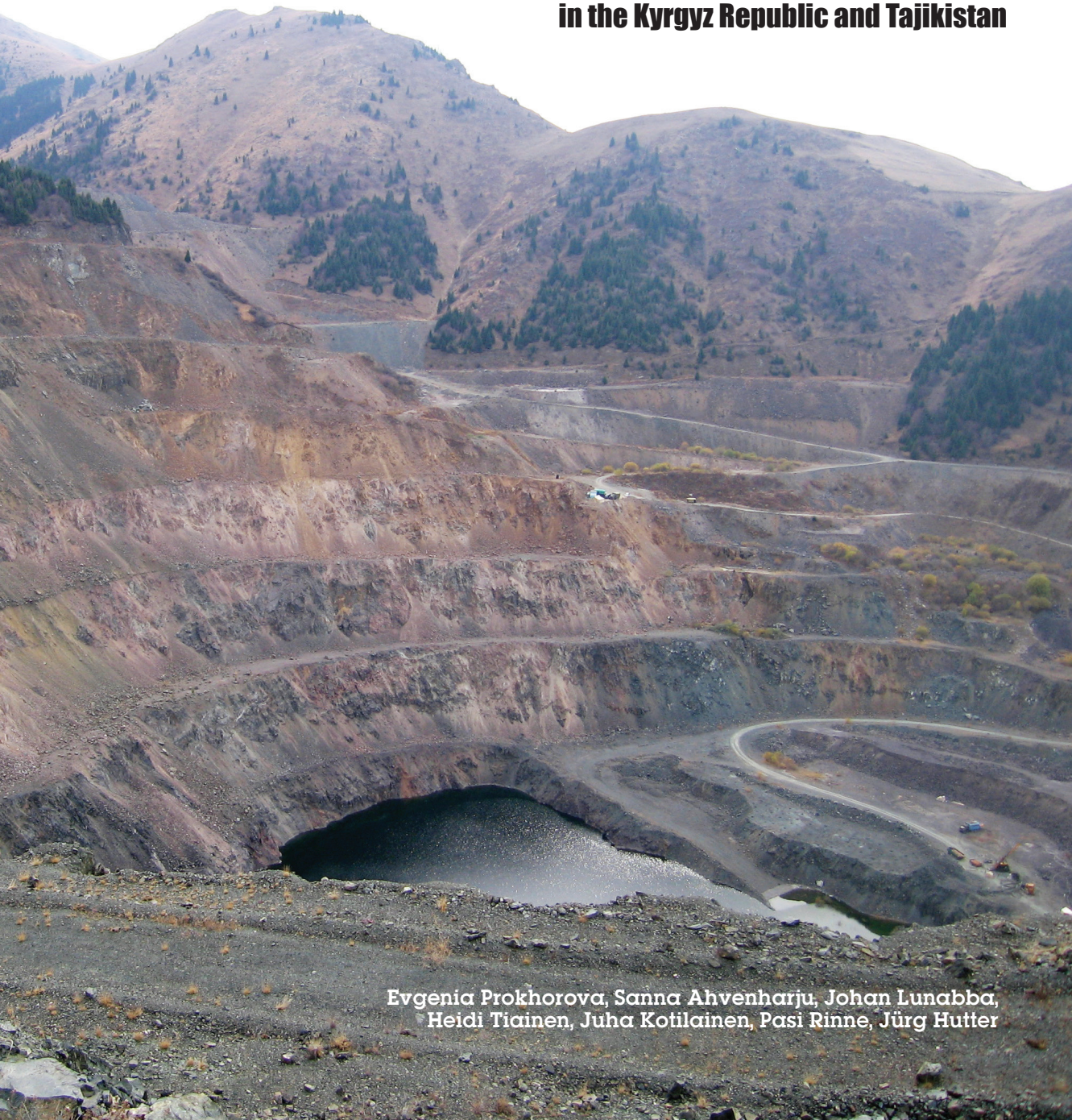
TOWARDS RESPONSIBLE MINING IN CENTRAL ASIA

Mining Legislation and Corporate Social Responsibility in the Kyrgyz Republic and Tajikistan



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Executive summary

Mining activities have significant impacts on sustainable development. Mining can be a source of employment for local people and a source of state revenues; it can drive economic prosperity and develop rural regions. However, the significant environmental impacts of mining and the unequal distribution of its benefits contribute to instability and can be root causes of conflict. Mining conflicts can also cause severe problems for mining companies, local communities and in many cases for national economies as well.

The development of profitable mining activities requires, in addition to the minerals and geological circumstances, significant investments and, increasingly, *a social licence to mine*. In addition to a combination of regulatory and fiscal matters, an enabling environment, such as a predictable policy framework, reliable governance and rule of law, skillful workforce, and infrastructure dictate the circumstances for investments and development. Mining companies have adopted the term "responsible mining" to describe their efforts to improve public and community acceptance – the so-called social licence to mine. Today, the mine manager must be able to interact with the community and generate the consent necessary to move the operation forward in a stable environment.

This report explores social responsibility in the mining sector in two Central Asian countries, Kyrgyzstan and Tajikistan. To many, these countries look the same. Similar in terms of population and geographical size, both are located in Central Asia with its geopolitical challenges, and are land-locked, mountainous and rich with minerals. In both Kyrgyzstan and Tajikistan mineral products account for 30-50 percent of the national GDP, and development plans foresee a growing mining industry. However, a closer look at the specifics of the countries reveal essential differences. These countries have different social, political and economic environments for developing mining.

The focus of this report is, first, on the ways in which legislation fosters development and implementation of responsible mining; and second, on corporate social responsibility policies and strategies of mining companies.

The principles of responsible mining can be summarised as follows: transparency of public and private management of mining activities; stakeholder involvement; fair distribution of benefits nationally and locally; clarity and predictability of the legal environment and behaviour of the actors involved; profitability of the mining business; promotion of health, safety and security of mining activities; protection of the environment from harmful impacts of mining; respect for human rights; efficient enforcement process of company policies and legislative requirements.

In the Kyrgyz Republic and Tajikistan, the shift to large-scale industrial mining occurred mainly during the Soviet era when intensive geological surveys were conducted and a number of large mining and processing enterprises were established in the two countries. Both republics hosted uranium mining and were significant contributors to the non-ferrous metallurgy of the Soviet Union. Recently, the importance of the extractive industry for the Kyrgyz economy has been growing, which can largely be attributed to gold mining. However, the development of mining projects is also hindered by tensions between mining companies and local communities. Though Tajikstan also has significant coal mining and construction mining operations as well as some gold mining, it remains to be seen whether the growth of the mining industry there will be realised.

There are a number of similarities between the mining industries in the Kyrgyz Republic and the Republic of Tajikistan. After the collapse of the Soviet Union, mining enterprises in both countries struggled to maintain their operations due to the disruption of traditional supply chains, outdated technology, lack of management expertise and high transportation costs. Consequently, some traditional minerals lost their importance in the national economies of both countries while gold mining has been performing relatively well. However, there are also striking differences between the mining industries in the two countries. It is evident that the mining industry (primarily the gold industry) plays a central role in the Kyrgyz economy, but in Tajikistan it occupies

a more marginal position. In the Kyrgyz Republic the mining industry has been considered one of the locomotives of industrial development. Finally, the Kyrgyz mining sector is a relatively open and licences are easy to obtain, while in Tajikistan the industry is more tightly controlled by the state.

The state of legal frameworks supporting responsible practices in mining in Tajikistan and the Kyrgyz Republic can be summarised as follows. In terms of *transparency* of mining legislation, Tajikistan has severe challenges: even basic statistics, information on mining legislation, permission processes or facts about mining companies are unavailable to the public. The processes for licensing are not transparent or very clear. It is unclear if the new law on subsoil will remedy these problems. In terms of *stakeholder involvement*, there are similar problems. Although Tajikistan is a signatory to the Aarhus convention, the practices of public involvement and information are very weak: local communities are rarely involved and their involvement, if there is any, is considered superficial. Involvement of companies in law reform is a positive finding.

Regarding *transparency, clarity and predictability* the mining reform is likely to bring about substantial change in the way mining activities are regulated in Kyrgyzstan. Even though the reformed legislation will still contain inconsistencies and contradictions, it is expected to improve the transparency of legislative procedures related to mining. The division of authority and tasks between the state Geology Agency and the Ministry of Economy is likely to alleviate problems related to conflicts of interest. However, even following the reform of the law on subsoil the inconsistency involving the use of subsoil and surface rights will remain. Moreover, the current practice of categorising different land types according to agricultural value is outdated and complex. The former practice of issuing licences through direct negotiation was vulnerable to corruption. The reformed practice with auctioning and tender procedures will improve transparency and predictability in licensing procedures. The tendering procedure in regard to deposits of national importance is problematic, as the apparent right of the government to declare a deposit or reserve an object of national importance might lead to the expropriation of a reserve by a third party.

With respect to *stakeholder involvement* the process of reforming the Kyrgyz mining legislation was conducted at a fast pace and based on conducted interviews it appears that local interest groups and NGOs were not granted many opportunities to affect the outcomes of the reformed legislation. This is somewhat worrisome since the people who are directly affected by the negative effects of mining activities have had the least impact on the legislation, whereas the International Business Council was rather effectively able to engage the mining companies.

In regard to *distribution of benefits* the laws of Tajikistan seem to protect the national interests in mining quite well: 70 per cent of employees have to be Tajiks, taxes and other government revenues are quite high and companies acting in Tajikistan must be partly Tajik owned. However, since there are no statistics concerning revenues or government spending it is difficult to say how these benefits have been distributed. Like transparency, *clarity and predictability* is an issue involving great challenges: the processes and division of responsibilities related to licensing are unclear, the tax code changes very often and may even change retroactively. On the other hand, it seems that mining companies are well informed about the new subsoil law; however, some claim that preparations have been made too rapidly to produce good quality.

In terms of *distribution of benefits* the reformed legislation in Kyrgyzstan will most likely benefit the local communities through the increase in non-tax payments. However, the two percent non-tax payment is a significant cost to mining companies and there is a risk that companies might be discouraged from investing in the country. Companies are also concerned that the funds generated by the non-tax payments would not benefit the communities affected by mining activities since according to the current law non-tax payments are directed to the central budget. On the other hand, if the funds are properly administered and directed to the communities, they could have a significant impact on the well-being and development of local communities.

The Tajik legislation places unnecessary obstacles in the path of companies seeking to achieve *profitability*, and they would benefit from simpler systems. According to the companies themselves, the level of taxes and other costs are

also too high. Although the legislation is rather old regarding *promotion of health, safety and security*, according to the figures given by officials, occupational safety in mines is good and the inspection of the safety procedures is described as strict. However, modern legislation with risk management requirements would be necessary, especially if mining activity is to increase in Tajikistan. According to the interviews, Tajik legislation is fairly advanced regarding *protection of the environment*. Substantial foreign support has been given in the preparation of this legislation, but the mine closure phase remains a problem area. There was no mention in the interviews of violations of *human rights*. However, the fact that the government does not need to compensate financially or assign compensatory lands to villagers who lose their previously used lands to mining activities raises concerns. Finally, many government officials as well as companies claimed that *enforcement* is very efficient and functions, but some NGOs did not see it in the same way. Keeping in mind estimates on the levels of corruption, one must doubt the claims of efficiency, at least in some of the sectors.

In many respects the success and impact of the mining legislation reform in Kyrgyzstan will boil down to efficient *enforcement* of the laws. If legislation is properly and consistently enforced, it will generate transparency and predictability and it will be easier and safer for foreign investors to invest in the Kyrgyz mining sector. The current legislation appears to provide the necessary tools for issues such as *protecting the environment* and *promotion of health, safety and security*, and no violations on *human rights* were reported. However, efficient enforcement is needed to maintain and improve the present state and, in particular, the consistency of the enforcement was generally seen as a major challenge. Finding resources and competence for proper law enforcement on all societal levels will continue to be a key challenge in Kyrgyzstan.

Corporate social responsibility (CSR) provides a perspective for business to tackle those tasks that contribute to economic, social and environmental sustainability. According to this perspective, corporations may have ethical codes, report transparently on social and environmental issues, contribute to fighting corruption, reduce social tensions and help protect minorities. CSR is often understood as voluntary corporate activity that goes beyond the legal

requirements since companies deal with tasks that contribute to economic, social and environmental sustainability. The notion of CSR must be understood as context dependent and in the light of the historical background of the countries and regions in which the companies operate. Corporate Social Responsibility is a relatively new phenomenon in Central Asia but it is clearly gaining in importance. CSR policies and practices could make a significant contribution to the development of more sustainable mining practices in the region.

Mining companies in both countries face a number of challenges in terms of the *transparency* of their CSR operations. CSR reporting is evolving rapidly in the region. CSR information disclosure is used more broadly in the Kyrgyz Republic than in Tajikistan. Information disclosure through the Internet is primarily practiced by those companies listed on foreign stock exchanges in response to the demands of external investors. As a result, English is the primary language used. The companies in both countries pay more attention to communicating their commitment to CSR issues than to providing detailed information about their CSR-related practices. Such an approach can be considered as potentially hampering transparency, because it may limit the access of the local stakeholders to the published information. In order to improve their transparency the companies should disclose more detailed information about their CSR practices at the site-level, provide quantitative indicators of their performance, and increase the use of local languages.

There are clear differences in stakeholder involvement practices in the Kyrgyz Republic and Tajikistan. In the Kyrgyz Republic the companies are motivated to include more stakeholders in their negotiations with the local communities due to the rise of mining conflicts in the country but face a number of challenges, including identification of all stakeholders, building trust between them, and finding suitable compromises. The dialogue between the industry and local communities in the Kyrgyz Republic has been blocked by lack of trust**.** This trust might be restored by a wider use of independent expertise and academic research on local communities, more transparent reporting and early use of forms of community engagement practices at the exploration stage. The companies should also address the cumulative effect of mining on the society by developing a closer dialogue within the industry.

Lack of clarity and predictability hinders the development of community policies in the Kyrgyz Republic, as neither the companies nor communities are certain of their mutual obligations and demands. Tripartite agreements that are already under development by some companies in the area might help to set a clearer framework for their relations with the community. In Tajikistan clarity and predictability is achieved through negotiations between the companies and state authorities rather than through direct agreements with local communities. Governmental bodies are clearly identified by the mining companies as key stakeholders in all aspects of CSR; other groups play almost no role in the society-company dialogue. The experiences of mining companies in the Kyrgyz Republic, however, suggest that these forms of communication might not be sufficient once mining operations have grown in number and intensity. In Tajikistan the identification of all relevant stakeholders and the development of a dialogue with them could be used more efficiently as a conflict prevention instrument at the exploration stage.

CSR instruments are used in both countries to improve the distribution of mining benefits. The mining companies undertake voluntary measures to support their host communities. Despite clear differences in stakeholder involvement practices between the mining industries in the Kyrgyz Republic and Tajikistan, the comparison of social contribution activities reveals many similarities between them. Companies in both countries consider local job opportunities and investments in roads and social infrastructure as the core of their voluntary social contribution strategies. Such similarities reflect the fact that both countries share a number of common socio-economic challenges including rural poverty, unemployment and a shortage of funds for maintaining social infrastructure.

The effectiveness of the companies' social contribution in both countries can be improved in two ways. First, the ad-hoc social contribution projects that still dominate the community strategies should be replaced with long-term social contribution planning. The planning will increase the efficiency of individual projects and also provide more transparency for CSR activities. There are already some signs that the Kyrgyz mining sector is shifting in this direction. Second, the direct support of social infrastructure might result in

a rapidly growing dependency of the communities on mining, which in the long run would undermine the sustainability of the communities once mining activities are discontinued. The attempts by the mining companies in the Kyrgyz Republic to support local businesses and create alternative livelihood sources in their host communities is a step in the right direction.

While the social policies of mining companies in both countries consist chiefly of voluntary activities, environmental and health and safety policies are constructed primarily on the basis of obligatory requirements in the national legislation. Compliance with the law is the dominant factor in both the promotion of health and safety and protection of the environment. The situation reflects the fact that the legislation in the Kyrgyz Republic and Tajikistan covers suitably both areas. The experiences of mining companies in the Kyrgyz Republic indicate that failing to communicate environmental information in an understandable and trusted way might result in growing concerns on the ground. The companies should concern themselves more with reporting their performance in health and safety and environmental matters, the use of independent environmental expertise and joint monitoring with the local population.

Finally, CSR activities are tightly linked to profitability. On the one hand, CSR instruments are used by companies to gain acceptance in their host countries and reduce risks to their business. On the other hand, business cannot invest in CSR activities in the long-run without profit. Reaching a balance between profitability and CSR aspects is essential for developing more sustainable mining in Central Asia and beyond. Disclosure of financial information is key instrument in gaining the trust of the local population and bringing the notion of profitability to the public debates on mining and CSR.

Introduction

As post-Soviet economies, the countries of Central Asia (Kyrgyzstan, Tajikistan, Uzbekistan, Kazakhstan, and Turkmenistan) have all experienced tremendous changes during the past twenty years. Many of these countries are characterised by extremely centralised political systems. In some the political and societal situation has been more stable during this period while others have experienced a number of revolutions. Due to their land-locked location between Russia and China, as well as demanding neighbours such as Afghanistan and Iran, the countries face challenges in terms of their foreign trade. Moreover, given heated ethnic issues, the mutual relations of these countries are not easy. In their striving to re-position themselves in the global division of labour, underground riches are seen as a key asset. The countries plan to re-establish their important role in mining within the former Soviet republics of the Commonwealth of Independent States (CIS) and Asian markets by developing their mineral resource potential. These plans are further encouraged by the high world prices of precious metals and the potential of the industry to foster national economic growth. In this report we explore the situation in the mining sector in two Central Asian countries, the Kyrgyz Republic and Tajikistan, with a focus on, first, legislation and the ways it deals with mining – from providing an investment-friendly environment to dealing with the side-effects of mining operations; and second, on corporate social responsibility policies and the strategies of companies operating in this field.

Like the extraction of natural resources more generally, mining operations tend to cause conflict situations in areas where mining companies operate. This occurs chiefly in that phase of the mining process when the mines are established and during their operation. Other phases, however, may arouse tension. Exploration of resources often leads to concern among people living in the vicinity of the exploration areas. The post-mining phase is equally

important, for the termination of working opportunities together with a transformed landscape and issues of waste removal become important after mine closure. However, mining activities can also have significant positive impacts on sustainable development by improving employment opportunities, adding to state revenues, driving economic growth and helping develop peripheral areas. Moreover, corporations involved in the extraction of minerals can play a considerable role in catalyzing development. However, in order to mitigate adverse social and environmental impacts, mining operations need to be planned adequately. This study seeks to answer the following questions: Which laws and regulations are most relevant to the development of the mining industry that would, at the same time, comply with the demands of sustainable development? What are the main differences between the countries' legislative systems in relation to the mining industry? How has the regulative framework contributed to the development of the mining industry? What kind of mining companies operate in the countries? Which corporate social responsibility policies, standards and procedures do these companies have in place? Have the present legislative systems influenced the way CSR policies in the mining companies are carried out or vice versa?

There are a number of international initiatives related to good mining practice. The Extractive Industries Transparency Initiative (EITI), promoted by the World Bank, seeks to advance revenue transparency at the local level and has issued a set of reporting guidelines, principles and criteria for governments to implement (EITI 2012a). In addition, the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development has published a thorough framework for mining policy; this was recognised by the United Nations Commission on Sustainable Development (CSD19) in May 2011 (Global Dialogue on Mining/Metals and Sustainable Development 2012). There are also a number of other organisations that have published guidance on good practice in the mining industry, featuring similar ideas on the principles for responsible mining, be they promoted by companies or lawmakers (Earthworks 2007; International Institute for Environment and Development 2002; International Council of Mining and Metals 2006, 2008; The Mining Association of Canada 2004; United Nations Environment Programme 2012). As a syn-

thesis of these international initiatives, a number of key issues can be identified. Based on these documents, the principles of sustainable and responsible mining can be summarised as follows:

- *Transparency* in the public and private management of mining activities as well as in social, environmental and economic impacts of these activities. This includes clear outlines of the responsibilities and accountabilities and publicly available statistics, policies and mining data, for example, disclosure of financial information, taxes, payments and revenues.
- *Stakeholder involvement* at all stages of the mining process from granting licences to mine closures. All stakeholders should be treated fairly and equally.
- *Distribution of benefits*: mining should benefit the citizens of the country and the region where the activities take place and the value of these benefits should reflect the value of the mined resources. The benefits may be distributed, for example, through tax revenue or employment opportunities for local inhabitants.
- *Clarity and predictability* of the legal environment and behaviour of the actors involved. Legal requirements and processes should be clear and legal reforms should be well planned and announced so that different parties can adjust to them over a reasonable period of time. The mining companies and stakeholders should act in clear and predictable ways in order to increase trust between all parties.
- *Profitability* of the mining business. The revenues from and legal constraints on mining activities must be optimised in such a way that mine developers and operators still find it profitable to maintain and develop their activities in best possible ways.
- *Promotion of health, safety and security* of mining activities. Workers' rights should be ensured, occupational health promoted and active risk analysis and management required. Permits should not be issued for deposits in conflict areas and mines could be (temporarily) closed down if they become parties or interests in armed conflicts.

- *Protection of the environment* from harmful impacts of mining: emissions into the air, water and soil as well as degradation of biodiversity should be minimised and efficient use of resources should be encouraged. Specific criteria for the closing of mines and plans for the post-mining transition should be in place.
- *Respect for human rights* in all mining activities be it employees, local inhabitants or foreign producers. Child labour should be prohibited, and equal treatment of men and women and proper compensation to people who give up their lands for mining guaranteed. Communities should not be forced to give up their lands.
- *Efficient enforcement* process of both company policies as well as legislative requirements including reasonable indemnities, compensating activities and sanctions, if necessary.

Although mining is an international business, most of its impacts are local, especially those impacts that determine whether the activity is responsible. Therefore, the promotion of responsible mining relies greatly on the national policies of the countries where the mining activities occur. National regulation may take place through *legislative instruments* such as laws and degrees, *financial instruments* such as taxes and subsidies, *support instruments* such as education and awareness-raising activities or *voluntary instruments* such as sectoral agreements. National regulation is influenced by a number of actors: international organisations and agreements, stakeholders, mining companies and citizens. In addition to national policies and regulation, there is another way to promote responsible mining: through self-regulation of the mining industry itself. Mining companies may have their own policies, their shareholders may have requirements for their actions and there may be international agreements among the business actors. Responsible mining activities are often part of the corporate social responsibility (CSR) policies of the companies. The interrelationships between the different actors and types of regulation are described in Figure 1.

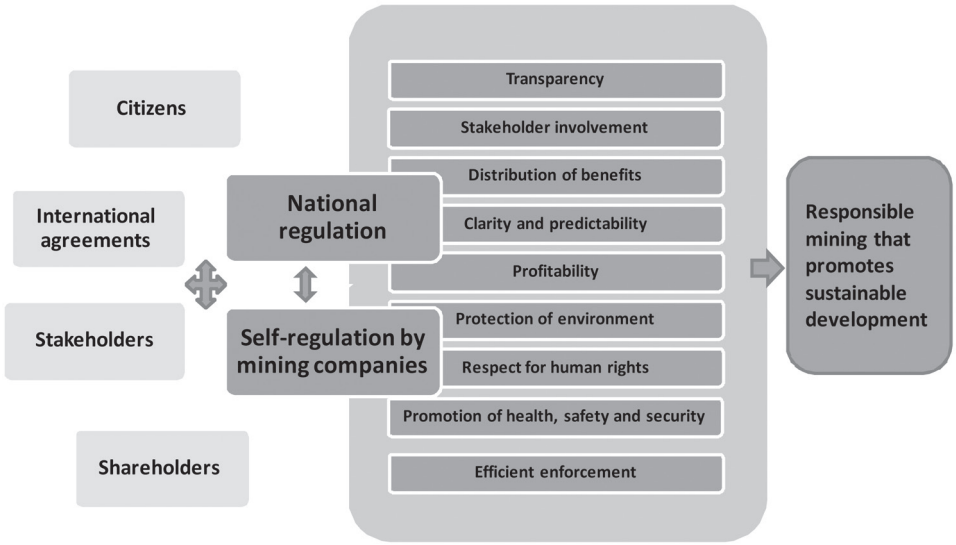

FIGURE 1. Ways to promote responsible mining

Corporate social responsibility (CSR) provides a perspective for business for undertaking tasks that contribute to economic, social and environmental sustainability. Corporate social responsibility is loaded with significant positive connotations. Corporations that have strong ethical codes, commit to corporate social responsibility and report transparently on social and environmental issues can strengthen good governance, contribute to fighting corruption, reduce social tensions, help protect minorities particularly in countries with weak governance and rule of law, and even promote stability between countries. CSR is often understood as voluntary corporate activity that goes beyond legal requirements as companies undertake tasks that contribute to economic, social and environmental sustainability. However, it has been pointed out that significant variation exists in terms of the level and extent of CSR of mining companies (Yakovleva 2005, 69). The societal setting is one of the most central determinants of CSR policies and although many transnational companies have developed global CSR strategies (Kapelus 2002, 275), practices on the ground heavily depend on context. Therefore, CSR practices in developing and post-socialist countries are different in nature from the ones followed in Western countries, and the notion of CSR must also

be understood as context dependent and CSR practices should be analysed against the historical background of these countries.

In this report we investigate the relations between the mining industry and society in the Kyrgyz Republic and Tajikistan. We first review the characteristics of the political systems in the region and then examine developments in the mining industry. We review legislation in the two countries in terms of how it deals with mining. The focus is not only on legislation as such but on perceptions of various stakeholders concerning the adequacy of legislation to deal with a variety of crucial matters such as investment climate and environmental and social issues. This analysis also helps position corporate social responsibility in context. We then analyse the situation of corporate social responsibility with mining companies in the two countries. The analysis includes companies with different backgrounds, from transnational corporations to nationally owned enterprises. The analysis, however, is preceded by a section on methods and materials.

Research materials and methods

In respect to the analysis of legislation, the study is based on publicly available documents on mining legislation in the countries under investigation, as well as interviews with key stakeholders. These include representatives of governmental authorities, mining companies and non-governmental organisations. In the Kyrgyz Republic 11 interviews were conducted by local representatives, Kalikova and Associates and nine interviews were conducted by the research team from the University of Eastern Finland and Gaia Consulting Oy that visited the Kyrgyz Republic on May 1-6, 2012. A total of 20 stakeholder representatives from 16 organisations were interviewed. In Tajikistan seven interviews were collected by Sharifa Khudobakshova from the Geology Institute under the Government of Tajikistan and 14 interviews were carried out by the project research team that visited Tajikistan on May 14-21, 2012. The interviewees included representatives of the mining industry; governmental administration on the level of ministries as well as governmental institutes; and non-governmental organisations. Interviewees were promised anonymity. Hand-written notes were taken at all interviews and some interviews were recorded when permission was granted. Furthermore, a feedback session was held in Bishkek at the Ministry of Economy of the Kyrgyz Republic on November 6, 2012, with various stakeholders participating.

These interviews also form the main body of the primary data for the CSR section of the report. Previous research on corporate social responsibility indicates that the size of the companies as well as nationality play important roles in shaping CSR policies of individual companies (e.g. Yakovleva 2005, 69). Hence, the study was designed to include both small and large mining companies as well as domestic and international enterprises. Based on preliminary desk research the three largest groups of international mining companies were

distinguished in the area: companies from Western countries, companies from post-Soviet countries, and, finally, companies from China. Interviews with representatives of companies from all three categories were conducted. Companies listed on Western stock exchanges, however, comprise the majority of the interviewees. This is partially due to the fact that these companies were at more advanced stages of operations, and for the pragmatic reason that these companies agreed to give an interview.

In addition to interviews, the members of the fieldwork team attended a two-day long roundtable meeting on Kyrgyz mining conflicts, organised by the University of Eastern Finland, Gaia Consulting Oy, Zoi Environmental Network and Aarhus Information Centre in Bishkek. The seminar gave the research team an opportunity to observe ongoing debates related to the relations between mining companies and local communities in the Kyrgyz Republic. These observations as well as the findings of the other studies were incorporated into the analysis along with web-pages of companies and other relevant organisations as well as news items from press agencies and newspapers.

Finally, a CSR disclosure analysis was conducted based on annual, environmental and sustainability reports and other CSR material published by companies on their web-pages. In the case of the Kyrgyz Republic the list of licences on subsoil resources as of December 22, 2010 was used to search the web sites of mining companies. Due to the large number of subsoil resource users (almost 1000 licences) and the dominating role of the gold sector in the Kyrgyz Republic, the research focused on gold mining companies. In the case of the Republic of Tajikistan a list of mining companies operating in the country was unavailable and, therefore, mining companies with active CSR policies were sought through the Internet, from news items and mining industry overviews. Nine gold mining companies operating in the Kyrgyz Republic with web-sites were located: Centerra Gold, Chaarat Gold, Gold Fields, Highland Gold Mining, Kazakhmys, Kyrgyzaltyn, Kentor Gold, Manas Resources and Zijin Mining Group. Three companies have web-sites dedicated exclusively to their Kyrgyz operations: Kentor Operating Company (a subsidiary of Centerra Gold), Kyrgyzaltyn (a Kyrgyz state-owned company), and Talas Copper Gold (a subsidiary of Gold Fields), while the majority of the companies reported

on their Kyrgyz operations through the web-pages of their parent companies. All these companies, with the notable exception of the Kyrgyz state-owned Kyrgyzaltyn, are transnational and listed on foreign stock exchanges. In Tajikistan, web-sites of three mining companies were located: Zijin Mining Group, Central Asian Minerals and Resources (CAMAR) and Kryso Resources. All three companies mine gold and are listed outside Tajikistan. The disclosure analysis was conducted with 60 indicators concerning major themes of CSR: health and security, environment and community (Appendix 1). The indicators were derived from previous research on the CSR strategies of mining companies in the post-Soviet space (Yakovleva 2005). The indicators included policy commitments (e.g. commitment to improve environmental or safety performance), information on the organisational structures and procedures of the company (e.g. community relations management) and reporting practices of corporate performance in these areas (reporting of accidents, financial contribution to social development etc.). The analysis was conducted in spring 2012 with the last update occurring in May 2012.

Politics and governance in the Kyrgyz Republic and Tajikistan

The Kyrgyz Republic and the Republic of Tajikistan have many historical, geographical and socio-economic similarities. Both countries were part of the Soviet Union and gained their independence following its dissolution in 1991. They are also comparable in population and surface area: the population of the Kyrgyz Republic is 5.5 million (National Statistical Committee of the Kyrgyz Republic 2011: 12) and the population of Tajikistan 7.6 million (Statistical Agency under the President of the Republic of Tajikistan 2011: 9). Both countries are land-locked with mountains covering most of their territories. They are the poorest of the Central Asian countries.

Political developments during post-Soviet transitions have been challenging. In Tajikistan a civil war erupted in the early 1990s and lasted until 1997, when the current president Emomali Rakhmon came to power. The political system has since been centrally controlled by the party of the president, the People's Democratic Party, registration of opposition parties is blocked and the media monopolised by the president (Spechler 2009). Although political liberties are limited, politically motivated violence is rare and the Tajiks are content with the stability the present government has brought: according to an international survey of the transition countries, life satisfaction in Tajikistan is at the same level as in Western countries and highest in all transition countries. There is a strong belief in a better future and very high level of trust in other people as well as in state institutions (EBRD 2011a).

In the Kyrgyz Republic, on the other hand, political developments have undergone a series of stages from stability to unrest and political violence. There have been two revolutions: in 2005 the peaceful "Tulip Revolution" and

in 2010 a revolution that included several ethnic and regional clashes. The revolutions have not brought about stability and peace to the country, which is suffering from ethnic confrontations, lack of social cohesion and political instability (Marat 2008). A new constitution was adopted in 2011, and parliamentary elections took place in November 2010. The political instability of the Kyrgyz Republic is reflected in the fact the citizens are very sceptical of the country's political-administrative institutions, and also have a low level of trust in other people. However, life satisfaction, although not as high as in Tajikistan, is higher than in transition countries on the average (EBRD 2011a). According to an international survey of political rights and civil liberties, Tajikistan is classified as a 'Not free country' and Kyrgyz Republic as a 'Partly free country'. However, the difference between the scores that the two countries have received is not very high (Freedom House 2012).

After the collapse of the Soviet Union both the Kyrgyz Republic and Tajikistan faced problems in restructuring their economies; this caused a sharp decline in gross domestic product in the 1990s. Between 1990 and 2000 the GDPs of both countries dropped significantly, but in the 2000s both have seen growth in GDP (World Bank 2012a, b). Nevertheless, these countries have the lowest GDP per capita among all former Soviet republics. In 2010, the GDP per capita based on purchasing-power-parity was 2 220 and 1 924 international dollars in the Kyrgyz Republic and Tajikistan, respectively (International Monetary Fund 2012). Both countries have also suffered from deindustrialisation with the share of industry and manufacturing decreasing in the national economy (Table 1). The sharpest decline in industrial production occurred in the 1990s when the industrial sector was shrinking on average at 11.4 percent per year in Tajikistan and 10.3 percent in the Kyrgyz Republic (World Bank 2012a, b). The collapse and subsequent growth of the industrial sectors is closely linked to the transformation of extractive industries in both countries.

TABLE 1. Structure of GDP of the Kyrgyz Republic and Republic of Tajikistan (% of total GDP)

	1990		2010	
	Kyrgyz Republic	Republic of Tajikistan	Kyrgyz Republic	Republic of Tajikistan
Agriculture	33.5	33.3	20.7	21.3
Industry	35	37.6	28	22
Services	31.4	29.1	51.3	56.6

Source: World Bank 2012a, b

In respect to the economic systems, the Tajik economy is strongly controlled by the state. There is strong state intervention, a lack of competition and administrative barriers to the business environment. In an international survey of countries with the best conditions for business, Tajikistan placed 139th. Some regulatory changes made in recent years have raised the Tajik rating by more than ten places. In comparison, the Kyrgyz economic system and its institutions have developed more towards a market economy, especially in the fields of natural resources, telecommunications, finance and capital markets. In the above mentioned survey of countries best suited for business opportunities, the Kyrgyz Republic was ranked 44th.(EBRD 2011b).

Poor governance and corruption hinder the development of both the Kyrgyz Republic and Tajikistan. They were ranked 154th and 157th, respectively, on a list of 178 countries (Transparency International 2012). In another study, the absolute levels of corruption were perceived to be much higher in the Kyrgyz Republic than Tajikistan, but there had been a significant increase in corruption in both countries (EBRD 2011a). In terms of transparency, especially in the mining sector, the Kyrgyz Republic has made major improvements: it was accepted as EITI (Extractive Industries Transparency Initiative) compliant in March 2011. According to EITI requirements, the government is obliged to provide free and open access to information related to the mining industry as well as involve mining companies and stakeholders in mining related decision-making (EITI 2012).

Mining industry in the Kyrgyz Republic and Tajikistan

Soviet period

Mining has a long tradition in Central Asia: artisanal gold mining as well as mining for copper and other minerals can be traced back to ancient times (Appel et al. 2004, 4). Modern day industrial mining started in both countries as early as the 19th century with coal mining (Bogdetsky et al. 2001: 26) but the shift to large-scale industrial mining occurred mainly during the Soviet era when intensive geological surveys were conducted and a number of large mining and processing enterprises were established in the Kyrgyz Republic and Tajikistan, transforming both republics into significant producers of non-ferrous metals and other minerals (Levine 1996, Bogdetsky et al. 2001).

In the 1930s and 1940s two large mining and processing enterprises were built in the Kyrgyz Republic to exploit local antimony-mercury deposits, and industrial uranium mining and processing began after World War II (Bogdetsky et al. 2001: 23-27). By the end of the Soviet era, the Kyrgyz Republic was a well-established producer of antimony, mercury, uranium, gold and rare-earth metals. In 1990 the Kyrgyz Republic produced 17 608 tons of antimony, making it the world's third largest producer at the time (Bogdetsky et al. 2001: 24). In 1989 it produced a quarter of the total world mercury production (ibid.). The estimated share of the Kyrgyz Republic in the production of rare earth metals in the Soviet Union was 30 percent, while its share in mono-crystal silicon and uranium production reached 25 and 15 percent, respectively (Bogdetsky et al. 2001: 27). The Kyrgyz Repub-

lic also had significant coal and construction mining operations (Bogdetsky et al. 2001: 26-27).

In Tajikistan, the Leninabad Chemical and Mining Complex was established in the mid-1940s to mine and process uranium ore. The peak of uranium production was reached in the 1970s and 1980s when the combine mined 500 000 tons of ore per year (Levine 1996). Tajikistan was also an important producer of the antimony-mercury and lead-silver concentrates that were further processed in the other republics of the Soviet Union. Tajikistan also mined gold, which at its height reached 1.5 tons of gold annually (Levine 1996), but the gold was refined in the Russian Soviet Socialist Republic (Botov and Iusupov 2004). In 1975, the Tajik Aluminium Smelter commenced operations, turning the republic into a large producer of aluminium in the Soviet Union. Due to lack of raw materials for aluminium production, the smelter was designed to process raw materials from other republics of the Soviet Union. Tajikistan also mined bismuth, copper, molybdenum, tungsten, zinc, coal and construction materials (Levine 1996).

The rapid growth of the mining industry in the second half of the 20th century had a controversial impact on both countries. On the one hand, the industry triggered a growth of industrial settlements in rural areas (Bogdetsky et al. 2001). In the Soviet Union, large enterprises were responsible for the maintenance of cultural, educational and medical facilities, provision of food and other supplies, as well as road maintenance and heating in the towns in which they operated. Industrial enterprises had better access to scarce resources than rural administrations and could provide better and more varied public services. As a consequence the local population in both republics obtained better educational, medical, cultural, and transport services (Bogdetsky 2001 et al. 56-57). On the other hand, the rapid growth of the mining industry caused long-lasting environmental problems. Radioactive waste deposits and some non-rehabilitated mines abandoned after the uranium boom in the region have been the focus of environmental concerns both in the Kyrgyz Republic and Tajikistan for decades (UNEP, UNDP, OSCE, NATO 2005: 30-31).

Restructuring of the mining industry after independence

With the collapse of the Soviet Union traditional demand and supply chains between mining and processing enterprises in the former Soviet republics were broken, and mining companies in the Kyrgyz Republic and Tajikistan struggled to find new suppliers and new markets. The removal of central planning exposed the mining industry in Central Asia to global competition. Transportation, fuel and electricity costs grew, making some mining operations in these land-locked countries commercially unviable (Levine 1996, Bogdetsky et al. 2001, UNEP, UNDP, OSCE, NATO, 29). In addition, mining companies experienced cash flow problems, struggled with outdated technology and the lack of management skills; some were brought to the brink of collapse (Bogdetsky et al. 2001, *Kyrgyz Republic Country Development Strategy* 2009, Janobilov, year unknown).

Both the Kyrgyz Republic and the Republic of Tajikistan face difficulties in dealing with the environmental legacy of past mining operations. Tailing dumps, particularly those of the uranium industry, constitute one of the most challenging environmental issues (CEE Bankwatch Network 2002; UNEP, UNDP, OSCE, NATO 2005). They are often exposed to wind and water erosion, and some of them are built on floodplains (CEE Bankwatch Network 2002; UNEP, UNDP, OSCE, NATO 2005). High seismic activity in the area adds to the list of risk factors as does the lack of awareness and poverty that drive local communities to use contaminated areas for farming and grazing (UNEP, UNDP, OSCE, NATO 2005: 31).

The Kyrgyz Republic

The significance of uranium, mercury and antimony in the Kyrgyz mining sector has been decreasing rapidly since the early 1990s (Bogdetsky et al. 2001). The shrinking was caused by the depletion of domestic deposits of uranium and antimony and the collapse of the Soviet Union cut the industry off from raw material suppliers in Russia and Kazakhstan (Bogdetsky et al. 2001: 23-25; 40). Other contributing factors were the low global prices of these com-

modities, high transportation costs and the technical characteristics of local deposits (Bogdetsky et al. 2001).

In spite of the difficulties, the significance of mining for the Kyrgyz economy has been growing. The GDP share of the mining and metals industry has grown from one percent in the mid-1990s to 10 percent in the early 2000s (Bogdetsky et al. 2005: 23-24). In 2007 the GDP share of the mining industry of the Kyrgyz Republic was 9.2 percent, comprising 40 percent of the value of industrial output and 40 percent of total export (*Kyrgyz Republic Country Development Strategy* 2009: 50).

The rise of the mining industry can largely be attributed to gold mining. According to some estimates, gold comprised almost 90 percent of the total value of mineral production in the Kyrgyz Republic in 2004 (Bogdetsky et al. 2005, Zozulinsky 2007). Most of the gold is produced by a single gold mining project, Kumtor. The project was launched in 1992 when the Canada-based Cameco Corporation and the government of the Kyrgyz Republic signed an agreement to develop the largest known Kyrgyz gold deposit (Centerra Gold 2012). Commercial production began in 1997.

The other large gold mining company in the Kyrgyz Republic is the state-owned Kyrgyzaltyn JSC, which represents the Kyrgyz state in the Kumtor project but also has its own mining operations. The production volume of Kyrgyzaltyn is much smaller in comparison to Kumtor: in 2011 Kumtor produced 18.1 tons of gold (Kumtor Operating Company 2012a), compared to the 509 kilograms produced by Kyrgyzaltyn (Kyrgyzaltyn 2012a). The Kumtor gold project has become the largest single contributor to the Kyrgyz economy. In 2011, the share of Kumtor in the GDP of the Kyrgyz Republic was approximately 12 percent (this calculation is based on GDP estimated by the National Statistical Committee of the Kyrgyz Republic 2012).

Any disruption of Kumtor operations would significantly reduce the GDP of the Kyrgyz Republic, which raises concerns over the long-term sustainability of the Kyrgyz economy. Further development of the extractive industry has long been considered an instrument to reduce the dependency of the country on Kumtor operations. In 2009 the president of the Kyrgyz Republic signed a document entitled *Kyrgyz Republic. Country Development Strategy (2009-*

2011). The strategy set a goal of diversifying the mining sector by putting into production several gold and tin-tungsten deposits and stimulating growth in construction-related mining as well as oil and coal production (*Kyrgyz Republic. Country Development Strategy* 2009, 52-54). The strategy states that foreign investments are essential for the development of the industry due to the scarcity of domestic financial resources (ibid, 53).

The attempts of the government to stimulate the development of the mining sector and attract investors resulted in the rapid growth of subsoil licences issued in the 2000s. By the end of 2010 there were almost 2 500 subsoil licences, 287 of which include gold (sometimes in combination with other metals) (The State Agency of Geology and Mineral Resources by the Government of the Kyrgyz Republic 2012).

The growth in the number of licences, however, has not led to a rapid growth in production mining. According to the Ministry of Economy and Antimonopoly Policy of the Kyrgyz Republic (2012) no large or medium-sized mining projects have been inaugurated in the country since 1992, with the exception of the Kumtor mine. The lack of production projects is often explained by the fact that many licences were obtained for further re-sale and licence-holders do not invest in the development of the deposits (Ministry of Economy and Antimonopoly Policy of the Kyrgyz Republic 2012). Currently, the state is attempting to improve transparency and efficiency in licence-issuing by reforming legislation on licensing and cancelling some licences. These steps have led to complaints among mining companies who cannot move to the production stage because licence issuance has been suspended.

The development of mining projects is also hindered by tensions between mining companies and local communities. In the 2000s there has been a rapid increase in the number of mining conflicts in the Kyrgyz Republic and in some cases violent clashes have occurred. In 2011 the consulting company Oxus International conducted a survey among the residents of the Talas region to explore the causes of the conflicts between mining companies and local communities. The study showed that environmental concerns are central to these conflicts (Oxus International 2011). The legacy of uranium mining and more recent accidents such as a cyanide leakage accident at the Kumtor gold

mining project in 1998 (CEE Bankwatch Network 2002) contributed to the rise of environmental concerns of the local population.

The socio-economic impact of mining operations on local communities is another source of tension. The Kyrgyz Republic has one of the lowest GDPs per capita among all former Soviet republics. Furthermore, mining projects are instituted in rural areas with a high level of poverty. In 2010 39.5 percent of the rural population of the Kyrgyz Republic lived in poverty, compared to 23.6 percent of urban population (National Statistical Committee of Kyrgyz Republic, 2011: 86-85). Studies carried out in mining regions of the Kyrgyz Republic indicate that the population is increasingly disappointed in the ability of the state to provide anything but the most basic social services (Tiainen 2012) and more demands for mining companies to make a social contribution have raised locally. These conflicts are causing delays in a number of gold mining projects that are close to the production stage.

Tajikistan

The mining industry of the Republic of Tajikistan also experienced a decline in the post-Soviet period. After the collapse of the Soviet Union large enterprises in the Tajik mining sector experienced problems in finding new markets in the 1990s and early 2000s; their operations were often suspended (Levine 2011) and uranium ore mining and processing was discontinued (Levine 1996).

We were unable to obtain data on the share of the mining industry in the Tajik economy. Information related to mining is considered sensitive and very little is released to the public. According to the Statistical Agency under the President of the Republic of Tajikistan (2011: 90), the non-ferrous industry constituted more than 35 percent of the GDP of Tajikistan in 2010. This data, however, does not reflect the weight of the mining industry in the Tajik economy per se. It includes the production of processed aluminium from imported raw materials by the largest mineral industry enterprise in Tajikistan, Tajik Aluminium Company. In 2009 processed aluminium comprised approximately 56 percent of the total export revenue of Tajikistan (this calculation is based on World Bank 2011, 14). Another important sector of the Tajik economy is

the cotton industry (World Bank 2011). The mining industry apparently occupies a more marginal position in the national economy.

Though many traditional mining operations have declined, gold mining has been on the rise in Tajikistan. In 1991 the government of Tajikistan commissioned the construction of a refinery for its gold mining industry that was opened in 1994 (Botov and Iusupov 2004). Several Tajik-foreign joint gold mining ventures were established in the mid-1990s in spite of the civil war and foreign capital still plays an important role in gold mining in the country. The largest gold mining company in Tajikistan, Zerafshan, is a joint venture between the China-based Zijin Mining Group and the Tajik state. Another significant producer of gold is Aprelevka, a joint-venture co-owned by the Tajik state and the UK-based CAMAR (CAMAR 2012). State-owned Tilloi Toijik runs gold mining operations in the southern part of the country and a number of small gold mining companies operate in the region as well. In 2010 Tajikistan reportedly produced slightly over two tons of gold (Nabiyeva 2011). Tajikistan has significant antimony and silver-lead mining operations run by foreign investors (Levine 2011). There are also coal mining and construction mining operations.

In the 2000s, the high prices of gold and other minerals fuelled hopes for developing the mining industry. One of the newest mining projects is the development of the Pokrud gold deposit, situated close to the capital city Dushanbe. Fuelled by high uranium prices, there have been plans to resume uranium mining and processing (Levine 2011).

Recently, the State Committee on Investments and State Property Management of the Republic of Tajikistan (2012) announced that the Tajik government planned to offer several non-ferrous metal deposits to investors in 2012. It may, however, take several years for a final decision to be made; this can be illustrated by the search made for investors for the country's largest-known silver deposit, Bolshoi Konimansur. A tender for Bolshoi Konimansur was announced in 2009, but it took three years to make a decision and all bidders but one withdrew their offers during that period (Asia-Plus 2012).

It is still remains to be seen whether the hopes for further growth of the Tajik mining industry will be realised in near future. One of the main obstacles is the unreliable energy supply (Levine 2011). The development of power in-

frastructure, particularly hydroelectric power, is considered a priority for the country both domestically (*National Development Strategy of Tajikistan until 2015*) and internationally (World Bank 2012). The Republic of Tajikistan uses its mineral resources to finance much needed infrastructure development projects. The Chinese company TBEA is building two power transmission lines in Tajikistan as well as some other energy infrastructure in exchange for mining licences for gold deposits (Eurasianet 2009).

Discussion

There are a number of similarities between the mining industries in the Kyrgyz Republic and the Republic of Tajikistan. The roots of industrial mining in both countries can be traced back to the Soviet era when a number of large mining and processing combines were established in the region. Both republics hosted uranium mining and were significant contributors to the non-ferrous metallurgy of the Soviet Union. They also share the environmental burden left by uranium mining operations. After the collapse of the Soviet Union, mining enterprises in both countries struggled to maintain their operations due to the disruption of traditional supply chains, outdated technology, lack of management expertise and high transportation costs. Consequently, some traditional minerals lost their positions in the national economies of both countries while the industry has been performing relatively well in gold mining.

However, there are also striking differences between Tajik and Kyrgyz mining industries. It is evident that the mining industry (primarily gold) plays a central role in the Kyrgyz economy, while in Tajikistan it occupies a more marginal position. In the Kyrgyz Republic the mining industry has been considered one of the locomotives of industrial development while in Tajikistan the main focus is on agriculture, the hydroelectric industry and processed aluminium. Finally, Kyrgyz mining is a relatively open and licences are easy to obtain, while in Tajikistan the industry is more tightly controlled by the state. The latter is not surprising given the generally strong interference by the government in the corporate sector in Tajikistan (EBRD 2011b).

National regulation of mining in the Kyrgyz Republic and Tajikistan

Regulatory framework in the Kyrgyz Republic and Tajikistan

National regulation of the extractive industry covers a broad scope of different branches of law. Typically mining legislation is considered to cover regulation of mining rights, ownership of land and minerals, as well as duties, royalties and taxes on mining activities. However, there are a number of other laws that have significant influence on the mining sector, such as laws on investments and financing, labour, corporations, environment, health and safety. The legislative framework of mining activities is a sum of all these different types of regulations within a country. In this chapter we aim to provide an overview of the legal frameworks related to mining in the Kyrgyz Republic and Tajikistan and assess the main challenges in promoting responsible mining.

National policies play an important role both in attracting mining businesses to a country as well as in controlling the impacts to ensure mining practices are responsible. An annual survey of mining companies by the Fraser Institute assesses how mineral endowments and public policies together affect investments in exploration. According to the survey the national and regional policy environment has crucial importance when decisions on investments are made. For example, the Kyrgyz Republic ranks 39th of 93 if the respondents only evaluate the mineral potential. But the ranking drops to 72 when the

respondents included the current regulations and land-use restrictions in the Kyrgyz Republic in their assessments (Fraser Institute 2012).

The Fraser Institute survey calculates a policy potential index for mining. The policy potential index is a composite figure that includes the respondents' assessment of a number of topics, many of which are related to responsible mining principles: uncertainty concerning administration, interpretation and enforcement of current regulation; environmental regulations; regulatory duplication and inconsistencies; transparency of legal processes; taxation; trade barriers; uncertainty concerning native land claims and protected areas; infrastructure; socioeconomic agreements; political stability; labour issues; geological database and security. According to the index, the Kyrgyz Republic is 87th of 93 countries. Its performance is among the average in taxation, clarity of land claims and environmental regulation, but is among the lowest-ranked countries in political stability, socio-economic agreements and infrastructure. Tajikistan was not included in the survey (Fraser Institute 2012).

The selection of various aspects in the mining regulations in the target countries that are reviewed in the following section are based on the issues identified by the Fraser Institute, the sustainability principles listed in the introduction to this report and other studies (e.g. Getting the deal through 2009) that compare mining regulation between countries. It should be noted that there is much more data available on the mining regulation in the Kyrgyz Republic than Tajikistan. In fact, reliable international sources on Tajik legislation are difficult to find. The information presented in the following section has been obtained through direct contacts and a field visit to the country; however, is some places information is lacking. An overview of the regulatory frameworks for mining in the target countries is given in Table 2.

TABLE 2. Comparison of regulatory frameworks in the Kyrgyz Republic and Tajikistan.

	Kyrgyz Republic	**Tajikistan**
General		
Ownership of land	Governmental, municipal and private landownership. Subsoil is owned by government.	All land is owned by the government, as well as subsoil.
Ownership of companies	No restrictions regarding ownership structures.	Allocation of shares between a company and the government is possible, if the company decides to sign a production sharing agreement, but the principles and procedures for concluding such agreement have yet to be defined.
Nationality of employees	No restrictions regarding nationality of employees.	70% of employees in companies have to be of Tajik nationality,
Licensing		
Granting authority	State Agency for mineral resources under the Government of the Kyrgyz Republic.	The application has to be approved by 5-6 government committees. The State Committee on Investments is solely responsible if current plans are realised.
Procedure of licence provision	Licences are granted on the basis of competition and auction. If a deposit is of national importance, the licence is issued through competition. In exceptional cases direct negotiations take place.	Applications for smaller and tenders for larger deposits. Complicated procedures for both processes involving several stages, actors and applications. Takes up to two years to reach decisions. Plans to have only tenders in the future.

Exploration and extraction rights	Exploration rights are granted on the basis of competition and auctions. Explorers are granted exclusive right to apply for mining licence for the deposit.	Currently, companies that conduct exploration activities have a priority right to obtain a mining licence for two years. But the State Committee on Investments and State Property has now suggested that the exploring companies should also receive their licence based on competition. This proposal has not yet been accepted by the government.
Length of licences	With the consent of the state, a maximum of 50 years.	Not defined.
Artisanal mining licences	Prospecting licence – up to five years with the possibility of applying for an extension. Exploration licence – up to ten years with the possibility of applying for an extension. Mining licence up to 20 years with the possibility of applying for an extension.	Same laws apply as to artisanal miners and companies.
Stakeholder involvement and access to information		
Availability of geological data	Geological information is considered state property.	Defined as not public information.
Information on mining sector of national economy	Officially available.	Officially available, if specifically requested. In practice, very hard to obtain.
Information on mining companies and their performance	Officially available.	No requirements for companies to disclose information to the public.
Party to the Aarhus Convention	Yes, since 2001.	Yes, since 2001.
Compliance with EITI	Yes, since 2011.	No.

Financial payments		
Taxes	VAT, land tax, profit tax, sales tax, payments to pension fund for employees, bonuses, royalties and export duty fees. Gold producers pay revenue tax instead of profit tax.	Nine different types of taxes for subsoil users: VAT, corporation tax, land tax, royalty, bonuses for signing and commercial discovery, tax on excess profit, tax on road users and vehicles.
Non-tax payments	2% of gross income.	Do not exist.
Regulation that directs tax money to local investments, funds, etc.	2% of gross income.	Not available.
Environment and health		
Environmental Impact Assessment	Required for all new exploration and mining projects.	Required for all new mining sites.
Mine closure	Requirements to restore and rehabilitate the environment during or after the exploration and mining works must be provided in each work programme which undergoes state expertise on environmental protection.	Not available.
Health and safety permits	Legal acts on occupational safety include Regulations on Recording and Investigating Occupational Accidents; Regulations on Occupational Safety Service and Organisation of Occupational Safety Work; Regulations and Instructions on Compensation of Damage from Occupational Accidents and Diseases; and Regulations on Training and Testing of Occupational Safety Knowledge.	Most of the safety regulation has not been changed since 1990.
Enforcement		
Controlling bodies	State Geology Agency and State Agency of Technical Safety Inspectorate.	Regular safety, environmental and tax inspections.
Sanctions	Suspension or termination of subsoil use rights, administrative and criminal liability.	Major sanctions for environmental and tax violations.

Overview of the regulatory framework in the Kyrgyz Republic in force through August 9, 2012

In 2012, the Kyrgyz Republic was in the process of reforming the mining legislation adopted in 1997 (Jorupbekova 2010). The main incentive for the reform has been the desire to increase transparency and the predictability of administrative procedures in order to attract foreign investment in the mining sector. The objective below is to describe the reform process and highlight topics that are likely to have an impact on mining practices in the future. The key question is: does the legal framework provide grounds for developing a sustainable mining sector in the Kyrgyz Republic? In exploring this issue, our focus is on the perceptions of stakeholders on the contents and regulatory power of the legislation.

The principal laws in the mining sector have been as follows:[1]

Law on Subsoil. The Law on Subsoil of 1997 (amended on April 13, 2012) is a framework law which regulates such issues as ownership of mineral resources in the Kyrgyz Republic, distribution of authority among state administrations, types of subsoil use, and subsoil use regimes (licensing, concessions, production sharing agreements). This law includes a procedure for issuing licences for subsoil use and articulates the grounds for suspension and termination of subsoil use rights. The majority of exploration and mining company activities are governed by the Law on Subsoil as they operate under the licensing regime.

Law on Concession. The Law on Concession of 1992 (amended on October 17, 2008) contains provisions which regulate the procedure and conditions on which a subsoil use concession is granted and a concession agreement is concluded. As of today there has only been one gold deposit operated under the concession regime.

Law on Production Sharing Agreements. According to the Law on Production Sharing Agreements (the "Law on PSA") of 2002, the Kyrgyz Republic, based on a production sharing agreement, may for a fee provide an investor with an exclusive right to search, explore and mine a mineral

[1] According to Kalikova & Associates.

resource deposit and perform related operations within an established time; the investor extracting subsoil resources must perform these operations at its own expense and at its own risk. The Law on PSA establishes requirements for conducting a public tender procedure, negotiations and execution of the PSA and a principle for distributing produced minerals.

Other Laws. In addition, there are a number of laws specific to certain minerals, including the Law on Coal, the Law on Precious Metals and the Law on Oil and Gas. Furthermore, the Kyrgyz Republic is a signatory to a number of international treaties on cooperation in the exploration sector. Among the Commonwealth of Independent States these include the Mining Charter of 1997 (Moscow), and the Agreement on Border Cooperation in the Area of Conducting Exploration, Exploitation and Protection of Subsoil of 2011 (Minsk). The Kyrgyz Republic is also a party to the Energy Charter of 1994 (Lisbon).

Reform process

The reform of the mining legislation in the Kyrgyz Republic has been a part of an ambitious governmental reform programme where a 100-day action plan was established in 2011 to provide measures to implement the government's programme on stability and dignified life. One of the aims of the 100-day action plan was to generate more attractive conditions for investments in the extraction of natural resources by developing a set of normative legal acts on subsoil management.[2] According to the action plan, the first package of laws to be amended are the Law on Subsoil, the Land Code and the Tax Code, Regulation on Subsoil Licensing Procedure, Regulation on Procedures and Conditions of Conducting the Competition and the Auction for the Right to Use Subsoil by the Authorized Government Body on Subsoil. In the second package new laws on Concession, Subsoil Concession and Product Sharing are to be drafted.[3]

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[2] http://www.eng.ibc.kg/index.php/government-initiatives/item/191-the-governments-100-day-action-plan

[3] http://www.eng.ibc.kg/index.php/government-initiatives/item/191-the-governments-100-day-action-plan

Even though the need for reform is apparent, there has been widespread criticism of the haste of the 100-day reform programme. According to stakeholder interviews the criticism has partly been directed towards limited stakeholder involvement. This has reportedly been the case for the reform process of the mining legislation as well. Civil society and local interest groups in particular have been under-represented in the process. Public hearings were also insufficiently utilised. In contrast, most of the interviewed representatives of mining companies painted a rather positive picture of the engagement and involvement of the mining community in the legislation process. Their participation was mainly coordinated through the International Business Council and its Mineral Resources Committee. In the following sections selected topics of interest in the reform process will be discussed. These are issues that were raised by the interviewed stakeholders and reflect the impacts the new legislation might have on sustainable mining in the Kyrgyz Republic.

The law on subsoil use and surface rights

The law on subsoil is the principal framework law regulating a variety of mining-related activities and procedures. Prior to the legal reform the law was administered by the State Geology Agency, which was also the main mining authority in the Kyrgyz Republic. In the new draft law on subsoil, authority is to be divided among several administrative bodies. One of the reasons for this division is to separate functions related to the supervision of mining activities from those concerning the realisation of governmental mining policy. However, according to interviews this has led to a power struggle between the State Geology Agency and the Ministry of Economy, which currently deals with policy matters in the mining sector. Furthermore, this unclear situation regarding the division of authority has created a situation where the administrative bodies are reluctant to issue new licences for mining extraction, thus resulting in a halt in issuing licences. Another challenge, according to interviews, is related to the fact that surface rights (or land rights) are granted separately from subsoil rights by local state authorities. Depending on the type, location of the required land and origin of the exploration or mining right holder (local or foreign), the right to land is granted by the central

government, local state authorities or local municipalities. If the land is in private ownership, the subsoil user has to negotiate with the owner of the land. A typical problem that mining companies continuously face is that the surface rights often belong to local authorities called *akimiat*. However, *akimiat* cannot grant surface rights without the consent of several smaller subdivisions of local authorities called *ayil okmutu* on the territories where the subsoil is located. This issue is not clearly regulated by the legislation.

Another problematic aspect of surface right legislation involves the way different types of land are categorised. Currently the legislation does not recognise any land use categories for non-agricultural purposes and, therefore, potential loss of agricultural production has to be evaluated on the basis of average crop capacity. It has been suggested that a new category of land – e.g. lands for deposits –be created. Obtaining land rights might take from two weeks to several years depending on whether the application is for an exploration or mining production project, exclusive use of land requirement, type of land, and whether the subsoil user is considered Kyrgyz or foreign. Companies registered in the Kyrgyz Republic with less than 20 percent foreign ownership are subject to a shorter process for obtaining a land right than those registered abroad and foreign-owned subsoil users. In addition, foreign companies may not obtain title to the land and may only obtain land use rights for limited types of land (including industrial lands required for exploration and mining purposes) with the consent of the state and for a maximum term of 50 years.

Licensing procedure

In the legislation which existed prior to the August 2012 changes the ownership of subsoil resources belonged to the state. The state could grant a private party the right to use subsoil, including the right to extract, process and sell mineral resources, or it could enter into concession or production sharing agreements. A majority of exploration and mining companies preferred to work under a licensing regime. Currently there are no mining companies operating under production sharing agreements. Before the reforms in the mining sector licences were issued on the basis of direct negotiations between mining companies and

state authorities. This arrangement was criticised for the lack of transparency and for providing grounds for corruption. Furthermore, local authorities and stakeholders could not influence the licensing procedure. Partly as a result of this system tensions exist in the regions in respect to mining companies and their activities. The new law provides a possibility to obtain a licence only on the basis of competition and auction. If it appears that a deposit is of national importance, the licences are issued through a tendering procedure. According to the law a commission on competition, including representatives from local communities and NGOs, is to be created on an ad hoc basis with regard to each deposit. There are rather active re-sale markets for mining licences. According to interviews a majority of mining companies currently active in the Kyrgyz Republic are exploring companies that re-sell licences at a considerable profit. Increased transparency in the licensing process would, according to interviews, also generate transparency in the aftermarket of mining licences.

Non-tax payments

Exploration and mining companies are subject to a variety of taxes and other payments such as bonuses, royalties and taxes. The taxation system has been widely criticised as outdated and inefficient. One of the major concerns of mining companies is the possible introduction of non-tax payments for mining activities. The rationale behind the introduction of non-tax payments can be traced to the strong and even violent local protests against mining companies. It was suggested that mining companies pay two percent of their profits to the budgets of local authorities. The main concern lies in the administration of these funds. The business community has been suspicious about the collection and distribution of the funds to meet the local needs. There is apprehension that since non-tax payments are considered as budget income and subject to budget laws they could not be directed to the particular needs of local communities.[4]

The business community also fears that under the proposed non-tax law mining companies would be subject to an unfair burden and rapidly increasing costs. For example, at the moment the Kumtor operating company has

[4] Lidia Savina, International Business Council (opinion on non-tax payments).

supported the community in the Issyk-Kul Oblast on the basis of a normative legal act on the collection of one percent of the gross income. During the past two years the region has received almost 19 Million USD from Kumtor. However, according to the interviews mine operators do not directly oppose the non-tax law, but fear that the funds are not directed to the communities around the mining sites. Hence, the communities could be unaware of the contribution of the mining companies and the local communities would continue to oppose the mining companies and their activities.

Law enforcement

One of the main concerns in terms of the development of sustainable mining in the Kyrgyz Republic is the proper enforcement of the law and respect for the rights of all parties. The main law enforcement authorities for the mining industry are the State Agency on Geology and Mineral Resources and the State Inspectorate on Environmental and Mining Safety. However, with the current state of government reorganisation and unclear power divisions between different state bodies, it is somewhat unclear which organisation will be the main law enforcement authority in the future. Basically the State Inspectorate performs control functions to ensure that operations by the licence holders comply with licensing conditions and the requirements of the legislation. It also conducts monitoring activities regarding the exploration, use and protection of subsoil. In case of non-compliance with the law, the State Inspectorate may suspend or revoke rights for subsoil use or impose administrative penalties and punitive measures. Mining rights are protected by the law on subsoil. Additional protection is granted to foreign exploration and mining companies under the law on investments of 2003, which provides guarantees from expropriation and discrimination (Honkanen 2012).

According to interviews a common concern among mining companies as well as local communities is that the resources allocated for law enforcement on the local level are insufficient. Another criticised aspect is the lack of qualified legal specialists with the capacity to evaluate mining-related conflicts as a whole. In some cases politicians have been known to put pressure on legislators, complicating matters even more.

Overview of the regulatory framework in Tajikistan

There are 33 laws or regulations that govern the mining sector – varying from the constitution to law on licensing and state secrets. The main government agencies that regulate mining activities include nine departments and committees covering a variety of topics: energy and industry, finance, tax, land management, geology, environmental protection, safety and investments. The most relevant laws are listed in the following:

- The Law of the Republic of Tajikistan "On Subsoil" (1995, 2008) is the main legislative document on the use of natural resources and environmental protection and regulates the use of mineral resources and defines the ownership and rights of extraction of subsoil resources. It should be noted that ownership of land lies with the Government of Tajikistan, and the citizens only have the right of usage.
- The Laws of the Republic of Tajikistan "On licensing of certain activities" (2005, 2006, 2007, 2008, 2009) and "Regulation on the features of licensing of certain activities" define the types of activities subject to licensing and describe the procedure, including more than ten required phases, for obtaining a mining licence. The procedure can be expected to last up to two years. At present five to six different Committees are involved in making licensing decisions.
- The tax code of the Republic of Tajikistan establishes the principles of taxation. According to the tax code subsoil users have to pay nine different types of taxes including corporation tax, value added tax, land tax, royalty, bonuses for signing and commercial discovery and tax on excess profit, vehicles and road users. The bonuses are one-time cash payments for the use of subsoil after receiving a licence and after commercial discovery.
- The Law "On the list of information constituting state secret" defines geological data to be classified information and therefore not publicly available.

- There are a number of laws on environmental protection, impact assessment, air protection, fauna, water, etc. defining various requirements for mining activity. Many of these laws have been recently reformed with the aid of donor agencies. All new mining sites are required to make an environmental impact assessment before starting activities.
- There are a number of laws related to the state appraisal of safety of mining activities. These define the procedures and subjects for controlling safety measures. Most of these laws have not been significantly reformed since 1990.
- In addition to the above, 70 percent of the employees of companies operating in Tajikistan must be Tajik citizens.

Challenges related to mining regulation

Tajikistan is currently reforming its mining legislation, mainly the law on subsoil and the licensing process, but there are also plans for changing taxation of investments. In the following, issues raised by the interviewed stakeholders are discussed. These issues reflect the challenges of the current legislation as well as the need for reform.

The legislative system in Tajikistan is a patchwork of different executive documents – laws, presidential degrees, government resolutions and different instructions and orders – many of which are contradictory in content. For example, the rights of usage of subsoil are defined in differing ways in different parts of the subsoil law, and the priority for exploration has in one section been given to those who have done the prospecting and in another the law requires all exploration rights to the granted on the basis of competition. According to one report, it is not possible to avoid the violation of tax laws, since following all the requirements is impossible (U.S Department of State 2012). Moreover, each ministry has set its own normative practices, which are not published and may be contradictory to the law.

Licensing

The licensing system is presently seen to be cumbersome and lacking clarity. At the moment a large number of governmental departments are involved in the licensing process and the applicants need to attend several meetings with different officials. As some interviewees pointed out, in particular the requirement of several face-to-face meetings with officials increases the risk of corruption. Since there are a number of contradictions in the law, there broader margin for interpretation by officials issuing the licences. According to companies it took nearly two years to attain their first licences, whereas subsequent licences were often granted in less than a year.

According to the interviews, it seems likely that the reformation process will concentrate licensing power in the hands of one department or governmental committee in order to make the process simpler. There are, however, concerns over the capabilities and sufficiency of expertise of a single administrative body to handle the process. Moreover, by concentrating decision-making into one department or committee the licensing system becomes more vulnerable to political control by the government.

For mining companies there are several risk factors in licensing. The tenures of licences are not clearly defined, and there is no assurance that after successful exploration a licence to operate a mine would be received. The reforms of the new law were also criticised for allowing the issuance of licences solely through tenders, and there is currently an alternative process of single application. Permitting tendering alone may be considered unfair by those companies that have carried out the prospecting work, and possibly have not yet been able to achieve any financial gain from it. Furthermore, there are several smaller deposits that might not be issued a licence since only one company may be interested in the site.

For individual citizens, the cumbersomeness of the licensing process has created an obstacle to practice alluvial mining. In Tajikistan, alluvial deposits are common in the mountains and this could be an opportunity for many local people to employ themselves. Supporting this type of employment would require special legislation.

Access to information and stakeholder involvement

There is very little public information about mining companies, the licensing system or the environmental permit system of mining activities. This hinders the possibility of the public to follow up or complain about possible mismanagement by the government or the companies. According to one interviewee the law on open information is so ambiguous that it may be interpreted in two totally contrary ways. Since all the land belongs to the state, it can make decisions on its use without consulting the local inhabitants. The government does not need to inform, let alone negotiate with, the local people about new mining sites. It is also not required to compensate or assign alternative plots of land to locals for farming or keeping their goats or sheep. There were no legal requirements for mining companies to support local communities or involve them in dialogue regarding their activities. However, the law requires all companies in Tajikistan to have 70 per cent of their employees from Tajikistan, which encourages the employment of local people for all possible jobs.

In practice, many of the companies have had direct contact with the president, who organises annual meetings with companies to discuss problems. Companies have also had many direct contacts with government officials and many considered themselves well informed and heard during the process of legal reform.

Financial payments

In general, the mining companies considered taxes they pay to be too high. The size of bonuses in particular is not fixed, may vary and their prediction is difficult. The bonus needs to be paid – before any revenue is made – within one month after the company gets a licence. In some cases the size of the bonus exceeds the funding available for a company and they are unable to pay the bonus. The possibility to make partial payments is not mentioned in any law. This was seen to be problematic by many, especially smaller companies, since private money is expensive – interest rates may rise to 30 percent.

At present there is a new draft law that requires investment agreements with mining companies. These agreements include all the taxation paid by a company. The reformation of this and other mining-related legislation has

already brought to a halt the licensing process, as the actors are waiting to see what the new regulation will be like. Many of the interviewees were not optimistic about the law reforms: if the text in old laws is unclear, it will also be unclear in the new ones. More expertise in drafting laws would be needed by the government. The model for the reformed law was said to be from Kazakhstan, where most subsoil use is in oil and gas. This was not considered suitable for Tajik needs.

Environmental, health and safety regulation

The Tajik environmental legislation was considered quite adequate and up-to-date by the interviewees. It has recently been updated with the support of OSCE, the Organisation for Security and Co-operation in Europe, GIZ, the German Agency for International Cooperation and UNECE, the United Nations Economic Commission for Europe. On the other hand, the health and safety regulation has not been properly updated since Tajik independence. In spite of this, worker safety in Tajikistan is rather good: according to a government representative, Tajikistan occupies second place among the CIS countries when rated for work safety.

Enforcement

The enforcement of mining regulation in Tajikistan was considered quite strict by the companies as well as government representatives. This was, however, an issue that the research team would find difficult to verify. Those active mines that have been identified as first level of priority are inspected by regional safety authorities every three months. The authorities have the right to shut down operations if the mismanagements uncovered are not corrected. For example, a tunnel site was closed for one year, due to safety problems. However, since there are so many different controls by various authorities, the president has suspended many financial inspections for two years, in order to let companies work in peace. In regard to safety enforcement, there is a lack of proper training opportunities for safety officials.

In respect to the enforcement of environmental regulation, the system has become much stricter over the past years. The penalties for environmental

damage have increased, and the system levies greater penalises for sequential violations of the regulations. Moreover, the sanctions for disseminating erroneous information have markedly increased: if there is some environmental damage and the information given by the company is found to be false, the penalty of the damage is twenty times higher. Currently, due to improved levels of information, the authorities are better equipped to function when problems arise.

In comparison

Keeping in mind the principal aspects promoting more sustainable and responsible ways of mining, the following conclusions concerning the state of legal frameworks supporting sustainable practices in mining in Tajikistan and the Kyrgyz Republic can be drawn.

In terms of *transparency* of mining legislation, Tajikistan has severe challenges: even basic statistics, information on mining legislation, permit processes or facts of mining companies are not available for the public. Licensing processes are neither transparent nor very clear. It is unclear whether the new law on subsoil will remedy these problems. In terms of *stakeholder involvement*, there are similar problems. Although Tajikistan is a signatory to the Aarhus convention, the practices of public involvement and information are very weak: local communities are rarely involved and their involvement, if there is any, is considered superficial. Involvement of companies in law reform is a positive finding.

Regarding *transparency, clarity and predictability*, the mining reform is likely to bring about substantial change in the way mining activities are regulated in the Kyrgyz Republic. Even though the reformed legislation will still contain inconsistencies and contradictions, it is expected to improve the transparency of legislative procedures related to mining. The division of authority and tasks between the state Geology Agency and the Ministry of Economy is likely to alleviate problems relating to conflicts of interest. The current practice of categorising different types of land by agricultural value is outdated and complex. The former practice of issuing licences by direct negotiations was

vulnerable to corruption. The reformed practice, with auctioning and tender procedures, will generate transparency and predictability in the licensing procedures. The competition procedure regarding deposits of national importance is problematic, as the apparent right of the government to declare a deposit or reserve an object of national importance might lead to the expropriation of a reserve by a third party.

In regard to *stakeholder involvement*, the process of reforming the Kyrgyz mining legislation was conducted at a fast pace and based on the interviews conducted it appears that local interest groups and NGOs were not granted many opportunities to influence the outcomes of the reformed legislation. This is somewhat worrisome as the people who are directly affected by the negative effects of mining activities have had the least impact on the legislation, whereas the International Business Council was rather effectively able to engage the mining companies.

In respect to *distribution of benefits*, the laws of Tajikistan seem to protect the national interests in mining quite well: 70 per cent of employees have to be Tajiks, taxes and other government revenues are quite high. However, since there are no statistics on revenues or government spending, it is difficult to say how these benefits have been distributed. Like transparency, *clarity and predictability* is an issue having great challenges: the processes and division of responsibilities related to licensing are unclear and the tax code changes very often. On the other hand, it seems that mining companies have been well informed about the new subsoil law; however, some claim that preparations have been made too rapidly to produce good quality.

In terms of *distribution of benefits*, the reformed legislation in the Kyrgyz Republic will most likely contribute to benefit the local communities through an increase of non-tax payments. However, the two percent non-tax payment is a significant cost to mining companies and there is a risk that companies might be discouraged from investing in the country. Companies are also concerned that the funds generated by the non-tax payments would not benefit the communities affected by mining activities since according to the current law non-tax payments are directed to the central budget. On the other hand, if the funds are properly administered and directed to the communities,

they could have a significant impact on the well-being and development of local communities.

The Tajik legislation creates unnecessary obstacles to companies in achieving *profitability*, and companies would benefit from simpler systems. According to the companies themselves, the level of taxes and other costs are also too high. Although the legislation is mainly outdated in regard to *promotion of health, safety and security*, according to the figures given by officials, occupational safety in mines is good and the inspection of the safety procedures was described as strict. However, modern legislation with risk management requirements would be necessary, especially if there is to be increased mining activity Tajikistan. According to the interviews Tajik legislation is fairly advanced on *protection of the environment*. Significant foreign support has been invested in the preparation of this legislation, but the mine closure phase remains a problem area. There was no mention in the interviews of violations of *human rights*. However, the fact that the government does not need to financially compensate or assign compensatory lands to villagers who lose the lands they previously used to mining activities raises concerns. Finally, many government officials, as well as companies, claimed that *enforcement* is very efficient and functions well, but some NGOs did not see it that way. Keeping in mind the estimates on the levels of corruption, one must doubt the claims of efficiency in at least some of the sectors.

In many aspects the success and impact of the reform of the mining legislation in the Kyrgyz Republic will boil down to the efficiency of the *enforcement* of the laws. If legislation is properly and consistently enforced, it will generate transparency and predictability and it will be easier and safer for foreign investors to invest in the Kyrgyz mining sector. The current legislation appears to provide the necessary tools for issues such as *protecting the environment* and *promotion of health, safety and security* and no violations of *human rights* were reported. However, efficient enforcement is needed to obtain and improve the present state and the consistency of the enforcement was in particular seen as a major challenge. Finding resources and competence for proper law enforcement on all societal levels will continue to be a key challenge in the Kyrgyz Republic.

Corporate social responsibility in the mining industry

General characteristics

Mining companies tend to operate in regions that are remote from global and national economic and political centres of power, and are often poorer than the national average. While these serve as important sources of raw materials for the global markets, the economic benefits of mining are often realised somewhere else (Gifford et al. 2010, 304). It is thus understandable that the distribution of benefits from the mining industry has long been a topic of heated debate and mining companies have been criticised for skimming the profits while leaving local communities to confront a variety environmental and social problems. However, in the past few decades, mining companies have been facing increasing pressure from stakeholders to conduct CSR practices and the industry has sought to overcome the historical burden of its bad reputation.

The rise of CSR is motivated by the increased desire for sustainability in the face of the multiple social and environmental problems that mining companies have been creating. This has led to a view treating CSR as a tool for resolving these problems (Yakovleva 2005, 9–15). Furthermore, the changing relationship of the public and private spheres, and the tendency to privatise public services, has encouraged the evolution of CSR policies. In this thinking, corporations are not perceived solely as private but also social institutions, and businesses are expected to contribute to the general well-being of societies (Yakovleva 2005, 9). Among stakeholders, companies are evaluated by their management of corporate responsibilities and reputation arising from such governance practices (Sairinen 2011, 139; Yakovleva 2005, 16). This makes them reach out for the acceptance of stakeholders, including investors, shareholders,

customers, consumers and people in local communities. With economic globalisation, more potential stakeholders have appeared to the scene, pressing companies to publish more information on their policies and performance.

In the course of time, the mining industry has undergone significant changes. During the 20th century, mining communities were constructed around mining activities and many of those remote villages and towns boomed and withered away with mining operations. Today, the mining industry is characterised by temporality in the sense that mining communities are no longer created around mines and the term "fly-in-fly-out" describes the commuting of personnel to mining sites over long distances (Sairinen 2011, 140). Moreover, life cycles of mines have shortened and companies are less willing to take on extensive local infrastructure projects (ibid). Nevertheless, local communities remain vastly affected by mining activities (Yakovleva 2005, 21), and in this context, CSR has become a tool for compensating the harmful impacts of the industry (Hutchins, Walk, Sterk, Campbell 2007, 17; Gifford et al. 2010; 304).

Like the industry itself, the principles for CSR have also undergone significant changes in recent years (Sairinen 2011). The forms of social well-being contributions have diversified from charity to other modes of support (Hamann 2004, 278); communication between mining companies and stakeholders has become more versatile, incorporating multiple voices instead of a company monologue (Sairinen 2011, 143). This is in line with the long-term goal of creating multi-stakeholder partnerships to replace the old company-government partnerships (Clark & Cook Clark 1999, 189–190).

Many transnational mining companies today formulate global CSR strategies which will be applied in all company operations (Kapelus 2002, 275). These company-specific management systems vary in comprehensiveness and detail, but the basic components of the systems are: formal policy documents, which typically include a Code of Corporate Conduct together with policies and standards addressing Health, Safety, Environment and Community (HSEC) issues; designated organisational units and specialist positions responsible for providing support to operations and driving change in HSEC areas; a process for assessing environmental, social and technical risks and impacts when approving new projects; and an auditing regime for monitoring

compliance with corporate policies at site level. Quite understandably, the content and extent of CSR as well as reporting practices vary greatly between companies (Yakovleva 2005, 69; Jenkins & Yakovleva 2006, 271), and, often, the amount of quantitative social and environmental data in annual reports has been rather limited (Jenkins & Yakovleva 2006, 273).

A number of factors influence what CSR becomes in practice. These include, for example, local situation, traditions, the way that the company places itself in the global context, the strength of stakeholder demand, scope of environmental and social concerns, past environmental incidents related to the mining sector in the region and in regard to the specific minerals mined, as well as structure, ownership and leadership of a particular company (Falck et al. 2011, 3; Yakovleva 2005, 69). The motives for CSR are manifold. On some occasions mining companies have been accused of using CSR for green-wash and mere image-building (Kapelus 2002). It has been pointed out that there is often a gap between the values and intentions of companies and the actual effectiveness of CSR (Kapelus 2002; Hamann 2004). Sometimes companies have difficulties in identifying the local community they are operating in (Kapelus 2002, 282). Nevertheless, at least the following objectives have been found as underlying drivers for CSR: increasing profitability, politically motivated investment and employment policy, "greening" of business operations, moral aims, strategic opportunities, reactionary action, and tactical motives (Gifford et al. 2010, 308; Rytteri 2011; Garriga & Melé 2004, 53). Since one of the ideas of CSR is the reconciliation of the interests of local communities and mining companies, CSR processes also play a role as a mediator in local conflicts between companies and communities.

Many international organisations have compiled their own guidelines and suggestions for CSR reporting. In general there are no binding requirements for CSR reporting and, thus, reporting can either be conducted as a standalone CSR or sustainability report or within another company report, such as an annual report. There are guidelines that seek to promote sustainability and responsibility in business and standardise CSR reporting. International players such as the Global Reporting Initiative (GRI), the intergovernmental working group International Standards of Accounting and Reporting (ISAR)

of the United Nations (UN) and the Organisation for Economic Cooperation and Development (OECD) have published guidelines on CSR reporting. The Sustainability Reporting Framework of GRI, also known as the G3, has become one of the most widely applied guidelines worldwide. Sector-specific organisations and actors such as the Mining, Minerals and Sustainable Development Project (MMSD), the International Council on Mining and Metals (ICMM) and the Extractive Industries Transparency Initiative (EITI) add to the list of organisations promoting CSR and sustainability. In addition to international frameworks, CSR codes have also become an integral part of the CSR strategies of mining companies. ISO 14001, OHSAS 18001, EMAS and the Corruption Perceptions Index among others are increasingly adopted by companies. The latest development in global standards is the establishment of ISO 26000, a guiding document on Social Responsibility. The emergence of voluntary CSR norms has contributed to the adoption of CSR among mining companies (Dashwood 2007) and the number of CSR frameworks and standards has been increasing. It has been suggested that the extent to which these frameworks have been adopted was dependent on local receptivity and national economic systems (Lim & Tsutsui 2012).

The importance of local and regional contexts

Many global mining companies have developed CSR management systems to be applied in all company operations in different parts of the world (Kapelus 2002), which means that the same standards and policies are to be applied in very different societal and cultural contexts. However, while the planning for these strategies and policies may be carried out on a very abstract level, their implementation requires a more practical approach (ibid, 282). Therefore, the subsidiaries of international companies can face great challenges in carrying out CSR policies locally, as company responsibilities may be very different, for example, in developing, developed or transitional economies.

The local context remains a key factor for CSR and national culture can have a particularly strong impact on CSR (Ringov & Zollo 2007; Yakovleva

2005, 105). Local economic, political, environmental, social, legal as well as cultural characteristics impact on the adaptation of CSR, and countries with a weak legal system as well as a poor institutional and economic setting, have been found particularly likely contexts for companies to underperform CSR (Yakovleva 2005, 105). On the one hand, drivers for CSR in these countries may be weak or non-existent, since stakeholder demand is also closely related to local context. On the other hand, it is precisely in these types of settings that the companies often face complicated situations and awkward demands from stakeholders since the state can be incapable of providing even basic social services. Hence, from the perspective of the companies, social investments include many uncertainties, as the limits of responsibility are unclear and the expectations of local communities may grow over time (Esteves 2008a, 346).

The importance of context is also emphasised by a growing focus on local communities, which are perceived as one of the key stakeholder group for mining companies (Kapelus 2002, 277; Jenkins & Obara 2008, 3). Companies need to cooperate with people in local communities to maintain a successful business but even with increased attention towards CSR, conflicts at the local level are a typical issue in mining. It has been suggested that local communities and the local context have been perceived as a tabula rasa regarding social issues in natural resource extraction (Luning 2011, 210). Exploration companies in particular have been thought to enter a community without any previous relationship. Hence, issues such as transmission of exploration permits, and thus the structural features of the processes of company-community relationships have been ignored (Luning 2011, 210). The importance of CSR as early as exploration stage has recently been better acknowledged, especially by academics (Luning 2011, 205), but this has not yet been realised at the practical level. These views are especially interesting due to the global mobilisation of local communities, which has been one of the growing phenomena around mining industry.

Traditionally, governments and NGOs have been regarded as the main actors pushing mining companies towards more sustainable practices, but the role of communities should not be overlooked. The reasons for the involvement of local communities are related to factors such as the increased desire

of communities to decide on their future (Joyce & Thomson 2000), the incapability of governments to ensure the interests of local communities (Gifford et al. 2010, 305) and the need of communities to ensure they receive the economic benefits of mining due to poor taxation systems (Warhurst 2001, 72). Furthermore, the socio-political contexts of a region as well as historical and cultural factors together with level of economic deprivation have been seen to impact on attitudes of local populations and their probability to protest against a mining project (Kemp 2011, 23). Communication with local communities is of particular importance since the lack of information on development projects can lead to local resistance (Kemp 2011, 23). CSR can, therefore, be considered not only a tool for balancing the benefits of mining but also a part of company risk management at the local level.

Challenges and further development of CSR

The mining industry has made progress in CSR during the past few decades (Gifford et al. 2010). The initiation of social scientific research in CSR has become more popular (Clark & Cook Clark 1999, 189–190), the level of spending of mining companies on social initiatives has increased (Esteves 2008b) and, overall, it appears that mining companies are becoming more involved in local development (Sairinen 2011, 144). However, the application of certain tools, such as Social Impact Assessment, have not reached their full potential (Vanclay & Esteves 2011, 3) and further progress is required.

The effectiveness of CSR as an instrument for building sustainable mining can be improved further. One issue to be addressed is lack of cooperation and consultation between companies. Thus far, mining companies have perceived each other as rivals in respect to CSR; they have been building their own CSR strategies and focusing on portraying themselves as responsible actors rather than building common practices with companies operating in the same region (Sairinen 2011, 142). The lack of cooperation can potentially hamper the mapping and management of social impacts of mining in regions with a large number of mining activities if the cumulative impacts of the operations are not considered. Mutual learning and cooperation would enhance the currency

of industry best practices and, possibly, formalise and unify the practices of CSR.

Reporting and information disclosure practices still remain a subject for improvement. The level of reporting between companies varies greatly and the reporting practices need development to become more consistent. More attention must also be paid to the effectiveness of social contributions. More widespread use of scientific research in the design of CSR, while bearing in mind the importance of dialogue with the local stakeholders, could create a combination which considers global tendencies and discovers the best practices, and along with local characteristics leads to maximising the positive impacts on all parties.

Despite the emergence of global CSR standards, national societal and cultural contexts have remained a key factor in the formation of CSR practices, creating significant differences between nations. Depending on the national context, the content and even the meaning of CSR can vary significantly from charity work to provision of a wide spectrum of social services, from complying with legal requirements to introducing stricter environmental and health and safety standards than those required by the host country legislation. Traditionally, CSR policies and practices are studied within a specific context of developed (Western) economies. The analysis of the CSR policies and practices in Central Asia will contribute to the research by analyzing region-specific trends in defining CSR and implementing CSR strategies.

CSR strategies of mining companies in the Kyrgyz Republic and Tajikistan

The Kyrgyz Republic

A great deal of the mining operations in the Kyrgyz Republic consists of exploration but CSR and sustainable development concepts are rapidly gaining in significance in the country. In 2004 the Kyrgyz Republic joined Extractive Industry Transparency Initiative and in 2011 it received compliant country status (EITI 2012).

Debates about social responsibility in the mining industry were triggered in recent years in the Kyrgyz Republic by the rise of the industry, intensification of exploration operations and the proliferation of mining-related conflicts between companies and local communities. CSR practices are increasingly seen as an instrument for settling the ongoing mining-related disputes in the country. A number of consulting companies and non-profit organisations in the Kyrgyz Republic have been building local expertise in social mining conflicts and corporate social responsibility. Among the services provided are conflict mediation (EcoPartner, web-site), conflict surveys, social impact assessment (Oxus International, web-site) and corporate social responsibility promotion (CSR Business Network, web-site and International Business Council, web-site). Despite these resent undertakings, the prevailing sentiment among all interviewees of the project (both companies and other stakeholders) was that the public dialogue about corporate social responsibility is still at an early stage in the Kyrgyz Republic.

Commitment to CSR

As noted above, the web-pages of nine gold-mining companies operating in the Kyrgyz Republic have been located and analysed. All these companies, with the notable exception of the Kyrgyz state-owned Kyrgyzaltyn, are listed on foreign stock exchanges and are engaged in mining operations in Kyrgyz Republic through their subsidiaries. Six companies (Centerra Gold, Gold Fields, Highland Gold Mining, Kazakhmys, Kyrgyzaltyn, Zijin Mining Group) are well-established mining companies with production operations in the Kyrgyz Republic or elsewhere. The remaining three companies, Chaarat Gold, Manas Resources and Kentor Gold, are junior mining companies with exploration projects in the Kyrgyz Republic but with no production.

Though all companies used their web-pages to communicate some information about their CSR activities, the extent of information published varied significantly. The best performing company scored 60 on the 60 indicators used in the study to evaluate the extent of the disclosure while the lowest scoring company received only 13 points.

The scores indicate that size of the company is related to the level of CSR disclosure. As a rule, large companies scored higher in CSR disclosure than smaller ones. The difference was particularly noticeable in the use of quantitative indicators to report CSR performance and expressed commitment to international frameworks and guidelines. Another consistent pattern we found is that the companies with production operations tend to perform better in their CSR disclosure than exploration companies. These observations, however, should be treated with caution since the number of analysed companies is rather small and not all companies fit this pattern.

All companies expressed commitment to at least some aspects of CSR. General statements on commitment to sustainability, minimising environmental impacts and health risks and social contribution were typically used. Nevertheless, only a few companies described their CSR management systems and declared that they have formal policy documents on CSR issues. Environmental and health and safety policies were mentioned by three and four companies, respectively (in some cases both policies were merged into an integrated Health, Safety and Environmental Policy); community policy was mentioned by three companies.

CSR reporting

Only two companies, Centerra Gold and Gold Fields, provide a stand-alone CSR Report. These two companies can be considered as pioneers among the nine companies as they also were the only ones to follow the G3 reporting guidelines of the Global Reporting Initiative (GRI). Four companies had integrated CSR as part of their annual report. However, the content and extent of CSR-related material within the reports was often somewhat limited. One-third of the companies did not include CSR issues in their annual reports but only provided technical and financial information on their activities.

The reporting practices of companies revealed a number of shortcomings. Seven companies mentioned providing reports on their *environmental activities* but only some of them review their environmental performance, conduct independent environmental audits or use quantitative indicators of their performance. Only three companies consistently provide detailed quantitative information on water withdrawal and discharge and air emissions. Two companies did not include their environmental performance on company web-sites in any way.

Reporting on *health, safety* and *community policy* shows a similar pattern. Health and safety reporting was conducted by five companies but only three provided extensive information on health and safety matters. The remaining six companies had substantially lower levels of reporting and provided only a few indicators. Five companies reported on social or community issues and in most cases the reporting was limited to describing particular projects or listing social contributions made by the company. Only four companies provided information on their total spending on social and community policy. The impacts of community policies are difficult to assess since the web-pages did not provide follow-up data regarding the measures employed and the utilisation of scientific research in the planning of the development projects remained unclear.

Another shortcoming of the reporting practices was language. All companies provided CSR information in English though in some cases other languages (typically the language of the country where the company's main operations are located) are also used. Only two companies provided information on the

company web-page in both Kyrgyz and Russian (the latter is the second official language of the Kyrgyz Republic), another three companies provided information in Russian. The lack of reports in native languages was also mentioned by interviewees during our fieldwork. Some respondents also mentioned that reports, particularly environmental reports, often use technical terminology unfamiliar to local people.

Finally, there is apparent shortage of information on CSR strategies at the level of individual sites in the Kyrgyz Republic. With the exception of three cases, the analysed companies did not provide comprehensive information on their CSR strategies for specific sites. In some cases the accuracy of the information on the web pages was problematic since relevant updates on the stage of operations were unavailable. To some extent this may be explained by the fact that many of the companies have not yet commenced production locally and the lack of information might have contributed to the uncertainty and dissatisfaction with the mining industry among local residents.

Overall, it can be concluded that the companies communicated their CSR strategies more often through general statements or commitment expressions than through a formal policy document or extensive CSR reporting.

Environmental and health and safety strategies

The compliance with existing legislation is seen by the mining companies as the dominant component of their *environmental* and *health and safety* strategies in the Kyrgyz Republic. Obtaining Environmental Impact Assessment (known as OVOS) is a necessary part of the application procedure for a mining licence. Environmental and health and safety monitoring is obligatory and is conducted by companies and by the supervisory agencies on a regular basis. Mining companies have specialists on safety and the environment that are responsible for implementing safety procedures and communicating with state supervisory agencies. Employees of mining companies go through safety training.

In addition, many interviewed companies voluntarily commit themselves to some international environmental and safety standards that exceed national legal requirements. Some companies developed management systems in com-

pliance with ISO 14001; others mentioned that the certificate will be sought once a mining licence is granted.

Legal requirements and voluntary certification of mining companies, however, do not eliminate environmental concerns at the local level. As a result, the companies recently began to use other methods in their attempts to reach understandings with local resistance groups. One of the instruments used by the companies to address the environmental concerns of the local population is independent environmental expertise to supplement the environmental monitoring conducted by supervisory agencies. The Kyrgyz Academy of Sciences was mentioned as one of the expert organisations invited by mining companies to conduct baseline studies or environmental monitoring. Some companies have also invited foreign experts to conduct environmental risk assessments and develop environmental management systems.

The impact of external environmental monitoring on local communities has proven to be less efficient than was desired. The local population tends to mistrust the results of such expertise. Recently, in one region some companies pioneered joint environmental monitoring with the local communities. They invited the representatives of the local communities to participate in monitoring conducted by the companies or, alternatively, trained local residents in conducting independent environmental monitoring. Such closer cooperation between mining company and the host community in environmental monitoring might alleviate local environmental concerns. The practice is still a novelty in the region and is used only by a few companies but if it proves efficient, it might become more common.

Community strategies

At the moment of the study, the relations with local communities were at the top of the agenda of mining companies in the Kyrgyz Republic due to the proliferation of mining conflicts. Two components of the corporate social responsibility concept were considered to be of upmost importance by all groups of shareholders: social contribution and community involvement.

Most of mining companies in the Kyrgyz Republic are still at an exploration or near production stage. During the interviews many companies admit-

ted that they had previously underestimated the importance of community policy at the exploration stage and have been postponing their work with local communities until the beginning of the application process for a mining licence. Nowadays, the growing number of local mining conflicts throughout the Kyrgyz Republic has raised the awareness among the companies about the necessity for community policy, as early as the exploration stage. Currently, most of the companies (including junior mining companies with small staffs) have an officer responsible for community relations. In some cases the senior manager of the site is responsible for these relations. Some companies have a special committee of the Board of Directors responsible for corporate social responsibility issues.

Social contribution to local communities

Most of the interviewed stakeholders agreed that job provision is the most important form of social contribution expected by the local communities of the mining companies. The companies try to employ people from the nearest communities. Local people are typically employed in positions that do not require high qualifications because these employees lack training in mining. Some companies also provide training opportunities for local residents and employ them in more qualified jobs.

Apart from the employment impact, social contribution is mostly limited to charity and infrastructure investments. These projects consist of construction or repair of social infrastructure (schools, sport facilities, medical facilities), repair of roads and irrigation systems that suffer from landslides and assistance to the most vulnerable members of the communities. Most of these projects are ad-hoc and short-term; they are based on direct appeals from the communities. Companies gather the requests from their host communities and respond to those considered most important.

The spread of mining conflicts and growing demands from the local communities have recently given rise to a new approach towards community development projects among mining companies. Companies argue that social investments have been raising the expectations of the local population that the mining companies will become the main welfare providers for their host com-

munities. In order to prevent the formation of a culture of excessive dependence, the mining companies began shifting the focus of their community development activities to support programmes for local businesses. Microcredit schemes, local subcontracting and business training of local entrepreneurs are increasingly used to build local capacity. The relatively short life-cycle of many mining projects (in some cases estimated mine life is less than ten years) makes such an approach a more sustainable option for the long-term development of communities. Most of these schemes are, however, still in the planning stage.

Currently, most of the companies conduct their development projects within their organisational structure. The companies try to avoid direct monetary hand-outs and keep a tight rein on their social spending. The situation might change in the near future since many companies consider establishing external social funds to carry out their community development projects. Such a shift is driven by two considerations. First, the fear, shared by most of the interviewed companies, that the social investments might be used inefficiently. Companies want to keep some control over the way community development funds are spent. Social funds permit such control through steering committees that include a company representative. Second, the social fund would be an independent organisation allowing mining companies to focus exclusively on mining operations and leave the management of community development projects to the fund and other stakeholders.

At the time of the interviews the shift to new modes of community policies was hindered by uncertainty with the Kyrgyz legislation. The companies interviewed, as well as other experts that work closely with the mining industry, argued that the proposed two percent non-tax payment to the local budgets would have a significant impact on the community policies of mining companies in the region. If the initiative were adopted, the companies would reduce their voluntary community policies. Companies expressed doubts that the proposed payment will reduce local tensions. They fear that this mandatory payment will not be associated with the company and funds will not be spent efficiently. Many companies expect that they would be forced to carry on extensive community policies in addition to the two percent payment. As a result, most companies choose to postpone launching large-scale CSR programmes, waiting

for the implementation of the new initiative. The two percent tax was recently approved and it remains to be seen how it will affect the voluntary social contribution programmes of the mining companies in the Kyrgyz Republic.

Stakeholder involvement

All companies have some form of direct communication with the local communities. Officers responsible for local communications regularly travel to the areas of mining or exploration operations to meet with local representatives. Mining companies also use local newspapers and other mass media to inform the community and publish their own leaflets in the Russian and/or Kyrgyz languages. The largest mining company, Kumtor Operating Company, has established a local information centre in its area of operations to distribute information about the company's operations including vacancies and tenders (Kumtor Operating Company 2012b).

All companies interviewed mentioned that they collect requests and complaints of the local population. Most of the companies collect them through local authorities and open meetings with the local residents. A more systematic feedback collection procedure could help to evaluate local public opinion about the proposed community development projects but is less common. One company mentioned that it hired an external consultant to conduct a more systematic feedback collection procedure to evaluate local public opinion about a community development project proposed by the company. This example is more of an exception; direct communication with key representatives is still the most commonly used channel of information exchange.

Until recently the mining companies have primarily been working with district (raion) authorities (mainly with *akim* – heads of the districts) and the representatives of local self-governance at the level of settlements, including village governments (*ayil okmotu*) and village councils (*ayil kenesh*). In addition, the companies work closely with informal but influential representatives of the communities. Traditionally, village elders have played a central role in local communities in the Kyrgyz Republic and mining companies have attempted to identify such influential leaders of the community and conduct their dialogue with the community through them.

The rise of mining conflicts has shown that these traditional channels of community engagement employed by mining companies are not sufficient. At present, the companies attempt to broaden the number of local consultation participants by inviting youth organisations that play an increasingly important role in formulating the demands of local communities towards mining companies. The mining industry also makes use of the traditional all-village gathering *kurultai*. One of mining communities has recently called on the kurultai to elect members of a special local council that together with local authorities will represent local interests in negotiations with a mining company (Talas Copper Gold 2012).

The broadening of community consultation processes presents a number of challenges in the Kyrgyz Republic. The companies have experienced difficulty in identifying all the relevant local stakeholders to be included in the consultation processes. It is even more difficult to address all the conflicting interests expressed by competing groups within the local communities and gain local trust.

A number of studies on mining conflicts in the Kyrgyz Republic show that there is a considerable lack of trust between the local communities and the companies (Oxus International 2011; Tiainen 2012). The local communities not only have a low level of trust towards the mining companies but towards international and national non-governmental organisations as well (Oxus International 2011). The local communities also demonstrate a high level of dissatisfaction with the central government (ibid; Tiainen 2012). All these factors make it difficult to find mediators for the conflicts. Mining companies and other interviewed stakeholders repeatedly pointed out that the state (namely the central government) should be more active in mediating mining conflicts and in guaranteeing that the agreements reached are fulfilled. As of now, there is a shared sentiment among all interviewed stakeholders that companies and communities are left alone to deal with their disagreements and neither of them have any certainty that the solutions achieved will be complied with in the long-run.

In their search for more predictability in community relations many companies interviewed consider the possibility of signing a formal tripartite agreement between the company, the state and the local community that would

regulate relations between the communities and the companies and help to mediate and prevent mining conflicts. The tripartite agreement was pioneered by Talas Copper Gold (a subsidiary of Gold Fields), which signed such an agreement with its local community and the State Agency for Geology and Mineral Resource by the Government of the Kyrgyz Republic in January 2012 (Talas Copper Gold 2012). Among other provisions, the agreement requires the company to develop a socio-economic development programme for the community before the end of its exploration work (ibid.). The introduction of tripartite agreements could provide a more predictable business environment for mining companies. It could also improve the efficiency of the social investments of the mining industry by replacing ad-hoc short-term social contribution projects with long-term planning of community development programmes. If the tripartite agreement proves to be an efficient mechanism for settling local disputes over mining operations, more companies might follow the same path.

Finally, most of companies interviewed mentioned that they suffer from actions taken by other mining companies. Some activities create expectations which are too high; others give lead to fears of environmental mismanagement. As a result, the companies pay close attention to the experiences of other mining companies in the region to learn from their mistakes or solutions. Nevertheless, the mining companies in the Kyrgyz Republic do not engage in close cooperation with one another. Each company works individually with its local host community and tries to build its own in-house CSR expertise. Mining companies focus on their own operations and little effort is made to address the cumulative effect of mining operations.

Tajikistan

Tajikistan is generally characterised by increasing activities by the mining industry. Many of the operations there are in the prospecting phase. Therefore, very little of the effects of mining in terms of social and environmental impacts is visible. There are, however, some older mining communities that date from early Soviet times. On the one hand, the existence of old mining com-

munities provides a sense of continuity to the community, health and safety and environmental policies of mining industry in the region. On the other hand, these policies are transformed in response to changes in the mining industry. Some old mining companies are still state-owned. State firms are probably short of resources and, therefore, focus on alluvial gold mining. Others, however, were turned into Tajik-foreign joint-ventures, mining, for example, gold and antimony. The companies with foreign investments say they follow global CSR standards. They see environmental activities and contacts with local population as instruments for reducing their business risks.

Public debates on CSR are still a novelty in Tajikistan but the idea is being actively promoted by a number of transnational organisations including the Aga Khan Foundation, Open Society Foundation and Eurasia Foundation of Central Asia. These organisations aim at fostering a dialogue between business and civil society.

CSR commitment and reporting

The web-pages of three mining companies operating in Tajikistan were located and analysed. All these companies are listed on foreign stock exchanges and are engaged in mining operations in Tajikistan through their subsidiaries. The largest company is the Chinese Zijin Mining Group, which conducts production mining in Tajikistan through a joint-venture with the Tajik government. Two other companies, Central Asian Minerals and Resources (CAMAR) and Kryso Resources, are small UK-based companies focused exclusively on mining operations in Tajikistan. CAMAR controls several ongoing production and exploration activities in Tajikistan while Kryso Resources is still at the exploration and development stage.

The web-pages of these three companies contain rather extensive technical information on the mining operations of the companies while the amount of information on CSR issues is considerably smaller. The company performing best scored 18 points on 60 indicators used in the CSR commitment and reporting analysis, the lowest score was zero.

Only one company discussed CSR issues in its annual report. The report contains statements about the CSR commitments of the company, but the

information on the measures taken to achieve these commitments is very limited. The other two companies did not include CSR issues in their annual reports. One company has some general CSR information on its web-pages that consists primarily of commitment statements and some illustrative projects. The third company cited some CSR issues only in its Competent Person's Report but they do not reflect the company's own CSR strategy. All companies used English as one of the languages of reporting, none reported in the Tajik language.

Two companies expressed a commitment to the protection of the environment, guaranteeing the safety and well-being of their employees and communities. Only one company, however, provided any quantitative indicators of its CSR performance. No international CSR standards and framework were mentioned by the analysed companies.

The analysis indicates that mining companies in Tajikistan pay little attention to reporting CSR issues to local residents through the Internet. The few company web-pages that were located concentrated chiefly on providing technical and financial information, suggesting that they are not regarded as an important means of communicating CSR information.

Environmental and health and safety policies

Many mining sites in Tajikistan are still at the exploration stage and the mining companies postpone the development of environmental management systems and public reporting until more technical details are known about the deposit. These plans mainly concern the use of chemicals. Reconstructing landscapes would be costly, and thus far there are no examples of such activities.

Although environmental issues do not seem to be important enough to report publicly, they are dealt with in other, more administrative ways. Generally, environmental monitoring and reporting is carried out on a regular basis, as governmental administration has a control mechanism concerning this issue. It has been said that the practices of environmental supervisory agencies have become stricter and the observation of legislation by the mining industry has improved.

Community strategies

In general, many mining companies deal with social issues in order to gain acceptance for their operations. They do not, however, publicly declare their policies on this matter. Their strategies seem to rely more on ad-hoc projects than on a long-term planning in response to some direct request from the communities. In terms of human resources devoted to social responsibility, the companies are often relatively small and they do not have a specific department dedicated to social issues, but, for example, a deputy director may be responsible for them.

Social contribution to communities

Providing job opportunities for local residents is considered to be a key form of social contribution of the mining industry in Tajikistan. All the companies hire local inhabitants for jobs where expert skills are not needed. These non-specialists are given short-term contracts. Mining experts, on the other hand, come from outside the local communities and often from abroad (e.g. China, Russia, Canada, and Australia).

One of the companies interviewed was operating in an old Soviet mining town. The town has been transformed from a government-subsidised to a company-subsidised locality. The company today transfers money to the budget of the local government. In addition, the company has provided roads, bridges, electricity, water supply, schools, and internet connections.

Interestingly, there is little variation in terms of responsibility policies that are dependent on the type of company. Investment in local infrastructure is made by most of the mining companies. Renovation of schools, particular rural schools, and construction of roads was often mentioned. By providing training and schools, the companies want to keep and increase their future work force. Charity was another type of community contribution practiced by companies in Tajikistan. In some cases companies assist local populations with food stuffs (flour was mentioned). One company helps pensioners with money and rebuilds houses, if necessary.

It might be more accurate to characterise the strategies of mining companies in Tajikistan as social infrastructure activities rather than corporate social re-

sponsibility policies. Many of them come about as a result of the direct needs of the companies themselves: road construction is a case in point. The companies' representatives describe the situation as one in which the local population is happy to get new and better roads, or roads in the first place, where there are no roads. Due to the lack of contact with local inhabitants, it is hard to say whether they consider increasing road traffic to be disturbing.

Chinese companies present a specific case of social contribution in Tajikistan. Chinese investments in the mining of gold and non-ferrous metals are considerable. Often the provision of subsoil rights is conditioned on vast social contribution programmes. For example, as a result of an agreement in 2007, one Chinese company that has about 2 000 workers, developed a two-stage investment programme. The company invested 80 million USD in Tajikistan in 2011, part of which (220 000 USD in 2011) is directed to local social development as humanitarian assistance. Another Chinese company has invested 30 million USD for mining and 100 million USD for roads and other infrastructure, which of course first benefits the mining company itself and only then the local inhabitants. In general, it can be concluded that the CSR practices of Chinese companies are part of what can be called the Chinese investment model, where extraction of minerals is enabled by considerable side-investments in social development. Some of this assistance is more systematic and consists of financial assistance to the local governments in the social development field, but other assistance is provided on a more ad-hoc basis, and is called unofficial. One of the motivations is the companies' labour demand and, in turn, the need for infrastructure for workers' families.

Stakeholder involvement

Implicitly, it seems that the motivation for the social contribution of the Tajik mining industry comes not from the demands of the communities or NGOs, but from the expectations of the central government. Foreign investors are sometimes granted tax relief by the Tajik government and are expected to contribute to the development of their host communities.

It should be noted, however, that many of the mining sites are located at altitudes where the human population is scarce (up to elevations of 4 000 m),

and the existing villages, if any, are very small in terms of population (some hundred people). Often the villages that are located in close proximity to the exploration or mining sites are tiny, with only a few families. Moreover, the mining sites are often located in places where there are no road connections. Therefore contacts with the local population are few and they are not necessarily in conflict from the start.

Non-governmental organisations do not have much say in shaping the CSR activities of the mining companies. NGOs do not usually have ongoing projects with or related to mining companies or sites. Nevertheless, they have considered potential land use conflicts, threats of forced removal of rural inhabitants, and a lack of information about the rights of the local residents.

Discussion: CSR and sustainable mining in Central Asia

Corporate Social Responsibility is a relatively new phenomenon in Central Asia but it is clearly gaining in importance. CSR policies and practices might make a significant contribution to the development of more sustainable mining practices in the region. Based on the presented overview of current CSR practices of the mining companies operating in the Kyrgyz Republic and Tajikistan, this section elaborates further on the role of CSR in developing sustainable mining in Central Asia, following the aspects of sustainable mining discussed at the beginning of this report.

Mining companies in both countries face a number of challenges in terms of the *transparency* of their CSR operations. CSR information disclosure is more broadly used in the Kyrgyz Republic than in Tajikistan. This is probably related to the fact that the Kyrgyz mining sector in general is more transparent in terms of availability of geological data from the state agencies and the public debates about mining than the Tajik mining sector. Considering the small number of mining companies operating in Tajikistan and the limited amount of data on the Tajik mining sector, the companies with web-pages on their Tajik operations are at the forefront of CSR communication, regardless of the limited nature of the information they provide.

Information disclosure through the Internet is primarily implemented by the companies listed on foreign stock-exchanges in respond to the demands of external investors. As a result, English is the primary language used and the companies are more concerned with communicating their commitment to CSR issues than to providing detailed information about their CSR-related

practices. Such an approach limits the access of the local stakeholders to the published information. **In order to improve their transparency the companies should disclose more detailed information about their CSR practices at the site-level, provide quantitative indicators of their performance, and increase the use of local languages.**

It should be noted here that CSR reporting is evolving fast in the region. During our reporting analysis some companies published new CSR documents on their web pages. More CSR information might be made available in both countries in the future.

There are clear differences in *stakeholder involvement* practices in the Kyrgyz Republic and Tajikistan. In the Kyrgyz Republic the rise of mining conflicts in the country has led the companies to include more stakeholders in their negotiations with the local communities but the companies face a number of challenges, including identification of all stakeholders, building trust among them and, ultimately, finding lasting compromises. The dialogue between the industry and the local communities in the Kyrgyz Republic is also hindered by the lack of trust between them. **The trust might be repaired by a wider use of independent expertise and academic research on local communities, more transparent reporting and early forms of community engagement practices as early as the exploration stage**. **The companies should also address the cumulative effect of mining on the society by developing a closer dialogue within the industry.** The lack of *clarity and predictability* hinders the development of community policies in the Kyrgyz Republic. Neither companies nor communities are certain of their mutual obligations and demands. **Tripartite agreements that are already under development by some companies in the area might help to set a clearer framework for their relations with the community.**

In Tajikistan clarity and predictability has evidently not been achieved through agreements with local communities, but through the negotiations between the companies and the state authorities. Governmental bodies are clearly identified by the mining companies as key stakeholders in all aspects of CSR; other groups play almost no role in the society-company dialogue in Tajikistan. The experiences of mining companies in the Kyrgyz Republic,

however, suggest that these forms of communication still might be insufficient once the mining operations have grown in number and intensity. **In Tajikistan the identification of all relevant stakeholders and development of a dialogue with them could be used more efficiently as a conflict-prevention instrument as early as the exploration stages.**

CSR instruments are used in both countries to improve the *distribution of benefits* of mining. The mining companies undertake voluntary measures to support their host communities. Despite clear differences in stakeholder involvement practices between mining industries in the Kyrgyz Republic and Tajikistan, the comparison of social contribution activities reveals many similarities between them. Mining companies in both countries consider creating local job opportunities and investing in roads and social infrastructure as the core of their voluntary social contribution strategies. Such similarities indicate that both countries share a number of common socio-economic challenges including rural poverty, unemployment and shortage of funds for maintaining the social infrastructure.

The effectiveness of the social contribution of mining companies in both countries can be improved in two ways. First, **the ad-hoc social contribution projects that still dominate the community strategies should be replaced with long-term social contribution planning**. This planning will increase the efficiency of individual projects and also provide more transparency for CSR activities. There are already some signs that the Kyrgyz mining sector is shifting in this direction. Second, the direct support of social infrastructure might result in a rapidly growing dependency on the part of the communities on the mining, which in the long run would undermine the sustainability of the communities once the mining activities cease. **The attempts of the mining companies in the Kyrgyz Republic to support local businesses and create alternative livelihood sources in their host communities is a step in the right direction.**

While the social policies of the mining companies in both countries consist chiefly of voluntary activities, the environmental and health and safety policies are built primarily around the compulsory requirements of the national legislation. Compliance with the law is the dominant mode of both the *pro-*

motion of health and safety and *protection of the environment*. The situation reflects the fact that the legislation in the Kyrgyz Republic as well as Tajikistan serves both areas well. The experiences of the mining companies in the Kyrgyz Republic indicate that the failure to communicate environmental information in an understandable and trusted way might result in growing concerns on the ground. **The companies should pay more attention to reporting their health and safety and environmental performance, and utilise more broadly independent environmental expertise and joint monitoring with the local population.**

Finally, CSR activities are firmly linked to *profitability*. On the one hand, CSR instruments are used by companies to gain acceptance in their host countries and reduce risks to their business. On the other hand, business cannot invest in CSR activities in the long-run without profit. Reaching a balance between profitability and other CSR aspects is essential for developing more sustainable mining in Central Asia and beyond. **The disclosure of financial information is the key instrument in gaining the trust of the local population and bringing the notion of profitability to the public debates on mining and CSR.**

Conclusions

Mining is an important sector in Central Asian countries, if due only to the expectations placed on the industry for contributing to sustainable growth. Mining easily has both positive and adverse impacts, so there is a general need for improvements and rethinking in legislation, industrial policies, their execution, local practices, as well as corporate social responsibility strategies and their realisation. Social responsibility is an essential issue.

In general, legislation and policies concerning the extractive industry and issues related to it have led to increasing efforts to address the need for transparency, predictability, environmental and health impacts and to provide requirements and incentives for improved social licences to mines. There is also a growing number of CSR initiatives in motion in companies in both countries. Responsible mining requires not only legislation and law enforcement, but also voluntary actions. Without knowledge and capacities amongst the multiple actors, and the willingness between companies and stakeholders to collaborate, progress in social responsibility will be hard to achieve.

The conclusions reaffirm the fact that the key elements of responsible mining are not possible to implement without concrete legislative norms. However, simple improvements in mining law will not be sufficient. Responsible mining will take place only when the spectrum of laws and policies guide the development of mining towards responsibility. This study emphasises the importance of enforcement. Without the structures, resources, capacities of administration and law enforcement, the letter of the law will not be observed. On the other hand, the study notes that responsible mining can take place without strong legislative norms. The CSR practices of companies indicate that progress on responsible mining can be made on the basis of voluntary measures. Making it sustainable, however, requires predictable long-term policies, transparent and functioning legislation and administration.

This report has explored the state of responsible and sustainable mining in two countries in Central Asia, the Kyrgyz Republic and Tajikistan. The analysis has revealed that despite similarities in legacies, mining industries differ in some respects. Reflected against the background of indicators of responsible mining presented at the beginning of the report, conclusions can be drawn on how operations in the extractive industry meet these criteria. In terms of the *transparency* of public and private management of mining activities as well as social, environmental and economic impacts of mining activities, it can be said that, in general, the situation in the Kyrgyz Republic is more transparent. In respect to *stakeholder involvement* the tendency seems to be towards more involvement in the Kyrgyz Republic. In Tajikistan, we can hardly characterise the processes including the substantial involvement of stakeholders. Clearly in both countries it is easier to evaluate the situation for the exploration stage. Regarding the principle of distribution of *benefits* so local communities and the population nationally would benefit, the trend in the Kyrgyz Republic is towards such distribution both locally and nationally. This is ensured by legislation but also by the strategies of mining companies. In Tajikistan, as well, it seems that the mining that exists or is planned will certainly benefit the population nationally, although it is harder to evaluate the situation for local communities.

In a context that is characterised by post-socialist transitions, the legislative system tends to be in flux, affecting the *clarity and predictability* of the legal environment and behaviour of the actors involved. It is rather difficult to estimate the *profitability* of the mining business, particularly given the fact that much of its activities are in the exploration stage. It can be concluded that the promotion of *health, safety and security* issues in mining activities is on a relatively high level in both countries. As mentioned above, since mining activities presently concentrate on exploration, *protection of the environment* is not at the moment so acute. A specific long-term challenge is the legacy of Soviet mines. This research has not really touched on *respect for human rights,* i.e. prohibition of child labour, equal treatment of men and women and proper compensation to people who give up their lands for mining. There is some need for improvement in *efficiency of enforcement* processes concerning legislation.

Finally, in respect to the relations between legislation (and official processes more generally) and corporate social responsibility policies, it can be concluded that much of the activities that could be identified as CSR policies and practices are forced through official administrative processes. This is the case for both countries, although they take slightly different forms. In Tajikistan, companies may need to negotiate with the government on the terms of mining licences, with infrastructure projects involved as a result. In the Kyrgyz Republic, social responsibility issues have been very recently incorporated into national legislation on a general level, with the companies being obliged to contribute to the budgets of local administrations.

This report reaffirms that CSR policies cannot replace well-designed legislation or vice versa. Both are needed for responsible mining to evolve. Even though international requirements increase the quality of CSR reporting, good CSR policies are based on local needs that should be protected by the legal system. CSR policies cannot replace lacking governance, but good governance can notably improve the demands and quality of CSR policies. This report also touches on a very topical discussion regarding the current state of affairs of mining in Finland, the role of regulation in promoting mining and protecting national interests. Strict regulation may better protect the interests, but is often considered bad for business. Finding a reasonable balance between these two aspects remains a challenge for most countries with an active mining sector.

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Kentor Gold. Company web site. Available at http://www.kentorgold.com.au/
Kumtor Operating Company. Company web site. Available at: http://kumtor.kg
Kryso Resources. Company web site. Available at http://kryso.com/ Visited 30.5.2012
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Appendix 1

Indicators of the web page analysis

1. **Environment**

1.1 **Environmental policy and management**

Developed environmental policy
Commitment to improve environmental performance
Commitment to sustainable development
Commitment to minimise environmental impacts & effects
Commitment to exceed legal requirements
Environmental office/department/staff
Environmental action plan
Environmental management system
Environmental monitoring
Tailings management
Water management
Environmental rehabilitation & reclamation
Energy efficiency

1.2 **Environmental reporting**

Review of environmental performance
Conducting regular environmental audits
Conducting independent environmental audits
Reporting on environmental activities
Water withdrawal/quantitative data
Water discharge/quantitative data
Air emissions/quantitative data
Funds allocated to environmental programme/quantitative data
Amount of waste/quantitative data
Reporting environmental incidents
Water quality/quantitative data

2. Health & security

2.1 Employee policy, H&S strategies

Developed H & S policy
Commitment to improve H & S performance
Commitment to exceed legal requirements
Dedicated H & S department or personnel
Training of employees on H & S practices
H & S action programme
Occupational health monitoring of employees connected with site
H & S audit
H & S requirements for contractors
Employee training (professional growth)

2.2. Employee policy, H&S reporting

Reporting on H & S issues
Reporting occupational diseases
Reporting accidents
Total number of employees
Share of nationals of the host country in total workforce
Share of women
Spending on employee wages and benefits

3. Community policy

Social / community policy
Department / office responsible for S/C issues
S/C programme
Naming key stakeholders
Consult with stakeholders on the environmental and social impact of the company
Address community concerns
Willingness to employ local people
Education & training of local community members (not mining related)
Contribution to community life (e.g. schools, hospitals)
Reporting on S/C issues
Cooperation with NGOs
Cooperation with industry associations

Cooperation with international organisations
Cooperation with government on social programmes
Charitable giving
Establishment of a philanthropic foundation
Buying from local suppliers
Projects to develop alternative businesses locally
Reporting on funds used on CSR

Mining activities have significant impacts on sustainable development. Mining can be a source of employment for local people and a source of state revenues; it can drive economic prosperity and develop rural regions. However, the significant environmental impacts of mining and the unequal distribution of its benefits contribute to instability and can be causes of conflict that can cause severe problems for mining companies, local communities and national economies.

The development of profitable mining activities requires significant investments and, increasingly, a social licence to mine. The term "responsible mining" has been adopted to describe the efforts to improve public and community acceptance.

This book explores social responsibility in the mining sector in two Central Asian countries, Kyrgyzstan and Tajikistan, where development plans foresee a growing mining industry. The focus is on the ways in which legislation fosters development and implementation of responsible mining, and on corporate social responsibility policies and strategies of mining companies.

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