



**Mining Regulation in the Kyrgyz Republic  
– A Review**

**ENVIRONMENTAL SECURITY, MINING  
AND GOOD GOVERNANCE**



**Environmental Security, Mining and Good Governance  
Mining Regulation in the Kyrgyz Republic. A Review  
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# INTRODUCTION: MINING IN KYRGYZSTAN

Although the mining industry may be small in comparison with other sectors when measured in economic terms, it is nonetheless central to the global economy and increasingly important to a number of countries that host the mining industry. In the Central Asian state of Kyrgyzstan, agriculture continues to dominate the economy as a whole. However, the share of the mining industry of the country GDP has increased from 5 per cent in 2005 to represent 12 per cent of GDP, 39 per cent of the value of all industrial output, 40 per cent of total exports by volume, and 12 per cent of tax revenues in 2010.<sup>2</sup> Despite changing figures, it could be said that the mining industry has always played a crucial role in the economic and social development of the Kyrgyz Republic. Currently, the mining industry is recognizably the basis of industrial production of Kyrgyzstan.<sup>3</sup> The mining sector employs an estimated 15 000 workers.<sup>4</sup>

The Kyrgyz Republic as part of the former Soviet Union had a relatively developed mining industry that employed up to 50 000 people. In various periods during the Soviet era, the share of Kyrgyzstan in the total production of mineral products was 15–18 per cent for lead, 40–100 per cent for mercury, 100 per cent for antimony, up to 30 per cent for rare earth metals, and up to 15 per cent for uranium. State financing of mineral exploration and prospecting totalled 50 million rubles a year.

As a result, a powerful geological infrastructure was established in the country.<sup>5</sup>

By the time of the collapse of the Soviet Union, mass investments had resulted in the discovery of several thousands of objects classified as deposits or manifestations of minerals registered by the State Cadastre. Among them, there are deposits discovered and fully prepared for exploitation such as Kumtor (a world-class gold deposit of 12 million ounces), Jerooy and Taldy-Bulak Levoberezhnyi (two medium-size reserves of gold deposits of 3 million ounces each), and at least a dozen deposits with the reserves of 1 million ounces of gold.

Overall, Kyrgyzstan can be considered rich in mineral resources. The minerals known here include molybdenum, iron ore, aluminum raw material, tin, mercury, rare earth metals and gold.<sup>6</sup> Gold has been the main mineral sector in Kyrgyzstan since the collapse of the Soviet Union. Currently, gold constitutes 90 per cent of the national mining production by volume and is the main export of Kyrgyzstan.<sup>7</sup>

The country's mineral resources being fairly rich, mining activities have become larger and more serious in recent years. Important contributing factors to this development have been the improved business environment and mainly the global trend of increasing prices of raw materials traditional for Kyrgyzstan.

In 2011, the deposits of Ishtamberdy, Dzhamgyr and Karakazyk with the total gold

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reserves of 22 tons have been put into operation. In 2012, construction of mines should be completed at the deposits of Bozymchak, Nasonovskoye and Kumbel with the reserves of gold totaling 30.9 tons and of copper 1 517 000 tons. The deposits of Aidarbek and Chonkymysdykty, with the reserves of gold comprising 25.1 tons and of copper 705 000 tons, are expected to be put in operation in 2013. In addition, a number of deposits are planned to be put into operation in 2014: tin and tungsten deposits of Trudovoye, Uchkoshkon and Kensu

with the reserves of tin totalling 205 000 and 124 000 tons respectively; the gold deposits of Jerooy, Taldybulak Levoberezhnyi, Kuru-Tegerek, Shambesay, Unkrurtash and Chaarat with gold reserves of 234 tons. Currently, these deposits are at the planning and construction stage (Taldybuldak Levoberezhnyi), final prospecting stage (Unkurtash, Chaarat), feasibility study stage (Shambesay) and at the stage of preparation of technical projects for the development (Kuru-Tegerek).<sup>8</sup>

# GENERAL MINING POLICY DEVELOPMENT IN KYRGYZSTAN

The development of Kyrgyz mining policy has moved from one challenge to another. During the Soviet era, policy-making was rather simple thanks to the highly centralized and state-led management system of natural resources extraction. After the collapse of the Soviet Union, the Kyrgyz mining sector experienced a severe decline. The run-down situation was linked to the transition from a centrally planned system to a market economy. The newly independent Kyrgyz Republic had to survive without higher-level control, support and direction, with its weak and undeveloped state institutions and an inadequate administrative system.<sup>9</sup>

In the new situation, government policy, and especially taxation, was to play an important role in the development of the Kyrgyz mining sector. The starting point was not very promising since many foreign investors had backed away from the country due to their removed privileges. The withdrawal of investors combined with decreased world prices for the metals produced by the country forced the government to take new action to improve the situation.<sup>10</sup> Consequently, the government has over the years taken on several measures including reduction of royalty rates, simplification of the licensing procedure, a cutback in the state share of mining projects, transformation of regulatory acts to reduce state interference in the industry, introduction of a new clause on taxing into the Tax Code on the use of subsoil,

and establishment of an agency responsible for managing the mining and minerals industry.<sup>11</sup>

At the end of the first decade of the twenty first century, the future of private investments in the Kyrgyz mining sector seemed optimistic and further growth of exploration investments was expected. However, although the state was committed to continue the legal reform vital to improve the operational conditions for mining, the financial risks were to shift to private investors.<sup>12</sup> Privatization is naturally a part of the transformation to a liberal market economy, but expectations for foreign investors might be unrealistic. There is no guarantee that the gained profits of the industry will, directly or indirectly benefit Kyrgyz citizens or lead up to any acceleration in the development of the country. Extensive administrative control over the mining industry is another factor in the picture.<sup>13</sup> It has been the government line that the shift from administrative and legal management to civil regulation has to be gradual.<sup>14</sup>

It is clear that Kyrgyzstan has recognized the potential of its mining industry and has made an effort to develop its operational environment. However, during the last decade, Kyrgyzstan has had trouble implementing large-scale mining projects due to mainly financial and administrative difficulties.<sup>15</sup> In general, the drastic transition from a socialist to a market economy has left chances neither

to the government nor to the sector specialists to realize the market value of the existing mineral resources.<sup>16</sup> In addition, there is a growing pressure to move the management of the Kyrgyz mining sector away from strict administrative regulation towards more market economy based regulation.

In general, broad state intervention has been a major feature of Kyrgyz mining regulation and policy. It has given immoderate power to officials, which has decreased the profitability

of the sector for foreign investors. The problems with the operational conditions in the mining sector are further related to a lack of financial and technical capacity. Poor operational conditions are not only affecting cooperation between companies and the state, but are also undermining the relationship between communities and companies, since there is no adequate mechanism for companies to take into consideration the needs of local communities.<sup>17</sup>

# MAIN ACTORS IN CREATING AND IMPLEMENTING MINING REGULATION IN KYRGYZSTAN

The administrative government in Kyrgyzstan may be divided into central and local government. In the area of environmental and mineral regulation, the central government is responsible for granting licences and permits, expertise on environmental and social impact assessments, planning for regional and local development, control over the compliance with environmental standards and health and safety standards, and distributing revenues from mineral development.

Each local administration has a number of tasks relating to mining activities in its area. For instance, local governance bodies are responsible for allotting lands for subsoil use after a company has been granted a mining licence. In general, environment and natural resource management in Kyrgyzstan has been impacted by decentralization developments and reforms of local government. These have resulted in a high level of overlap in the functions, responsibilities, and authority among organizations of different levels of state and local governance bodies.<sup>18</sup>

The history of the main environmental authority of Kyrgyzstan is likewise marked with organizational reforms. Since 2005, the State Agency of Environmental Protection and Forestry has been the body responsible for environmental regulation. The low institutional status of the Agency has been said to create difficulties when it comes to defending ecological interests and raising environmental priorities.<sup>19</sup> In 2009, the State Agency of Environmental Protection and Forestry lost the major responsibility for environmental expertise and control in environmental protection relating to mining operations within the licensed sites to the Ministry of Natural Resources. In mining

issues, the Agency's main function was limited to environmental impact assessment on the lands of the state forest fund specially protected natural areas and the realization of the requirements of 13 international environmental agreements (conventions and protocols), including the Aarhus Convention on access to environmental information, public participation and access to justice in environmental matters.<sup>20</sup>

In the administrative mining sector, the State Agency for Geological and Mineral Resources was transformed into the Ministry of Natural Resources (Minprirody) in 2009. This change was said to reflect the (projected) significance of the mining industry in the future success of Kyrgyzstan.<sup>21</sup> In addition, the transfer of the administrative functions on environmental protection and health and safety protection to a specific empowered body on subsoil use was justified by the idea of organizing the interaction between the state and mining companies “in one window” in order to reduce risks of corruption.<sup>22</sup>

The Ministry was given an impressive number of functions, and also tasks that were previously the responsibility of other sectoral agencies were transferred to the new Ministry. The Ministry of Natural Resources was, for instance, responsible for mining licensing, supervision, normative regulation and policy development. This organizational “centralization” development considerably simplified the operations of mining companies in the country, yet the ability, and interest, of the Ministry to safeguard e.g. environmental protection was questioned.

The Ministry of Natural Resources was allowed to function for almost three years before

the next organizational reform was introduced. A new government was formed in Kyrgyzstan in late 2011, and it decided to abolish three ministries, among them the Ministry of Natural Resources. The Ministry was reorganized into the State Agency for Geology and Mineral Resources (Gosgeolagentstvo).<sup>23</sup> In principle, thus, the Kyrgyz mining governance was returned to the same organizational level as it was before 2009 (i.e. divided between two state agencies), except for some competencies related to the state environmental expertise of projects within geological licensed sites that were retained.

It has been decided that the State Agency for Geology and Mineral Resources will retain licensing and monitoring functions (through its two departments: Mineral Resources Monitoring and Analysis, and Subsoil Use Policy), while the concerned ministries will handle policy issues.<sup>24</sup> The latter means that the functions related to mineral resources management policy are handed over to the Ministry of Economy and Anti-Monopoly Policy. The newly created State Agency for Geology and Mineral Resources will then implement the subsoil use policy.<sup>25</sup> The main tasks of the Agency have been defined as follows: systematic comprehensive study of the subsoil; state regulation of subsoil use issues; state control over the rational use of mineral resources of the Republic; and protection of the subsoil.<sup>26</sup> The detailed division of work between the state agencies of mining and environmental protection, and the re-established State Inspection for Environmental and Technical Safety,<sup>27</sup> is still uncertain. Furthermore, it appears that the functions of the sub-departments of the Mineral Agency are somewhat duplicative.

This organizational change was rather surprising, and its justifications have not been openly discussed, except for the general need to reduce state budget deficits and improve efficiency.<sup>28</sup> Perhaps it was thought that the

general mining policy of the country should be subordinated under the Ministry of Economy instead of a sector-specific governance structure. In that way, according to the intentions, the government could have the mining policy under better control and it could be more effectively integrated with the more general economic plans and policies of the country. Nevertheless, it appears clear that the leading politicians were not satisfied with the way the Ministry of Natural resources had functioned. Time will tell how the Kyrgyz mining policy will be affected by the yet again reformed governance structure.

## RECOMMENDATIONS FOR DECISION-MAKERS:

- Decrease overlap in the functions, responsibilities, and authority among organizations of different levels of state and local governance bodies by assigning more clear-cut responsibilities to individual authorities.
- Analyze the responsibilities of the State Agency for Geology and Mineral Resources and reorganize sub-departments to maximize efficiency and increase functionality of each department.
- Shift responsibilities on environmental protection from the State Agency for Geology and Mineral Resources to the State Agency of Environmental Protection and Forestry.
- Strengthen the institutional status of the State Agency of Environmental Protection and Forestry to give priority to environmental protection in the licensing process during exploration and exploitation.

# NATIONAL REGULATION OF MINING IN KYRGYZSTAN

## Introduction: Developments and Development Needs

In general, providing a comprehensive picture of the legal situation related to mining in Kyrgyzstan is challenging as the regulation has been renewed several times and it is split into numerous sectoral laws and blocs of regulation. However, it is important to have these all covered because, as it has been said, “it is the holistic legal system that defines the relationship between the regulator and the miner.”<sup>29</sup> All parts have their important roles in the whole of the relevant legal system.

The Kyrgyz legislation has been entirely renewed since the gaining of independence in 1991. The reform process has not been without difficulties. The starting point was challenging and progress has at times been rather slow. It is clear that as the reform has been made in numerous steps and over many years, long-term planning and coordination of the process have been poor or lacking altogether. Sectoral authorities may have had visions as to how the regulation should be improved, but these have not been properly reflected in practice and have at times contradicted the laws and objectives of other sectors. Furthermore, the government bureaucracy has remained inefficient, plagued by conflicts of interest, corruption, duplication of duties and ineffective communication across agencies.

Problems of poor coordination and communication have persisted to a significant extent across different functions of the central

administration and between the central and local governments. Also the quality of the reform efforts has often left something to be desired: the changes have in many cases been limited to formal legislative, organizational, and technical reforms that were arguably in some cases intended to please donors and secure continued funding from international finance institutions.<sup>30</sup> The flood of new legal documents has been intense, leading in some cases to legal inflation and selective enforcement of laws, and possibly to barriers to economic development in the country.<sup>31</sup>

The Kyrgyz government has more recently recognized problems that the mining industry faces due to the inadequacy of mining legislation. These are considered to derive from the ongoing transition to market-based (economic) regulation. The imperfect regulatory framework has been acknowledged to cause inconsistency and ambiguity between and within relevant laws.<sup>32</sup> Consequently, the government launched a programme “Improvement of the statutory and legal system”. The programme included preparation of a new edition of the Law on Subsoil<sup>33</sup> and bringing other laws regulating the use of subsurface resources into conformity with it along with amending and supplementing laws governing subsoil use. As a result, a comprehensive mining code would have been developed to regulate all issues pertaining to use of subsurface

resources.<sup>34</sup> However, the implementation of the programme proceeded irregularly.

The prevailing administrative inefficiency and confusing state functions, together with the legal nihilism of the population,<sup>35</sup> have formed a regrettable backdrop for conflict situations both between state and/or local administration and the mining industry, and between mining companies and local populations in Kyrgyzstan. Uncertainties regarding the future expected regulatory requirements and the level of rigor and consistency of the implementation of the existing policies and legislation undermine both the country's business environment and its social atmosphere in mining regions.

In general, no country has a perfect legal system for mining. However, characteristics of ideal regulation may be defined. It has been argued that from the regulator's perspective, a clear-cut, predictable and enforceable framework is essential to control the activities of the mining industry effectively. From the industry

viewpoint, it is important to have a regulatory system that is stable, transparent and appropriate to the conditions of the country in terms of priorities, infrastructure and skills.<sup>36</sup> The relevant legal framework and individual rules have to be appropriate to the needs of different actors, understandable and justified. When parties sense that they are fairly treated, they are more likely to comply with the regulation. However, this does not remove the need to have enforcement methods available.

## RECOMMENDATIONS FOR DECISION-MAKERS:

- Pursue strengthening and consolidation of laws pertaining to the use of subsurface resources, e.g. via implementation of the revised mining code, to create a coherent and enforceable framework for mining in Kyrgyzstan.

## Trends in Subsoil Use<sup>37</sup>

For Kyrgyzstan, 2011 was marked with rearrangements of political elite groups and changes in political as well as economic influences. Continued redistribution of property and changes in the state administration led to the change of “play rules” for businesses. The national political instability and uncertainty gave rise to economic instability and even chaos. The geological sector, as the major sector generating budget revenue, was under a lot of pressure. According to the data of the Ministry of Natural Resources, the number of licensed sites for subsoil use was 998 as of 1 January 2011. Of these, licences for prospecting of various minerals were issued for 174 sites; licences for exploration for 215 sites; and licences for the development of mineral resources for 609 sites. In 2010, the Ministry cancelled 550 licences.

At the beginning of 2012, instability in the country and in the mining sector continued. The legal reform aimed at the introduction of new taxes and payments as well as increasing legislative pressure is being implemented at an accelerated pace. The licensing process has been suspended for an uncertain period of time. Furthermore, general discontent with geological companies is growing among local communities. Consequently, mining

companies have been forced to stop their operations due to unsolved problems with land resources and local communities in many parts of the country. The companies do not get any protection from the state authorities as local communities have very little belief in law and in the capacity of the state bodies.

In addition, the unsolved issue of acceptance of geological reports and issuance of licences to mining companies threatens the implementation of their operational plans. This could cause the disruption of the 2012 field season. Another serious drawback in the current regulation of subsoil use is the fact that the actions of the Mineral Resources Agency do not envisage the diversity of forms for subsoil use, but impose only one administrative and command principle, i.e., the issuance of licences.

As the result of the situation in the investment market, external investors have started to lodge their assets in projects in more stable countries. Furthermore, local investors tend to support only short-term projects in Kyrgyzstan. This has caused stagnation of the mining sector followed by instability in consulting and other services. If political, economic and social instability drags on, the mining consulting services may lose the majority of their clients as well.

# The Legal Framework for Mining



## Development of Regulation

The Law on Subsoil has been the principal regulatory instrument for mining activities in the Kyrgyz Republic. To signify the development of mineral resources as one of its economic development priorities, Kyrgyzstan adopted the original 1992 Law on Subsoil as one of the first laws developed after the country gained independence from the Soviet Union. The Law declared a transition to a market economy, but in practice strict state control over subsoil users remained in place.<sup>38</sup> A kind of manifestation of this was the establishment of a complicated licensing system which has largely remained the same up to the present.

The Kyrgyz legal regime of subsoil use was critically reviewed by external analysts in 1990s, but it was not until 1997 that the new Law on Subsoil – that is in force even today – was adopted. The new law did not bring a radically novel approach to the governance of mining activities in Kyrgyzstan; the traditional “command and control” method was largely retained. The shortcomings of the mining regulatory system were recognized in subsequent review studies,<sup>39</sup> which largely recommended an administratively lightened control and licensing system. The government took note of these results of policy studies and initiated a reform

process for the country’s mining legislation. However, the process has seen many winding turns without a concrete final outcome.

The mining legislation of Kyrgyzstan has indeed been subject to remarkable reform efforts in recent years. A new Law on Subsoil was passed by Parliament in late 2000s, but it was not signed into law by the President. The proposed law was subject to considerable controversy,<sup>40</sup> and, consequently, the draft appeared to have been left for further development for an indefinite period of time.

In April 2010, new draft laws on subsoil and related laws, prepared by the Ministry of Natural Resources, were introduced to the Parliament. However, the draft laws did not pass through the parliamentary procedure due to the change of the government.<sup>41</sup>

A new effort to reform the legal framework for mining activities in Kyrgyzstan was introduced in autumn 2011 as a Parliament Committee approved the three readings of the amendments to the Law on Subsoil. A change of government put this process to a halt, until a new hastily developed draft Law was presented to the ministries and agencies for endorsement in March 2012.<sup>42</sup> It is illustrative that during the last five years, six ministers have in turn directed the reform of the Kyrgyz subsoil legislation, introducing their personal views into the content of the draft text of the new law. At the time of writing, the draft Law has just

been given final consideration and acceptance by the Kyrgyz Parliament and President.

Overall, the development of the new subsoil use regulation has been aiming at eliminating shortcomings in matters of licensing and preventing corruption mechanisms within the mining regulation. Further goals have been the improvement of the publicity of mining operations and bringing additional funding to the national budget. Furthermore, the new law has been expected to prohibit approvals on the development of mining sites located near strategic ecologic locations such as rivers, lakes and glaciers.<sup>43</sup> It has been said that the law would thus provide the restriction to keep under lock and key crucial territories to protect the environment.<sup>44</sup>

The economic instruments intended to be introduced into the Kyrgyz mining sector regulation include competition and auction processes in the distribution of licences, and a fee for holding a licence. It is supposed that the latter would encourage subsoil users to start developing their deposits faster than is currently the common practice. Moreover, the new draft law would allow direct negotiations as a licensing procedure only in special cases (when the subsoil use rights are not related to exploration and development of mineral resources).<sup>45</sup> Subsoil use rights with respect to mineral deposits of national importance would then be provided solely by means of a tender.<sup>46</sup> From the viewpoint of the mining industry, the planned legislative reform has been said to fall short of the needs of the business as the discretionary rights of the authorities would not be reduced and as geological information would be declared state property.<sup>47</sup> From the viewpoint of local communities and conflict prevention, an open tender process would be better than closed negotiations between a mining company and the government.

In any case, whenever finally becoming effective, the new Law on Subsoil is expected to

substantially change many aspects of the current mining licensing, regulatory, and fiscal regime in Kyrgyzstan. The government has been determined to adopt a “hands-off” approach to the mining sector, leaving only relatively few issues in the hands of the government to control the fate of the mining licences.<sup>48</sup> The aims are to significantly reduce bureaucracy and to improve the functioning of market mechanisms in the regulation of the mining sector of the country.

## RECOMMENDATIONS FOR DECISION-MAKERS:

- Make geological information available for mining companies and promote exchange of information among stakeholders.
- Promote the options to award licences via an open tender process instead of closed negotiations between a mining company and the government.
- Pursue the implementation of the new Law on Subsoil.



## The Legal Regime for Mining in Kyrgyzstan

The 1997 Law on Subsoil continues to be the most important regulatory instrument for the planning, operating and closing of mining activities in Kyrgyzstan. The Act defines the rights and responsibilities of the legislator and state, local authorities and the mining operator. Much of the Law on Subsoil is concerned with ownership issues, and with the procedure

and conditions for subsoil use. Environmental and social issues of mining activities have been left for other sector-based regulation.

The first stage of a new mining project is prospecting works and then exploration of reserves. In conducting geological exploration of subsoil, companies operating in Kyrgyzstan are required by law to take measures for environmental protection. Exploration activities are subject to licensing. In the same vein, if a mineral deposit is found, the operator needs a licence for its exploitation.

If the exploration has proved successful, the company needs to obtain a “licence to use subsoil with the purpose of development of mineral resource deposits, including man-made ones”. It should be noted that small-scale artisanal mining activities are not subjected to licensing in the country. However, artisanal miners should, in principle, register with local authorities.

The State Agency for Geology and Mineral Resources is the main permitting authority for the mining sector in Kyrgyzstan. Currently, licences are usually issued through direct negotiations. If the applying company has discovered a deposit after a legal exploration, it has a preferential right to obtain a licence for its mining.<sup>49</sup> This is a reasonable policy as investment in exploration is unlikely if the investor has no assurance of being able to secure rights to exploit the mineral deposits it discovers. However, the new draft of the Law on Subsoil would impose some limits to this practice. Accordingly, competitive tenders and auctions would be the major mechanisms for granting of mining licences. It could be supposed that the broader introduction of tender and auctions processes<sup>50</sup> would bring more competition to the Kyrgyz mining licensing and stop speculation with licences – thereby collecting more revenue for the state.

The right to access subsoil to develop mineral resources in Kyrgyzstan is implemented

in two stages. At first, a licence accompanied by a licence agreement, which foresees development of the project or feasibility study, is issued. The licence is valid for two years. When the project (feasibility study) has been completed and tested, the licence for development is issued for the term defined in the feasibility study. Generally, the validity of mining licences in Kyrgyzstan is considered short compared to most of the developed industrialized countries.<sup>51</sup> The new draft Law on Subsoil would set the validity of mineral development licences to be “up to 20 years”.<sup>52</sup> Thus, authorities would be left with discretionary power to determine the term of use of mineral resources. Generally, mining licences may be reviewed whenever remarkable changes are introduced to the activity.

Generally, Kyrgyz rules and regulations do not make a difference between the mining rights of domestic parties and foreign parties. It is not necessary for a foreign company to have a domestic partner.<sup>53</sup> Licence rights can also be pledged or transferred to third parties, with the agreement of the mineral resources authority. On the other hand, mining operations need legal continuity and security. Therefore, the law states that once a mineral right has been granted, it cannot be suspended or revoked except on carefully specified grounds set out in law.<sup>54</sup>

Once a company has completed mining works in Kyrgyzstan, it is legally obliged to close the mine. The subsoil users that operate under a licence are required to present their financial guarantees for restoration of the damaged environment.<sup>55</sup> Furthermore, licensing agreements for exploitation of deposits typically require the miner to environmentally restore the mine site after use. The required closure includes mandatory rehabilitation of land. A re-cultivation plan is required from the companies, which shall be approved by the authorities.<sup>56</sup> In addition, mining companies

must be prepared for environmental rehabilitation by placing a financial guarantee to the effect that re-cultivation works will be undertaken upon completion of mining works. However, it has been reported that in practice such guarantee is not provided due to the absence of established terms and conditions of providing such payments.<sup>57</sup> The new Law on Subsoil could possibly solve the present unclear situation: the draft law obliges the mining company to set up a recovery and liquidation fund in a bank. The account of the fund should be regularly replenished. The means of this fund could not be used for other purposes.<sup>58</sup> This arrangement could increase the confidence of local communities and mining authorities in the presented closure and environmental rehabilitation plans of mining companies, and thus contribute towards lessening tensions around new mining projects.<sup>59</sup>

## RECOMMENDATIONS FOR DECISION-MAKERS:

- Ensure that environmental and social issues of mining activities are considered an integral part of sector-based regulation.
- Review the introduction of tender and auction processes to increase competition to the Kyrgyz mining licensing as a measure to increase state revenue.
- Ensure integration of mine closure works, including re-cultivation, into the mine licensing requirements via environmental funds accumulated during mine operations and provide valid terms and conditions for the funds.

## Mining Agreements: Regulatory Flexibility and Political Controversies

To complement licensing, mining agreements are also in use in Kyrgyzstan when new mining operations are about to be started (or existing agreements are renewed). Nowadays, a licence agreement is an integral part of the mining licence, which is not valid without it.<sup>60</sup> The right to use subsoil may also be granted by concession<sup>61</sup> or on the basis of a production sharing agreement.<sup>62</sup>

By way of an example, the agreements on the Kumtor mine will be shortly discussed here.<sup>63</sup> It is to be noted that the ratification of the agreements by the Kyrgyz Parliament has provided the Kumtor project a special status. This example of special relations between the investor and the government is an exception and does not have analogues for other mining projects in the country.

The 1992 “Master Agreement”<sup>64</sup> established the applicable rules and regulations with respect to the exploitation of Kumtor. These included the tenure of mineral and surface rights, operating obligations, applicable taxes (including a ten-year exemption on profit tax),<sup>65</sup> employment of Kyrgyz citizens and the import and export of funds, materials and gold produced from the Kumtor mine. Naturally, other laws and regulations of general application in the Kyrgyz Republic also applied to the operation of the Kumtor mine, except to the extent they conflicted with the mining agreements.

The original agreement was then replaced by an Investment Agreement, concluded in 2004. The new agreement included regulatory and tax relief that was given to the Centerra company operating the Kumtor mine. These clauses had the purpose of ensuring greater predictability and stability of the investment environment for the company. Furthermore, towards the same end, the Investment Agreement provided Centerra with guarantees against expropriation and rights to non-discrimination. It also stipulated that Centerra is entitled to all necessary permits and approvals relating to the Kumtor mine, including with respect to environmental matters and hiring of foreign nationals. Easements of regulatory requirements were also granted with regard to the company’s import of any capital equipment and operating supplies. Finally, Centerra was granted the right to export any of its products free of export duty and other charges and without unreasonable formalities that delay or hinder such exports.<sup>66</sup>

Towards the end of the 2000s, the Kyrgyz Government and Centerra started re-negotiations on the Kumtor Investment Agreement. The process was difficult and ended up in a stalemate several times. Finally, the Restated Investment Agreement was signed in June 2009. The new agreement established a simplified tax regime for the Kumtor mine, removing

a number of previously valid taxes and stabilizing many of the remaining ones. In general, tax stabilization agreements between mining companies and host governments are sometimes negotiated separately from more general mining development agreements, which typically address a broad range of issues within a particular project only.<sup>67</sup> In Kyrgyzstan, it appears that the Tax Code<sup>68</sup> serves as a kind of general tax stabilization agreement whereas more detailed provisions are included in mining agreements or specific investment treaties.

Even after the 2009 Agreement, the Kyrgyz government has been contemplating means to increase its share in Centerra's operation in the country. Recently, a commission studied the company's compliance with the norms and requirements on the rational use of natural resources, protection of the environment, industrial safety and social protection of the population from the impact of the gold mine. In the course of these discussions, the majority of deputy members of the Commission supported the idea of reviewing all agreements and contracts signed in the past, the conditions of which are not to be considered beneficial for Kyrgyzstan. In other words, the main objective of the effort is to increase the share of the Kyrgyz side in Centerra Gold/Kumtor.<sup>69</sup>

Sometimes host country governments practically force mining companies to renegotiate their licence agreements. This has happened also in Kyrgyzstan. For instance, the increased price of gold was the driver that initially made the Kyrgyz government start renegotiations on the Kumtor gold mine agreement in the late 2000s.<sup>70</sup> This kind of action is naturally not welcomed by the mining companies, and created an environment of uncertainty that may affect all mining projects in the country. Similar strong discontent and uncertainty have been felt by investors towards Kyrgyzstan's recent record of withdrawing licences from one company to award them to another. Jerooy

gold deposit is an example of this latter practice. The Kyrgyz government withdrew the licence to develop the deposit from its owner in late 2010 and announced that a new tender would be held for the field. The official reason for tearing up the 2006 licence agreement was that the venture had failed to make good on its commitment to start construction of an ore-enrichment factory by an agreed date.<sup>71</sup>

Another case where mining rights have been subject to withdrawal efforts is the Andash mining site. The Kyrgyz Parliament passed a Resolution in June 2011 to the effect of suspending all activities related to the development of the Andash gold-copper mine, revoking all permits and cancelling the land use permit. The member of the Parliament who proposed the Resolution claimed that the mining company's activities neglect environmental safety and pollute water with industrial waste. It appeared, however, that the claims had not been taken up with the company or authorities. It was considered unlikely that the Government would accept the Resolution. The Parliament does not have the power to revoke mining licences, only the Ministry of Natural Resources could do that and only under specified conditions. The Ministry informed the mining operator that it complies with all legal requirements and standards of licence activity in Kyrgyzstan.<sup>72</sup> The situation has remained unresolved while the mining company has decided to stop the development of the Andash site.

## RECOMMENDATIONS FOR DECISION-MAKERS:

- Provide a stable investment environment by establishing and enforcing sound rules and regulations for mining agreements, including licence agreements.

## Fees and Taxes: A Burden for Mining Companies

The host country to a mining project seeks to benefit from the industry by collecting a variety of taxes and other payments from mining companies. There are a number of fees and taxes that a mining company active in Kyrgyzstan has to pay in different phases of its operations.

According to the Kyrgyz Tax Code, a mining company is subject to a single bonus payment for the right to use subsoil, and regular royalty payments for the extraction of mineral resources. The bonus is essentially a licensing fee that is comparably high (amounting to 0.05 per cent of the value of estimated reserves at 2009 market prices).<sup>73</sup> Few other countries apply this kind of tax: licensing payments are usually based on land area rather than the value of estimated reserves.<sup>74</sup> A royalty is essentially a tax on mineral production, based on the state's sovereign ownership over the resource and is paid in exchange for the right to extract the mineral substance.<sup>75</sup> The rate of the royalty in Kyrgyzstan is set for each type of mineral resources as a percentage of the proceeds.<sup>76</sup>

In addition, there are land taxes and corporate income taxes that all business in Kyrgyzstan have to pay. It should be noted that small-scale artisanal mining is exempted from the payment of taxes and royalties on use of the subsurface.<sup>77</sup>

Generally local governments do not directly receive tax revenue from mining companies, except via land tax and other very small

payments. The major source of revenues for local governments is “shared revenues” or transfers from taxes collected by the state and then allocated with uniform rates to local administrations.<sup>78</sup> The current situation where local governments benefit only indirectly from the profits made by mining companies operating in their area has received increased criticism in Kyrgyzstan. This state of affairs is one of the main reasons for local opposition to mining projects as many people perceive that the big profits that mining companies make do not benefit the local area but the tax payments go to the bottomless state budget.

Not much concrete was done to ameliorate the situation before an initiative for a law amendment was introduced in 2011. The initiative proposed an allocation of 2 per cent of the proceeds of mining companies into local budgets. Behind the proposal were members of the Kyrgyz Parliament who saw the initiative as a way to improve the country's investment attractiveness. According to the most ardent defender of the initiative, MP Iskhak Pirmatov, it would relieve tension at mining districts and diminish opposition and assaults against mining companies by local people. The initiative would give local self-government freedom to decide how and when to spend the money, and public supervisory boards would be obliged to monitor the transparency of the actions.<sup>79</sup> The Ministry of Natural Resources considered that

the 2 per cent payment scheme would assist in the challenge of letting mining investors and local communities work together.<sup>80</sup>

The initiative has given rise to reservations within mining companies. It has been pointed out that the Kumtor Operating Company has been paying, according to the established agreement through the Issyk-Kul Development Fund, a significant amount of money to the local administration. The company has not, however, received any report as to how the province has spent the money. Furthermore, the company suspects that the central government will respectively reduce local budgets with revenue accounting.<sup>81</sup> Mining industry representatives stated that in the planning of mandatory payments, the experience of Kumtor should be taken into account, and the size of the deductions should be 1 per cent, the same that applies to the Issyk-Kul Fund.<sup>82</sup> The government line was that 2 per cent is the minimum rate for the payment; it was pointed out that in Kazakhstan such payments constitute 5.5 per cent and in Russia 7 per cent.<sup>83</sup>

In general, investors have a very reserved attitude towards the 2 per cent proposal. In their opinion, it does not guarantee protection of the rights of business, and remarkably contradicts the current legislation and may even lead to new unrest among the local population.<sup>84</sup> The mining industry is concerned about the transparency of the distribution of the funds: what decision-making mechanisms would be used in the allocation of funds, and does the community trust local authorities in this respect? Mining companies have expressed their need for safety guarantees if they are required to pay a portion of their profit to local governments as requested.<sup>85</sup> Furthermore, it has been considered unfair to burden only mining companies with additional payments; other sectors of the economy could be engaged, too.<sup>86</sup> Finally, it has been pointed out that the situation of local governments with regard to income from

mining activities is not as grim as it may seem. Arguably, local authorities have in recent years collected increasingly (excessively) high land-use fees from mining companies.<sup>87</sup> These collected funds have not, however, been observable to local communities and their welfare.

A slightly more open attitude has been shown by the company operating the Andash mining site: they have said that although naturally not welcoming additional charges and fees, the current state of affairs in the mining industry in Kyrgyzstan may warrant such measures as the 2 per cent local tax if it will help companies to get started with their business.<sup>88</sup> The company's view is understandable as they had to step back from the licensed Andash mining area due to severe conflicts with local people. More generally, investment security is very important for any mining company operating in Kyrgyzstan. If the 2 per cent payment scheme guarantees a safe working environment for the mining industry, their opposition would no longer be a concern. The General Director of Andash Mining Company has furthermore stated that setting standards for local budget contributions will help to limit unreasonable requests from the local people to mining companies and improve relations with the local population. As a result, investment in the mining industry is arguably likely to grow.<sup>89</sup> This appears a reasonable line of thinking, although further practical issues (e.g. the use of the collected funds at the local level, the perceived inadequateness of the 2 per cent fee in relation to the profits of the mining industry) may cause also new unrest among local communities.

The 2 per cent mandatory payment for mining companies was accepted by the Kyrgyz Parliament in late 2011.<sup>90</sup> However, the President used his veto right and did not sign the new Law on Non-Tax Payments. The Parliament is currently attempting to overcome the veto.

Besides the official tax regime, the tax rate of a mining company operating in Kyrgyzstan

may be determined by arrangements agreed upon in a special agreement as was done with Kumtor (see the text on mining agreements above). As these agreements are negotiated between the company and the government, they may contain a scheme of special treatment with regard to the tax (mining-related and other) scheme for the company. This kind of differential treatment, the main element of which is usually tax stabilization, may be necessary to attract or maintain mining business in the country, but it is also a problematic practice in some respects. Overall, it should be noted that the agreement made on Kumtor is an original and special case in the Kyrgyz mining sector.

It has been said that the two licensing fees (the bonus and royalty) in combination have made Kyrgyzstan one of the costliest countries in the world in which to conduct mining exploration and production.<sup>91</sup> The high mineral tax and administrative cost regime could perhaps partly explain the relatively limited development to date of Kyrgyzstan's mineral wealth and the relative absence of major mining companies from Kyrgyzstan.<sup>92</sup> On the other hand, other political and administrative barriers have probably affected the development more. More recent comments by mining industry representatives have, nevertheless, been voiced in a more positive tone. For instance, the Kyrgyz tax regime for mining companies has been described as "attractive"<sup>93</sup> and as "definitely the best in the region and one of the best in the

world".<sup>94</sup> Indeed, currently the overall tax burden for mining companies, including all payments into the state budget, comprises 12–15 per cent of the company proceeds. This is very low compared to other countries.<sup>95</sup> These efforts of the Kyrgyz government to make the general investment climate of the country attractive for foreign business have not gone unnoticed by investors, including those in the mining industry.

## RECOMMENDATIONS FOR DECISION-MAKERS:

- Increase local benefits from mining activities to raise living standards in mining areas.
- Identify mechanisms to create direct benefits from mining operations to local governments.
- Provide standards for local budget contributions to channel requests from the local people to mining companies and to improve relations with the local population.
- Identify appropriate decision-making mechanisms for the allocation of funds to local budgets.

## Problems in Mining Licensing

Despite recommendations towards increasing openness,<sup>96</sup> the mining permitting process has not been open to direct civil society participation.<sup>97</sup> During recent years, however, the public has been involved, to some extent, in the permitting activities. Importantly, the membership of the licensing commission has been extended through the involvement of deputies of the Parliament, prosecutors, representatives of other ministries and public groups. Thus, civil society participation is also allowed in the licensing commission, and an additional observatory board has been established.<sup>98</sup> However, the State Agency for Geology and Mineral Resources has the ultimate power to make licensing determinations, and public participation is many times more pro forma than really influential on the final outcome. In general, it would be a wise policy to make the local community aware of the planned mining project and to ask for their genuine contribution to the activity. This would work towards releasing tensions and the significant conflict potential that new mining projects face in Kyrgyzstan.

It was reported in 2008 that the state mining authority had issued around 1 500 licences in total. However, almost 90 per cent of the licence holders were not operating at that time.<sup>99</sup> It is remarkable that only two gold deposits (Kumtor and Solton-Sary) have actually been put into operation in Kyrgyzstan over the last 15 years (not taking into account deposits

of local construction materials). A government commission has found that the majority of the mining-related licences were received for the purpose of speculation and for increasing the share value of the company, and not for the purpose of conducting actual mining activity. The Law on Subsoil has provided significant discretionary powers to officials with regard to licence issuance and cancellation, and has allowed any person, including those completely unrelated to the mining industry and without financial capability, to receive and retain licences for speculation purposes.<sup>100</sup>

State deputies have explained the situation by the fact that the majority of subsurface resource use licences were issued without any tenders, by direct negotiations between the Ministry of Natural Resources and subsoil users.<sup>101</sup> It could be expected that if companies had to invest in tender processes, they would not obtain the respective licences for speculative purposes only.

The Kyrgyz government has recently adopted a strict policy as a response to the speculative mining licence acquisition. In January 2011, by an order of the Ministry of Natural Resources, the issuing and renewal of licences and licence agreements for geological research and development of mineral fields were suspended.<sup>102</sup> During the suspension, the length of which was not announced, authorities will review fulfilment of licence agreement terms

before company reports and 2012 work plans are approved. It was reported that 260 licences were revoked after 10 months in 2011. There had been cases where companies had been delaying the start of work for 11 years; understandably, the authorities were determined to put an end to empty promises of mining investments.<sup>103</sup>

The strong line of action is to an extent understandable since the government no longer wants to support mining companies that fail to proceed with actual mining and extraction. This kind of setting never meets the aim of issuing mining licences because the Kyrgyz economy never receives the promised investments, the state budget never sees tax revenues, jobs are never created and services are never purchased from the adjacent-sector providers.<sup>104</sup> On the other hand, the suspension policy could and has been criticized. Perhaps most importantly, the policy creates remarkable uncertainty for investors. While the government is weeding out ineffective companies that are not actively developing their holdings, the government review is causing “considerable problems” for companies that have acquired their licences with good intentions.<sup>105</sup> Experts have called the suspension decision “unprofessional and tendentious”.<sup>106</sup> The situation has resulted in numerous lawsuits where the cancellation of licences has been claimed as illegal. Some of the cases have actually been won by subsoil users. However, the execution of the judgments has been delayed.<sup>107</sup>

## RECOMMENDATIONS FOR DECISION-MAKERS:

- Implement a public mining cadastre that contains geological information on mining sites, admissibility of sites for licensing, ownership information and so on.<sup>108</sup>
- Continue strengthening the role of public participation in the mine licensing process via greater representation of the public in the licensing commission and increase the commission’s influence in the decision-making vis-à-vis the State Agency for Geology and Mineral Resources.
- Raise awareness within the affected community regarding planned mining projects and encourage active participation in the decision-making process.
- Pursue the establishment of a tendering process to award mining licences instead of direct negotiations between the State Agency for Geology and Mineral Resources and potential subsoil users to avoid speculative mining licence acquisition.
- Develop a screening mechanism for licence holders to reduce the risk of speculative mining licence acquisition.
- Adopt a flexible approach to advance mining site development taking into consideration screening results and company structure.

# Assessment of Environmental Impacts of Mining and the Public's Environmental Rights in Kyrgyzstan

Mining does not take place in a vacuum; it is bound to have effects on the surrounding environment and the local community. Assessment and analysis of these negative impacts is vital to bring them to the attention of all actors and to give rise to appropriate reactions towards their reduction or elimination.

Ideally, environmental impact assessment (EIA) is the delivery of high quality information from the company (or other actor responsible for the given project) to the community, the government and other decision-makers. In Kyrgyzstan, environmental impact assessments are legally required to be carried out on new mining projects. The process takes place in two stages: first, the operator must conduct an EIA and prepare an environmental impact statement (EIS). Second, the assessment must be followed by a positive State Environmental Expertise (SEE) report.

Public participation is mandatory at all stages of the environmental impact assessment procedure.<sup>109</sup> The project developer is obliged to subject the Environmental Impact Statement to public scrutiny and to revise the Statement based on the feedback. The instruction on environmental impact assessment (EIA) procedure of September 1997 provides detailed requirements for the provision to the public of information on the project, for the EIA statement and documentation as well as for the organization of public hearings. Despite

these advanced guidelines, the practice has been criticized for not ensuring that the public should be or has actually been informed about the reasons for not reflecting its comments or proposals in the summary of public comments that the developer is submitting to SEE. Furthermore, the instruction does not oblige the SEE authority to inform the public about its decisions.<sup>110</sup> These are serious flaws, as there seems to be very inadequate follow-up to public participation in the EIA process. The instruction and its application may give the impression that the public is actively engaged in the project planning, whereas in reality the participation is limited to one project stage without much attention to the outcome.

To help countries to deal with activities that are likely to have environmental impacts across boundaries, the Espoo Convention on Transboundary Environmental Impact Assessment<sup>111</sup> was adopted in 1991. Kyrgyzstan joined the Convention in 2001. The first real test for the implementation of the Espoo Convention in Kyrgyzstan came in 2007 when a pilot project “EIA in a Transboundary Context: Pilot Implementation Project in Central Asia” was organized by the Organization for Security and Co-operation in Europe and the United Nations Economic Commission for Europe under the Environment and Security (ENVS-EC) initiative. The project was operational in 2007–2008 and focused in Kazakhstan and

Kyrgyzstan while bearing relevance for the whole Central Asia region.<sup>112</sup> The provisions of the Espoo Convention have been applied in a couple of similar cases after the successful pilot project.

Kyrgyzstan joined the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters in January 2001. The Aarhus Convention has been very significant for Kyrgyzstan and similarly for other former Soviet Union states. After independence, these countries had moved to greater openness in their overall state policies. However, there was still little recognition among officials that they were obliged to provide environmental information upon request to the public, for example. The administrations and legal systems in these countries were not oriented to serving NGOs and citizens.<sup>113</sup> In addition, people were not aware of their rights to receive and submit environmental information and participate in decision-making.<sup>114</sup>

Kyrgyzstan has made its legislation conform to the requirements of the Aarhus Convention. The most remarkable asset of the Aarhus Convention in relation to access to information for Kyrgyzstan and other Central Asian countries has been the provision that officials should provide environmental information without demanding that an interest in obtaining the information be explained by the requester.<sup>115</sup> Nowadays, the public's information rights are, in principle, quite well secured in Kyrgyzstan. However, there are situations where the rights are not fully respected. It may be that the public has been initially informed and heard in the preparation of a new mining project, for example, but no obligation has been established in the legislation to inform the public about the decisions taken, along with the reasons and considerations on which they are based.<sup>116</sup> It has been assessed that the problem in Kyrgyzstan is not so much access to information

on request (passive access to information) as keeping the public informed in order to facilitate considered decision-making (active access to information). The reasons for this include lack of funds, the absence of clear-cut procedures and arguably also pure ignorance of the rights of the public.<sup>117</sup> The problem is not to be taken lightly as a poorly informed public tends to act according to its worst-case scenarios, causing trouble that could sometimes be helped with appropriate information-sharing by the relevant authorities.

The implementation of public participation in environmental decision-making in Kyrgyzstan is not very straightforward.<sup>118</sup> The regulation is scattered in various sources. Consequently, realization of public participation in environmental decision-making in Kyrgyzstan has received quite a lot of criticism. According to the most extreme view, public participation in the decision-making process in Kyrgyzstan is usually just for show.<sup>119</sup> In any case, the problem is both in the legislation and in its implementation. For instance, licence applicants are not encouraged by domestic law to exchange information with the public.<sup>120</sup> Public participation in environmental decision-making in Kyrgyzstan is, thus, largely haphazardly organized. This has, in some cases, pushed people to take action on their own, to make their views heard in more forceful, even violent ways.

Generally, transformation towards more participatory decision-making in Kyrgyzstan has largely been initiated and assisted by international inputs. The availability of international expertise, the influence of international conventions such as the Aarhus Convention, and the operation of international development organizations as well as investors in the country have all contributed towards granting the public a more participatory role in the decision-making and governance of the country.<sup>121</sup>

Under the Aarhus Convention, access to justice covers cases where the rights enshrined in the first two pillars of the Convention (access to justice and public participation) have allegedly been violated. In addition, access to justice must be provided in all cases where a person or organization claims that environmental law has been breached. In Kyrgyzstan, access to justice in environmental matters is generally provided without limitations.<sup>122</sup> Nevertheless, this right is not very widely used; Kyrgyz people often prefer more direct and informal ways to express their discontent with the way their procedural environmental rights are implemented.

## RECOMMENDATIONS FOR DECISION-MAKERS:

- Introduce and implement a mechanism by which the State Ecological Expertise authority is required to justify the rejection of comments and proposals by the public, and inform the public about its decisions.
- Continue strengthening awareness among the local population regarding their rights to receive and submit environmental information and participate in decision-making.
- Continue developing procedures for information exchange between mining companies, government and the public.
- Secure sufficient funds to implement appropriate information exchange and public participation (e.g. via licence fees).

## Consideration of Social Impacts of Mining in Kyrgyzstan

Besides the obvious fact that mining activities always come with environmental impacts, they also always affect local people's lives on the social side.<sup>123</sup> The impacts can be related to, for instance, people's livelihoods and working conditions, education, social relations, and health and safety.

In general, social concerns are, or should be, usually included to a varying extent in an environmental impact assessment (EIA) of a new mining project. Sometimes these processes specifically become "environmental and social impact assessments" (ESIAs), though usually the role of social impacts therein is much smaller than that of the biophysical assessments<sup>124</sup>); sometimes a separate social impact assessment (SIA) is made in the context of new mining projects. In essence, an SIA is concerned with the identification and mitigation of both positive and adverse social impacts that may arise from the establishment of a mine, for example.<sup>125</sup> ESIAs should ensure that mining is carried out in an environmental and socially responsible way.

Kyrgyz mining-related regulations mention the assessment of social impacts in the instructions on the environmental impact assessment procedure.<sup>126</sup> Accordingly, the EIA includes social effects, the EIA being a "socio-environmental-economic analysis of intended project aspects", "with the assistance of public hearings."<sup>127</sup> The general criteria of social

effects detection have been set as to possibly include "population's health and security, possible resettlement to other districts, changes in usual living conditions and traditional forms of employment, proximity to recreation zones, natural reservations, archeological, ethnic and historic monuments."<sup>128</sup> The assessment must then identify the degree of public concern based on the gathered information. The information is part of official EIA materials.<sup>129</sup>

In practice, social impacts of mining projects in Kyrgyzstan are assessed as part of their general feasibility studies.<sup>130</sup> A feasibility study to be submitted to the authorities together with a mining licence application includes an EIA statement (covering environmental, social, economic, etc., impacts of a project). In fact, the applicant needs to have acquired an OVOS (a specific environmental and social permit, corresponds to an accepted EIA) before a mining licence can be applied for and granted.

Many times international standards are also applied in the assessment of the environmental and social impacts of new mining projects. An SIA or ESIA is often conducted in projects financed by international organizations (such as the World Bank or the Asian Development Bank).<sup>131</sup> These assessments are naturally separate from the Kyrgyz national requirements, but they can nevertheless contribute towards more profound assessments of project impacts on the ground level.

Overall within the Kyrgyz context, the assessment of the social impacts of mining projects is not a well-established standard procedure. Social impacts are, as a rule, assessed to some extent, but the process and its outcomes lack coherence and effectiveness. Too often a project's social impacts are only rather briefly and superficially accounted for, without genuine research and public participation in the process. This practice needs to change: social impact assessment must be better institutionalized in the country with the introduction of appropriate legislation and promotion by mining companies, authorities and NGOs.

It is important to note that social impacts of mining are often tackled by voluntary corporate social responsibility (CSR) initiatives and programmes that mining companies operating in Kyrgyzstan implement. It can be said that today, the mining industry is very much concerned about the possible impacts of environmental and social issues on its business activities and therefore those issues have become key agenda items.<sup>132</sup> In essence, the companies face the fact that they need to obtain a “social licence to operate” and engage with key stakeholders at every stage of the mining life-cycle.<sup>133</sup>

Corporate social responsibility practices include community development and going beyond compliance with local and national laws. A social impact assessment should be the first step when a mining company is developing its CSR policy. On that basis, a company may launch a variety of community involvement initiatives at the site level. Today, mining company CSR policies are a mixture of general and industry-wide initiatives and contextual company- and site-specific policies and projects. Despite some internationally agreed voluntary guidelines,<sup>134</sup> the field of mining CSR is very complex as the implemented activities cover such a wide range of initiatives.

Within the Kyrgyz context, the mining

industry has initially been relatively cautious in introducing CSR principles into their operations in the country. This is said to be largely a reflection of the obsolete legal framework, which practically discourages companies from financing social programmes, from implementing social projects and from increasing their partnership in charitable activities.<sup>135</sup> In addition, the role of the state authorities in promoting CSR movement has arguably been rather weak. In essence, Kyrgyzstan is lacking a strong state policy intended for CSR of business.<sup>136</sup> The policy to be established should be based on voluntarism, however. Active involvement of all parties (business, state, mass media and society) is required in this issue.<sup>137</sup>

At the company level, Centerra Gold operating the Kumtor mine has taken initiatives towards tackling the socio-economic impacts of the mine. The company has had the practice of setting aside funds to be used to different capacity-building projects within Kyrgyzstan. Under the terms of the newest agreement with the Kyrgyz government, the company pays 1 per cent of the gross revenue from the mine to the Issyk-Kul Development Fund.<sup>138</sup> Centerra has also created the Kumtor microcredit public fund and provides financial support to several local cooperation committees.<sup>139</sup>

Another example to be noted is Kentor Gold the main project of which is the development of the Andash gold-copper site. The company has a very developed environmental and social management scheme.<sup>140</sup> The company has invested in interaction with local populations and in community development projects. This has been also a necessity since the company has faced strong opposition from the local people towards its mining plans. By way of an example, CSR projects (part of the company's community development programme) to be implemented in Kentor's Andash mine site include a Micro-Finance Scheme to assist local villagers in sustainable development.<sup>141</sup>

In addition, the company has also planned to provide a 1 per cent royalty to community development projects in the local village, district and province.<sup>142</sup> However, despite the attempts of Kentor to “be responsive to and satisfy the locals”, the local residents still oppose to the work of the company.

As can be seen from the examples above, the mining industry active in Kyrgyzstan has increasingly been engaged with self-regulation as to the mitigation of the negative social impacts of their mining operations. The trend of establishing different social development funds has been especially clear. This has largely been an answer to the criticism presented by local communities that a larger share of the profits that the companies make should benefit the local population. The CSR policies have developed rapidly during the last 10-20 years, starting from the non-existent Soviet time legacy to the current largely civil society-initiated programmes. The Kyrgyz state has remained mainly silent in the face of these self-regulatory developments of the mining sector. However, perhaps some state regulation and

support would be in order since while different community development programmes and funds can be efficient mechanisms to prevent and mitigate mining conflicts, they may also fuel tensions if they have not been set up or function properly.

## RECOMMENDATIONS FOR DECISION-MAKERS:

- Provide appropriate legislation that integrates assessment of the social impacts of mining projects (similar to the EIA procedure) as a requirement for any mining development.
- Establish a legal framework that gives an incentive to corporate social responsibility based on voluntarism.
- Analyze how CSR can contribute to conflict mitigation and develop corresponding policies on self-regulation.

## PROBLEMS AND CHALLENGES

### Risks of Mining Activities in Kyrgyzstan

Mining industry enterprises in Kyrgyzstan are mainly located in the mountain areas. Since these areas are ecologically vulnerable, the impact of mining activities on the environment is stronger than with similar enterprises in other countries located on the plains.<sup>143</sup> Generally, mining activities cause many kinds of harm, actual or potential depending on the case. In short, the risks of environmental harm include pollution of soil, water (surface and ground water) and air; erosion; hazardous chemicals (especially mercury) and waste; and loss of biological diversity (especially in remote and previously undisturbed areas).<sup>144</sup> Furthermore, mining induces, worsens and accelerates many processes typical of mountainous areas such as landslides, mudflows, slope erosion and others and also leads to some dangerous anthropogenic processes such as subsidence, flooding and pollution.<sup>145</sup> The exacerbated processes may also release hazardous substances to the surroundings with considerable harmful impacts.<sup>146</sup>

On the social side, the most pressing problems caused by mining are the dependence of local people on the revenue generated by the mine and the still sometimes prevailing hazardous working conditions. The issue of (legally) guaranteed benefits or share of the profits of the mine to the local authorities and population is felt very important in the Kyrgyz mining areas. If the local actors are not given

sufficient consideration in benefit sharing, the incentive of these people to develop cooperation with mining companies fades.

From a regulatory viewpoint, the international Extractive Industries Transparency Initiative (EITI) has been established to tackle, among other issues, the problem of inadequate transparency and accountability of mining companies. The Initiative aims at improved governance of resource revenues in the oil, mining and gas sectors. This could lead to better management of the resources, thus promoting economic and political stability and preventing conflicts.<sup>147</sup> Kyrgyzstan has been EITI-compliant since 2001. It is generally considered that company implementation of EITI in Kyrgyzstan is generally strong.<sup>148</sup> The EITI is also valued by the civil society, company stakeholders and the government of the Kyrgyz Republic. In general, partly thanks to EITI, the dialogue between mining companies and local residents has improved. Mining companies have also begun to develop community development programmes.<sup>149</sup> Government representatives appreciate the initiative for helping improve natural resource governance within the country.<sup>150</sup> However, though EITI has brought significant benefits to Kyrgyzstan in numerous ways, its implementation could still be improved. So far, the imperfect legal framework, absence of a clear auditing mechanism, and poor awareness of local communities

through mass media about the Initiative have been hampering EITI implementation in the country.<sup>151</sup>

For the industry and companies, mining in Kyrgyzstan always involves political risks in addition to the potential environmental and social grievances. The past has shown that the government policy may change quite rapidly. The government may introduce measures that discourage foreign investment by implementing unforeseen restrictions or requirements; even nationalization of mining industries has sometimes been mentioned even though the official line has been strongly against such developments.<sup>152</sup>

Overall, the mining sector in Kyrgyzstan suffers from bad legacy and high tensions among different stakeholders. The negative social and environmental legacy of the sector can be considered a major obstacle to building trust and moving forward. Political risks are a

further factor that the mining industry has to take into account when making investments in the country. The latter issue is, however, most easily controllable by the state government.

## RECOMMENDATIONS FOR DECISION-MAKERS:

- Ensure well-regulated and fair benefit sharing, working conditions, and social development to enable good cooperation between the mining company and the local community.
- Implement a sound legal basis for social and environmental management before, during and after mining activities are carried out.

## Legacy of Tailings

There are differences in the available information, but according to the data of 2009, Kyrgyzstan had 92 locations where toxic and radioactive mining waste had accumulated, totaling 250 million cubic meters.<sup>153</sup> Many of the sites are in a dangerous condition, which creates a risk of a leak of hazardous or even radioactive material into the river system and further to neighbouring countries.<sup>154</sup> There is some national regulation in Kyrgyzstan in this respect, but, overall, there is no clear distribution of duties in radioactive waste management between existing governmental structures that have competence in this area.

All is very well if there is legislation in place on mine closure and environmental and social rehabilitation, and it is effectively executed. However, what to do with degraded, abandoned mining sites? They often form a great environmental and health risk for local communities and sometimes even to the environment and people in neighbouring countries. The past misbehavior within the mining sector also forms a great source of discontent and suspicion among local communities towards new mining projects.

The first things to find out are whether the former owner of the operation or the current owner of the land can be identified and brought to bear responsibility. Further, it needs to be examined whether laws were broken when the mine was still in operation or had just been

closed. Often, however, the mine operator or the owner of the land (if it is even privately owned to begin with) cannot be brought to bear responsibility.

In the past, there were no requirements for mine closure planning or guarantees of environmental rehabilitation. In these cases, remedial action must be taken by the state, often with the assistance of different NGOs and international organizations. When such projects are carried out, the actions should be carefully planned since the risks and costs are high. The phases of action include, first, identification of the sites, then assessing their risks, determining what actions would be needed and how much they would cost. Finally, funding mechanisms should be developed at the national and international levels. Given the starting point that not all sites requiring rehabilitation can be remedied anyway, priority should be given to sites where remedial action will offer a clear payoff in improved public health and safety, more usable water supplies, or other demonstrable benefits, such as protection of biodiversity. Another priority is sites with significant abandoned mine legacy problems, and those with particularly pressing social legacies of mining communities.<sup>155</sup>

In Kyrgyzstan, there are, unfortunately, numerous abandoned mining sites that have not been properly closed, not to mention environmentally rehabilitated. These sites are

the legacy of the former Soviet Union, which makes their proper treatment very challenging. Until recent years, these sites have mainly been ignored by the authorities. Formally, the Ministry of Emergencies is responsible for the issue of abandoned mining sites. According to the old 1991 law on environmental protection, residual pollution or damage to the environment caused before 1992 is considered to be the responsibility of the state. However, due to lack of funding and institutional methods for determining the owners' liability for the uranium production facilities and radioactive waste storage facilities, not much concrete has been done to address the problems of abandoned mining sites.<sup>156</sup>

In recent years, former mining sites have been under review and in some cases under rehabilitation efforts with the assistance of international finance and development organizations. Much more effort is, however, needed to properly deal with the issue. Sometimes a mining company discovers an interesting deposit in the area of an abandoned mining site. In these cases, an environmental audit will be conducted which will distinguish between the legacy of the past and the impacts of the new project (the company shall be responsible only for the latter).<sup>157</sup>

The fate of tailings dumps of radioactive waste located at closed uranium mining and processing sites is a serious issue in Kyrgyzstan and a severe regulatory problem for the country and the broader region. The disposal of

radioactive waste from the Soviet era is also a considerable challenge to Kyrgyz economic, social and political development and also to the neighboring countries. The tailings, a legacy of years of inadequate safety measures in the mining sector, are regarded as presenting the highest risks to environmental safety and human health in Kyrgyzstan.<sup>158</sup> It has been estimated that if immediate action is not taken, it will only be a matter of time before soil erosion, landslides, flooding or earthquakes will destroy one or more of the uranium tailing dams, with the possible consequence of causing a national and regional catastrophe with radioactive waste being released into the air and/or nearby rivers or lakes.<sup>159</sup>

## RECOMMENDATIONS FOR DECISION-MAKERS:

- Develop a rehabilitation strategy that includes systematic assessment, prioritization and remediation of environmental threats at each orphaned and abandoned mine site.
- Integrate mine closure planning and remediation in mining agreements to prevent mining legacies in the future and secure funding via environmental bonds created during the economic phase of the mining operations.

## Special Question: Mining in Protected Areas

Mining in or near protected areas is a sensitive issue. The pressure to allow mining activities in protected areas is often hard as mining would bring revenue to the state and also to a varying extent to the specific area. Furthermore, mining companies generally say that they recognize the value of biodiversity and the need to protect valuable areas. However, they point out that the demand for minerals is increasing. In addition, it is argued that new technologies reduce negative impacts of mining on the environment.<sup>160</sup> It is true that companies may use advanced technology and follow best practices, but accidents may always happen, and the consequences in or near a highly valuable protected area can be serious. In Kyrgyzstan, mining companies have in many cases not been very successful in convincing local communities of the safety of their operations and of the effectiveness of the environmental protection measures that companies (routinely or according to tailored site-specific processes) take. In fact, much of the public opposition towards new mining projects in Kyrgyzstan stems from suspicions by local communities that the mining companies will not take adequate measures to protect the vulnerable environment in and around mining sites.

To resolve the issue, criteria should be established and consultations organized before a decision is made whether to take a protected area into mining use. Efforts to this end have

been taken at the international level, although the outcomes have been rather soft. The International Union for Conservation of Nature (IUCN) has issued a recommendation that “IUCN’s State members prohibit by law, all exploration and extraction of mineral resources in protected areas corresponding to IUCN Protected Area Management Categories I to IV”.<sup>161</sup> At the international company level, the members of the International Council on Mining and Metals have made a commitment not to mine in or near World Heritage Sites.<sup>162</sup>

In Kyrgyz legislation, the Law on Special Protected Natural Areas<sup>163</sup> regulates nature protection areas. Generally, existing and well-established nature reserves are strongly protected and mining is not allowed in them. It is specifically prescribed that any economic activity is prohibited in reserved areas of the first category.<sup>164</sup> However, the borders of protected areas are not always clear. Moreover, mining (or at least exploration activities) may be allowed in more softly protected areas (e.g., so-called buffer-zones around more strictly protected areas).<sup>165</sup> These kinds of “border cases” tend to cause conflicts and state authorities must be consistent in their policies in order to lessen tensions.

Inconsistent actions of the Kyrgyz Government in this respect lead to inevitable collisions. In 2009, two land sites (Ak-tyuz and Oktorkoy) adjacent to industrial areas were

put outside of the boundaries of an established nature park (Keminskiy).<sup>166</sup> The decision was justified by the aim to “attract investments into the mining sector and development of geologic exploration and mining works”. Consequently, the sites were passed to the mining companies for prospection and design of mining works. Since then, geological exploration was completed and three mining areas were prepared in Ak-Tyuz village. However, the new Kyrgyz government cancelled the previous resolution in February 2012, and the industrial sites were returned to the park. This made the investments that the mining companies had made in the area worthless, an outcome that was naturally met with deep frustration by the companies.<sup>167</sup> Consequently, one of the mining companies has challenged this decision of the government in court.

A recent report has alleged that the Kumtor mining licence area has spread to the area of the adjacent Sarychat-Eertash nature reserve. A part of the reserve has been assigned as part of the new concessions area of the mine. In addition, the Kumtor Operating Company has a licence for prospecting areas that are in the buffer zone of this nature reserve. It has been pointed out that these acts are against the Kyrgyz regulations on environmental protection.<sup>168</sup> As a minimum, the situation should be ameliorated by urgently conducting an environmental impact assessment in the areas.<sup>169</sup>

According to the Law on Subsoil, paleontological objects and other subsoil portions of special scientific or cultural value may be declared geological sanctuaries or reserves, or natural or cultural monuments.<sup>170</sup> It is clear that such areas are not open to mining

activities thereafter as any activity that might affect the safety of these sanctuaries, reserves and natural monuments is prohibited. The practical protection of such areas is, however, difficult as information on them is lacking. Furthermore, reporting of the found historical mining sites may be ignored (in principle, subsoil users are required to discontinue works at the land plot and inform the State Agency for Geology and Mineral Resources if they discover rare geological and mineralogical formations, meteorites, paleontological, archaeological and other objects of scientific or cultural value) or expertise on assessing and preserving them is lacking.<sup>171</sup> The final decision on protected geological sites rests with the Mining Agency.

## RECOMMENDATIONS FOR DECISION-MAKERS:

- Establish consistent criteria and consultation procedures for mining operations in protected areas.
- Ensure that these criteria cover all relevant areas including environmental, geological and mineralogical formations, meteorites, paleontological, archaeological and other objects of scientific or cultural value.
- Ensure relevant expertise in all areas concerning a protected area to be included in the information gathering and decision-making process.

## Poor Governance

In the early years of independence, Kyrgyzstan was often described an “island of democracy”<sup>172</sup> or the “democratic showcase of the former Soviet Union”<sup>173</sup> as the country was regarded as an avant-garde among Central Asian states in both democratic and economic reforms. However, the democratic development has actually been quite slow in many fields as shown in weaknesses of transparency and government. The system has been characterized to a large extent by political and group interests, which are not conducive to developing a climate of transparency.<sup>174</sup>

Many restrictions have been removed, but democratic principles still need more effective implementation in the country. Corruption continues to be one of the major challenges. The corruption perception index (published by Transparency International) ranked Kyrgyzstan 164th out of 178 countries surveyed in 2010.<sup>175</sup> Corruption has been an unfortunate feature also in the mining sector of Kyrgyzstan. For instance, there have been allegations against members of the presidential

family and concerns over why the country appeared to benefit so little from its gold exports.<sup>176</sup> The Kyrgyz government has publicly denounced corruption and implemented some steps to counter the problem, but positive results have sometimes been slow in coming.<sup>177</sup> Indeed, it has been argued that the trend in the country in the last few years has been an increase rather than a reduction in corruption.<sup>178</sup>

Despite some structural reforms, the central and local governments in Kyrgyzstan still suffer from weaknesses of governance and resources in many areas. More generally, lack of strategic economic and social planning hamper the development of the country. Moreover, heavy bureaucracy, together with a high corruption rate, slows down economic activity considerably.<sup>179</sup> Consequently, Kyrgyzstan’s current governance system has been assessed to indicate significant accountability and legitimacy problems, partly inherited from the previous regime and sustained by economically and administratively detrimental practices.<sup>180</sup>

## Enforcement Challenges

It is not sufficient that regulation exists; the regulated actors must also comply with it. Effective implementation of regulation requires knowledge and institutional capacity from the regulator.<sup>181</sup> The laws have to be supplemented by lower level and more detailed regulation: by-laws, resolutions, decisions and directives. Only through them can an implementation gap be avoided, provided that the implementation and enforcement are effective.

Studies conducted on the Kyrgyz environmental regulation have identified the following reasons to nourish non-compliance with the regulation: the slow pace of governance and economic reforms; the complicated legal framework and poor economic situation; society's failure to believe in fair regulation; and the erosion of the rule of the law.<sup>182</sup> Correspondingly, found reasons for weak enforcement included enforcement agencies' limited powers and scarce financial and human resources, confrontational relations with the regulated community due to lack of dialogue between stakeholders, low understanding of compliance problems, unfeasible regulatory requirements, and outdated instruments of compliance assurance and promotion.<sup>183</sup> These same issues are to be found also in the field of mining-related regulation in the country. Some of the challenges are related to authorities' resource problems, some are of administrative or institutional nature, while

others derive from poor instrument or strategy choice.

The main responsibility for implementing and enforcing mining regulation in Kyrgyzstan rests on the State Agency for Geology and Mineral Resources. The State Inspection on Environmental and Technical Safety at the Government of the Kyrgyz Republic is the general enforcement authority for environmental laws and regulations. The administrative arrangements for enforcement easily become complex because of unclear legislation, a high level of corruption and the fact that the division of responsibilities among different government departments and among national, provincial and local levels of government is seldom straightforward. This situation is prone to give rise to different types of conflicts among the mining industry and various stakeholders.

It has become clear that the status and resources of enforcement authorities should be strengthened in Kyrgyzstan. In addition to providing sufficient resources, it should be ensured that the enforcement authorities act from the right motive: out of a concern to ensure fair implementation and effectiveness of the regulation, not for the purpose of raising revenue for the government.<sup>184</sup>

Monitoring of mining activities (including their environmental impacts) is the responsibility of the State Agency for Geology and Mineral Resources. The Agency is to conduct

regular checks of companies' compliance with their mining licences and licence agreements. Monitoring is done to cover both the mining project design and actual mining operations. If a company delivers incomplete reports, sanctions may follow. A decision to stop the mining operations may be issued if there is a failure to report by a company.<sup>185</sup>

Monitoring activities face, however, the risk of corruption in the country. Authorities have quite broad discretion to decide whether a company's reporting is sufficient or not.<sup>186</sup> Furthermore, authorities often face difficulties in getting operational and reliable information on the actions of mining companies supposed to be subject to monitoring.<sup>187</sup> This state of affairs partly originates from restrictions to access industrial sites.<sup>188</sup> It is understandable that the sites need to restrict visitors from entering, but this should not be applied to authorities who are conducting their legitimate monitoring tasks. Usually, inspection visits are allowed if arranged beforehand with the management of a mining site.<sup>189</sup> This is general practice in most countries.

Monitoring is a function where the expertise and capacity of the Kyrgyz civil society and non-governmental organizations could be

taken into much more active use. Government authorities often have excessive reservations towards the engagement of civil society in environmental monitoring; however, assistance could often be welcomed as more active monitoring is seldom a bad thing. Interestingly, the Law on Environmental Protection establishes the right of public associations to participate in inspections conducted to examine compliance with environmental legislation.<sup>190</sup> This opportunity should be more effectively used by civil society.

## RECOMMENDATIONS FOR DECISION-MAKERS:

- Strengthen the role of civil society in the monitoring of mining activities to increase efficiency and lower the risk of corruption.
- Strengthen the status and resources of enforcement authorities and shift their focus on implementation and effectiveness of the regulation, not for the purpose of raising revenue for the government.

## **Kyrgyz Mining Policy: Attracting Investment – at the Cost of Sustainability and Stability?**

Government's role in pursuing mining and minerals development includes establishing an institutional and administrative framework for gaining access to mineral resources, setting up effective and efficient legal systems, levying appropriate charges, and designing a regulatory system to prevent and control environmental impacts from mining activities – without forgetting appropriate handling of potential and actual social issues.<sup>191</sup> Thus, there are numerous issues that the government has to resolve, many systems to set up and impacts to assess or foresee before it can expect an active mineral industry in the country.

In developing their mining policies, governments have to seek a balance between attracting investors and ensuring the environmental and social sustainability of mining. The legal framework is one of the factors that constitute the overall investment regime that investors take into account when making their investment decisions. Often, in practice, countries are competing to attract (foreign) private sector capital for mineral exploration and development: all want to have an attractive mining investment regime. Consequently, many countries have in this race liberalized their mining codes by strengthening private mining rights and security of tenure, and by minimizing state intervention.<sup>192</sup>

The officially proclaimed policy of the

Kyrgyz government is to create a favorable environment for investments and to develop the mining sector of the economy. The “fundamental mission” is to “identify stimulating, legal and institutional basis and to provide its application” for the development of the mining sector.<sup>193</sup> For necessary reasons (high capital intensity of mining projects and scarcity of domestic financial resources), the policy has been focusing on active attraction of foreign investments.<sup>194</sup> The country has taken up an ambitious plan to review and liberalize the regulatory basis and requirements for foreign investments in the mining sector. The state has announced that it will replace its excessive administrative control functions with arguably more effective market (economic) regulations.

Review efforts to remove impediments to foreign direct investment in the mining sector in Kyrgyzstan have been truly needed. Identified obstacles to foreign investments include administrative bureaucracy (including excessive intervention of control agencies), corruption, lack of legal stability (including inconsistent implementation and interpretation of laws), lack of regional cooperation, security concerns and insufficient institutional capacity of governmental agencies.<sup>195</sup>

The regulatory framework of Kyrgyzstan could be described as one that is in many parts purposefully built to attract foreign invest-

ments. The interests of the regulated business community are increasingly taken into account within the lawmaking process and the regulatory requirements are not anymore “parachuted” on the industry.<sup>196</sup> The regulated community welcomes this kind of development while critics may point out that state regulation should serve the public interest. In general, Kyrgyzstan has a relatively open and liberal policy towards foreign investment.<sup>197</sup> However, many investors have in recent years become involved in disputes over licensing, registration, and enforcement of contracts. Thus, the details of the system need improvement. Indeed, a World Bank study concluded in 2009 stated that Kyrgyzstan has not managed very well the transition into revitalizing its mining sector following an economic collapse and the institution of a new Constitution (amended several times in 2000s) and body of laws. The study assessed that the new laws under consideration would create an even worse environment for mining investment.<sup>198</sup>

From any perspective, a life-cycle approach (from planning to operation to closure) is important in the regulation concerning mining. Another crucial aspect is at least some kind of stability or predictability of legal requirements. In Kyrgyzstan, the mining policies have been restructured and updated many times, especially in an effort to become globally more

competitive. This has also strengthened administrative interference in the mining business. While it is important to continuously seek to attract investments and develop the mining industry, frequent changes in the regulatory environment in fact deter investments to some extent. Due to the fluctuating policy, mining companies have reportedly faced the challenge of understanding what the right standards are and what is the right level of investment in social and environmental performance.<sup>199</sup> The uncertainties tend to make mining companies very careful in their investment decisions, which can lead to under-performance with regard to their original business plans, including social and environmental precautions and projects taken at the mining sites.

## RECOMMENDATIONS FOR DECISION-MAKERS:

- Implement a life-cycle approach for mining regulation to ensure the mining policy covers all relevant aspects before, during and after mineral extraction.
- Ensure stability or predictability of legal requirements to provide a reliable investment framework for mining companies.

## CONCLUDING REMARKS

Establishing and especially effectively implementing responsible mining regulation and policy is very challenging in Kyrgyzstan. Difficulties at the societal level – widespread corruption, poor economic conditions, and a low level of public environmental awareness – sometimes severely hamper effective natural resources governance in the country. Add to that frequent changes in government structures and policies, the vulnerable environmental conditions and public opposition to new mining projects, and the situation is revealed in all its main complexities.

Overall, the current policymaking situation in the mining sector in Kyrgyzstan is somewhat confusing. It has been the general government line that the investment attractiveness of the country should be improved, also with regard to the mining sector. A number of policy decisions have been taken in this respect, yet the actions have been rather haphazard and even confusing. Frequent changes in the country's leadership and governance structures have caused uncertainty and a lack of predictability for mining policy. It has been pointed out that the mining industry has suffered from a series of strong actions by the Kyrgyz government to limit their freedom of action and business opportunities; these include the suspension of the issuance of licences and their cancellation; closing access to geological information funds; and the fact that the established inter-agency

licensing commission does not have mining professionals as members.<sup>200</sup>

Nevertheless, it seems that the relevant agencies and actors should be more aware of each other's planned and ongoing actions, and that they should seek cooperation and joint ventures in the realization of environmental and natural resources management in the country. In the same vein, better coordination between the central government and the oblasts would be beneficial. It would ensure that the local requirements for mining activities would be in line with the government requirements. In addition, a coordinated policy would give the mining companies that come to Kyrgyzstan a good understanding of what they can expect both from the central government and local authorities. These issues should not be a question of resources as much as many other policy development efforts.

In addition to improving the administrative and regulatory framework for mining, Kyrgyzstan should actively seek to resolve conflicts within the sector. Not only the relations between authorities and mining companies but even more so between the mining industry and local people need to be improved and cherished.

It is not sufficient that the government concentrates on establishing feasible economic and administrative conditions for the mining industry in the country, but the relevant social

and environmental aspects also need urgent attention. These are also tightly intertwined issues since, for instance, public concerns over the environmental problems caused by mining activities give rise to protests and social unrest in the country. The policymakers face a big challenge in developing Kyrgyzstan's mining policy environment as they have to balance between different parties and their interests, and between the economic, social and environmental demands in pursuing sustainable development for the country.

It has been stated that a country willing to attract private investors in the mining sector needs to develop policies in four key areas.<sup>201</sup> First, it needs to establish sound mining and investment codes with clear rules and guarantees regarding exploration and mining rights. Kyrgyzstan has done quite well in this respect. However, ineffective implementation of the legislation and unpredictable moves by the government have made the mining industry somewhat cautious when planning new investments in Kyrgyzstan. The mining industry has unfortunately learned on several occasions that the country's legislation does not provide sufficient guarantees for investment decisions.

Second, governments must assure companies that they will have the right to mine following successful exploration, and that they will be permitted to transfer or trade exploration or mining licences subject to explicit criteria. In the light of these criteria, Kyrgyzstan appears, again, relatively good at least on paper. Mining licences are usually granted, although the process sometimes appears quite cumbersome.

Third, governments need to enact fiscal regimes that are competitive with and comparable to those in other mining countries. This aspect has been taken care of to some extent in the Kyrgyz Republic. Changes have been introduced to the tax regime in recent years, and nowadays Kyrgyzstan is usually considered as

a relatively attractive country in this regard. In addition to the formal fiscal regime, the Kuntor example shows that special mining agreements may at least potentially include provisions on favorable tax treatment.

Finally, governmental institutions, which supervise and regulate the sector, should be capable of performing their duties in a professional, fair, and transparent manner. This is an area where the Kyrgyz Republic has the most room to improve its performance. The division of responsibilities among authorities is not always very clear, they remain financially under-resourced and corruption is still a problem at all levels of governance.<sup>202</sup>

The policy-makers must effectively work towards realizing the principles of good governance, coordinate in the development of the country's natural resources policy and ensure that transparency, coherence and sustainability are the key features of any new proposal. Transparency of regulation should be improved by possibilities for more effective public participation and monitoring. The latter aspect has seen some progress recently: public oversight boards have begun monitoring government agencies' expenditures, distribution of licences and conduct of tenders. In addition, the government has audited more than 20 mining enterprises.<sup>203</sup> The findings of these audits have been made known to the public.<sup>204</sup> The government has also introduced an initiative to engage public opinion, NGOs and the media in discussing innovations in the mining industry.<sup>205</sup> These steps of progress have arguably moved Kyrgyzstan far ahead of the other Commonwealth of Independent States member states in terms of mining transparency.<sup>206</sup> The progress is partly due to the EITI programme that requires increasing transparency in the mining policy of the country. As a next step of the EITI, local governments will be required to report to the public on their allocation of mining revenues.<sup>207</sup>

It is clear that all actors need to improve their performance. In addition to the government level, the mining industry can improve its performance and pay greater attention to achieving the goal of responsible mining in Kyrgyzstan. A key aspect is going beyond the legal requirements, to see real effort to protect the environment from harmful impacts and to engage with local people, providing accurate information and social benefits to the affected population.

Finally, the Kyrgyz people could do more in terms of acquiring information and participating in mining development projects. Authorities should listen to the public if they present their comments in an appropriate way (in public hearing meetings instead of unlawful riots, for instance). It is the duty of the government to enable such participation methods.

The Kyrgyz Republic has invested in improving its regulatory and business environment, and the global trend of increasing prices of raw materials has also attracted mining companies to seek business opportunities in this mineral-rich Central Asian state. It appears, however, that the government still has considerable work to do in the practical implementation of the reforms and in the general improvement of its natural resource governance. With sufficient resources and (political) will, Kyrgyzstan can rise to be one of the top responsible mining nations in the world.

## RECOMMENDATIONS FOR DECISION-MAKERS:

- Improve coordination between the agencies and between central and local government to pursue joint ventures in the realization of environmental and natural resources management.
- Adopt a strategy for active conflict resolution between authorities, mining companies and local communities.
- Establish and implement a sound mining code with clear rules and guarantees regarding exploration and mining rights.
- Provide assurance to serious investors that they will have the right to mine following successful exploration, and that they will be permitted to transfer or trade exploration or mining licences subject to explicit criteria.
- Enact fiscal regimes that are competitive with and comparable to those in other mining countries.
- Improve transparency at all levels of decision-making by strengthening public participation and monitoring.

## NOTES

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  38. Personal communication with Dr. Valentin Bodgetsy from the Kyrgyz Mining Association.
  39. See, primarily, Valentin Bogdetsky, Karybek Ibraev and Jyldyz Abdyrakhmanova: Mining Industry As a Source of Economic Growth in Kyrgyzstan, PIU of World Bank IDF Grant for Building Capacity in Governance and Revenues Streams Management for Mining and Natural Resources (2005), available at <<http://siteresources.worldbank.org/INTOGMC/Resources/336099-1156955107170/miningsourceeconomicgrowth.pdf>> (visited 10 May 2011).
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  41. Sean Farrell et al. (eds): Mining. The Regulation of Exploration and Extraction in 32 Jurisdictions Worldwide (Getting the Deal through, 2010) p. 78.
  42. Draft Law on Subsoil (March 2012), available at <[http://www.eng.abc.kg/index.php?option=com\\_k2&view=item&task=download&id=284\\_6251c99d832522883994b8654ed6acbb&Itemid=67](http://www.eng.abc.kg/index.php?option=com_k2&view=item&task=download&id=284_6251c99d832522883994b8654ed6acbb&Itemid=67)> (visited 19 April 2012).
  43. 'Kyrgyzstan's Parliament passes a Subsoil bill', 24.kg of 21 October 2011, available at <<http://eng.24.kg/politic/2011/10/21/21064.html>> (visited 16 January 2012).
  44. 'The monitoring over the issuance of licences for minefields is being enhanced in Kyrgyzstan', 24.kg of 4 October 2011, available at <<http://eng.24.kg/politic/2011/10/04/20709.html>> (visited 16 January 2012).
  45. See Art. 20 of the draft Law on Subsoil.
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  47. Personal communication with Dr. Valentin Bodgetsy from the Kyrgyz Mining Association. See also Art. 14 ('Geological information on Subsoil') of the draft Law on Subsoil.
  48. Business Week Special Advertising Section: The Kyrgyz Republic Looks Ahead (a statement by Valery Tutykhin, advisor to the director of the former State Agency of Geology and Mineral Resources (now Ministry of Natural Resources) and partner at John Tiner & Partners law firm) (2009), available at <[http://www.businessweek.com/adsections/2009/pdf/122109\\_kyrgy.pdf](http://www.businessweek.com/adsections/2009/pdf/122109_kyrgy.pdf)> (visited 11 October 2011) p. 6.
  49. See Kalikova & Associates: Business in the Kyrgyz Republic: Legal Aspects (2008), available at <[http://privatization.kt.kg/business\\_aspects\\_eng.pdf](http://privatization.kt.kg/business_aspects_eng.pdf)> (visited 16 June 2011) p. 80–81; and Arts 10 and 16 of the Law on Subsoil.
  50. See Art. 20 ('Procedure for granting subsoil use rights') of the draft Law on Sub-

- soil. According to the draft, a competitive tender would be applied to mineral resources of national significance according to a special governmental decision; auctions would be applied to mineral deposits, occurrences and promising areas based on the list approved by the authorized government agency responsible for subsoil management.
51. UNECE: 2nd Environmental Performance Review: Kyrgyzstan (UN, 2009), available at <[http://www.unece.org/env/epr/epr\\_studies/Kyrgyzstan%20II%20En.pdf](http://www.unece.org/env/epr/epr_studies/Kyrgyzstan%20II%20En.pdf)> (visited 2 May 2011) p. 39. An exploration licence is initially issued for the period of two years, with the following prolongation for up to 10 years, provided that the conditions of licence agreement are observed. A licence to develop mineral deposits (a mining licence) is granted for a period established on the grounds of a technical project document, but for no longer than 20 years with the subsequent extension pending the depletion of mineral stocks (Arts 10-11 of the Law on Subsoil)
  52. Art. 21 of the draft Law on Subsoil.
  53. John Turner and Michael Bourassa (eds), *Mining in 35 Jurisdictions Worldwide* (London: Law Business Research Ltd., 2011) p. 106.
  54. However, it has been pointed out that these “clearly defined” grounds are often understood differently by state officials and mining investors. Personal communication with Dr. Valentin Bodgetsky from the Kyrgyz Mining Association.
  55. Art. 31-1 of the Law on Subsoil, no. 42 of 2 July 1997 as amended.
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  57. *Ibid.* See also the section on mining fees of this report.
  58. Art. 46 of the draft Law on Subsoil.
  59. However, see the Resolution of the Government of the Republic of Kyrgyzstan “Statements on the Order of Licensing and Regulation of Subsoil Use” (into force on 28 April, 2012) that puts under the question the efficiency of investments into mining sector in Kyrgyzstan. Personal communication with Dr. Valentin Bodgetsky from the Kyrgyz Mining Association.
  60. Provision on the procedure for subsoil use licensing Approved by the Resolution of the Government of the Kyrgyz Republic, 15 August 2007, no. 336 as amended, para. 11.
  61. See Law on Concessions and Concession Enterprises in the Kyrgyz Republic of 6 March 1992.
  62. See the Law on Agreements on Sharing of Production Resulting from Development of Mineral Resources, No. 49 of 10 April 2002.
  63. Cameco Corporation: Annual Information Form for the Year Ended December 31, 2007 (2008), available at <[http://www.cameco.com/common/pdf/investors/financial\\_reporting/aif/2007/Cameco\\_2007\\_AIF.pdf](http://www.cameco.com/common/pdf/investors/financial_reporting/aif/2007/Cameco_2007_AIF.pdf)> (visited 7 September 2011) p. 82.

64. Signed between the Government of the Kyrgyz Republic and Cameco Corporation, complemented by the concession agreement signed between the Government of Kyrgyzstan and Kumtor Gold Company in 1993.
65. See, for example, Jozsef Feiler: Kumtor – the Poisoned Gold, in Ivona Malbasic and Jozsef Feiler (eds): Heavy Footprint. The World Bank and Environment in Europe and Central Asia (CEE Bankwatch, 2000), available at <[http://bankwatch.org/documents/heavy\\_footprint.pdf](http://bankwatch.org/documents/heavy_footprint.pdf)> (visited 14 September 2011) p. 3.
66. Cameco Corporation: Annual Information Form for the Year Ended December 31, 2007 (2008), available at <[http://www.cameco.com/common/pdf/investors/financial\\_reporting/aif/2007/Cameco\\_2007\\_AIF.pdf](http://www.cameco.com/common/pdf/investors/financial_reporting/aif/2007/Cameco_2007_AIF.pdf)> (visited 7 September 2011) p. 83.
67. See James Otto, Craig Andrews, Fred Cawood, Michael Doggett, Pietro Guj, Frank Stermole, John Stermole and John Tilton: Mining Royalties. A Global Study of Their Impact on Investors, Government, and Civil Society (World Bank, 2006) p. 248. On what mining development agreements generally may contain, see *ibid.* at p. 248–249.
68. Tax Code of 2 October 2008.
69. Personal communication with Dr. Valentin Bodgetsy from the Kyrgyz Mining Association. See the review of the process available (in Russian) at <<http://kesh.kg/RU/Pages/ViewNews.aspx?id=8&NewsID=9068>> (visited 2 July 2012).
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73. World Bank: Sector Licensing Studies: Mining Sector (2009), available at <[https://www.wbginvestmentclimate.org/uploads/Sector\\_Licensing\\_Mining.pdf](https://www.wbginvestmentclimate.org/uploads/Sector_Licensing_Mining.pdf)> (visited 14 June 2011) p. 46.
74. *Ibid.*
75. James Otto, Craig Andrews, Fred Cawood, Michael Doggett, Pietro Guj, Frank Stermole, John Stermole and John Tilton: Mining Royalties. A Global Study of Their Impact on Investors, Government, and Civil Society (World Bank, 2006) p. 4. See *ibid.* for a comprehensive account of royalties in the mining sector.
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and other precious metal royalties will be 5% for deposits containing commercial reserves in excess of 10 tonnes, 3% for deposits containing from 3 to 10 tonnes, and 1 % for mineral deposits with the reserves less than 3 tonnes. Art. 310 of the Tax Code.

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136. *Ibid.*
137. *Ibid.*
138. Centerra Gold response to CEE Bankwatch report "Between a rock and a hard place", 19 January 2010, available at <<http://www.reports-and-materials.org/Centerra-Gold-response-re-CEE-Bankwatch-19-Jan-2010.doc>> (visited 14 October 2011) p. 4. For more information on the Fund, see, for instance, Kumtor Gold: 'Oblast Development Fund', available at <<http://www.kumtor.kg/en/media-relations/fund-of-area/>> (visited 19 October 2011).
139. See Centerra Gold: 'Community Development Project' (2009), available at <<http://www.terrapinn.com/2009/ama/data/centerra.pdf>> (visited 13 September 2011).
140. See Kentor Gold Ltd: 'Sustainability policy framework', available at <<http://www.kentorgold.com.au/sustainabilityPolicy.htm>> (visited 29 June 2011).
141. Kentor Gold Ltd: Andash Project Update (9 November 2010), available at <<http://www.kentorgold.com.au/admin/upload/2010%2011%2009%20Project%20Update.pdf>> (visited 28 June 2011) p. 1.

142. *Ibid.*
143. State Agency on Environment Protection and Forestry under the Government of the Kyrgyz Republic and UNDP in the Kyrgyz Republic: Kyrgyzstan. Environment and Natural Resources for Sustainable Development (UNDP, 2007), available at <<http://www.adb.org/Documents/Assessments/Country-Environmental/KGZ/Environment-Natural-Resources-SustainableDev.t.pdf>> (visited 2 May 2011) p. 30.
144. For more information, see MMSD Project: Breaking New Ground. Mining, Minerals and Sustainable Development (Earthscan, 2002), available at <<http://www.wbcsd.org/DocRoot/ev8jEjvTiMYd4mJhGGHQ/finalmmsdreport.pdf>> p. 259–262. On the environmental impacts of mining activities specifically in Kyrgyzstan, see State Agency of Environmental Protection and Forestry under the Government of Kyrgyz Republic: Kyrgyz Republic Environment Outlook (2009), available at <[http://geodata.rrcap.unep.org/envt\\_outlook\\_reports/eco.pdf](http://geodata.rrcap.unep.org/envt_outlook_reports/eco.pdf)> (visited 5 September 2011) p. 13–14.
145. State Agency on Environment Protection and Forestry under the Government of the Kyrgyz Republic and UNDP in the Kyrgyz Republic: Kyrgyzstan. Environment and Natural Resources for Sustainable Development (UNDP, 2007), available at <<http://www.adb.org/Documents/Assessments/Country-Environmental/KGZ/Environment-Natural-Resources-SustainableDev.t.pdf>> (visited 2 May 2011) p. 30.
146. UNECE: 2nd Environmental Performance Review: Kyrgyzstan (UN, 2009), available at <[http://www.unece.org/env/epr/epr\\_studies/Kyrgyzstan%20II%20En.pdf](http://www.unece.org/env/epr/epr_studies/Kyrgyzstan%20II%20En.pdf)> (visited 2 May 2011) p. 104.
147. EITI Source Book (EITI, 2005), available at <<http://eiti.org/files/document/sourcebookmarch05.pdf>> (visited 3 May 2011) p. 5.
148. Coffey International Development: Validation of the Kyrgyzstan Extractive Industries Transparency Initiative (KEITI) (2010), available at <[http://eiti.org/files/Kyrgyz\\_Republic\\_final\\_validation.pdf](http://eiti.org/files/Kyrgyz_Republic_final_validation.pdf)> (visited 14 June 2011) p. 24. On the implementation of the EITI in Kyrgyzstan, see *ibid.*
149. Speech by HE President of the Kyrgyz Republic Ms. Roza Otunbaeva at the 5th EITI Global Conference, Paris, 2 March 2011, available at <<http://eiti.org/files/Speech%20by%20HE%20President%20of%20the%20Kyrgyz%20Republic%20Ms.%20Roza%20Otunbaeva%20at%20the%205th%20EITI%20Global%20Conference.doc>> (visited 7 July 2011) p. 3.
150. Coffey International Development: Validation of the Kyrgyzstan Extractive Industries Transparency Initiative (KEITI) (2010), available at <[http://eiti.org/files/Kyrgyz\\_Republic\\_final\\_validation.pdf](http://eiti.org/files/Kyrgyz_Republic_final_validation.pdf)> (visited 14 June 2011) p. 28.
151. Kalia Moldogaziyeva: NGO Consortium on EITI, Kyrgyzstan, in EITI: Pilot Countries Experience. International Conference, Baku, Azerbaijan, April 6–8 2006 (Centre for Economic and Political Research, Azerbaijan, 2006), available at <[http://www.eiti-az.org/ts\\_gen/eng/feal/aprilConference\\_book.pdf](http://www.eiti-az.org/ts_gen/eng/feal/aprilConference_book.pdf)> (visited 9 July 2011) p. 51–58 at p. 56.

152. For instance, the Centerra company made a strong statement in 2010: *“[t]here can be no assurance that Centerra’s assets will not be subject to nationalization, requisition or confiscation, whether legitimate or not, by any authority or body.-- Similarly, Centerra’s operations may be affected in varying degrees by government regulations with respect to restrictions on production, price controls, export controls, income taxes, expropriation of property, environmental legislation, labour legislation, mine safety, and annual fees to maintain mineral properties in good standing.-- . Furthermore, there can be no assurance that the agreements Centerra has with the governments of these countries will prove to be enforceable or provide adequate protection against any or all of the risks described above.”* Centerra Gold Inc.: Management’s Discussion and Analysis for the fiscal year ended December 31, 2010, available at <[http://www.centerragold.com/media/pdf/investors/financial\\_reports/annual/2010/2010\\_MDA.pdf](http://www.centerragold.com/media/pdf/investors/financial_reports/annual/2010/2010_MDA.pdf)> (visited 4 October 2011) p. 61.
153. UNECE: 2nd Environmental Performance Review: Kyrgyzstan (UN, 2009), available at <[http://www.unece.org/env/epr/epr\\_studies/Kyrgyzstan%20II%20En.pdf](http://www.unece.org/env/epr/epr_studies/Kyrgyzstan%20II%20En.pdf)> (visited 2 May 2011) p. 117.
154. See also State Agency on Environment Protection and Forestry under the Government of the Kyrgyz Republic and UNDP in the Kyrgyz Republic: Kyrgyzstan. Environment and Natural Resources for Sustainable Development (UNDP, 2007), available at <<http://www.adb.org/Documents/Assessments/Country-Environmental/KGZ/Environment-Natural-Resources-SustainableDevt.pdf>> (visited 2 May 2011) p. 30.
155. MMSD Project: Breaking New Ground. Mining, Minerals and Sustainable Development (Earthscan, 2002), available at <<http://www.wbcsd.org/DocRoot/ev8jEJvTiMYd4mJhGGHQ/finalmmsdreport.pdf>> (visited 3 May 2011) p. xxxii.
156. See T. Zhunussova et al.: Threat Assessment Report. Regulatory Aspects of the Remediation and Rehabilitation of Nuclear Legacy in Kazakhstan, Kyrgyzstan and Tajikistan, Strålevern Rapport 2011:5, available at <<http://www.nrpa.no/dav/df5bbfdf54.pdf>> (visited 12 October 2011) p. 29.
157. Interview with Valentin Bogdetsky of the Kyrgyz Mining Association, 10 August 2011.
158. UNECE: 2nd Environmental Performance Review: Kyrgyzstan (UN, 2009), available at <[http://www.unece.org/env/epr/epr\\_studies/Kyrgyzstan%20II%20En.pdf](http://www.unece.org/env/epr/epr_studies/Kyrgyzstan%20II%20En.pdf)> (visited 2 May 2011) p. 109.
159. *Ibid.*
160. See MMSD Project: Breaking New Ground. Mining, Minerals and Sustainable Development (Earthscan, 2002), available at <<http://www.wbcsd.org/DocRoot/ev8jEJvTiMYd4mJhGGHQ/finalmmsdreport.pdf>> (visited 3 May 2011) p. 162–163.
161. Resolution adopted at the Second World Conservation Congress on the Protection and Conservation of Biological Diversity of Protected Areas from the Negative Impacts of Mining and Exploration (Octo-

- ber 2000), available at <<http://liveassets.iucn.getunik.net/downloads/miniucnicmmtorfin.pdf>> (visited 3 May 2011), Annex A.
162. ICMM Position Statement: Mining and Protected Areas (2003), available at <<http://www.icmm.com/document/43>> (visited 29 November 2011).
  163. The Law on Special Protected Natural Areas, of 31 March 2011.
  164. John Turner and Michael Bourassa (eds), *Mining in 35 Jurisdictions Worldwide* (London: Law Business Research Ltd., 2011) p. 107.
  165. Interview with Valentin Bogdetsky of the Kyrgyz Mining Association, 10 August 2011.
  166. See the Resolution of the Government of Kyrgyzstan No. 374 of 13 June 2009.
  167. Personal communication with Dr. Valentin Bogdetsky from the Kyrgyz Mining Association.
  168. See Evaluation of Compliance with Environmental and Industrial Safety Standards at Kumtor Gold Mine, Report of the Interagency Governmental Commission of the Kyrgyz Republic (2011), available at <[http://treelife.org/kg/images/files/kumtor\\_commission\\_report\\_28.12.2011\\_eng.zip](http://treelife.org/kg/images/files/kumtor_commission_report_28.12.2011_eng.zip)> (visited 23 February 2012) p. 22.
  169. See Evaluation of Compliance with Environmental and Industrial Safety Standards at Kumtor Gold Mine, Report of the Interagency Governmental Commission of the Kyrgyz Republic (2011), available at <[http://treelife.org/kg/images/files/kumtor\\_commission\\_report\\_28.12.2011\\_eng.zip](http://treelife.org/kg/images/files/kumtor_commission_report_28.12.2011_eng.zip)> (visited 23 February 2012) p. 20 and 22.
  170. Art. 38 of the Law on Subsoil.
  171. Interview with Valentin Bogdetsky of the Kyrgyz Mining Association, 10 August 2011.
  172. Executive Board of UNDP and UNPF: 'Draft country programme document for Kyrgyzstan (2005–2010)', UN Doc. DP/DCP/KGZ.1 (2004) p. 2.
  173. Gregory Gleason, Asel Kerimbekova and Svetlana Kozhirova: Realism and the Small State: Evidence from Kyrgyzstan, 45 *International Politics* (2008) p. 40–51 at p. 46. The name described Kyrgyzstan's enthusiasm for the reform path.
  174. Valentin Bogdetsky (ed.): *Mining Industry and Sustainable Development in Kyrgyzstan* (IIED and WBCSD, 2002), available at <<http://pubs.iied.org/pdfs/G00573.pdf>> (visited 2 May 2011) p. 69.
  175. See Transparency International: 'Corruption perceptions index 2010 results', available at <[http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2010/results](http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results)> (visited 2 May 2011).
  176. Richard Pomfret: *Resource Management and Transition in Central Asia, Azerbaijan, and Mongolia*, Peterson Institute for International Economics working paper series no. 11-8 (2011), available at <<http://www.iie.com/publications/wp/wp11-8.pdf>> (visited 27 June 2011) p. 11.

177. World Bank: Sector Licensing Studies: Mining Sector (2009), available at <[http://www.wbginvestmentclimate.org/uploads/Sector\\_Licensing\\_Mining.pdf](http://www.wbginvestmentclimate.org/uploads/Sector_Licensing_Mining.pdf)> p. 39.
178. Bertelsmann Stiftung: BTI 2010 – Kyrgyzstan Country Report (2009), available at <[http://www.bertelsmann-transformation-index.de/fileadmin/pdf/Gutachten\\_BTI2010/CIS/Kyrgyzstan.pdf](http://www.bertelsmann-transformation-index.de/fileadmin/pdf/Gutachten_BTI2010/CIS/Kyrgyzstan.pdf)> (visited 26 October 2011) p. 20.
179. As an illustration, the Index of Economic Freedom of 2011 placed Kyrgyzstan 83th out of 179 ranked countries. Thanks to the recent years' efforts to attract foreign investment to the country, the fiscal freedom scored quite high (92.6), but the overall score was lowered by 55.0 investment freedom and above all by the freedom of corruption that was assessed only 19.0. See Terry Miller, Kim R. Homes et al.: 2011 Index of Economic Freedom (Heritage Foundation and Dow Jones & Company Inc, 2011), available at <<http://www.heritage.org/index/download>> (visited 26 October 2011) p. 8. With regard to the mining industry in particular, a recent study ranked Kyrgyzstan 87th out of the 93 jurisdictions surveyed regarding Policy Potential Index which measures the overall policy attractiveness for mining companies. Fred McMahon and Miguel Cervantes: Fraser Institute Annual Survey of Mining Companies 2011/2012 (2012), available at <<http://www.fraserinstitute.org/uploadedFiles/fraser-ca/Content/research-news/research/publications/mining-survey-2011-2012.pdf>> (visited 19 April 2012).
180. Mahabat Baimyrzaeva: Shortcomings of Institutional Reform in Public Sector Governance: the Case of Kyrgyzstan, a dissertation presented to the Faculty of the USG Graduate School University of Southern California in partial fulfilment of the requirements for the degree Doctor of Philosophy (Public Administration) (2010), available at <<http://digitallibrary.usc.edu/assetserver/controller/item/etd-Baimyrzaeva-3613.pdf>> (visited 26 October 2011) p. 261.
181. This is arguably a challenge for Kyrgyzstan as the retirement of elder professionals is not easily compensated by skilled experts capable of conducting multiple assessments foreseen by the legislation. Personal communication with Dr. Valentin Bodgetsky from the Kyrgyz Mining Association.
182. OECD: Guiding Principles for Reform of Environmental Enforcement Authorities in Transition Economies of Eastern Europe, Caucasus and Central Asia (OECD, 2003), available at <<http://www.oecd.org/dataoecd/36/51/26756552.pdf>> (visited 23 May 2012) p. 3.
183. OECD: Environmental Enforcement in the Kyrgyz Republic: Promoting Environmental Improvements and Enhancing Good Governance. Peer review recommendations (OECD, 2005), available at <<http://www.oecd.org/dataoecd/27/40/37633519.pdf>> (visited 4 May 2011) p. 7; and 'Review of Environmental Compliance Assurance Systems and Their Outcomes in Eastern Europe, Caucasus and Central Asia', Eighth Annual Meeting of the EECCA Regulatory Environmental Programme Implementation Network, 12–13 June 2006, Doc. REPOIN(2006)8/Eng, available at <<http://www.oecd.org/>>

- dataoecd/42/21/36863620.pdf> (visited 13 May 2011) p. 3.
184. See also OECD: Environmental Enforcement in the Kyrgyz Republic: Promoting Environmental Improvements and Enhancing Good Governance. Peer review recommendations (OECD, 2005), available at <<http://www.oecd.org/dataoecd/27/40/37633519.pdf>> (visited 4 May 2011) p. 18.
  185. Interview with Valentin Bogdetsky of the Kyrgyz Mining Association, 10 August 2011.
  186. *Ibid.* For instance, the Licensing Commission may refuse to extend a mining licence due to low informational content of a company report.
  187. See State Agency on Environment Protection and Forestry under the Government of the Kyrgyz Republic and UNDP in the Kyrgyz Republic: Kyrgyzstan. Environment and Natural Resources for Sustainable Development (UNDP, 2007), available at <<http://www.adb.org/Documents/Assessments/Country-Environmental/KGZ/Environment-Natural-Resources-SustainableDevt.pdf>> (visited 2 May 2011) p. 54. State environmental monitoring practices have been criticized for vagueness due to the government's own interests in mining companies (as the main share-holder). This was arguably the problem at least partly behind the notorious cyanide accident that happened in 1998. See CEE Bankwatch Network: Mountains of Gold. Kumtor Gold Mine in Kyrgyz Republic (2002), available at <[http://www.nodirtygold.org/pubs/200205%20CEE\\_Bankwatch\\_Report.pdf](http://www.nodirtygold.org/pubs/200205%20CEE_Bankwatch_Report.pdf)> (visited 7 July 2011) p. 41
  188. UNECE: 2nd Environmental Performance Review: Kyrgyzstan (UN, 2009), available at <[http://www.unece.org/env/epr/epr\\_studies/Kyrgyzstan%2011%20En.pdf](http://www.unece.org/env/epr/epr_studies/Kyrgyzstan%2011%20En.pdf)> (visited 2 May 2011) p. 40.
  189. Recently, there was an incident relating to mine site inspections by the Parliament in Kyrgyzstan. Various factions of the Parliament had expressed their wish to visit the Kumtor gold mine (for the second time that year) to see the real state of affairs at the mine, i.e. that environmental and safety standards are observed. As a result, a visit was organized together with the Kumtor Operating Company Management in September 2011. Shortly after the visit, a new parliamentary committee attempted to visit the Kumtor mine. The new group did not wait for the results of the work of the previous committee that had visited Kumtor, nor did it coordinate its activities in any way. The company was not willing to allow the visit as it was without notification (and could therefore involve health risks). The MPs protested heavily against the decision. The Kumtor Operating Company insisted that all visitors should adhere to the relevant access procedures. The company stated that it keeps adhering to the principle of transparency and is open for dialogue and constructive cooperation with all government agencies and NGOs – provided that appropriate procedures are followed. Kumtor Gold: 'Official Statement', available at <<http://www.kumtor.kg/en/news/ofisialnoezayavlenie/>> (visited 19 October 2011).
  190. Art. 45 of the Law on Environmental Protection no. 53 of 16 June 2009.

191. See also MMSD Project: Breaking New Ground. Mining, Minerals and Sustainable Development (Earthscan, 2002), available at <<http://www.wbcsd.org/DocRoot/ev8jEJvTiMYd4mJhGGHQ/finalmmsdreport.pdf>> (visited 3 May 2011) p. 302.
192. MMSD Project: Breaking New Ground. Mining, Minerals and Sustainable Development (Earthscan, 2002), available at <<http://www.wbcsd.org/DocRoot/ev8jEJvTiMYd4mJhGGHQ/finalmmsdreport.pdf>> (visited 3 May 2011) p. 147.
193. Kyrgyz Republic. Country Development Strategy 2009–2011, available at <<http://www.carecinstitute.org/uploads/docs/KGZ-Country-Development-Strategy-2009-2011-en.pdf>> (visited 3 May 2011) p. 53.
194. *Ibid.*
195. Mehmet Dikkaya and Ibrahim Keles. A Case Study of Foreign Direct Investment in Kyrgyzstan, 25 Central Asian Survey (2006) p. 149–156 at p. 151; and UNESCAP: Kyrgyzstan, in Foreign Direct Investment in Central Asian and Caucasian Economies: Policies and Issues, Studies in Trade and Investment No. 50 (2003), available at <[http://www.unescap.org/tid/publication/chap3d\\_2255.pdf](http://www.unescap.org/tid/publication/chap3d_2255.pdf)> (visited 3 October 2011) p. 136–177 at p. 165.
196. OECD: Progress in Modernising Environmental Regulation and Compliance Assurance in Eastern Europe, Caucasus, and Central Asia, Doc. ENV/EPOC/EAP(2007)5 (2007), available at <<http://www.oecd.org/dataoecd/50/22/39236907.pdf>> (visited 15 June 2011) p. 17.
197. After a scrutinized assessment of the general business environment in Kyrgyzstan, the country was ranked 70th of the world’s countries participating in the study on the ease of doing business in 2012. The placement in the 2011 study was 67th. IFC: Doing Business 2012. Doing Business in a More Transparent World (2011), available at <<http://www.doing-business.org/reports/global-reports/doing-business-2012>> (visited 27 October 2011).
198. World Bank: Sector Licensing Studies: Mining Sector (2009), available at <[https://www.wbginvestmentclimate.org/uploads/Sector\\_Licensing\\_Mining.pdf](https://www.wbginvestmentclimate.org/uploads/Sector_Licensing_Mining.pdf)> (visited 14 June 2011) p. 37.
199. Jim Walker and Steve Howard: Finding the Way Forward. How Could Voluntary Action Move Mining Towards Sustainable Development? (IIED, 2002), available at <<http://pubs.iied.org/pdfs/9203IIED.pdf>> (visited 2 May 2011) p. 10.
200. Personal communication with Dr. Valentin Bodgetsky from the Kyrgyz Mining Association.
201. See CEE Bankwatch Network: Mountains of Gold. Kumtor Gold Mine in Kyrgyz Republic (2002 available at <[http://www.nodirtygold.org/pubs/200205%20CEE\\_Bankwatch\\_Report.pdf](http://www.nodirtygold.org/pubs/200205%20CEE_Bankwatch_Report.pdf)> (visited 7 July 2011) p. 20.
202. According to a critical report published in 2009, mining licensing in Kyrgyzstan is “marred by corruption and cronyism”. Bankwatch: Some Aspects of EITI as Performed by Mining Companies. Can a Model Mining Agreement Come into Being in Kyrgyzstan? (2009), available at

<[http://bankwatch.org/documents/EITI\\_\\_mining\\_2009.pdf](http://bankwatch.org/documents/EITI__mining_2009.pdf)> (visited 28 September 2011) p. 3.

203. Bakyt Ibraimov: 'Kyrgyzstan seeks mining industry transparency', CentralAsiaOnline.com of 22 July 2011, available at <[http://www.centralasiaonline.com/cocoon/caii/xhtml/en\\_GB/features/caii/features/main/2011/07/22/feature-01](http://www.centralasiaonline.com/cocoon/caii/xhtml/en_GB/features/caii/features/main/2011/07/22/feature-01)> (visited 17 August 2011).

204. *Ibid.*

205. *Ibid.*

206. *Ibid.*

207. *Ibid.*

