

Reflections

From conflict to a Community Development Agreement: a South Gobi solution

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Community Development Agreements (CDA) present a progressive approach to addressing endemic challenges in local communities encountering resource extraction. Focusing on community-centred action, a CDA offers the potential to inform, engage and resolve disputes at local levels. Here we present a case study highlighting the process leading to a successful CDA between herders and a mega-mine. The process exemplifies the promise O’Faircheallaigh (2013, p 96) identified in this journal—that CDAs can ‘minimize negative impacts and ensure local communities obtain benefits from development’ of mining. In fact, the Oyu Tolgoi (OT) Mine case in Mongolia is a prime example of how, with cooperation, training and trust, a community, mining company and local government can resolve intractable problems and promote a cooperative development environment.

Historically, government regulatory efforts and voluntary industry initiatives have been standard practices for addressing local development concerns over resource extraction. However, these approaches have often been unsatisfactory, particularly from the community perspective, in their inability to resolve local complaints and ameliorate community interaction (Jackson, 2015; Nwapi, 2017). In this challenging context, the concept of CDAs has gained traction as an effective method to improve mining—community relations. Endorsed by international agencies (World Bank, 2012), mining consortia (ICMM, 2012) and practitioners (Loutit et al., 2016),

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CDAs can supersede industry initiatives and public regulation as a process to resolve the conflict over resource extraction.

Our unusual, positive saga came to fruition in Mongolia's southern Gobi region, home to mobile herders, two humped camels and a sacred spring. In the steppe vastness, Soviet geologists identified copper deposits in 1957; by 1997, the OT mine licence had passed to Ivanhoe Mines, a Canadian company. Its president, Robert Friedland, famously claimed that he was building a cash machine in the desert where there were 'no people, it's flat, no jungle, no NGOs and lots of room for waste dumps' (MAC, 2006, p 1). In 2009, Rio Tinto Corporation bought a controlling interest in Oyu Tolgoi from Ivanhoe. As part of a now \$12 billion investment, OT has become a focal point of national politics and economic aspirations in Mongolia and has garnered much attention for both its investment potential and perceived negative impacts.

The path to the CDA began in 2012. At that time two rounds of herder household resettlement had taken place, the first in 2004 (ten families), the second in 2011 (eighty-nine families). The process of selection and level of compensation were considered inadequate by the local community. Herders felt exploited; this started the grievance procedure based on two major issues. The first was over socio-economic and environmental impacts of the mine; the second concerned the loss and replacement of a sacred spring located within the mine site. A local herder NGO filed a complaint with the International Finance Corporation (IFC) in its role as a loan guarantor for OT, alleging that the IFC had failed to apply its internal standards in making the loan. Assisted by both national (OT Watch) and international (Accountability Counsel) NGOs, the local complaint was accepted by the IFC's Compliance Accountability Ombudsmen (CAO). This led to an IFC review where the mine's participation in the investigation was required, though there was no legal obligation to resolve the complaint.

Key issues were a contentious resettlement of herder families from the 8 × 10 km mine licence area and the loss of the spring that served as a principal watering source for livestock. Ancillary issues included eligibility and resettlement packages and community compensation including jobs, education and district development. Social impacts focused on livelihoods, economic damage, alternative income sources and recognition of land rights. Environmental implications represented visual, tangible concern over groundwater withdrawal, pasture degradation, dust impact on human and animal health and land fragmentation resulting from mine-related infrastructure (roads, quarries and airport). A further, more nebulous, sensitive issue was the ability to continue traditional mobile pastoralist livelihoods and customs in the face of decades-long mining disruption.

From the mine's perspective the issue was satisfying lender (IFC) requirements, reducing the local conflict to safeguard the mine's production and to enable expansion. A further spectre was the possible impact and government oversight on OT's other mineral licenses in Mongolia and the potential reputational damage of poor publicity on the share value of publicly-traded parent company Rio Tinto.

The aim of the CAO process was to mediate and resolve contested issues locally through joint fact-finding. Recognizing the knowledge and power inequality between the herders and the mine, the CAO initiated skills training, capacity building and the establishment of rules of order for meetings. Although the practice was difficult, the grounding was essential in developing herder negotiation skills, building trust and commonalities between the mine and herders and establishing regular interaction among the parties. As engagement developed the CAO encouraged a forum to talk and discuss the dispute with efforts led by external trainers. Although at first international experts were used, the talent of a Mongolian facilitator was key to skills development. This process led to the establishment of the Tri-partite Council (TPC) in 2015, which became the vehicle for finding common ground among the parties and addressing the complaints. While starting with the mine and local community, participants realized the district government was an essential component for resolving the dispute. As difficult issues emerged over livelihood and compensation issues and implications for water, pasture and dust, the CAO offered the involvement of 'independent experts' in 2015 to establish objective information, perspectives and data that could be trusted and gain the confidence of all the parties. The TPC's commissioning of the Multi-Disciplinary Team of international academics and experts reframed the debate away from the mine's data-driven methods and the herders' traditional approach to an outsider's considered assessment raising vital issues (CAO, 2017).

At this point, the authors became involved to provide an impartial academic perspective based on the TPC's terms of reference. Participating in our first TPC meeting in 2016 was revelatory. The mine staff, in orange safety outfits and heavy boots, sat together on the right side of the room, herders were seated in the middle while government representatives were on the left. Introductions gave way to progress reports and increasingly fractious discussion. The meeting Chair was trying to follow an agenda and preserve a semblance of order. Contentious and antagonistic statements abounded and voices were raised until a break was declared. Doors were slammed and combatants were removed to separate rooms, the independent trainer sought to calm emotions. It appeared little agreement was possible—indeed, any chance for a CDA seemed remote.

Yet working groups continued and formal meetings were held every two months. Although participants evolved, with herder representatives and officials changing through elections and mine staff shifted with new job responsibilities, key participants remained at the mine and among the herders. In part, this reflected ongoing training and improved skills, which was particularly notable among community members, and the perceived benefit of participation. Slowly issues were discussed and differing viewpoints grudgingly acknowledged. The herders' NGO partners at first participated through surreptitious phone calls, then later as official non-speaking observers. With growing familiarity and a genuine desire to reduce conflict on all sides, begrudging acceptance of the process and its limitations ensued. Shouts to 'close the mine' transitioned to 'we need compensation' to 'can we discuss', showing notable progress and mild optimism.

After a year's investigation, the Multi-Disciplinary Team submitted their report in January 2017. The work presented 28 recommendations to resolve the major issues (CAO, 2017). The report became the focus of negotiation between the TPC members to review and resolve the topics one by one. This was enabled by the trust that had gradually developed in the council, the ongoing support of the CAO trainer and genuine skills-building in the local community. Two additional factors fed into the TPC debates and subsequent resolution. More conventionally, OT wanted national government approval to commence a \$5 billion underground expansion of the mine. Whilst OT is the country's largest taxpayer, the Mongolian election cycle often features a 'resource nationalist' angle. Thus it was imperative for the mine to resolve expansion issues before the national elections in 2020. For both herder representatives and government bureaucrats on the TPC, domestic party politics now sees members presenting their effectiveness in securing the agreement as a step to local elected office. Thus the interests of divergent TPC members came together to conclude an agreement. In addition, as part of the national licence agreement, OT had instituted a province-wide agreement providing \$5 million annually for development projects. In the first year, 2016–2017, the fund built a kindergarten and school buildings in the regional capital.

After months of negotiation the main points had been settled, including instituting a claims tribunal, job training, educational support, creating business opportunities (abattoir, greenhouses) and paving the road from the mine to the district town. By autumn 2017, 55 of 110 claims had been positively resolved. The uncertainty over water was addressed by the mine agreeing to build seventy-five new shallow wells across the district. Best efforts were made in resolving residual issues.

Yet even though the TPC had settled core issues, the herder representatives were reluctant to conclude and close the IFC complaint. Although most

points had been addressed, years of distrust were hard to overcome. There was clear community recognition of the key role of the CAO and the talented trainer in resolving the complaint. The fear, even after years of cooperation, was that the mine would abandon the herders and the agreement. A second challenge was the uncertainty of what was next for the community and the TPC. Should the TPC close, or turn into an NGO and seek funding? Ultimately, the members agreed to continue the TPC role, confident that the long experience showed the parties could work together. The sides recognized that there will be future challenges to discuss and resolve and that the TPC has been an important format for cooperation.

Finally, the day came—March 25 2019—when all the parties met in the capital Ulaanbaatar to conclude and close the IFC complaint. There were speeches and videos (youtube/TMWvP9ZweE0), commentary and testimonials and key participants from over more than four years. The TPC members and broader local and national community could for a day savour the fruit of so much frustration and effort over so many years. Internationally the event was crowned by the Guardian (UK) newspaper trumpeting, ‘An example to all’: the Mongolian herders who took on a corporate behemoth—and won.’ (www.theguardian.com/global-development/2019/apr/08/mongolian-herders-corporate-behemoth).

The lengthy path from the herders’ original complaint to implementation of the CDA is reflective of O’Faircheallaigh’s (2013) innovative formulation. Many of the points raised then remain salient, including community consent, adaptability to local circumstances, training and participative decision-making (when feasible) while helping to mitigate a mine’s negative impacts. Loutit et al.’s (2016) identification of CDAs as a vital mechanism to ensure community benefit through formalized agreements matches the TPC experience in Mongolia. What academic analysis and international reports capture well are the key points and challenges in pursuing CDAs. We are most aware of problems and pitfalls when theoretical feasibility and possibility meets hard reality, relationships and economics. Thus CDAs are something to aim for, with several of the points accessible to communities. However, to have a better sense of the challenges of establishing and sustaining CDAs it is essential that we pay close attention to how they are enacted on the ground. Sustained engagement with stakeholders over the duration of mediation processes reveals dynamics that armchair scholarship simply misses. The striking feature of the Mongolian OT case is how the TPC process was able to address key features and put into practice state-of-the-art ideas and approaches. Investment in training was key to the TPC’s effective dialogue.

Stepping back from the intense process, the case study contributes three key lessons for mediating community-mining disputes and ameliorating local relationships. Importantly, a willingness to engage, meet and sit with

different stakeholders was key. The different parties, all comprised of Mongolians, agreed to the mediation mechanism. Secondly, the role of external mediators, trainers and expertise was critical. This enabled parties to improve their skills and knowledge, reduce perceived inequality and bring ideas and issues to the table in a clear and reasonable manner. Though less stressed in Mongolia, the active and committed participation of the dominant actor, in this case the OT Mine, was essential. The process of addressing and resolving complaints perhaps cost the company \$1 million. The price purchased community buy-in and support, burnished its national reputation, enabled expansion of the mine and set a positive example for other mining operations in Mongolia and internationally. In fact, the TPC process has been studied by other communities in Mongolia, a major UK Research Council grant (Gobiframework.ouce.ox.ac.uk) and the Canadian MERIT aid project (ceso-saco.com/merit). This unexpected process and the positive outcome shows the potential of CDAs when there is interest, enthusiasm and support by all parties at the local level.

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