



One Year Later

Justice in Waiting: Kumtor and a community's struggle for their rights

Introduction

In July 2022, the Asian Forum for Human Rights and Development (FORUM-ASIA) and Bir Duino-Kyrgyzstan undertook field research to understand the impact of mining operations carried out by the Kumtor Gold Mine in the Issyk-Kul region of Kyrgyzstan.

The research highlighted the lived experiences and testimonies of the most affected people, focusing on their socioeconomic, cultural, civil, political, and environmental rights.

Over a span of two weeks, the field team conducted interviews and focus group discussions (FGDs) with local communities, government representatives, civil society organisations (CSOs), mining company representatives, the National Human Rights Commission, and human rights defenders (HRDs) in Tosor, Barskoon, Chon Jargylchak, Kichi Jargylchak, Karakol, and Cholpon-Ata in the Issyk-Kul region.

Through these interviews and FGDs, the research developed a holistic understanding of the consequences of mining on the environment as well as the fundamental rights of the people. The testimonials and data gathered by the field team shed light on the detrimental effects of the Kumtor Gold Mine on the livelihoods and health of the local communities. It also highlighted threats to the region's glaciers and biodiversity as well as

the community's access to a safe, clean, healthy, and sustainable environment.

The research report—launched in Bishkek, Kyrgyzstan in November 2022—also explored mining's impact on fundamental freedoms and civic space. The report offered recommendations for the adoption of a more human-rights-centric approach to economic progress.

Since the research, there have been developments within the research site as well as in Kyrgyzstan's legal landscape with regards to the issue of mining, human rights, and the protection of HRDs. To capture these developments, impacted community members and CSOs were asked to participate in a survey, which intended to better understand the changes (if any) in their surrounding areas. Likewise, the survey was used to document efforts to capacitate communities to understand and advocate for their rights more effectively. This forms the basis of this 'one year later brief,' which summarises relevant developments following the field research.

The developments cover both positive and negative changes since July 2022, including legal reforms, media coverage, official statements from the government and mining companies, capacity building initiatives, the establishment of collaborative groups; and advocacy efforts at local, national, and international levels to name a few.

This brief aims to further highlight the severity of the crisis faced by local communities affected by mining operations in Kyrgyzstan. We hope that the human rights community and wider civil society urgently act to prevent the crisis from further wreaking havoc on the livelihoods of the Kyrgyz population.

Survey Findings

Context

The Kumtor Gold Mine in the Issyk-Kul region is among the main sources of income for Kyrgyzstan's state budget. However, its significant contribution to the country's gross domestic product has prioritised business interests over the rights and well-being of communities.

The situation of the communities and the environment of the Issyk-Kul region remains largely unchanged even after the nationalisation of the Kumtor Gold Mine and its transfer from Canadian investor Centerra Gold to the Kyrgyzstan Government in April 2022. Instead of taking efforts towards remedying the adverse impacts of mining, the Kyrgyzstan Government has continued to grant international investors and mining companies access-through licences and permits-to explore and extract the country's natural resources since the research.

Furthermore, notable restrictions on freedom of association and assembly, freedom of expression, the right to non-discrimination, and the right to privacy have persisted since the research.¹

The government has been employing various tactics—such as the introduction of new repressive laws, the arbitrary detention and deportation of HRDs, and the targeting of media organisations—to continue and further intensify its crackdown against dissenting voices that attempt to raise concerns over the shrinking of civic space in the country.

One such tactic includes introducing repressive laws which can impede the exercise of rights and could result in the closure of human rights organisations and independent media.

The proposed law on non-profit organisations (NPOs) primarily stigmatises the organisations receiving foreign funding as 'foreign representatives' and places them under burdensome requirements of reporting, monitoring, and unscheduled inspections by government authorities. The proposed amendment to the Criminal Code also includes provisions that introduce criminal liability and the possibility of imprisonment for representatives of NPOs.

Meanwhile, the draft law on mass media may curtail press freedom by imposing several stringent requirements on the operations of all media outlets. The proposed mandatory registration for all mass media outlets creates undue barriers for informal media outlets to operate, while provisions on granting rights to government interference with the editorial work of media outlets could lead to media censorship.

¹ https://24.kg/ekonomika/274768_kitayskie_kompanii_nachali_dobyivat_ugol_vkyrgyzstane/

Deportation is another tactic used by the government to silence dissent as seen in the case of investigative journalist Bolot Temirov who was deported from Kyrgyzstan to Russia.² A similar tactic was used to detain 20 people—including HRDs—for publicly opposing a government-negotiated border agreement with Uzbekistan regarding the transfer of the Kempir-Abad water reservoir.³

Environmental Protection

At the time of the research, the melting of the Lysyi and Davydov glaciers surrounding the Kumtor Gold Mine was flagged as a primary concern in connection to the mining operations.⁴ The nearness of the open pit mine's tailings ponds to the glaciers posed a serious risk of groundwater pollution, which could potentially contaminate the Naryn River, Central Asia's main water source.

Nurlan Nabiev, Director of the Asian Development Bank's project on enhancing the resilience of water resources in Kyrgyzstan to climate change and natural disasters, voiced concerns over the rapid glacier meltdown in the region.⁵ Nabiev anticipates even more extensive melting ahead, especially in the Talas River basin where glaciers are disappearing. Nabiev also highlighted the threat to water sources, demanding urgent attention and mitigation strategies.⁶

Rather than addressing the detrimental effects of mining, the Kyrgyzstan Government granted international investors access to mining sites.⁷ This move aims to generate additional revenue for the country's struggling economy. The government plans to invite large investors through open tenders for the development of various mines, such as the Jetim-Too iron ore mine in Naryn; the Sandyk aluminium mine in Jumgal; the Bala-Chyckan copper-gold mine in Talas; and the Kuttuu-Sai-II rare metals mine in Kemin.⁸ However, experts from the state's geo-environmental safety department cautioned how these mining activities could result in adverse effects unless specific measures were implemented to safeguard glaciers, delicate slopes, and ecosystems.⁹ Experts further noted that these mining activities will lead to more mining-related natural disasters.¹⁰ However, agreements have been signed by the government in

² <https://www.omct.org/en/resources/urgent-interventions/kyrgyzstan-rights-defender-and-journalist-bolot-temirov-illegally-deported-to-russia>

³ <https://kloop.kg/blog/2022/10/24/mvd-zaderzhalo-21-aktivista-i-politika-zashhishhavshih-kempir-abad-ot-peredachi-uzbekistanu/>

⁴ "Justice in Waiting: Kumtor and a community's struggle for their rights" 2022. FORUM-ASIA and Bir Duino. December 5th, 2022. Page 22. <https://forum-asia.org/?p=37589>

⁵ <https://daryo.uz/en/2023/09/13/kyrgyzstan-faces-dire-water-crisis-as-glaciers-rapidly-melt-warns-expert>

⁶ https://24.kg/obschestvo/274850_ledniki_budut_katastroficheski_tayat_ekspert_rasskazal_oposledstviyah_malovodya/

⁷ <https://www.gov.kg/ky/posts/21603-ministrer-kabinetinin-bashchysy-akylbek-zhaparov-zhay-dayyndalgan-naryn-oblusunun-bashchysyn-emgek-zhamaatka-taanyshtrydy>. See also, <https://ejatlas.org/conflict/zhetim-too-mine-in-naryn-region-kyrgyzstan>

⁸ <https://news.climate.columbia.edu/2022/07/13/>

⁹ Ibid

¹⁰ <https://www.thethirdpole.net/en/climate/aftermath-of-kyrgyzstans-viral-glacier-collapse/>



October 2023 with Chinese companies to undertake green energy initiatives and coal mining near the Kyrgyz-Chinese border.¹¹

One of the positive initiatives by the government in detecting, preventing, and reducing disasters was undertaken by inaugurating the 'Dolon' avalanche-monitoring station, a joint effort by the Kyrgyz Ministry of Emergency Situations, the Japanese Government, and the United Nations Development Programme. It offers real-time data for early avalanche warnings, enhancing public safety in the Naryn region.¹²

Civil and Political Rights

The research report highlighted the case of Tengiz Bolturuk, former manager of the Kumtor Gold Mine, who was accused of financial fraud in August 2022.¹³ The case sparked accusations against the Sadyr Japarov government for concealing gold buyers' information.¹⁴ The opposition's demand for access to Kumtor's documents was denied, citing security concerns.¹⁵ Following investigations, Bolturuk was found guilty on 17 counts under Article 247, which concerns 'violation of the procedure for conducting public sales, auctions or public procurement (purchases)' of the Criminal Code of the Kyrgyz Republic, and fined 800,000 soms (approx. USD 9,000) by the Pervomaisky District Court in Bishkek on 21 November 2023.¹⁶ Additionally, 10 million soms (approx. USD 11, 000) in damages were returned to the treasury.¹⁷

There is a notable restriction on the scope of operations of CSOs, journalists, and HRDs in Kyrgyzstan as the government introduces several repressive policies to curtail free speech. As mentioned earlier in the brief, one such attempt is the proposed draft Law on Mass Media, which poses severe implications on the freedom of expression in Kyrgyzstan.

After facing extensive backlash from media experts, lawyers, and human rights advocates, the presidential administration acknowledged the need to amend the draft media law. It established a working group—composed of government officials and media representatives—to revise the draft. Despite this effort, however, the presidential administration did not sufficiently consider the suggestions made by media representatives during the revision process.

¹¹ <https://pressroom.rferl.org/a/32663533.html>

¹² <https://www.undp.org/kyrgyzstan/press-releases/new-avalanche-station-starts-operating-dolon-kyrgyzstan>

¹³ Justice in Waiting: Kumtor and a community's struggle for their rights" 2022. FORUM-ASIA and Bir Duino. December 5th, 2022. Page 23. <https://forum-asia.org/?p=37589>

¹⁴ <https://rus.azattyk.org/a/31993999.html>

¹⁵ <https://rus.azattyk.org/a/32006823.html>

¹⁶ <https://rus.azattyk.org/a/32693719.html>

¹⁷ https://24.kg/english/280323_Former_external_manager_of_Kumtor_Tengiz_Bolturuk_sentenced/

Consequently, the revised version of the law—presented for public review in mid-May 2023—remained a matter of serious concern for civil society groups¹⁸ and the UN Special Rapporteur on freedom of expression.¹⁹ They raised the alarm on the use of excessive government oversight on media and non-governmental organisation (NGO) operations to coerce and silence those who challenge authority.

As part of the changes proposed in the draft law, all media platforms, sources of information, and NGOs would need to undergo registration or re-registration. Stringent registration requirements are to be imposed on all mass media outlets. Non-compliance risks dissolution.²⁰

The European Union (EU) passed a resolution calling to revoke these repressive laws in Kyrgyzstan. The EU also highlighted specific instances of media suppression, as exemplified by the closure of radio Azattyk and the national bureau of the international broadcasting corporation Radio Free Europe/Radio Liberty; the ongoing criminal investigation involving Kaktus Media; and the illegal expulsion of investigative journalist Bolot Temirov to Russia to name a few.²¹

In October 2023, the national parliament (Jogorku Kenesh) adopted amendments to the law 'On Non-Profit Organizations' and the Criminal Code²² in the first reading²³, which is said to be modelled on Russia's repressive 'foreign agent' law.²⁴ The bill includes vague language categorising non-profits receiving foreign funding and engaging in activities to influence politics or public opinion as 'foreign representatives'.²⁵

For establishing an association or non-profit entity that engages in activities inciting citizens to avoid civic duties, commit unlawful acts, or lead such organisations, the proposed law introduces fines ranging from 50,000 to 100,000 soms (approximately USD 563 to 1,127) or imprisonment for up to five years.²⁶ Fines between 100,000 to 200,000 soms (around USD 1,127 to 2,254) or imprisonment for up to ten years are also proposed as punishment for actively participating in such associations or propagating such actions.

¹⁸ <https://www.hrw.org/news/2023/06/27/kyrgyzstan-attacks-media-free-expression>. See also, <https://monitor.civicus.org/explore/mass-arrests-activists-restrictive-draft-laws-and-widening-campaign-against-false-information/>

¹⁹ <https://kyrgyzstan.un.org/en/251211-un-special-rapporteur-expresses-concerns-draft-mass-media-law-kyrgyz-republic>

²⁰ <https://monitor.civicus.org/explore/mass-arrests-activists-restrictive-draft-laws-and-widening-campaign-against-false-information/>

²¹ https://www.europarl.europa.eu/doceo/document/TA-9-2023-0290_EN.html

²² http://kenesh.kg/ru/draftlaw/634426/show?fbclid=PAaAZK8dz79rfaCbjQbwYcS-6y-fn2WD54wN2M_m1tLx7Rt63abALAWC5KM

²³ <https://kyrgyzstan.un.org/en/248422-un-special-rapporteurs-have-urged-government-kyrgyz-republic-reconsider-and-withdraw-draft>

²⁴ <https://www.rferl.org/a/kyrgyzstan-cpi-foreign-agent-law-media-rights/32654553.html>

²⁵ https://kloop.kg/blog/2023/10/25/parlament-bez-obszhdenij-prinyal-v-pervom-chtenii-zakonoproekt-ob-inoagentah/?fbclid=IwAR2qQYjKlFBhn8oH_S5Z-atwyGokNhOwyUGBk6hpKClawd13abgyYQ19E

²⁶ <https://kyrgyzstan.un.org/en/248422-un-special-rapporteurs-have-urged-government-kyrgyz-republic-reconsider-and-withdraw-draft>



The bill's vague language raises concerns regarding the lack of legal clarity in its definition of 'incite,' 'propaganda of acts,' 'other unlawful acts,' and the extent of 'civic duties'.²⁷ NPOs assuming roles as foreign representatives must detail their expenditure of funds and other resources received from overseas, providing an auditor's report. Without proper intervention, this could lead to unrestricted administrative control over NGOs.

In addition, government officials would be allowed to demand internal documents from NGOs. They would also be able to send state representatives to partake in the internal activities of NGOs. Granting broad authority to the government to monitor and intervene in activities of non-profit organisations goes against international human rights standards. Unscheduled inspections could also potentially intimidate and harass organisations critical of the government.

Economic, social and cultural rights

The mining activities in the Issyk-kul region continue to negatively impact the environment as well as people's wellbeing and livelihoods.

While not much has changed since the nationalisation of the Kumtor Gold Mine, the situation has deteriorated in terms of people's access to clean water, the health of both residents and livestock, and the continued melting of glaciers.

In addition, the looming threat posed by climate change continues to be observed in the Issyk-Kul region, where shortage of river water was noted alongside the rapid melting of glaciers.²⁸

The continuous violation of labour rights in the Kumtor Gold Mine has been highlighted in the research and survey. One such example is from the subcontracting organisation handling cleaning and catering services at Kumtor, which employs 94 local women as part of its poverty alleviation initiatives. These employees face challenges in accessing benefits—such as vacations and sick leaves—due to their employment through a patent system rather than direct contracts. Initial discussions with these workers revealed their reluctance to advocate for their rights or join a trade union out of fear of losing their jobs. Such fears are fanned by the limited job opportunities and low wages in the region. As a result, many workers feel that they have no choice but to stick with a job despite the poor working conditions. In Kumtor, around 1,000 individuals employed through subcontracting organisations are facing labour rights violations.

In response to the government's minimal efforts to address these issues in Kumtor, Bir Duino-Kyrgyzstan established a union for former Kumtor mine workers. The union aims to actively mitigate labour rights violations and safeguard the rights and interests of both former and current mine workers through various human rights initiatives nationwide.

In addition to this, more recently, women affected by the 1998 sodium cyanide spill established a public organisation named 'Akyikat Guldor' (Flowers of Justice), with the aim to promote the rights of more than 90 women employees at the Kumtor Gold Mine. The organisation also works towards highlighting the importance of women's leadership in risk and disaster prevention as well as strengthening their advocacy skills to promote the right of communities and the

²⁷ Ibid
²⁸ https://24.kg/obschestvo/269044_obmelenie_issyk-kulya_kuda_uhodit_voda_ikakov_prognoz_ucheniyh/

environment. The organisation also aims to foster a culture of sustainability at the community level by creating a range of products from environmentally friendly materials to replace existing environmentally harmful alternatives.

Capacity Building Activities

FORUM-ASIA—in collaboration with Bir Duino-Kyrgyzstan—organised a three-day capacity building programme for community members from the Issyk-Kul region in Karakol from 18 to 20 April 2023 on the topics of human rights research, business and human rights, improving access to information, and understanding the Programme for Social and Economic Development.

Bir Duino-Kyrgyzstan also conducted a series of workshops to further strengthen the ability of local community representatives to actively engage in decision-making processes. Participants were oriented on how to draft official requests and applications. In addition, they were trained on how to effectively advocate for their interests, fundamental rights, and freedoms at a national level.

These trainings contributed to elevating the understanding of legal frameworks among local community representatives. Following such trainings, community members have engaged in advocacy activities to protect the environment—particularly the glaciers—with the officials of the Kumtor Gold Mine and local governments representatives.

Conclusion

The adverse effects—both current and future—of the Kumtor Gold mine cast a shadow over Kyrgyzstan's Issyk-Kul region.

Regrettably, the government and mining companies have both failed to take substantial actions to mitigate the damage inflicted on the communities and the environment. While certain positive developments have emerged, there is a long way to go to ensure accountability for the impacted communities.

Greater action is needed from the government in ensuring the protection of the rights of communities. Likewise, concrete steps need to be undertaken to make sure that the surrounding environment is not put at greater risk of deterioration and subsequent collapse as this could have devastating and long-reaching consequences for the environment and its inhabitants within the region and beyond.

