in mid-July, 2012.

The initial assessment below is based on a review of all material received from the parties. The NCP’s review benefitted as well from the additional context provided by Ambassador to Mongolia and staff of the Canadian Embassy in Mongolia pertaining to the legal and regulatory environment for international business operating in Mongolia. The NCP also had the advantage of the experience of its interdepartmental members, one of whom had previously visited Boroo and was familiar with the surrounding communities.

Initial Assessment Criteria – OECD Guidelines and Commentary

The *Procedural Guidance* chapter of the OECD Guidelines provides at paragraph C.1. that the NCP will make an initial assessment “...of whether the issues raised merit further examination...”

The *Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises* (the “Commentary”) further states at paragraph 25 that the NCP will need to determine whether the issue is *bona fide* and relevant to the implementation of the Guidelines. In this context, the NCP will take into account:

- the identity of the party concerned and its interest in the matter;
- whether the issue is material and substantiated;
- whether there seems to be a link between the enterprise's activities and the issue raised in the specific instance;
- the relevance of applicable law and procedures, including court rulings;
- how similar issues have been, or are being, treated in other domestic or international proceedings; and
- whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines.

Each of these factors is addressed below.

Identity of the parties and interests in the matter

Pursuant to paragraph 25 of the Commentary, the NCP is to consider the identity of the parties and their interests in the matter.

The parties are identified above and their interest in the matter was adequately outlined at the beginning of the request for review.

Two of the notifiers are Mongolian non-governmental organizations (NGOs), and the third is an NGO based in Canada:

UMMRL was established in 2008. It is a coalition of eight environmental movements whose members are Mongolian citizens who seek to protect rivers and lakes from the impact of mining.

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.

MiningWatch Canada is an Ottawa-based organization that advocates for responsible mining in Canada, and by Canadian companies operating overseas.

The multinational enterprise (MNE) in question, Centerra Gold Inc. is a gold mining and exploration multinational enterprise based in Canada. It is engaged in the operation, exploration, development and acquisition of gold properties in Asia, the former Soviet Union and other emerging markets worldwide. It owns two operating subsidiaries in Mongolia: Centerra Gold Mongolia (CGM) and Boroo Gold Company (BGC).

Are the issues material and substantiated?

Pursuant to paragraph 25 of the Commentary, the NCP is to determine whether the issues are both material and substantiated. In so doing, the NCP examines the relevance of the issues in the context of the Guidelines' implementation as a voluntary code of conduct multilaterally endorsed and adopted by governments to express shared values and commitments with respect to responsible corporate conduct. In substantiating the issues, the NCP provides its 'good offices' to engage in a non-judicial review and assessment of findings on behalf of the parties.

The Request for Review raises the following issues:

1) Obeying host country laws (Chapter 1, Paragraph 2).

The notifiers allege that the Gatsuurt project is located in a protected area where mineral exploration and mining operations are prohibited by *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*) and that this therefore constitutes a disregard of Mongolian law.

The *Water and Forest Law* was passed by the Parliament of Mongolia in July 2009. It provides that the Government of Mongolia has the responsibility for determining the boundaries of the areas to be covered by the *Water and Forest Law*. The Government of Mongolia has decided to take a staged approach in determining the boundaries of the areas to be covered by the *Water and Forest Law*. The company received correspondence from government authorities in 2010 stating that the Gatsuurt project operations cannot start while the government reviews activities related to the implementation of the *Law*. Subsequent correspondence from government authorities informed the company that the Gatsuurt mine cannot be commissioned until the issues with the *Water and Forest Law* are clarified. Centerra contends it has not engaged in site development work since receiving a letter from the Minister of Mineral Resources and Energy on November 1, 2010.

The NCP considers the issue raised to be material, but not substantiated.

2) Refrain from Seeking Exemptions (Chapter II, Paragraph 5).

The notifiers allege that Centerra lobbied the Government of Mongolia to seek an exemption from the law, that it lobbied for an amendment to the *Water and Forest Law*, and that it disregarded a Supreme Court of Mongolia decision.

As part of the legislative process, it is not unusual for lawmakers to wish to hear from stakeholders who may be affected by legislative or regulatory changes. The Commentary to the OECD Guidelines provides that “Enterprises are encouraged to co-operate with government in the development and implementation of policies and laws. Considering the views of other stakeholders in society, which includes the local community as well as business interests, can enrich this process.” The mining community in Mongolia has lobbied the government with respect to the law. No information was presented to indicate that the extent or nature of this lobbying was unusual or inappropriate.

With respect to the Supreme Court decision, reference was made to judgment No. 687 of 20 October 2011 which obliges the Cabinet of Mongolia to implement Resolution Number 55 of the State Great Hural, providing guidance on the implementation of the *Water and Forest Law*. The decision of the Supreme Court was directed to the Mongolian Government. Centerra was neither a party in the matter, nor the subject of the decision.

The NCP considers that it is unable to determine, based on the information submitted, whether the issues raised are material. Chapter II, General Policies, Paragraph 5 refers to the recommendation that companies “...refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework...” The Mongolian Government’s statutory and regulatory framework appears to contemplate such exemptions.

The NCP does not consider the issue to be substantiated.

3) Sustainable Development and Human Rights (Chapter II, Paragraph 1.)

(i) Contamination of water sources

The notifiers allege that forest cutting, digging and the use of explosives in the Gatsuurt project area have released arsenic and other heavy metals into the river which has affected the health of the local population and the animals that live along the river.

The company has indicated that before Centerra took an interest in the property there was a high degree of alluvial mining which took place at and near the project site; and this artisanal mining was largely unregulated, with no reclamation activities following the alluvial mining operations. The company's tests also indicate that metals such as arsenic are naturally occurring elements in area soils. According to the company, its proposed operations at Gatsuurt would systematically reclaim and restore the areas under its licences damaged by previous alluvial mining operations. Centerra has indicated that it would minimize, mitigate, and repair any impacts on the local environment from its own mining operations and return the site at mine closure to conditions which will support the use of the land for other purposes. Centerra has indicated that it is ready to enter into partnerships with interested NGOs to design a tree and reforestation program which would commit the company to investing in broader environmental protection initiatives to ensure that Centerra's presence in the country delivers a net environmental benefit.

The NCP considers that there is acknowledgement that the water resources are contaminated. However, it is not clear that this is attributable to the company. There is a history of artisanal mining in the area. The NCP considers this issue to be material, but not substantiated as being caused by the company. Further, the company has indicated that it is prepared to repair the damage that exists, as part of its mining plan, should the Mongolian authorities authorize the implementation of the plan.

(ii) Denial of human rights

The notifiers allege that the company has breached the OECD Guidelines by failing to respect the right to religious freedom of the local community. Mount Noyon is considered to be a sacred mountain that is worshipped by the local people. The notifiers allege that as a result of Centerra's activities they no longer have any access to Mount Noyon and the "Naadam" festival. More specifically, the notifiers allege that without consultations with the local population, the company expanded its territory by at least two kilometres, thereby fencing off the sacred mount and the "Naadam" horse race territory.

The company responded by pointing out that there are two routes for worshippers to access Mount Noyon, one of which passes through a site security post at Gatsuurt. People are permitted to pass this way to attend the traditional worship ceremony if they wish. Both routes were used during the 2011 ceremony. Access was never impaired.

Regarding the route used once a year for horse racing during the "Naadam" celebrations, it was moved to another location by local government authorities in 2009.

The notifiers also make reference to the arrest of environmental activists after a demonstration in June 2011. According to the notifiers, one of these arrests was in relation to an incident that occurred in September 2010, when two members of UMMRL fired “warning gunshots” from their hunting rifles at gold mining equipment (“an empty fuel tank”) on the Gatsuurt site belonging to Centerra Gold and Puuram LLC. Regarding the arrests, the company states that these were undertaken by the Mongolian authorities and are not relevant to a review of Centerra’s activities. The company also questions how those who shot at the fuel tank could have known that it was empty.

As the local population appears to still have access to Mount Noyon through alternative routes as well as a horse racing route during the “Naadam” celebrations, it is not clear how the company failed to respect the religious freedom of the local community.

The NCP does not consider the issues to be material or substantiated. However, the NCP recognizes that continued contention on these issues as presented may point to a need for improved dialogue as a foundation for deeper understanding of community sensitivities, as and when they arise.

4) Environment – Effects of Boroo tailings seepage on ground water quality (Chapter IV. Preamble.)

The notifiers allege that the company has not provided the public with adequate and timely information on the actual and potential environmental, health and safety hazards and impacts of the company’s activities. As an example, they allege that the company has not made the “humidity cell tests results concerning Gatsuurt available to the public or to any other environmental monitoring or assessment reports.”

The company states it has distributed fact sheets and that environmental monitoring results are provided to local communities as well as to the local and national authorities. The company states further that a summary of the Acid Rock Drainage (ARD) test report for Gatsuurt, for which the humidity cell tests are only one of a series of required tests, is summarized in the Detailed Environmental Impact Assessment (DEIA) for Gatsuurt and for which the company states the specific findings are available in section 7.2.7 of the DEIA.

The NCP considers the issues raised to be material, but not substantiated.

Link between the company’s activities and the issues raised

Pursuant to paragraph 25 of the Commentary, the NCP is to determine whether there is a link between the company’s activities and the issue raised in the specific instance. In this case, there appears to be a link between the company’s activities and some issues that were raised, but not all. There is a link between the company’s activities and the application of the law, the access and human rights issues, as well as the company’s activities at Boroo with respect to water. However, the link is not established with respect to the water issues at Gatsuurt.

Relevance of applicable law and procedures

Pursuant to paragraph 25 of the Commentary, the NCP is to determine the relevance of applicable law and procedures.

There are laws and procedures in Mongolia that are relevant to the mining industry and to the issues raised in this matter. The Canadian NCP expects Canadian companies operating in Mongolia to comply with all applicable laws and related regulatory procedures in the conduct of its activities. Based on the information available and obtained by the NCP, it has no reason to believe that the Canadian company is not observing and complying with the local regulatory regime.

However, any such determination regarding compliance with local laws and regulations, as well as corresponding enforcement, is the responsibility of Mongolian authorities.

How similar issues have been, or are being, treated in other domestic or international proceedings

Pursuant to paragraph 25 of the Commentary, the NCP is to consider how similar issues have been, or are being, treated in other domestic or international proceedings.

Issues relating to environment (e.g. water-related issues), are extensively regulated in developed economies with corresponding monitoring and legal procedures to enforce the applicable laws and resolve disputes.

Representations during the drafting of regulations or procedures related to a law or statute are allowed and common in Canada. Seeking to have a law modified by democratic means is not considered, in Canada, to constitute seeking or accepting exemptions not contemplated in the statutory or regulatory framework itself.

In matters of access to cultural or religious sites, in Canada, companies would be expected to mitigate the impact by providing alternate access. In Canada, companies are encouraged to find culturally effective methods of disseminating information to local populations.

Whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines

Pursuant to paragraph 25 of the Commentary, the NCP is to determine whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines.

Given the unsubstantiated nature of the allegations against the company, the NCP does not believe that the consideration of this specific instance would contribute to the purposes and effectiveness of the Guidelines.

Conclusion

Paragraph 21 of the *Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises* provides:

The effectiveness of the specific instances procedure depends on good faith behaviour of all parties involved in the procedures. Good faith behaviour in this context means responding in a timely fashion, maintaining confidentiality where appropriate, refraining from misrepresenting the process and from threatening or taking reprisals against parties involved in the procedure, and genuinely engaging in the procedures with a view to finding a solution to the issues raised in accordance with the Guidelines.

The NCP considers it important for the parties to be able to communicate and dialogue in a peaceful manner without violence or threats of violence. The use of weapons and the firing of “warning gunshots” by two members of the UMMRL are not helpful to the building of trust that is critical to good faith behaviour.

The NCP has received messages conveyed by both parties, indicating that they are willing to engage in a dialogue. The NCP encourages them to do so.

The NCP further recommends that the company extend its efforts to communicate information to the local population, as well as to the notifiers. For example, an additional Fact Sheet dealing with water issues could be well received, since water issues are a concern of local populations.

The company has also recognized that access to the summary results of the acid rock drainage (ARD), including humidity cell test reports regarding the Gatsuurt project is constructive, and responds to the public interest. Centerra thus commits to making the technical summary available in English and Mongolian on the Boroo Gold Company website. Recognizing the need to accommodate broader communications within the community, Centerra further commits to preparing a non-technical overview for local stakeholders available in English and Mongolian, so that they have an understanding of ARD issues as well as the company’s proposed mitigation measures.

The NCP recommends that Centerra proceed with these commitments without delay. Furthermore, the company could consider additional methods of communicating information to the local populations, keeping cultural and local conditions in mind. For example, approaches found effective in other contexts include radio spots, radio call-in programs, and graphic novel or other types of presentation that facilitate lay understanding of technical or complex data and other information.

As noted in Section 3) (ii), the NCP further recommends that the company continue to permit public access to the Mount Noyon site for cultural and religious purposes; increase efforts to maintain a dialogue with the local population to ensure they are aware of the access routes established for those purposes; and set the foundation for deeper understanding of, and community dialogue surrounding, cultural or other sensitivities should they arise.

Based all material submitted, the NCP is of the view that the issues raised do not merit further examination.

The NCP considers this specific instance to be closed.