



ACCOUNTABLE MINING

TACKLING CORRUPTION RISKS IN MINING

NEGOTIATION MANIPULATION [COMMUNITY CONSULTATION]

THE CHALLENGE OF CORRUPTION IN THE LICENSING OF SUBSOIL USE

Mining takes place in some of the most corruption-prone places on earth. According to the OECD, one in five foreign bribery cases involves the extractives industry.¹ Mining projects can span decades and involve hundreds of millions of dollars' worth of investment. Given these high stakes, there are strong incentives for corruption at the licensing stage of a mining project. Indeed, a study of over 130 corruption cases in the oil, gas and mining sectors found that one in four cases arose at the licensing stage.²

The discovery or suspicion of corruption in government decisions to grant licences for mining and exploration projects has significant consequences. It erodes public trust in the ability of government to manage the country's natural resource wealth. It erodes public trust in mining companies operating in the country. Corruption erodes trust and confidence in the mining sector as a whole.

ASSESS THE CORRUPTION RISKS

Transparency International has developed the Mining Awards Corruption Risk Assessment (MACRA) Tool³, a step-by-step guide to identifying vulnerabilities and corruption risks in the licence, permit and contract awards process. This tool can be applied and tailored to any operating context. The MACRA Tool helps ask the right questions to determine corruption risk exposure – the first step in any corruption risk mitigation and management strategy. The tool contains a list and explanation of 80 common corruption risks. Adopting a tiered approach, it provides guidance on how to “triage” and identify the corruption risks most relevant to the circumstances and how to assess likelihood and impact of those risks. Adopting a holistic approach to risk assessment, the MACRA Tool accounts for corruption risk factors in the legal framework, its implementation and practice, and the surrounding political and administrative context. This system-wide approach to corruption risk assessment captures risks in the environmental and social impact assessment process and community

1 OECD, Foreign bribery report, (Paris: OECD, 2014): 8.

2 OECD, Corruption in the extractive value chain: Typology of risks, mitigation measures and incentives, (Paris: OECD, 2016).

3 M.Nest, Mining Awards Corruption Risk Assessment Tool, (Berlin: Transparency International, 2nd ed, 2017).

consultation, as well as the allocation of exploration and mining rights.

LACK OF AWARENESS OF THE POPULATION

According to sociological studies, the majority of local residents surveyed have a negative attitude to the activities of mining companies and the mining industry as a whole. As practice shows, limited information leads to confrontation and conflicts with the local population. In the most conflict areas, the local population even demanded the establishment of a long-term moratorium on the development of deposits

The Subsoil Law and other regulations do not detail the requirements for consultation with the local community. Often, licenses are issued without taking into account the opinions of local residents. Public hearings, at which company representatives must inform people about their upcoming work, are held formally. They mainly involve interested parties. The population has practically no information. Mining companies establish contacts with local authorities, obtain a license, allocate land and, without giving any reason, start working. Residents often do not know what the company is doing, how much money the region receives from the development of a particular industry and where these funds are directed.

The degree of participation of local communities in the EIA process remains unclear, since in accordance with the Regulation on the Procedure for Conducting an Environmental Impact Assessment, taking public opinion into account consists of posting EIA documentation at the offices of local government bodies and companies to collect written comments and suggestions, and not mandatory meetings with local communities and consensus building.

WHAT HAS BEEN DONE

In the frame of implementation of the National Action Plan for Building an Open Government in the Kyrgyz Republic for 2018-2020, the State Committee for Industry, Energy and Subsoil Use of the Kyrgyz Republic established a working group to ensure

transparency in the mining industry, which included representatives of government agencies, business and CSOs.

The working group has compiled a preliminary list of mining industry data to be published based on the results of the analysis, including data on employment, subcontractors, social benefits and environmental impact.

At present, the development of a draft normative legal act of the State Committee for Industry, Energy and Subsoil Use is under way to approve the list of data to be published, as well as the format, methods and frequency of their publication.

RECOMMENDATIONS

There is a need to strengthen efforts to ensure free, prior, informed consent of local communities.

For government

- Develop and legislate detailed requirements for consultations with the affected local community and the extent of its involvement
- Carry out work to ensure a balance of compliance with the interests of the local population and mining companies

For Civil Society

- Promote building of local community capacity and empowering community participation and consultation at all stages of mining

For mining companies

- Ensure that official records of consultation discussions and agreements are publicly available

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