

**Negotiations with local community in the mining industry of
Kyrgyzstan**

**СПОСОБЫ СОГЛАСОВАНИЯ СПОРНЫХ ВОПРОСОВ С
МЕСТНЫМ НАСЕЛЕНИЕМ В ГОРНОДОБЫВАЮЩЕЙ
ИНДУСТРИИ В КЫРГЫЗСТАНЕ**

**Кыргызстанда тоо-кен тармагында жергиликтүү калк менен
болгон талаш суроолорду сүйлөшүү ыкмалары**

Abstract: the paper presents a research on the ways to resolve mining companies misunderstanding of local population using negotiations and provides successful examples from other countries.

Аннотация: статья рассматривает способы согласования спорных вопросов горнодобывающих компаний с местным населением, а также приводит успешные примеры таких переговоров в других странах.

Аннотация: макала тоо-кен тармагындагы тоо-кен казып алуу компаниялардын жергиликтүү калк менен болгон талаш суроолорун чече турган ыкмаларды изилдейт, жана башка өлкөлөрдүн ийгиликтуу мисалдары жөнүндө талкуулайт.

Keywords: mining industry; Kumtor, negotiations; Centerra Gold; conflicts.

Ключевые слова: горнодобывающая индустрия; Кумтор; переговоры; Центерра Голд; конфликты.

Негизги сөздөр: тоо-кен онер жайы; Кумтор; сүйлөшүү; Центерра Голд; чыр-чатактар

In recent years, many foreign-owned mining companies, such as Kumtor, Chaarat Gold and Talas Copper Gold have faced tremendous hardships. Over the past years, series of protests and unrests of the local communities against the work of mining operators have led to disruption of their work [1]. The situation in the mining sphere has had a negative impact on the country's image abroad leading to an outflow of many foreign investors from Kyrgyzstan [2].

Kumtor is the largest taxpayer in the country, only in the first financial quarter of 2017, it paid around \$35mln to Kyrgyzstan's budget in form of taxes, social payment and other mandatory payments [3]. Under the existing agreement, Kyrgyz Republic owns 26.6% in Centerra Gold, which is 100% owner of Kumtor, via Kyrgyzaltyn JSC [ibid.].

Operating in Kyrgyzstan, Kumtor faces typical challenges investors face in developing countries: corrupt government, political instability, and local population's resistance, resulting in constant disruption of the

company's work. Understanding that a broader issue of corruption in the government should be addressed in the first place, this article, nevertheless, tries to find a way to solve mining companies misunderstandings with local population using negotiations, based on Kumtor's example.

Section 5 of the Article 12 of the *Constitution of the Kyrgyz Republic* states that "The land, its resources ... as other natural resources shall be the exclusive property of the Kyrgyz Republic; these shall be used for the purpose of preserving a unified environmental system and shall enjoy special protection from the State." Section 1 of the Article 2 establishes that "the people of Kyrgyzstan are the bearer of sovereignty and the sole source of state power in the Kyrgyz Republic" [4]. These two articles are used as a justification of the local community's claims to Kumtor, because they believe people of Kyrgyzstan shall solely benefit from its resources. This opinion is also supported in David Gulette's research on conflict sensitivity in mining in Kyrgyzstan [5]. Especially taking into account widely known violations of the Government when signing the concession agreement with Kumtor [6].

Conflict history

There were many occasions of conflicts with the local population, the biggest ones being the following:

1. In 1998, a truck carrying 1,762 kg of sodium cyanide fell into the Barskaun River, which falls into the biggest lake in Kyrgyzstan – Issyk-Kul. Kumtor had to settle this environmental catastrophe for 3.7 million USD [7].

2. In 2012, political opposition used the sensitive topic of Kumtor to organize protests and demand nationalization of the company. However, they were arrested, which caused unrests in Issyk-Kul in support of the opposition [5; p 29]. Environmental concerns such as displacement of glaciers, radiation, dust pollution and cyanide poisoning, were raised again.

3. In 2012 and 2013, there was a series of road blockades; experts predicted that continuing social and legal instability in the mining sector might lead Kumtor to close down, and the country would incur great financial losses [8]. Being under pressure the Government started renegotiations with Kumtor, but it did not prevent mass protests on May 29, 2013 when 250 young men blocked the road to the gold mine in Barskaun village, cut the power off demanding denunciation of the Agreement with Kumtor and damages to be covered with 5 billion USD [9]. Protests continued for many days and expanded further; the President declared a state of emergency in the area. Protesters attacked police forces, and 90 people were arrested as a result.

4. In August of 2012, a video was made public where two men, claimed to be organizers of the blockade in Barskaun, met with a representative of Kumtor, requested 3 million USD for "peace" in the region and threatened with civil war in the event of a failure to comply [10]. Extortion of money was recorded with a hidden camera and resulted in

criminal charges brought against these two men.

5. In October 2013, protesters captured the Governor of the Issyk-Kul oblast and demanded nationalization of Kumtor and release of the people arrested in Barskaun [11]. Again, mainly young men from Jeti-Oguz district participated in protests with no women or elderly people. To release the Governor the police used tear gas and rubber bullets and was able to stabilize the situation in Karakol. The Prime Minister of Kyrgyzstan met with people in Karakol, promised renegotiation of the Agreement with Kumtor and stated intentions on opening a new Joint Venture with 50% shares for Kyrgyzstan [12].

Kumtor, to loosen the existing tension, kept investing in the infrastructure by reconstructing road Balykchy – Karakol in 2013 [ibid.] and continued paying 1% of its annual gross revenue to the Issyk-Kul region Development Fund, established in 1994.

Challenges for Kumtor Kumtor faces several challenges when tries to facilitate negotiation processes with the local community. First, there is a problem with identification of stakeholders and their authorized representatives, as in situation with the extortionists. They claimed to represent the local community's interests, but in reality they were not supported by the local population at all [10, p. 1].

Second, over the years conflict broke out in different parts of the Issyk-Kul region, in Barskaun, Saruu and Karakol, each village having shared interests and some interests distinguishable from others. If in Jeti-Oguz people were more concerned with ecology and demanded more employment opportunities as the area located closest to the mine, Karakol demanded increased payments to the local budget.

Third, acknowledging these interests, nevertheless Kumtor must consider local populations' mistrust to foreign investors and corrupt state officials, misunderstanding of the investments impact on the region, lack of knowledge on the international arbitration and other instruments to be employed by the investors.

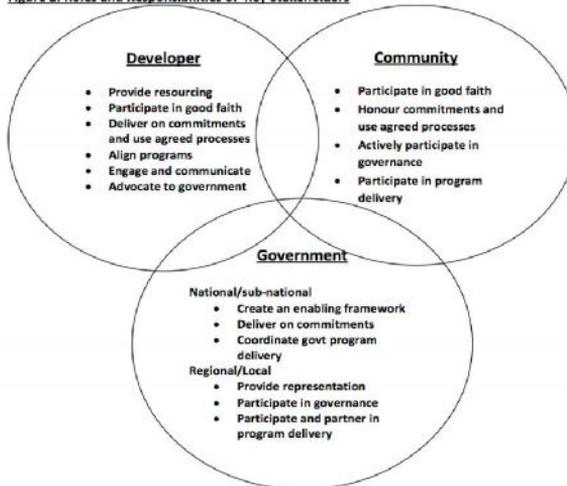
In 2014, reporters conducted independent investigations and found out that the management of the Development Fund was highly untransparent and involved corruption and misconduct [13]. As a result, criminal proceedings were instituted against the Board of the Fund and the management of the tender commissions [14]. Many projects were suspended, subcontractors poorly performed their work or did not finish the reconstruction of the ongoing projects. Obviously, the Fund's work had not been externally audited over the years. Its sole auditor – the

Accounts Chamber of the Kyrgyz Republic had been widely perceived as one of the most corrupt government agencies in Kyrgyzstan itself [15].

According to the *Statute of the Fund*, the Board of the Fund consists of 12 people: 3 - from the Government, 3 - from the local administration, 3 - from the local council (kenesh), 3 - from non-governmental organizations, which are appointed by the Prime Minister based on recommendations of the Governor of the Issyk-Kul oblast [16]. The local community does not participate in this process, which undermines the legitimacy of the Fund in public perception. Clearly, transferring 1% of Kumtor's gross profit to the Fund did not benefit the company as it would in countries with the rule of law and good governance practices. It is also important for Kumtor to recognize that this approach is perceived rather as a lack of interest in the local community's concerns and Kumtor being engaged in corrupt practices with the Fund.

In approaching negotiations with each stakeholder, it is very crucial to acknowledge that each party has to participate in negotiations in good faith and communicate with each other. The Centre for the Social Responsibility made a clear distinction in each stakeholder's roles [17], which should guide stakeholders in the Kyrgyz gold mine industry.

Figure 1: Roles and Responsibilities of Key Stakeholders



Successful cases of negotiations

Case of Chevron Nigeria LTD (Chevron) and local population affected by oil and gas extraction in Niger Delta presents particular interest due to hostile relationship between the local community and investors [18]. Considering their previous negative experiences, in Nigeria Chevron successfully signed the General Memoranda of Understanding (GMOU) with the clusters of the communities impacted by the company's operations

[18, p. 2]. GMOU model specified the principles of mutual work such as transparency, partnership and accountability and allowed people to engage in every step of the community development projects. GMOU model created the Regional Development Council (RDC), which was comprised of local government, local community representatives, donors, Chevron, state representatives and other stakeholders. The Council in its turn was divided into the Project Review Committee, the Peace Building Committee and the Accounts and Audit Committee.

RDC carried out two substantial participatory stakeholder evaluations that researched the local community's perception of investors, community engagement project and ideas of transparency, fairness and accountability [18, p.8]. They worked to identify interests of different groups: elderly, youth, women etc.

As a result of the comprehensive approach, the parties successfully negotiated for only several weeks instead of months [18, p. 9], with the following steps proved to be successful:

- Joint training of the parties on Mutual Gains approach to negotiations;
- Joint naming of the issues to be negotiated;
- Joint sessions to share interests and options;
- Joint sessions to build packages that could create joint gains;

- Joint sessions to resolve impasses and disagreements. This example presents highly organized and structured negotiation process with the local community's engagement starting from the early preparation steps for the negotiations.

The Peru LNG Project operated by Hunt Oil Company addressed the local community's environmental issues by involving a third neutral party to implement the Participatory Environmental and Social Monitoring Programme [19]. The successful program included in monitoring process people that were selected by their communities. The program set criteria to ensure people with relevant background and knowledge would be nominated by their communities, and provided them with necessary trainings to enable their full and comprehensive participation in the project. This is another successful mechanism to build trust, because first of all community is giving consent to specific people, which are able to make proper decisions on behalf of their community when they are educated and not driven by emotions and frustration.

Thus, mistrust of the local community to the Fund in the way of spending Kumtor's money could be addressed similarly as in Nexen's

successful project – the Aboriginal scholarship programs [20]. Nexen, Canadian oil and gas Company launched a scholarship project for local students, which was administered in cooperation with universities; another successful project was the Summer Student Employment Program that offered students trainings for improving their employment opportunities upon graduation.

Preparations to attract investors

Legitimacy of the mining company's operation in the country is highly controversial due to the lack of the local population's trust to the state and local authorities. Because the local population does not participate at the stage of granting a license and generally does not understand how the selection process happens, they feel deceived. Therefore, it is very important to make them feel included in the decision-making. IPIECA (global oil and gas industry association for environmental and social issues) recommends a concept of free, prior and informed consent, the idea of which is to engage local communities at the early stage of negotiations with government and ask for their consent to launch mining project [19, p. 19].

Government might contest this approach; however, mining companies should at least propose it to earn trust of local community. Voting 'yes' to investments would sufficiently decrease local populations' objection to company's work at later stages, therefore prior to a tender or auction to sell exploration and mining rights, the Government is recommended to hold a referendum at a desired location in support of free, prior and informed consent.

Prior to a referendum, government and mining company must jointly inform local population about the mine, its approximate value, resources needed, the length of the project, and benefits of investment to their region. A model of Kurultai (Kyrgyz for – “national/local assembly with participation of well-respected members of the community) could be employed, where not only foreign company, but distinguished economists, professors and local leaders would talk to the communities and explain information in a clear and precise way. Using its authority, state agency could also seek out to the assistance of international organizations specializing in the field, which could serve as independent party that would ensure fairness of negotiations with mining company and uphold international standards in protecting local community's interest in such projects.

Selection of a mining company

When a state agency makes a shortlist of possible companies to obtain a license it must consider company's plan on negotiations and possible agreement draft. It would help to identify those companies that would be interested in negotiations with local communities and determined to compromise. Additionally, their draft proposals would draw a zone of possible agreement for a state agency to analyze if it meets the existing requirements of local communities.

Before signing a final agreement with a company, state must verify if company has started groundwork informing local population on its work, on how ecology will be preserved and which benefits will they receive. At this stage, the role and presence of state agency should be minimized in the best interest of mining companies.

Preparation for negotiations

When preparing for negotiations, mining company should carry out evaluation of local community's interests and concerns and consider possible solutions to address them. Simultaneously, mining company should be able to identify stakeholders and possible informal leaders it will be working with in a long-term.

This approach would definitely benefit Kumtor, because inclusiveness of different groups is extremely important. They should, first of all, divide local communities into groups: first – the closest located villages, which would be small villages from Barskaun to Kyzyl-Suu, second – qualified community of the further located villages and cities, including small villages from Kyzyl-Suu to Karakol. Within these qualified communities they should also distinguish age groups (children, youth, working people, elderly people), social groups (workers, unemployed, skilled professionals etc.). Usually in Kyrgyzstan negotiations are held with aksakals (Kyrgyz for – “older respected informal leaders”) in conflicting regions [21], however currently newly emerged groups of young men has become the driving force in unrests [10, p. 2]. Therefore, defining stakeholders in a meticulous way would enable mining company to address interests and concerns of local community more efficiently as Chevron successfully did in Nigeria.

The company can have its own department that would work directly with communities on social projects. For instance, it can launch scholarship programs for school and university students as Nexen's Aboriginal Scholarship Programs. Undoubtedly, local people are interested in their

children receiving good education; therefore, such scholarship programs would positively impact mining company's reputation.

Another emphasis should be made on guided tours for local population. Such public tours would enable to see which technics are used in mining, and what kind of environment protection measures is implemented. For instance, rare photos of Kumtor exploding mountains and digging a huge hole amidst mountains are perceived as the images of colonizers destroying the nature, and it strongly disturbs the minds of local population [22]. Considering this fact, guided tours should be approached very carefully; for instance, with explanatory movie offered in the beginning of the tour, when mining company explains its goals and benefits the country is receiving from mining.

In addressing environmental issues, mining company should definitely use a model of Hunt Oil Company's Participatory Environmental and Social Monitoring Programme discussed previously. Involving a prominent environmental organization and local community to monitor changes in ecology of the region, as well as participate in the project to minimize the harm, would positively benefit mining company and reduce aggression based on the lack of information.

It is to be noted that over the years of conflict, Kumtor has started contributing to the community development projects such as supporting agricultural innovations, cooperating with microfinance companies to further lend money with low interest rates, launching vocational education training and organizing summer camps for local children. Additionally, by 2017 it employs around 3000 locals with salaries much higher than average in the country [23]. Kumtor's approach has been successful in keeping peace since 2015.

Additionally, considering mistrust of the local population to the corrupt state, Kumtor should control its financial contributions to the Fund. As noted earlier, the Fund is not transparent; therefore, either Kumtor should pay for independent external audit, request to change the Statue and appoint representatives from the community to the Board, or fund the local community's projects directly, without any participation of the third parties.

Negotiations

In negotiations, mining company have to avoid positional bargaining and negotiate on the basis of shared interests. Both parties, mining company and local community are interested in having the mine. Nevertheless, people have specific attachment to the nature, the land and strong feeling of ownership for natural resources; therefore, mining company has to approach their feelings very carefully. Learning more about the country's culture, traditions would benefit mining companies immensely; they should show respect and interest in local issues.

It is very important to have the Kyrgyz speaking people in a mining company's negotiating team; if it consist fully of foreigners, the local community might not feel even being listened to and heard due to the language barriers. Thus, it is very important to create friendly and familiar environment. Not only should an agreement be a result of such negotiations, but also many spin-off projects proposed by mining company.

Mining company should also genuinely inform the other party about alternatives they have, such as international arbitration, which might be used if local communities disrupt its work. It should be explained that the state will be held liable and has to pay reparations that might negatively affect social programs run by the company in the region. And by no means should it be presented as a threat, rather as a remedy that would largely harm state and local budget, and approached with shared interest in stability and cost saving.

It is very important to acknowledge that for effective negotiations mining companies should avoid any secret negotiations with government. If the information on secret negotiations becomes public, trust of local community will be lost for decades. It is very important for mining company to acknowledge that it must approach negotiation process in good faith, disclose all the relevant information on the project and its implications for ecology, and inform about protective measures to be taken. Considering that local communities have trust issues, it is very important to recognize their concerns and start building trust from the very beginning.

Obviously, government should take part in fostering the relationship between mining companies and local population, but rather it should internalize laws, procedures and agreements concluded with investors within the local community. In this respect, the state shall cooperate with advocacy initiatives and civil activist groups competent in working with grassroots. They could carry out large-scale campaigns aimed at refuting misconceptions that local people might have.

The paper suggests mining companies to approach negotiations using the principle of mutual gains; nevertheless, it recommends to consider local community's interests and concerns in the first place. Mining companies should be aware of the influence of the third parties; therefore, it should diligently work on the trust-building process with local communities, which requires good-faith participation and direct involvement in the projects that address concerns of local communities. The paper emphasizes that conflicts with local people are separable from larger issues in a country and can be solved through negotiations.

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