

## Request for Inspection 18/01

*(This English translation has been provided by the Requesters. The original Request for Inspection in Mongolian/Russian is kept with the Panel)*

TO: Gonzalo Castro dela Mata, Chairman, WBG the Inspection Panel

Via Electronic Mail [panel@worldbank.org](mailto:panel@worldbank.org)  
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### REQUEST FOR INSPECTION OF MINING INFRASTRUCTURE INVESTMENT SUPPORT (MINIS) PROJECT IN MONGOLIA

[REDACTED] Rivers without Boundaries Coalition, [REDACTED] and [REDACTED] are submitting three separate Requests for Inspection on Component 1 [REDACTED] of the Mining Infrastructure Investment Support Project (MINIS) (P118109). Each complaint describes the lack of inclusion of important environmental and social risks and impacts in the assessment documentation for MINIS sub-projects. All three cases are associated with enormous the delays in delivery of and substandard quality of environmental safeguard products (ESIAs, REAs, ESMP, etc). Information about each sub-project has not been disclosed in a timely manner, consultations with local community stakeholders have not been meaningful, and the measures recommended by the Inspection Panel in July 2017 to bring the project into compliance with World Bank policies have not been implemented.

This summary complaint will attempt to synthesize and augment to the two complaints from the local communities and the complaint from RwB.

#### 1. THE PROJECT AND HARMS TO COMMUNITIES AND THE ENVIRONMENT

The complaints focus on sub-projects under Component 1 [REDACTED] of the MINIS Project. All three complaints describe how non-disclosure of information and lack of meaningful consultations in violation of OP 4.01 have resulted in a failure to identify actual and potential harm to the environment and local communities, and to set out mitigation measures to avoid unnecessary harm for both Components 1 [REDACTED] of the project.

[REDACTED]

[REDACTED]

*Component 1: Shuren and Orkhon Sub-components.*

[REDACTED]

The potential harm from MINIS Project Shuren and Orkhon subcomponents on the Selenge River, Lake Baikal and the livelihood of communities depending on these water bodies was described in the 2015 Request and verified in the WBIP Eligibility Report. The threats have not changed in substance, and the ability to prevent/mitigate them depends on implementation of recommendations outlined in the WBIP Final Report in 2017. Eight months have now passed, and we are still likely to suffer harm as a result of the failure to implement the recommendations of the WBIP, which were essential to ensure that the project complied with Bank policies. Based on communications with the project team and Bank management, we are concerned that the new TOR on the basin-wide REA does not take into account the decision of the World Heritage Committee, and does not incorporate an assessment of impacts on indigenous people, influx of workers, and other impacts mentioned in the Panel's final report. The REA process has been delayed for another half-a-year, the draft TOR has not been disclosed, and will not be subject to a meaningful consultation process. This may result in decreased quality of REA study, improper identification of potential harm from hydropower and water supply projects and some or all negative consequences described in original complaint.

In addition, the consultations carried out by its MINIS project on Shuren HPP and Orkhon HPP/water transfer in Mongolia in June-July 2017 were not meaningful consultations as required by OP 4.01, para. 14 - 16. Rather than consult on potential harm and impacts, as well as mitigation measures, the consultations focused on promoting the projects, and orders to local governments to express support to these projects as was stated by [REDACTED] in the meeting with the IP team in June 2017 in Ulaanbaatar. The response matrices from Mongolia consultations have been bulked together for all local community concerns relating to two separate projects making it difficult to impossible to see if these have been addressed meaningfully.



[REDACTED]

## 2. ACTIONS OR OMISSIONS OF THE BANK AND INFORMING THE BANK

World Bank Management has failed to comply with the obligation to supervise the project to ensure compliance with its policies (in this case, OP/BP 4.01). Concerns have been raised with the Project Team and Bank management via email and in-person (see Annex xx), and their responses and lack of commitment to take action (see attachment XX) indicates a failure to adequately supervise the project to ensure compliance with Bank policies.

The Requestors have jointly and separately informed the Management, Country Office, PIU and TTLs regarding the issues requested to be investigated in the past. Requestors are requesting investigation into MINIS project based on the fact that non-disclosure of information, lack of meaningful consultations and non-compliance with the WBG policies. [REDACTED]

[REDACTED] The complaint from Rwb Coalition deals in detail on how and why informing the WBG was not sufficient and why we are filing yet another Request for Investigation on MINIS project. [REDACTED]

[REDACTED]

Information supporting our request is provided in the Annex section of this Request. All Requestor stand ready to provide any additional information or clarifications on the three Requests filed by Rwb Coalition and [REDACTED] on Component 1 – follow up Request for Inspection on REA TOR process; Rwb Mongolia and [REDACTED]

## 3. CONFIDENTIALITY

Inspection Panel is kindly requested to keep confidential names of community level requestors listed in the enclosed list of signatories to this Request for Inspection. Names of leaders of Rwb Coalition, Rwb Mongolia and OT Watch do not require confidentiality.

Signatures:



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<sup>4</sup> I haguumberel Tumursukh, a biologist of the Snow Leopard Foundation was killed in 2015 for his attempts to prevent coal mining in this part of Gурvantes soum.

<sup>5</sup> Note that the Mongolian language page carries a TOR for CIA dated 2015.

To: Gonzalo Castro dela Mata, Chairman, the Inspection Panel

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1. We, the undersigned, are coordinators of the Rivers without Boundaries International Coalition, who also represent a diverse group of stakeholders who submitted a Request for Inspection #102 to the WB Inspection Panel in 2015, final decision on which was made in July 2017, and who engaged with the WBIP in 2015-17 and public hearings on subcomponents 1.1. and 1.4. of the MINIS Project in Mongolia and Russia.

Potential harm from MINIS Project Shuren and Orkhon subcomponents to Selenge River, Lake Baikal and livelihood of communities depending on these water bodies has been described in original complaint and verified in great detail in the WBIP Eligibility Report. The threats have not changed in substance since, and ability of the WB and GoM to prevent/mitigate them depends on implementation of measures outlined in the WBIP Final Report.

2. The MINIS Project is aimed at facilitating infrastructure investments to support mining operations in Mongolia. It finances impact assessments, feasibility studies for subprojects, two of which were the subject of our Request for Inspection: the Shuren Hydropower Plan and the Orkhon Gobi Water Diversion project. The 2015 Requestors stated that the two subprojects may have potential irreversible environmental and social impacts on the Selenge River in Mongolia and Russia's Lake Baikal, a World Heritage Site. The Requestors also raised concerns about the subprojects' transboundary and cumulative effects, and lack of consultation and disclosure of information.

In July 2017, the Panel recognized that the Request for Inspection had placed the project on a positive trajectory, especially through a recognition of the relevance of transboundary issues, and the greater importance given to ensuring meaningful consultations with both Russian and Mongolian stakeholders. The Panel noted Bank Management's commitment to include various environmental assessment tools, including a regional environmental assessment, cumulative impact assessment and analysis of alternatives, and to integrate comments from the consultations into revised terms of reference for the studies. On July 13, 2017 the WBIP recommended not to investigate the complaint. In making this recommendation, the Panel emphasized the need for management **to remain in close contact with the Requesters and affected communities, to incorporate some of the lessons from previous consultations into future ones**, and to ensure diligent **implementation of the full set of environmental assessment tools** that have been identified.<sup>1</sup> From our understanding the WBIP concluded that:

- *Robust consultation process should be continued for the successful implementation of the Project;*
- *Decisions of the World Heritage Committee are yet to be considered in revision of the relevant TORs*
- *Draft TORs had serious gaps - are yet to include assessment of impacts on indigenous peoples and some other important fundamental aspects of large infrastructure projects*
- *If not for concerned public who initiated the Request for Inspection and rigorous implementation of public consultations current positive shift within MINIS Project would not have happened.*<sup>2</sup>

### 3. New Circumstances-reasons for a new complaint

Eight months since these recommendation of the Inspection Panel we are still likely to suffer harm as a result of the World Bank's failure to implement the recommendations of the WBIP.

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<sup>1</sup> <http://ewebapps.worldbank.org/apps/ip/Pages/ViewCase.aspx?CaseId=107>

<sup>2</sup> See the 3rd Report of WBIP

Throughout this time no tangible progress has been made in designing and consulting with stakeholders on the new assessment plans. Reports developed with 5-month delays after the consultations held in Mongolia in June-July 2017 are of such poor quality that they even fail to make a clear distinction between two Orkhon and Shuren projects. MINIS issued one final report on consultations held separately on two different projects with a single set of conclusions for both. Despite decisions made on Project Restructuring, the MINIS web-site has no accurate information on current structure of planned assessments\ tenders making us doubt that MINIS intends to implement fully its plan for the REA assessment before the new closing date of 30 September 2019. Finally we as representatives of the public have been denied access to consultations on the key planning document - Draft REA ToR, which contradicts both the WB OP 4.01 and WBIP recommendations.

The MINIS now claims that consultations on basin-wide unified REA ToR are not necessary *"because it is the product of the public consultations on two separate sets of REA\ESIA ToRs for all stakeholders carried out in Mongolia and Russian Federation"*. (See December 5 Response matrix to RxB Comments and the Grievance report for period May-November 2017). The WB [REDACTED] in his response to E.Simonov on [REDACTED] also rules out possibility for public consultations (see correspondence attached). Instead of public consultations on draft REA TOR, which may include proactive invitation of stakeholders, public meetings\hearings or webinars, followed\accompanied by a collection of oral and written comments and production of substantive response matrices the MINIS Project managers insist on limiting public involvement by a mere opportunity to send comments without any guarantee of being heard and getting focused response on incorporation of those comments into final ToR.

On March 11, 2018 we again made a request to open consultations for draft REA ToR and were told that the REA TOR "updates are in line with the suggestions and feedback received; these concern mostly organizational, procedural and detailed technical aspects. **The updates do not introduce significant, new, previously unknown aspects and concepts. In view of this, the revised REA TOR warrants review by experts rather than a broad public consultation.**"

The consultations held in 2017 discussed two ToRs for two separate REA\ESIA studies, that had quite standard structure, scope and contents, especially in REA part. Based on requests of many stakeholders including the Requestors, the WB and MINIS promised to rework completely plans for these safeguard studies into Unified Terms of Reference where the REA that covers both Orkhon and Shuren Projects and analyses whole watershed of the Selenge river\Lake Baikal Basin. This future REA should be an assessment of a different type than previously planned ESIA with rudimentary REA-appendix. Calling this "update" is gross misrepresentation of difference between old and new ToR documents. New ToR has a significant difference in subject, scope, depth of research and expected outcomes, from any of the REA\ESIA studies ToRs which were presented for 2017 consultations. The new REA will require a team of consultants with different expertise, different timeframe and budget. Therefore this Unified REA ToR is based on concepts quite differing from those underlining separate REA\ESIA ToR drafts and must take into consideration a lot of aspects, which were not duly reflected in the REA\ESIA ToRs.

To ensure compliance with WB policies, as well as adequate quality and stakeholders' (especially communities to be affected) trust in the new REA it should start from public consultations on the draft REA TOR document. MINIS's reiterated refusal to hold those consultations cannot be explained by a lack of time (for more than half-a-year has passed without action since the date on which they promised to deliver Draft Unified REA ToR), nor it can be excused by lack of capacity (although the WBIP specifically noted great improvement in MINIS' capacity to hold public consultations, no formal consultations have been undertaken within MINIS Project as a whole since July 2017).

The MINIS PMU reply that ToR **"updates do not introduce significant, new, previously unknown aspects and concepts"** directly contradicts findings and recommendations of

**the WBIP Final Report on "on missing aspects in the TORs, such as those related to impacts on indigenous peoples in Russia and those related to labor influx, particularly in the context of isolated nomadic communities in Mongolia". Many more "missing aspects" were acknowledged by MINIS itself in response matrices and in absence of new consultations it will be impossible for stakeholders to ensure those are properly incorporated in the final REA ToR and to "ensure diligent implementation of the full set of environmental assessment tools that have been identified".**

The Panel also encouraged the Management to ensure that the decisions of the World Heritage Committee are taken into account in any revision of the relevant TORs, which is consistent with WB policies on international conventions and its environmental safeguards. However, the [REDACTED] ignored suggestions we sent in July 2017 on efficient implementation of WHC recommendations and MINIS PMU on March 16, 2018 again declined to answer directly our inquiry on the "further communication with the World Heritage agencies regarding their participation in the REA ToR drafting or selection of an Independent Expert Panel". Instead they stipulated that "Strategic aspects have been .... covered by separate but related strategic assessments of **least cost power production** for the Mongolian central power system and water supply to Gobi." This wording is drastically different even from promises made in response matrices regarding contents of the assessment of alternatives. The WHC and IUCN request to look at alternatives implies that environmental and social impacts of various alternative scenarios of energy system development should be considered along with "least cost power production" to achieve sustainable development outcomes. The WBIP Final Report also stressed that MINIS Project "will also analyze alternative investments and technology, looking at options to generate energy with less environmental impact" is not incorporated in MINIS PMU intent to assess "least cost power production", i.e. continuing with the same approach pursued in "Shuren HPP Pre-feasibility Study". This clearly demonstrates the unwillingness of the MINIS Project to follow\consider WHC and subsequent WBIP recommendations and creates huge concern that without public consultations on draft REA ToR it is likely to ignore recommendations of the World Heritage Committee and the requirements of the World Heritage Advice Note on Environmental Assessment.

Our concern with planning and implementation of REA is further exacerbated by the fact that MINIS Procurement Plan (not featured on the WB and MINIS web-sites, but provided on request) indicates that insufficient 10,5 months' time and \$1,0 million resources have been secured for the implementation of REA. Previous experience with MINIS shows that both time and necessary level of effort are likely to be underestimated and there are reasonable doubts that proposed timeframe is sufficient for the baseline assessment and REA. Existing good practice in any modern manual on hydro-ecological data collection would stress the need for baseline information to be collected at least for a period of 12 months to reflect all seasonal changes\variations in key ecological parameters.

March 16, 2018 response from the MINIS PMU suggests that any further clarity with REA contents and consultations will be achieved only after Mongolian-Russian Intergovernmental Committee on Transboundary Waters provides recommendations on next steps, including consultations and implementation of the REA study. This Committee meets annually in July-August, which further shortens time remaining for REA tendering, consultation and implementation, which was addressed in the WBIP Final Report (para #40) as a legitimate concerns about insufficient time and resources: *"Some experts doubt that baseline information will be readily available or that it can be collected in the field in a short time by a limited number of experts. Therefore, they claim that the REA development should be based on accurate estimates of the necessary time and resources required for baseline studies and assessments derived from the actual state of knowledge about the Lake Baikal basin. They also highlighted the need for collaboration between Russian and Mongolian scientists during the preparation of the studies"*.

The WBIP report #46 explicitly mentions potential impacts of the Egiin Gol hydropower project on Baikal's biodiversity in the context of WB and GoM willingness to include "elements of

strategic environmental assessment” required by the WHC, in particular " assessment of cumulative impacts on a regional scale **before decisions on individual projects** are made..." Planned 1-year delay in start of the REA coupled with refusal to hold consultations on ToR is further exacerbated by the "Plan to start construction of 11 power plants in 2018" announced by the Ministry of Energy<sup>3</sup>. This plan announces start of Egiin gol Hydro Construction with investment of 20 billion tugrugs required to complete 10 per cent of the planned work. The site of the Agency of State Property Management also contains Resolution №376 from September 2017 releasing funding to the Egiin Gol Hydro Company in the amount of USD 2.5 million<sup>4</sup>. This demonstrates, that while REA and cumulative impacts assessment are drastically delayed, decisions on individual projects are actively moving forward thus making future results of CIA practically useless. This contradicts the WHC Decisions on Lake Baikal issued in 2015-2017.

As demonstrated by references in text above we have communicated our concerns and proposals to MINIS and World Bank continuously during consultation process and grievance mechanism since July 2017 till now. We believe that the response received is not satisfactory as it does not answer or solve our problems for the reasons explained above. Communication is also presented in Appendix 1:

#### **4. Request for Investigation**

**We request to investigate** whether the WB MINIS Project violated the WB OP 4.01 and other relevant policies by refusing to conduct public consultations on the Draft REA ToR.

**We also request to investigate** whether recommendations of the 3rd WBIP Report and the 2017 Restructuring Paper as well as specific commitments made by WB Management MINIS and Mongolia Government are being fulfilled or no sufficient action is being undertaken to "**implement the full set of environmental assessment tools that have been identified**"<sup>5</sup> and could be completed in time to guide crucial decisions on individual projects to prevent harm on the ground.

**We are also requesting to investigate** whether recommendations of the World Heritage Committee and the World Heritage Advice Note on Environmental Assessment have been sufficiently considered in the REA ToR and overall MINIS Project planning and whether Project managers and GoM have had meaningful communication with the World Heritage Center regarding SEA and cumulative impact assessment. We request to investigate whether the MINIS fully support implementation of Mongolia's obligations under World Heritage Convention as well as Bonn Convention and Ramsar Convention.

**We hope that renewed involvement of the WBIP will help to prevent harm on the ground by:**

- 1) Guaranteeing that the stand-alone REA TOR is subject to meaningful public consultations, as a completely new assessment plan. So that the Requesters and communities to be affected can be ensured that all good promises given by the WB and MINIS in 2017 in several dozen response matrices are really incorporated into the ToR.
- 2) Subjecting the REA TOR to independent expert evaluation to ensure that duration, consultant diversity and financing for REA should correspond to complexity and scale of the tasks of such REA study and corresponding Baseline Assessment.
- 3) Revisiting the issue of inappropriate selection of dam projects under the MINIS in non-conformity with OPs on natural habitats and forests as clearly described in the Annex 2 to the MINIS Project ESMF.
- 4) Causing MINIS to disclose subproject screening protocols annexed to the ESMF and trigger OPs on dam safety, indigenous people, forests, natural habitats, etc. Cause these to be incorporated in the promised revision of ESMF (promised in March 2017 and again in March 2018).

<sup>3</sup> <https://www.news.mn/?id=272613> ( incomplete in English HTTP://MONTSAME.MN/RU/READ/12733)

<sup>4</sup> <http://pcsp.gov.mn/uploads/9134298842a3adb392abb8f92c73939b.pdf>

<sup>5</sup> <http://ewebapps.worldbank.org/apps/ip/Pages/ViewCase.aspx?CaseId=107>

5) Ensuring that the MINIS PMU and the GoM fulfill the World Heritage Committee requirements on the SEA by improving the REA ToR and ensuring high quality REA process, that incorporates all key aspects emphasized in WBIP 2017 Final Report:

- *comprehensive baseline studies and assessments derived from the actual state of knowledge about the Lake Baikal basin;*
- assessment of missing aspects in the REA\SEA TORs, including those related to impacts on indigenous peoples and all those revealed in response matrices from 2017 consultations
- *comprehensive analysis of alternative investments and technology, looking at options to generate energy with less environmental impact resulting from energy system development*
- assessment of cumulative impacts on a transboundary basin scale **before decisions on individual projects** are made (including Egiin Gol Hydro)
- assessment of cumulative effects on Lake Baikal and Selenge river delta from already existing and planned water infrastructure with clear recommendation on environmental flow\water regime requirements for preservation of Lake Baikal heritage values.

Signatures:

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D. Sukhgerel, Director of Rwb-Mongolia -



Date: March 12, 2017

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- 4) Causing MINIS to disclose subproject screening protocols annexed to the ESMF and trigger OPs on dam, safety, indigenous people, forests, natural habitats, etc. Cause these to be incorporated in the promised revision of ESMF (promised in March 2017 and again in March 2018).
- 5) Ensuring that the MINIS PMU and the GoM fulfill the World Heritage Committee requirements on the SEA by improving the REA ToR and ensuring high quality REA process, that incorporates all key aspects emphasized in WBIP 2017 Final Report:
  - comprehensive baseline studies and assessments derived from the actual state of knowledge about the Lake Baikal basin.
  - assessment of missing aspects in the REA SEA TORs, including those related to impacts on indigenous peoples and all those revealed in response matrices from 2017 consultations
  - comprehensive analysis of alternative investments and technology, looking at options to generate energy with less environmental impact resulting from energy system development
  - assessment of cumulative impacts on a transboundary basin scale **before decisions on individual projects** are made (including Egin Gol Hydro)
  - assessment of cumulative effects on Lake Baikal and Selenge river delta from already existing and planned water infrastructure with clear recommendation on environmental flow water regime requirements for preservation of Lake Baikal heritage values.

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D. Sukhgerel, Director of Rwb-Mongolia -



Date: March 12, 2017

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