



Follow-up Report

GobiMin Inc.

Country: China

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List of abbreviations

CORE	Canada Ombudsperson for Responsible Enterprise
HRRM	Human Rights Responsibility Mechanism
HRDD	Human Rights Due Diligence
OECD Guidelines	OECD Guidelines for Multinational Enterprises on Responsible Business Conduct
OIC	Order in Council-2019-1323 dated 2019-09-06
OP	Operating Procedures for the HRRM of the CORE
UNGPs	United Nations Guiding Principles on Business and Human Rights



About the CORE

The Canada Ombudsperson for Responsible Enterprise (CORE) is a business and human rights grievance mechanism established by the Government of Canada. People can file complaints with the CORE about possible human rights abuses arising from the operations abroad of Canadian garment, mining, or oil and gas companies.

For more information, see the [Canada Ombudsperson for Responsible Enterprise website](#).

What is the purpose of this report?

The CORE is reporting on the recommendations issued by the Ombudsperson (the Ombud) with regard to the complaint filed against GobiMin Inc. by a coalition of 28 Canadian organizations on June 21, 2022.

The information in this report is a follow-up on the Ombud's recommendations to the Respondent related to responsible exit. It has no adverse effect on any person including the parties to the complaint.¹ In preparing this follow-up report, the Ombud has considered the comments of the parties provided to the CORE on May 22, 2023, and May 31, 2023, with regard to its draft Initial assessment report.

Pursuant to Sections 14(1)(c) and 15 of the CORE's [Order in Council 2019-1323](#) (OIC), the Follow-up report will be shared with the Ministers of International Trade and Natural Resources.

Who are the parties to the complaint?

The Complainants are a coalition of 28 Canadian organizations (hereinafter referred to as Complainants) listed in [Appendix I](#).

The Respondent is GobiMin Inc. (GobiMin), a Canadian mining company. GobiMin was incorporated under the *Canada Business Corporation Act* on September 30, 2005.²

¹ It should be noted that Section 16 of the [Operating Procedures for the Human Rights Responsibility Mechanism of the Canada Ombudsperson for Responsible Enterprise](#) (OP) does not apply to this specific follow-up report since this report does not contain any new facts or submissions nor any adverse effect to the parties.

² Federal Corporate Information – 432600-8, Innovation, Science & Economic Development Canada, online: <https://ised-sde.canada.ca/>



What is the complaint about?

The complaint alleges GobiMin has been implicated in Uyghur forced labour through exploration work carried out at its Sawayaerdun mine in Xinjiang, China. The complaint also alleges there is no indication GobiMin has taken any concrete steps to ensure beyond a reasonable doubt that Uyghur forced labour is not implicated.

The Complainants indicate that by way of a letter dated November 12, 2021, they asked GobiMin to conduct human rights due diligence (HRDD) to ensure the company's operations do not benefit from Uyghur forced labour. According to the Complainants, GobiMin did not reply to their inquiry.

Part 1 – Summary of the complaint process to date

1. On July 31, 2022, based on the information provided by the Complainants, the Ombud decided the complaint was admissible pursuant to Section 6.1 of the [Operating Procedures for the Human Rights Responsibility Mechanism of the Canada Ombudsperson for Responsible Enterprise](#) (OP). This means the Ombud decided there was sufficient information in the complaint to form a reasonable belief that each of the 3 admissibility criteria prescribed in Section 5.7 of the [OP](#) was met. The complaint then moved to the initial assessment stage of the complaint process.
2. On May 17, 2023, a draft version of the Initial assessment report was sent to the parties for comments. Following receipt of the parties' comments, and considering GobiMin's transfer of its subsidiary, Xinjiang Tongyuan Minerals Limited, which owned the company holding the mining license of the Sawayaerdun Gold Project, in July 2022, the Ombud decided not to launch an investigation. Instead, considering that GobiMin has not provided detailed information about its exit from the high-risk region of Xinjiang, the Ombud issued recommendations to GobiMin on their responsible business conduct abroad. More specifically, the Ombud recommended GobiMin:
 - a) revise and update its HRDD policies on responsible exit or if it does not have such policies, develop and adopt new policies on responsible exit including from high-risk areas
 - b) share these policies with the CORE by December 29, 2023, incorporate any feedback or comments from the CORE, and post these policies on GobiMin's website by March 15, 2024



- c) publicly commit to implement and apply these policies in the context of its operations abroad

The [Initial assessment report](#) was published on the CORE's website on August 15, 2023.

Part 2 – The follow-up process

3. The follow-up process is part of the CORE's Human Rights Responsibility Mechanism (HRRM). A follow-up process includes review of and reporting on measures taken to implement the Ombud's recommendations issued at any stage of the dispute resolution process.
4. Section 14(1)(d) of the [OIC](#) and Section 13.5 of the [OP](#) clarify the steps of the follow-up process.

Part 3 – Summary of events during the follow-up process

Recommendations for responsible exit policy

5. On September 28, 2023, the CORE requested information and supporting documents about GobiMin's implementation of the Ombud's recommendations in the Initial assessment report. The CORE notified GobiMin that following Section 14(1)(d) of the [OIC](#), the CORE would prepare and publish a follow-up to its Initial assessment report, which would assess GobiMin's implementation of the Ombud's recommendations.
6. In its response, on October 20, 2023, GobiMin notified that the CORE's recommendations did not consider the following:
 - a) The complaint to the CORE did not allege any lack of responsible exit policies by GobiMin and, thus, there was "no complaint to the CORE about the manner of GobiMin's exit."
 - b) During the initial assessment stage, GobiMin received no notice that its exit from Xinjiang, or the adequacies of its policies regarding such an exit, were under consideration by the CORE.
 - c) GobiMin divested its mining assets in Xinjiang to a buyer who made public commitments to the respect of international human rights and whose policies



included the due diligence process in the UNGPs. Relating to this divestment, the CORE took no issues with the buyer to whom assets were divested.

- d) Since transfer of its subsidiary in Xinjiang, GobiMin is no longer investing in the mining sector and has never invested in the oil and gas or garment sectors. Therefore, the CORE's recommendations are issued for a company that is "no longer active in the economic sectors within the CORE's mandate."
- e) Finally, as a junior investment company it is not "practical" to improve or adopt a responsible exit policy.

7. On November 16, 2023, the CORE notified the Respondent that:

- a) The Ombud's recommendations that GobiMin adopt or update and publicize a responsible exit plan did not introduce a new issue. Rather, the Ombud exercised their power and mandate to review a Canadian company's foreign mining operation and ending of or exit from that operation as prescribed in the [OIC](#) and the [OP](#).
- b) The manner of exit is an integral part of a company's HRDD processes and its responsible business conduct. During the initial assessment stage, the CORE sought clarifications on May 1, 2023, from GobiMin regarding responsible business conduct and the steps taken by GobiMin leading up to and following the sale to minimize the human rights impact of its departure. As a result, the Ombud gave sufficient notice to GobiMin before considering and making recommendations related to responsible exit.
- c) In response to the CORE's query on the manner of GobiMin's exit, GobiMin notified on May 5, 2023, that the buyer had publicly announced its commitment to respecting human rights. Other than this, GobiMin provided no further information on how it tried to minimize the human rights impacts of transferring its mining business in Xinjiang. Given the insufficient information the CORE received regarding GobiMin's exit plan or processes during the sale of its subsidiary in Xinjiang, it was not clear whether GobiMin's transfer of its subsidiary included:
 - i) any remediation plan to address any negative impacts that may have already happened
 - ii) any comprehensive human rights impact assessments to identify potential risks associated with the transfer



iii) whether GobiMin consulted with local communities or stakeholders, etc.

Considering the insufficient information provided by GobiMin to the CORE and the fact that the transfer of the subsidiary in Xinjiang had already taken place, the Ombud's recommendations were issued to ensure that GobiMin adopt a responsible exit plan regarding its future mining businesses. Under no circumstances were the Ombud's recommendations issued without sufficient notice to the parties.

d) Regarding the issue of GobiMin ceasing to invest in businesses or sectors within the mandate of the CORE, the CORE requested all relevant information and supporting documentation relating to GobiMin's exit plans and processes during the time of transferring its interest in its subsidiary in Xinjiang in 2022.

e) Regarding the adoption of exit policies by junior mining companies, the CORE referred to the relevant provisions of the United Nations Guiding Principles on Business and Human Rights (UNGPs), which provide the authoritative global standard for business and human rights and for business enterprises. The UNGPs requires HRDD processes, including responsible exit plans, be initiated as early as possible in the development of a new activity or relationship. Also, the UNGPs require all companies to publicly disclose their HRDD processes.³ Consequently, private equity firms investing in the early stages of mining exploration should integrate human rights into their investment processes and support changes that lead to better human rights outcomes. The CORE also advised that even if GobiMin is no longer involved in mining, for its existing and potential investments, it is advisable to develop context sensitive HRDD processes, including responsible exit policies. It was stressed that such a proactive stand is a necessity especially when companies are investing in a high-risk location and specifically given that the [Office of the UN High Commissioner for Human Rights](#) had underlined the serious risk of use of Uyghur forced labour in in Xinjiang, China.

8. On December 15, 2023, GobiMin notified the CORE of its willingness to follow the Ombud's recommendations to adopt and publicize a responsible exit policy for its foreign investments. A draft responsible exit policy was shared with the CORE for comment. GobiMin also agreed that, subject to consideration of the CORE's comments, it would

³ United Nations Human Rights Office of the High Commissioner, [Guiding Principles on Business and Human Rights](#) (2011), Principles 14, 15, 18, and 19 and Commentary to Principle 18.



post the new policy on its website as part of its commitment to follow the Ombud's recommendations in the Initial assessment report.

9. On January 25, 2024, the CORE suggested some revisions to build upon the draft policy and provide further clarity.
10. On February 16, 2024, the finalized responsible exit policy was approved by GobiMin's board of directors and is available on GobiMin's [website \(PDF\)](#).

Part 4 – Responsible exit: meaning and processes

11. Responsible exit is used to describe how a business or investor should anticipate and make plans for exiting its relationship and remedy any adverse human rights impacts including environmental risks that may have already occurred or caused by its exit.
12. Responsible exit is integrally tied to a company's responsible business conduct and HRDD processes. According to the [UNGPs](#), HRDD processes need "to identify, prevent, mitigate and account for how they address their impacts on human rights."⁴ HRDD processes apply to all stages of a business relationship, including the establishment and end of the relationship.
13. For the purpose of this complaint, the CORE focused on the processes of exit to make sure that:
 - a) Exit is planned, undertaken, and monitored in a way that avoids or mitigates potential human rights impacts or impacts on the environment.
 - b) If adverse human rights impacts, including environmental risks have already occurred, exit ensures remedy of those impacts.
 - c) Positive impacts of business or investment endure after exit.
 - d) The exiting company or investor analyses the decision to exit in good faith; plans the exit in accordance with internationally recognized human rights laws and standards; consults stakeholders at all stages of exit; and exercises heightened caution and undertakes elaborate plans while exiting from high-risk areas.

⁴ *Ibid*, Principle 15(b).



14. A finalized exit policy should focus on the following considerations relating to responsible exit:

- a) A pre-exit plan, which includes i) a risk assessment of any adverse human rights impacts and environmental risks that may result from exiting the business; ii) contingency plans for probable impacts such as putting in place a transition agreement to minimize adverse human rights impacts and environmental risks; iii) vetting the buyer's human rights record; and iv) consultation with stakeholders to identify, prevent, or mitigate harmful impacts of exit.
- b) Exit execution which includes consideration of the actual context of the exit and devising/updating risk management, and risk mitigation plans accordingly.
- c) A post-exit plan, which includes devising/updating plans for mitigating and managing adverse human rights impacts and environmental risks which the seller/investor contributed to prior to its transfer or exit. These might include environmental contamination, unaddressed displacement of local communities, or other human rights impacts; and plans for providing open and free access to an appropriate grievance mechanism for affected stakeholders.

Part 5 – Concluding the follow-up process

15. As noted in [Part 2](#), this report concludes the follow-up process related to the recommendations made by the Ombud in the Initial assessment report with respect to the Respondent.

16. Also, in this follow-up report, the Ombud determined whether the Canadian company acted in good faith in implementing the recommendations.

17. Once the follow-up report is finalized, the Ombud will share copies with the Minister of International Trade and the Minister of Natural Resources.

18. Finally, the Ombud will publish the follow-up report on the CORE's website.

Part 6 – Participation in the CORE's complaint process

19. The [Operating Procedures](#) provide that full and active participation in the complaint process is part of good faith:



Section 11.1 requires the parties to fully participate in the complaint process including by providing the Ombud with relevant information and documents and making witnesses available on reasonable notice, according to the timelines established by the Ombud.

Section 11.2 provides that where a Canadian company does not participate actively in the complaint process, including refusing to provide relevant information and documents, the Ombud may draw appropriate negative conclusions or adverse inferences during fact finding.

Section 12.4 provides that the Ombud may consider a party not to be acting in good faith if the party does not actively participate in a review without reasonable explanation, including providing relevant information and documents, making witnesses available on reasonable notice, and responding within the timelines established by the Ombud.

Section 12.6 provides that refusal without reasonable explanation by a Canadian company to implement a recommendation made by the Ombud may be relevant to a consideration of whether the Canadian company is acting in good faith.

Part 7 – Ombud’s decision

7.1 Good faith participation and collaboration in the CORE’s dispute resolution process

20. GobiMin demonstrated good faith both during the initial assessment and follow-up processes to date. This is evidenced by the following:

- a) Throughout the intake and the initial assessment processes, GobiMin engaged with the CORE and provided information and documents relating to its investment and divestment from Sawayaerdun Gold Project. GobiMin provided a response to the complaint. The initial assessment meeting with GobiMin was held on January 16, 2023. GobiMin responded to all correspondence from the CORE and provided information and documents in response to the CORE's questions on April 20, 2023 and May 5, 2023.
- b) During the follow-up process, GobiMin was actively involved in a) drafting a policy and revising it in accordance with the Ombud’s suggestions; b) posting the revised policy in a timely manner; and c) committing to follow the policy from February 16, 2024 onward – the date of its approval by GobiMin’s board of directors.

Given GobiMin’s active and good faith participation and cooperation, the Ombud will not exercise their discretion to make a recommendation to the Minister under Section



10 of the [OIC](#) which provides that the Ombud may make recommendations to the Minister on implementing trade measures.

7.2 Closure of the complaint

21. Considering GobiMin's implementation of the Ombud's recommendations in the Initial assessment report and its good faith participation in the CORE's dispute resolution process, the follow-up report confirms that the complaint filed against GobiMin at the CORE is closed. GobiMin's proactive stand in following up with the Ombud's recommendations to develop a responsible exit policy and make it publicly available on its website, is a commendable step towards responsible business conduct. The Ombud hopes that other Canadian companies operating foreign businesses or investments will adopt a responsible exit policy across their operations, track the effectiveness of the steps, and communicate with stakeholders implementing and improvising these policies. For this report, GobiMin has sufficiently complied with the Ombud's recommendations by committing to prevent, manage, and remedy actual or potential human rights impacts and environmental risks that may result from exiting an investment.



Appendix I: Coalition of 28 civil society organizations

1. Canadians in Support of Refugees in Dire Need (CSRDN)
2. Alliance Canada Hong Kong
3. Anatolia Islamic Centre
4. Canada Tibet Committee
5. Canadians Against Oppression & Persecution
6. Canadian Council of Muslim Women (CCMW)
7. Canadian Council of Imams (CCI)
8. Canada-Hong Kong Link
9. Doctors for Humanity
10. East Turkistan Association of Canada
11. End Transplant Abuse in China (ETAC)
12. Human Rights Research and Education Centre, University of Ottawa
13. Human Concern International (HCI)
14. Islamic Circle of North America Canada (ICNA)
15. Islamic Society of North America (ISNA)
16. Justice for All
17. Lawyers for Humanity
18. Muslim Association Canada (MAC)
19. National Council of Canadian Muslims (NCCM)
20. Raoul Wallenberg Centre for Human Rights
21. Canadian Security Research Group
22. Share 2 Care (S2C)
23. Stop Uyghur Genocide Canada
24. Toronto Association for Democracy in China
25. Union of Medical care and Relief Organizations-Canada (UOSSM)
26. Uyghur Refugee Relief Fund
27. Uyghur Rights Advocacy Project
28. Vancouver Society in Support of Democratic Movement