

IGF MINING POLICY FRAMEWORK ASSESSMENT

Kyrgyzstan

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IGF

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The IGF is a member-driven organization which provides national governments the opportunity to work collectively to achieve their sustainable mining goals. It is devoted to optimizing the benefits of mining to achieve poverty reduction, inclusive growth, social development and environmental stewardship. The IGF serves as a unique global venue for dialogue between its 67 member country governments, mining companies, industry associations and civil society.

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IGF Mining Policy Framework Assessment: Kyrgyzstan

November 2018

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ABOUT THE MPF ASSESSMENT SERIES OF REPORTS

With support from the Government of Canada, the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF) is working with a voluntary selection of its member states to help them operationalize practices consistent with the IGF's Mining Policy Framework (MPF). The first assessments were carried out in 2014 in the Dominican Republic, Madagascar and Uganda. Based on the success of these initial evaluations, the IGF will conduct three or four assessments each year in response to member requests.

The MPF assessment process itself is made up of two main steps. First, the MPF assessment team evaluates relevant national, regional and international laws, policies, conventions and administrative frameworks for mining and minerals development and management relative to the six themes of the MPF: the Legal and Policy Environment, Financial Benefit Optimization, Socioeconomic Benefit Optimization, Environmental Management, the Post-Mining Transition, and Artisanal and Small-Scale Mining (ASM). This work is done both through desk- and field-based research involving diverse stakeholders. The assessment identifies key strengths, weaknesses and gaps in the country's mining laws and policies, as compared to the international best practices outlined in the MPF, which helps measure the readiness of the member state to implement the MPF through its existing government measures. Building on the outcomes of this assessment process, the second phase of the project involves working with the participating state to develop a capacity-building and technical support program that addresses key weaknesses and gaps, in the hopes that these strengthened capacities and increased understandings can enhance national legislation and policies, thereby optimizing the contribution of the mining sector to sustainable development.

This report presents the assessment for Kyrgyzstan, with a view toward the following: helping the government target its efforts in implementing the MPF; informing capacity-building efforts; and allowing for monitoring of progress over time. The authors would like to thank their colleagues from Kyrgyzstan, particularly those at the State Committee on Industry, Energy and Subsoil Use of the Kyrgyz Republic (SCIESU), for their help and support with this project. A special thanks to the many stakeholders who were generous with their time, perspectives and warm hospitality during our field visits in Kyrgyzstan.



EXECUTIVE SUMMARY

This report presents an assessment of Kyrgyzstan's readiness and capacity to implement the Mining Policy Framework (MPF) of the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF).

The assessment included extensive desk-based research and a thorough review of all national laws relating to mining, as well as an analysis of information from numerous government agencies with oversight and responsibility for the mining sector. This was complemented by an in-country visit that took place from April 23 to May 1, 2018 and included a site visit to the working mine and facilities of Altynken LLC, located in the Kemin rayon (district) of the Chui Oblast (region). A total of 30 meetings were held during the visit with different organizations from government, civil society and the private sector. The assessment phase of this project concludes with this report.

The assessment team identified the following **key strengths** in Kyrgyzstan's mining laws and policies:

- Mining codes and standards are revised and updated to reflect changing knowledge and best practice. Key laws, including the Law on Subsoil, have been regularly updated to address gaps related to lack of transparency during direct negotiations, disclosure of beneficial owners and simplification of licensing of common natural resources. Other primary laws and codes are also quite current and updated frequently. However, frequent fiscal amendments are of concern to the mining companies.
- The Tax Code establishes a favourable fiscal regime for the mining companies. Revenues are generated through a mix of mechanisms (taxes, royalties, fees, levies, equity), the tax rates for which are seen as fair.
- Socioeconomic planning is required in the Law on Subsoil within the "social package" framework. Due to conflicts between communities and mining companies, the Law on Subsoil has introduced the requirements of a social package as a way to demonstrate benefits to nearby communities.
- Legacy issues have been identified, and the government is working to mitigate negative impacts. The Ministry of Emergency Preparedness, with support from international organizations, has sought to address the legacy issues related to uranium.
- There is broad awareness among authorities of the importance of the post-mining transition. All interviewed stakeholders acknowledge the importance of closure plans, not only as a means of environmental protection, but also as a means of increasing public confidence.
- Artisanal and small-scale miners can operate through the acquisition of inexpensive and accessible individual permits. There is a system in place to support artisanal mining, and, while the sector is small (and not growing), it does provide livelihoods to an estimated 5,500 people.

The assessment team identified the following **key gaps** in Kyrgyzstan's mining laws and policies:

- Technical instructions are outdated and in need of revision to reflect best practice, as many are based on Soviet-era (*Gosstandart*, or GOST) state standard guidelines. These include numerous geological instructions for drafting and evaluating the technical projects and plans of mining works; regulations on industry; mineral resource safety audits; guidance on mine closure; and other industry-specific instructions (industrial and environmental safety, mineral resources safety, closure and post-closure).
- The tax regime is unpredictable. Companies have complained about a prolonged increase in tax rates and the number of taxes applied since 2012 and are concerned about the lack of



explanation they receive regarding the administration of the tax system. This contributes to a context of uncertainty and possible corruption risks.

- Integrated environmental and socioeconomic assessments are not widely understood. A review of impact assessments shows a gap in understanding of the links between the environment and social aspects of mining.
- Environmental legislation can be confusing for companies due to perceived contradictions in laws and variability in the application of standards.
- Current legislation does not specifically address mine closure. Legislation nominally deals with reclamation, but most of the text addresses the restoration of land and territory, while not dealing with the responsible management of specific mine-related infrastructure, such as tailings facilities and waste dumps.
- ASM activities are inadequately legislated. Overall, the system of ASM is not centralized and falls under the responsibility of local authorities.

TABLE ES1. KEY STRENGTHS AND GAPS OF EACH PILLAR OF THE MPF

MPF THEME	LEVEL OF PROGRESS TOWARD MPF STANDARDS	STRENGTHS	GAPS
Legal and policy framework	MEDIUM	<ul style="list-style-type: none"> • Geological information is available to the public for a reasonable fee. Any interested party may obtain hard copies of geological reports in the State Geological Fund office in Bishkek, in accordance with the Regulation on the Procedures and Conditions for Granting Geological Information Resources for Use. • Mining codes and standards are revised and updated to reflect changing knowledge and best practice. • The permitting process must be completed in a timely, transparent, unambiguous and consistent manner. Tenders, Auctions and Licensing Committee meetings are open to the public. 	<ul style="list-style-type: none"> • The level of engagement with communities and other stakeholders during the assessment and planning process is inconsistent. • Licensing procedures are difficult to predict and often take longer than expected. • Technical instructions are outdated and in need of revision to reflect best practice, as many are based on Soviet-era instructions. • Legislative and policy review processes are seen to be too slow, which generates uncertainty. A lack of long-term policy and strategic visioning in policy-making results in legislation that appears ad hoc, reactive and out of line with international best practice.



MPF THEME	LEVEL OF PROGRESS TOWARD MPF STANDARDS	STRENGTHS	GAPS
Financial Benefit Optimization	MEDIUM	<ul style="list-style-type: none"> • The Tax Code establishes favourable fiscal regime for the mining companies. Revenues are generated through a mix of mechanisms, and the tax rates are seen as fair. • Revenue-generation schemes allow for redistribution of revenues from mining to the local budgets. • Open and transparent data on tax and royalty flows is provided. The Open Budget Portal publishes information about payments of all legal parties to the state budget. 	<ul style="list-style-type: none"> • Government capacity to calculate and manage the tax regime is strained by the significant number of taxes and fees payable to the government that are not regulated by the general tax regime. • The tax regime is unpredictable, and the private sector is concerned with the increases in both tax rates and the number of taxes applied since 2012. There is also concern around the opaque administration of the tax system. This contributes to a context of uncertainty and possible corruption risks. • There is a lack of clear links between national strategies and lawmaking. Despite efforts to improve the fiscal regime, numerous amendments have been made without sufficient dialogue with interested parties. • Government policies on regular audits and the management of state enterprises and budget funds should be improved. • There is no clear scheme to balance volatility in commodity prices.
Socioeconomic Benefit Optimization	MEDIUM	<ul style="list-style-type: none"> • The importance of socioeconomic issues is acknowledged by all stakeholders. • Socioeconomic assessment is partly integrated into the Environmental Impact Assessment (EIA) process. • Socioeconomic planning is required in the Law on Subsoil as part of the “social package” framework. • Regional development funds focus on local infrastructure development. 	<ul style="list-style-type: none"> • Integrated environmental and socioeconomic assessments are not widely understood as a concept. • EIAs do not require plans or measures to mitigate socioeconomic impacts. • Requirements for the “social package” are not specific. • Local content strategies are underdeveloped.



MPF THEME	LEVEL OF PROGRESS TOWARD MPF STANDARDS	STRENGTHS	GAPS
Environmental Management	MEDIUM	<ul style="list-style-type: none"> • Core topics of water, waste, biodiversity and emergency preparedness covered in existing legislation. • Legislation is in place requiring EIAs, including requirements for developing measures to mitigate adverse impacts. • Broad awareness among the authorities of the importance of environmental management, including aspects of emergency preparedness, which is regularly monitored. Environmental legislation and authorities charged with implementing the requirements demonstrate serious consideration of the environmental impacts of mining. 	<ul style="list-style-type: none"> • Environmental legislation can be confusing for companies, due to perceived contradictions in laws and variability in the application of standards. • Legislation for environmental monitoring is outdated, causing challenges for regulators and the need for instructions on specific industries. • There is a lack of evidence that companies monitor themselves, and there are no detailed instructions for reporting in existing legislation.
Post-mining Transition	LOW	<ul style="list-style-type: none"> • The Law on Subsoil links closure with the initial engineering design. • There is a broad understanding that closure plans are a formal part of the expertise process. • Legacy issues have been identified, and the government is working to mitigate negative impacts. 	<ul style="list-style-type: none"> • Current legislation does not specifically address mine closure. • There is limited experience in monitoring mine closure and the post-mining transition. • The implementation of financial assurance procedures unclear.
Artisanal and Small-Scale Mining	LOW	<ul style="list-style-type: none"> • ASM miners can operate through acquisition of inexpensive and accessible individual permits. 	<ul style="list-style-type: none"> • ASM activity is under-legislated. • Environmental and social impacts of ASM, as well as health and safety risks, are not integrated in the legislation. • There is a lack of revenue collection from the sector. • Current legislation does not specify conditions for child labour or the role of women in the sector.



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ACRONYMS

AETR	average effective tax rate
ASM	artisanal and small-scale mining
EBRD	European Bank for Reconstruction and Development
EIA	Environmental Impact Assessment
EITI	Extractive Industries Transparency Initiative
FARI	fiscal analysis of resource industries
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
GNI	gross national income
GOST	Gosstandart
ICMM	International Council on Mining and Metals
IFC	International Finance Corporation
ILO	International Labour Organization
JORC	Joint Ore Reserves Committee
MPF	Mining Policy Framework
NGO	non-governmental organization
NRGI	Natural Resources Governance Institute
OSCE	Organization for Security and Co-operation in Europe
PSA	production sharing agreements
SAEPF	State Agency of Environmental Protection and Forestry
SCIESU	State Committee for Industry, Energy and Subsoil Use
SIETS	State Inspectorate for Ecological and Technical Safety
UNDP	United Nations Development Programme



INTRODUCTION

Mining has long been a central pillar of the economy of Kyrgyzstan. Gold is particularly important—a single large gold mine in the east of the country, Kumtor, accounts for nearly 10 per cent of the country's GDP (World Bank, 2018a). While mining presents a significant opportunity for growth and development, the Kyrgyz government, civil society and the private sector understand that new mining projects must take into account the environmental and social impacts often associated with their operations. If the sector is to continue making a contribution to the country's development, a strong legal and policy framework that maximizes the benefits accrued to the nation and its communities is required, a framework that promotes the development benefits of mining while upholding strong environmental and social standards.

At the request of the Government of Kyrgyzstan, and in collaboration with the State Committee for Industry, Energy and Subsoil Use (SCIESU), the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF) conducted an analysis of Kyrgyzstan's mining laws and policies, using the best practices outlined in its Mining Policy Framework (MPF) as a guide for the evaluation. The assessment focused on the six thematic areas of the MPF: the Legal and Policy Environment, Financial Benefit Optimization, Socioeconomic Benefit Optimization, Environmental Management, the Post-Mining Transition, and Artisanal and Small-Scale Mining (ASM).

This assessment report presents the findings of this analysis. It first presents Kyrgyzstan's development, mining and legal contexts. It then highlights the key strengths and gaps in the country's mining policies and laws across all six of the MPF's thematic areas, before making recommendations for further capacity building and reform.



METHODOLOGY

This assessment was conducted from December 2017 to May 2018. It involved desk-based research on the mining sector in Kyrgyzstan, including a review of all relevant laws and policies relating to the sector. Information was gathered from numerous government agencies with oversight and responsibility for the mining sector.

The desk-based research informed an in-country visit that took place from April 23 to May 1, 2018. During the in-country visit, efforts were made to meet with as many stakeholders relevant to the sector as possible. These meetings sought to gather insights from a representative sample of knowledgeable organizations from government, the private sector and national and international civil society groups. The research team also visited the working mine and facilities of Altynken LLC, located in the Kemin rayon of the Chui oblast. The mine is operated by the Zijin Mining Group, a Chinese company engaged in the exploration and mining of gold, copper, zinc and other mineral resources around the world. The mine is partly owned by OJSC Kyrgyzaltyn, a state mining company, which has a 40 per cent share of the Altynken project.

The research team sought to work closely with the State Committee for Industry, Energy and Subsoil Use. The in-country visit began with a presentation of the overall research format on April 23, 2018. A total of 30 consultations were held during the visit with different organizations from government, civil society and the private sector; many meetings with the former included extended interviews with multiple representatives of government agencies or organizations. All interviews sought to clarify and expand upon the findings from the preliminary desk-based research and to collect qualitative information about how mining policies and laws are implemented and interpreted in practice.

A full list of stakeholders consulted during the research is included in Annex at the end of this report.



KYRGYZSTAN: THE NATIONAL CONTEXT

Kyrgyzstan is a mountainous landlocked country in Central Asia with a proud history of nomadic traditions and a deep connection to the natural environment. Much of its current territory was annexed into the Russian Empire in the 1870s. It became an autonomous oblast (Region) within the Russian Soviet Federative Socialist Republic in 1918 and a Soviet republic in 1936. It is one of five Central Asian countries that gained its independence from the Soviet Union when it disbanded in 1991.



FIGURE 1. MAP OF KYRGYZSTAN

Source: Perry-Castaneda Library Map Collection.



Kyrgyzstan is divided into multiple administrative units. There are seven oblasts and two independent cities, Osh and the capital, Bishkek. Oblasts are further divided into 40 rayons (also called districts) and then into a third level of administration called “communities” (aiyl aimaks in Kyrgyz), which can consist of one or several villages (or aiyls). The relationship between the different administrative levels has been, and continues to be, relevant for mining. Different administrative levels are important, as each level has varying roles and responsibilities for oversight of the mining sector, as well as choices on taxes and benefit-sharing.

In the 2016 United Nations Human Development Report, Kyrgyzstan ranked 120 out of 188 countries worldwide. It is grouped as a “medium human development” country, similar to its regional neighbours Turkmenistan and Tajikistan. Table 2 compares key development indicators of Kyrgyzstan with those of neighbouring Central Asian countries, as well as the average rankings for Europe and the region and the average scores of all countries within the medium human development category.

TABLE 1. UNITED NATIONS DEVELOPMENT PROGRAMME (UNDP) HUMAN DEVELOPMENT RANKINGS, 2015

RANKING	COUNTRY	HDI RANKING	LIFE EXPECTANCY AT BIRTH (YEARS)	MEAN YEARS SCHOOLING / EXPECTED YEARS SCHOOLING	GROSS NATIONAL INCOME (GNI) PER CAPITA PPP ¹ 2011 (USD)
56	Kazakhstan	0.794	69.6	15.0 / 11.7	22,093
-	Europe and Central Asia	0.756	72.6	13.9 / 10.3	12,862
105	Uzbekistan	0.701	69.4	12.2 / 12.0	5,748
111	Turkmenistan	0.691	65.7	10.8 / 9.9	14,026
120	Kyrgyzstan	0.664	70.8	13.0 / 10.8	3,097
-	Medium Human Development	0.631	68.6	11.5 / 6.6	6,281
129	Tajikistan	0.627	69.6	11.3 / 10.4	2,601

Source: UNDP, 2016b.

Table 2 indicates changes in human development indicators in Kyrgyzstan since 1990. All indicators show progress over the time period; however, this progress has not kept up with other newly independent countries that were part of the Soviet Union, which have developed at a faster pace.

TABLE 2. UNDP HUMAN DEVELOPMENT INDEX TRENDS, 1990-2015

	1990	2000	2010	2011	2012	2013	2014	2015
HDI Score	0.615	0.593	0.632	0.638	0.647	0.656	0.662	0.664
Life expectancy at birth	66.3	66.2	68.5	69.1	69.7	70.2	70.6	70.8
Mean years of schooling	8.6	9.8	10.6	10.6	10.7	10.7	10.8	10.8
GNI per capita (2011 PPP\$)	3,407	1,925	2,599	2,610	2,766	2,975	3,055	3,097

Source: UNDP, 2016a.

In 2016, the country had a reported a population of 6.1 million people (National Statistical Committee, 2016) with expected growth up to 7.1 million people by 2030 (UNDP, 2016b). The country is predominantly ethnic Kyrgyz (73.2 per cent), with Uzbeks (14.6 per cent) and Russians (5.8 per cent)

¹ Purchasing Power Parity (PPP) is a method of economic analysis that equates the price of a basket of identically traded goods and services in two countries and allowing for a comparison between countries with different currencies.



making up other significant ethnic groupings (National Statistical Committee, 2017). While relations with Uzbeks have been strained for decades, especially during ethnic conflict in 2011 in the Fergana Valley region, recent meetings between Kyrgyzstan and Uzbekistan have indicated the potential for improvement (REF/RL, 2017). Relations between Kyrgyzstan and its larger neighbours are shaped by differences in population and economy; Uzbekistan, for example, has a population nearly five times greater than that of Kyrgyzstan, and Kazakhstan's economy is more than 10 times larger than Kyrgyzstan's. Despite these disparities, the economies are closely linked, primarily due to resources; Uzbekistan's agricultural sector relies heavily on water from Kyrgyzstan, which holds about a third of Central Asia's water resources (Toktonaliev, 2017).

ECONOMIC CONTEXT

Kyrgyzstan is one of the few countries in Europe and Central Asia to be assessed by the World Bank as a lower-middle-income country. World Bank estimates put the national GDP at USD 6.55 billion in 2016, and attribute current political and social instability to past weak governance and entrenched corruption, which they link to the internal political upheavals in 2005 and 2010 (World Bank, 2018a).

While mining is a critical part of the industrial sector, which makes up 29.2 per cent of the overall economy, there are also large service (55.9 per cent) and agriculture (14.9 per cent) sectors (CIA, 2018). Statistics from the National Statistical Committee (Figure 2) provide a breakdown of the national labour force, with agriculture representing the largest employer (National Statistical Committee, 2017).

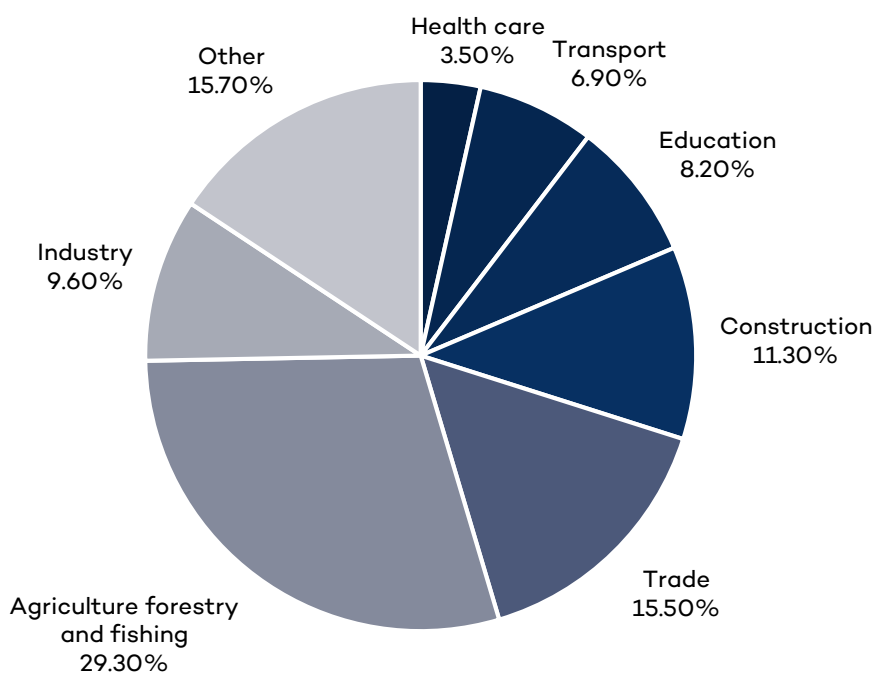


FIGURE 2. DISTRIBUTION OF EMPLOYED POPULATION BY TYPE OF ECONOMIC ACTIVITY, 2015

Source: National Statistical Committee, 2017.

Potential growth areas for the economy include the export of hydroelectricity and the promotion of tourism. These sectors are seen as important for the diversification of the private sector (World Bank, 2018).

In general areas of business development for small and medium businesses, Kyrgyzstan ranks in the middle when compared to its neighbours. The World Bank's 2018 assessment of the "ease of



doing business” ranks Kyrgyzstan 77 of 190 countries globally (World Bank Group, 2018). In the 2018 assessment, which gauges the ease with which a local limited liability company operating in the largest business city can develop, Kyrgyzstan sits behind its neighbours²:

- Russia – 35
- Kazakhstan – 36
- Uzbekistan – 74
- Kyrgyzstan – 77
- Tajikistan – 123

International groups frequently cite corruption as an important issue hindering the country’s development, constraining economic growth, competitiveness and social equality (World Bank, 2018). Transparency International, in its annual Corruption Perceptions Index in 2017, ranked Kyrgyzstan 135 of 180 countries. In comparison with neighbours, Kazakhstan was marginally better (122), while Uzbekistan, Tajikistan and Turkmenistan were ranked 157, 161 and 167 respectively out of 180 countries (Transparency International, 2017).

GENDER CONTEXT

Women in Kyrgyzstan live longer than their male counterparts (an average of 74.8 years, versus 66.8 years), and they spend more time in school (an average of 10.9 years, versus 10.7 years). However, these factors do not translate into higher earnings, which remain unequal: GNI per capita for women is just USD 2,123, compared to USD 4,090 for men (UNDP, 2016b). Kyrgyzstan ranked 90 out of 159 countries on the UN’s 2015 Gender Inequality Index. The country’s index value is 0.394, which is lower than neighbouring Uzbekistan and Tajikistan, which rank higher at 57 and 65 respectively, indicating that Kyrgyzstan has greater levels of gender equality than its neighbours. The index reflects gender-based inequalities in reproductive health, empowerment and economic activity (UNDP, 2016b).

The European Bank for Reconstruction and Development (EBRD) has developed a strategy for the promotion of gender equality and has assessed countries in its area of operation on seven indicators. Kyrgyzstan ranks strong in comparison to other Central Asian countries on women’s access to finance. The main gap, as in most of its neighbours, is in labour practices. Additional research, also by the EBRD, highlights aspects of the Labour Code that limit women’s ability to participate in some jobs, including some in the mining sector. Specific provisions prohibit women from working in harmful or dangerous conditions and from undertaking heavy work, and forbid the employment of women in underground work. In total, one government resolution under the Labour Code reserves approximately 400 occupations or tasks for men. Overall, the gender gap in labour force participation is estimated to be annually costing the country between 0.2 and 0.4 per cent of GDP (EBRD, 2015a).

ENVIRONMENTAL AND CLIMATE CONTEXT

Some of the key environmental issues in Kyrgyzstan include water pollution, increasing soil salinity from faulty irrigation practices and air pollution linked to a rapid increase in traffic (CIA, 2018). The most recent Environmental Performance Review in 2009 linked environmental challenges with the country’s economic difficulties, specifically the prolonged recession of the economy since independence. These economic difficulties in turn make it difficult to allocate resources for environmental protection (UNECE, 2009).

² Turkmenistan was not included in the 2018 report.



Biodiversity is of particular importance to the mining sector since many mine sites are located in sensitive mountain habitats. Although the country covers about 0.13 per cent of the world's landmass (199,951 km²), it is estimated to hold 1 per cent of the world's known flora and fauna. Conservation International, an international non-governmental organization (NGO), considers the country a high priority area for global biodiversity conservation (EBRD, 2015b).

Legacy issues from Soviet mining continue to be a challenge for the Kyrgyz environment, specifically 92 radioactive and toxic sites related to the mining industry. The majority of these are in the vicinity of transboundary watercourses and areas of high seismicity, posing a threat to the country and its neighbours (National Council for Sustainable Development, 2012).

The national sustainable development strategy identified five key consequences of what it called the "brown" economic system: 1) depletion of national capital; 2) increased poverty; 3) threats to food security; 4) threats to energy security; and 5) inequality (National Council for Sustainable Development, 2012).

The primary environmental objectives of state policy since 2013 have included:

- Improvement of legislation to create favourable conditions for the application of new technology, attract "green" investment and adapt to climate change.
- Ensure impact assessments are undertaken for commercial and development projects.
- Improve systems for monitoring and reporting on environmental pollution.
- Create a sustainable system of control to use monitoring information for rational use of natural resources and balanced decision making.
- Introduce new financial tools to promote green technologies via taxes, customs, procurement and investment.
- Promote the rational use of renewable natural resources.
- Increase energy efficiency and reduction of energy losses, especially heat and electricity.
- Support sectors aimed at creating "green" jobs (National Council for Sustainable Development, 2012).

Analysis of climate change in Kyrgyzstan predicts increasing temperatures, reduced precipitation, increased extreme weather events (floods, landslides and heavy rains) and a shortened heating period at altitudes above 1,000 metres. The sectors considered most vulnerable to climate change are water resources, hydropower, agriculture, public health, and forests and biodiversity. In relation to mining, such changes are predicted to increase tensions over natural resources (UNDP, 2013).



KYRGYZSTAN: THE MINING CONTEXT

Mining is a major contributor to the Kyrgyz economy. The Extractive Industries Transparency Initiative (EITI) put the mining industry's contribution to Kyrgyz GDP at 8.4 per cent in 2014, or 53.9 per cent of industrial output (EITI, 2018). Mining in Kyrgyzstan is largely focused on coal and gold. The country's mining sector has been led by the country's most significant project, the Kumtor gold mine, which is managed by a subsidiary of Centerra Gold Inc. A key challenge for the government today will be determining how new mines—including around 30 small-to-medium-scale mines to be opened before 2019—will replace the budget contributions of Kumtor, which is expected to stop production in 2026. Reliance on the Kumtor mine puts the country at considerable risk, given that it accounts for a large percentage of the country's GDP. Another factor susceptible to global and external shocks is remittances from Kyrgyz nationals working in other countries. These remittances were estimated to be about 30 per cent of GDP from 2011–15 (World Bank, 2018a).

Aside from Kumtor, there are eight additional medium- and large-scale gold mines operating in Kyrgyzstan (Natural Resources Governance Institute [NRGI], 2017). The most recent data from the SCIESU counts over 2,500 active mining licences in the country.

The Kumtor mine and its history play an important role in current discussions on financial and environmental management in the mining sector. A notorious 1998 incident involving a truck spilling cyanide into the Barskaun River has been referenced by many groups to highlight the perceived dangers of the mining sector. In financial debates, the country has an “on-and-off battle” with the mine's Canadian owners, and discussions on revenue sharing are frequently linked to internal political debates and accusations of corruption (Eurasianet, 2016).

In March 2017, the country suffered a setback when Kyrgyzstan was sanctioned by the EITI for “inadequate progress” in meeting EITI standards. The country had been EITI-compliant since 2009; however the 2016 validation process marked the first rigorous evaluation of its compliance with EITI standards (Furstenberg, 2017). The government is implementing policy reforms and working on the corrective actions proposed by the EITI Board. Progress on the corrective actions will be assessed during a second validation, which is expected to start in September 2018.

Many Kyrgyz and international organizations have sought to promote mining as a key sector to support the country's sustainable development. Numerous assessments and reports have been written to assess the challenges and opportunities in mining. One effort, led by the Ministry of Economy, resulted in a draft version of the Medium and Long-Term Strategy of Mining Industry Development of Kyrgyzstan. This initiative ambitiously sought to define the main areas for mining



development through the year 2052 (Ministry of Economy, 2014). Although not formally adopted, aspects of the strategy are being integrated into overarching government strategies for national sustainable development.

While the draft strategy is yet to be updated and approved, it is seen as a substantial effort, with input from many national and international stakeholders. As the document is publicly available in its draft form, it is used throughout this report as a source of information on the mining sector and one representation of ideas for improving the contribution of the sector to the country's development.

Mining legislation is regularly being updated, additional evidence that the government is seeking to improve upon the regulatory environment to make mining more sustainable. Soon after the MPF in-county work in Kyrgyzstan, a revised version of the Law on Subsoil (2018) was passed. Key updates include:

- Granting of licences on a first-come, first-served basis, and eliminating the direct negotiations mechanism for the granting of licences.
- Expanding requirements aimed at increasing transparency in the mining sector, including disclosure and publication of information on beneficial owners of mining companies, and the publication of texts of licence agreements.
- Amending (to decrease) the validity terms of licences and extension rights of the licence holders.
- Transfer of the rights to grant and register licences for exploration and development of construction materials such as clay and gravel from SCIESU to local government authorities.



KYRGYZSTAN: KEY MINING LAWS AND POLICIES

Kyrgyzstan is a parliamentary republic. After several referendums enhanced presidential power in the 1990s and 2000s, a new constitution adopted in 2010 restored powers to the parliament. An additional referendum in 2016 also shifted powers from the presidency to parliament and the prime minister.

The national legislature, the *Jogorku Kenesh*, is a unicameral chamber with 120 seats elected for a five-year term. The last elections for parliament were held in October 2015 and for president in October 2017, which Sooronbai Zheenbekov won and took over from Almazbek Atambayev in December 2017. The next elections for parliament and president are scheduled for 2020 and 2022, respectively.

KEY INSTITUTIONS

The implementing government body responsible for the licensing process in the mining sector is SCIESU. SCIESU is responsible for developing and implementing state policy in the areas of industry, fuel and energy, subsoil use and industrial safety. It accepts applications for licences and licence extensions, and may grant, temporarily suspend or revoke a licence. SCIESU is also responsible for EITI implementation.

Other key organizations include:

- **Ministry of Economy:** Responsible for general tax and investment policies, as well as policy related to economic development.
- **Ministry of Finance:** Oversees policy on non-tax payments and public finance, including data on revenues from the mining sector.
- **State Agency of Environmental Protection and Forestry (SAEPF):** Responsible for policy development and environmental projection. The agency also oversees the process of environmental expertise or review, which is related to reviewing impact assessments.
- **State Inspectorate for Ecological and Technical Safety (SIETS):** Oversees monitoring of environmental compliance, adherence to mining rules and regulations, including general environmental oversight.



- **State Tax Service:** Responsible for collecting and monitoring payment of taxes, insurance fees and other mandatory payments to the budget.
- **Ministry of Emergency Situations:** Responsible for reviewing emergency preparedness. The ministry also oversees abandoned mining sites, a task largely connected to Soviet legacy sites related to uranium mining.
- **Local public administrations and local government bodies:**³ Support the work of national authorities and play a key role in the process of land allotment. Local authorities also oversee reclamation work in cooperation with SIETS.

DOMESTIC LAW AND POLICY

The mining sector in Kyrgyzstan is governed by an extensive array of laws, regulations and codes, underpinned by the national constitution. The constitution was adopted after the transfer of power in 2010. It was amended by referendum in 2016, transferring some presidential powers to the prime minister. Key elements relating to mining include: Article 33, which established the right to seek and receive information from state authorities; and Article 48, which establishes that all shall have the right to an environment that is favourable to life and health, the right to compensation for damage to health or property and that citizens have a responsibility to care for the environment. The country does not have a mining code in place.

MINING-SPECIFIC LEGAL ACTS

- The **Law on Subsoil (2012)**, also referred to as the Mineral Resources Act, governs the relationship between the state and individuals or legal entities or other states involved in subsurface management. The law requires that all subsurface activities be based on the constitution and other regulations of Kyrgyzstan. It also sets out the responsibilities of state, regional and local authorities.
- The **Law on Concessions and Foreign Concessionary Entities (1992)** regulates economic, organizational and legal conditions of granting concessions for the purposes of economic development.
- The **Law on Agreements on Sharing of Production Resulting from Development of Mineral Resources (2002)**, also referred to as the Production Sharing Agreement or PSA Law, establishes legal grounds for the relationships arising in the administration of domestic and foreign investments in prospecting and development of mineral deposits.
- The **Regulation on the Procedure for Licensing Subsoil Use (2012)**, also referred to as the Licensing Regulation, regulates the responsibilities for the implementation of state policy on subsoil use and establishes that the right to use subsurface resources arises on the basis of a licence.
- The **Regulation on the Procedure and Conditions for Holding a Tender for the Right to Use Subsoil (2012)**, also referred to as the Tender Regulation, sets the procedure for the tender process for each mineral deposit of national importance or “objects of national importance.” These are approved by the government of Kyrgyzstan and published in the media.
- The **Regulation on the Procedure and Conditions for Holding an Auction for the Right to Use Subsoil (2012)**, also referred to as the Auction Regulation, sets out the procedure for the auction process to exploit subsoil resources and the conditions for participation.
- The **Regulation on Procedure and Condition for Granting Geological Information Resources for Use (2016)** was developed in accordance with the Law on Subsoil (2012) and establishes levels of access for geological information.

³ As described above, the nine oblasts are divided into rayons and then into a third level of administration called “communities” or *aiyl aimaks* in Kyrgyz.

OTHER KEY LEGAL ACTS RELATED TO MINING

- The **Land Code (1999)** regulates all land relationships, including the procedures for exercising and terminating the right to land. The code develops the market relationships between state, communal and private ownership.
- The **Water Code (2005)** regulates use, protection and development of water resources with the aim of providing an adequate and safe supply of water to the population, as well as protecting the environment.
- The Tax Code (2008) regulates the establishment, enforcement and collection of taxes, as well as clarifying the responsibilities for violations of requirements under the Code.
- The **Law on Non-tax Payments (1994)** covers procedures related to the transfer of non-tax payments to the budget, as well as rules related to the granting of benefits to entities that provide such payments.
- The **Law on Environmental Protection (1999)** is based on the idea that nature is the property of the country and one of the main factors of sustainable social and economic development. This law regulates the protection and efficient use of natural resources in accordance with the constitution and other laws.
- The **Law on Environmental Expertise (1999)**, also referred to as the **Law On Environmental Review**, regulates environmental review with the aim of protecting the population from the negative ecological consequences associated with economic and other activities.

INTERNATIONAL COMMITMENTS

Kyrgyzstan has signed and ratified a number of international agreements and commitments relevant to the mining sector, including but not limited to the following international laws, protocols and conventions:

- Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (1996)
- Convention on Biological Diversity (1996)
- Convention on International Trade in Endangered Species of Wild Fauna and Flora (2006)
- Convention to Combat Desertification (1999)
- Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (2000)
- Convention on Environmental Impact Assessment in a Transboundary Context (2001)
- Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (2000)
- Convention for the Protection of the Ozone Layer (2000)
- Framework Convention on Climate Change (2000)
- Protocol on Substances that Deplete the Ozone Layer (2001)
- Convention on Wetlands of International Importance especially as Waterfowl Habitat (2002)
- Kyoto Protocol (2003)
- Biosafety Protocol (2005)
- Convention on Persistent Organic Pollutants (2006)



INTERNATIONAL COMMITMENTS RELATING TO LABOUR

Kyrgyzstan has ratified the eight core International Labour Organization (ILO) Conventions, including:

- Discrimination (Employment and Occupation) Convention, No. 111 (1992)
- Equal Remuneration Convention, No. 100 (1992)
- Forced Labour Convention, No. 29 (1992)
- Freedom of Association and Protection of the Right to Organize Convention, No. 87 (1992)
- Minimum Age Convention, No. 138 (1992)
- Right to Organize and Collective Bargaining Convention, No. 98 (1992)
- Abolition of Forced Labour Convention, No. 105 (1999)
- Worst Forms of Child Labour Convention, No. 182 (2004)

An additional 45 governance and technical conventions have also been ratified and are in force (ILO, 2018).

INTERNATIONAL COMMITMENTS RELATING TO HUMAN RIGHTS

Kyrgyzstan's Human Rights Coordinating Council submitted its second National Report to the Human Rights Council at the UN General Assembly in 2015.⁴ This followed an earlier report from 2010. It states that the country has ratified the following international human rights treaties:

- Convention on the Rights of the Child (1994)
- International Covenant on Civil and Political Rights (1994)
- International Covenant on Economic, Social and Cultural Rights (1994)
- Convention on the Elimination of All Forms of Discrimination against Women (1997)
- Convention Against Torture and Other Cruel Inhuman or Degrading Punishment (1997)
- International Convention on the Elimination of All Forms of Racial Discrimination (1997)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (2003)
- Optional Protocol of the Convention Against Torture (2008)

The report concludes by stressing that Kyrgyzstan is firmly committed to protecting and promoting all human rights and fundamental freedoms, and supports the respect for human rights, including those enshrined in the Universal Declaration of Human Rights. (UN General Assembly, 2015).

Kyrgyzstan is currently serving as a member on the UN Council on Human Rights, through to the end of 2018.

⁴ This report is reproduced by the UN General Assembly as received and does not reflect any opinion on the part of the Secretariat of the United Nations.



ASSESSMENT: KYRGYZSTAN AND THE MINING POLICY FRAMEWORK

LEGAL AND POLICY FRAMEWORK

The first thematic area of the MPF focuses on national mining laws, policies and permitting processes. It encourages a mature, modern legislative system with clear lines of responsibility and accountability, and highlights the types of laws and policies that serve as a basis for good governance and sustainable development. The MPF standards featured in this thematic area fall into the following categories:

- The ongoing generation of and equal access to geological information.
- The periodic revision and updating of mining legislation and policies.
- A timely, transparent, unambiguous and consistent permitting process that requires:
 - Consultation with communities in the planning and development stages of a mine.
 - Submission of integrated social, economic and environmental impact assessments.
 - Identification of sustainable development opportunities.
 - Planning for mine closure, with adequate financial assurance.
 - Protection of Indigenous rights and cultural heritage, and addressing resettlement and community safety and security issues.

KEY LAWS AND POLICIES

MINING-SPECIFIC LEGAL ACTS

- Law on Subsoil (2012)
- Law on Concessions and Foreign Concessionary Entities (1992)
- Law on Agreements on Sharing of Production Resulting from Development of Mineral Resources (2002)
- Regulation on the Procedure for Licensing Subsoil Use (2012)
- Regulation on the Procedure and Conditions for Holding a Tender for the Right to Use Subsoil (2012)
- Regulation on the Procedure and Conditions for Holding an Auction for the Right to Use Subsoil (2012)



- Regulation on Procedure and Condition for Granting Geological Information Resources for Use (2016)

OTHER KEY LEGAL ACTS RELATED TO MINING

- Land Code (1999)
- Water Code (2005)
- Tax Code (2008)
- Law on Non-tax Payments (1994)
- Law on Environmental Protection (1999)
- Law on Environmental Expertise (1999)

GENERATION AND ACCESS TO GEOLOGICAL INFORMATION

The Kyrgyz Republic's State Geological Fund contains over 15,000 reports collected since 1889. However, the information is only partially scanned, digitized and classified via the IRBIS Automated Library System. Due to limited government resources to update existing information, most of the newer geological reports are submitted by private licence holders as part of their licensing obligation to submit annual, semi-annual and final geological information and reports. The State Reserves Committee, under SCIESU, is responsible for state approbation of reserves and does not yet use a global resource classification system or GIS-based database that can link to national land-use planning.

However, with support from the Geological Survey of Finland, the first GIS-based geological map of the country at the scale of 1:20,000 is now under development, to be completed by the end of 2018. In addition, the EBRD is currently supporting the policy reforms for introduction of the JORC classification system.⁵

The Regulation on Procedure and Condition for Granting Geological Information Resources for Use (2014) specifies conditions for access to information for all interested parties. However, one needs to be physically present at the Geological Fund to obtain information. Geological information on the areas under active licences is not shared with the public in accordance with the Law on Subsoil.

MINING CODES AND STANDARDS

Key legal acts related to mining include various laws and codes such as the Law on Subsoil, the Land Code (1999), the Water Code (2005), the Tax Code (2008) and the Law on Environmental Expertise (1999).

In regards to technical regulation, the draft Mining Strategy from 2014 lists 244 legal acts applicable to the mining industry. Since 2010, however, when the Law on Normative Legal Acts of the Kyrgyz Republic (2009) came into effect, many of the Soviet-era standards, also known by the Russian acronym GOST and SNIp, have ceased to be legally binding (Ministry of Economy, 2014). Some parts of the standards have been approved by the Government Decrees. However, in the absence of enforcing decrees, state bodies continue to be guided by the old norms while examining documents and implementing control functions the range of sectors such as industrial safety, construction of industrial objects, environment, water and land, all of which can have implications for mining, the legal hierarchy is ambiguous (NRGI, 2017).

⁵ Joint Ore Reserves Committee (JORC) is the Australasian code for reporting of exploration results, mineral resources and ore reserves. The JORC Code is a professional code of practice that sets minimum standards for public reporting of minerals exploration results, mineral resources and ore reserves.



Legislation nominally covers exploration, development, closure and post-closure management. Multiple interviews underline that the legal framework for exploration is more developed than other stages. The Law on Normative Legal Acts of the Kyrgyz Republic (2009) requires regular review of the existing legal acts, but this process is ongoing, and all stakeholders see harmonization of mining laws and standards as an important task. There is also an active debate into codification of all mining-specific legal acts into a single mining code; however, there is no existing document at this time. Some stakeholders state that they believe the draft Mining Strategy can serve as the basis for developing a mining code in the future.

The Law on Subsoil establishes geological and mining reporting requirements and SCIESU develops and approves the format and procedures for reporting by all licence holders. Companies report that the instructions and report forms are clear.

PERMITTING PROCESS

The Law on Subsoil and Regulation and the Regulation on the Procedure for Licensing Subsoil Use (2012) are the primary legal acts that regulate the licensing system for mining in Kyrgyzstan. The main government agency responsible for the licensing process is SCIESU. SCIESU accepts and reviews applications for subsoil use licences, calculates fees for retaining a licence, and retains the authority to grant, temporarily suspend or revoke subsoil use licences.

The Law on Subsoil defines several types of licences, including prospecting, exploration and development licences. Licences may be given for a term up to 20 years, with a possibility of extension until the depletion of mineral resources in accordance with a given technical project. In accordance with Article 21 of the Law on Subsoil, there are no foreign ownership restrictions applicable to licence applicants or licence holders. Both foreign and local entities may participate in procedures for obtaining a licence for the right of subsoil use. Foreign applicants, if issued a licence, shall, within a time frame specified by the Law on Subsoil, establish a wholly owned subsidiary in Kyrgyzstan to which the licence is issued.

The significance or size of a deposit or licence area is used to determine the procedure for obtaining a licence. The three procedures include obtaining licences on the basis of a tender, auction or direct negotiations with SCIESU.

A tender process is required in cases where the object is considered to be of national importance and listed as such by the government. The Regulation on the Procedure and Conditions for Holding a Tender for the Right to Use Subsoil (2012) sets out the process whereby a winner is selected by a government-formed Tender Committee, on the basis of accumulated points over two stages. Table 3 is a list of objects that will be required to undergo this procedure in the near future.

TABLE 3. DEPOSITS TO BE TENDERED BY THE GOVERNMENT OF KYRGYZSTAN

DEPOSITS TO BE TENDERED BY THE GOVERNMENT OF KYRGYZSTAN	
Sulukta, field-11	brown coal deposit, reserves of 83 million tons
Togolok and Jangart	gold deposits, reserves of 30 tons
Tuyuk-Kargasha	a coal deposit, reserves of 100 million tons
Kara-Keche	brown coal deposit, reserves of 482 million tons

Source: State Committee for Industry, Energy and Subsoil Use, personal communication, June 5, 2018.



In accordance with the Regulation on the Procedure and Conditions for Holding an Auction for the Right to Use Subsoil (2012), an auction is carried out on objects identified by SCIESU. It may take place on objects of national importance in cases where there are no winners identified through the tender process, or on other sites to which rights are granted through direct negotiations but there were two or more simultaneous applications. In such instances, the licence is granted to the bidder offering the highest price through the auction commission. This does not automatically mean that the highest price is selected. In the next stage, technical projects are reviewed for compliance with industrial, geological and environmental standards. Without an approved technical project, an auction winner would not be granted the right for operations on a site.

The third way licences are granted is by direct negotiations between the applicant and SCIESU. The procedure for issuance of a licence based on direct negotiations is governed by the Regulation on the Procedure for Licensing Subsoil Use (2012). This method of granting subsoil use is applied for smaller deposits not included on the lists of deposits of national importance of areas to which the subsoil use rights are granted through auction.

The licensing agreements that come out of direct negotiations—which are attached to and are an integral part of the licenses—have come under scrutiny in many instances. EITI validation demonstrated that, in some cases, there are transparency concerns around the process for how licences are obtained and transferred. As part of its validation exercises, the EITI has noted as problematic the non-disclosure of protocols of direct negotiations as well as in licensing documentation (EITI, 2017a).

In relation to the engagement process, key legislative requirements are included in the Law on Environmental Expertise (1999), which states that the EIA linked to a permit application must take into account public opinion and that environmental information will be presented to local authorities, public organizations and residents. In addition, the Regulation on the Procedure for Conducting Environmental Impact Assessments (2015) sets out the process for formal “public hearings.” The public hearings should be based upon disclosure of complete information about a project and include information on where stakeholders may read impact assessment documentation and then send comments and suggestions.

Kyrgyzstan has also ratified the Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (the Aarhus Convention) and the Convention on Environmental Impact Assessment in a Transboundary Context (the Espoo Convention). These further expand the commitments of the government to provide information to the public in projects that have significant environmental impacts, including potential transboundary impacts. There are two Aarhus Centres in Kyrgyzstan: one in Osh (since 2004) and one in Bishkek (since 2014). The Bishkek Centre, aimed at promoting the Aarhus Convention throughout the whole country, was established through a Memorandum of Understanding with the SAEPF.

In practice, the procedures to request and review impact assessments and other permitting documents of mining projects are variable. Some companies disclose full information online and state that this information is provided locally through local administrative offices at the oblast, rayon and *aiyl aimak* levels. However, others do not provide this information and requests to SAEPF for full impact assessments on one recent project were refused based on the documentation being the “property of the company” (SAEPF, personal communication, February 2, 2018).

There is a link between permitting and conflict between communities. Research conducted in areas of heightened community tension has highlighted the link between conflict and the environment. Given that local economies typically rely on traditional agricultural activities, these links can be particularly



strong. Surveys indicate that local people believe mining will have a devastating impact on the environment and associated livelihoods (Oxus International, 2013). Other research found that over 90 per cent of respondents listed environmental concerns as the main reason to protest against mining, with over half believing that radiation from mining activities is present in those areas, where in reality background radiation is less than that in Bishkek (SIAR, 2013).

Frequent assumptions about the environmental risks of mining underline the importance of the permitting process and the risks associated with the inconsistencies in information disclosure. Without robust, consistent and transparent licensing and permitting systems, rumours can be used to generate suspicion among potentially affected communities. One NGO stated that this is happening and explained that, in a situation where local populations do not know the regulatory framework well, companies can get around permitting requirements with money, while the environment can be used as a pretext for protests against mining.

STRENGTHS

- **Geological information is available to the public for a reasonable fee.** Any interested party may obtain the hard copy of geological reports in the State Geological Fund in Bishkek in accordance with the Regulation on the Procedure and Conditions for Granting Geological Information Resources for Use. The Geological Survey of Finland is supporting the development of an electronic database of geological information and is in the final stages of digitizing the country's geological maps in ArcGIS.
- **Mining codes and standards are revised and updated to reflect changing knowledge and best practice.** The Law on Subsoil has been revised and updated, most recently to address gaps related to a lack of transparency around direct negotiations, the disclosure of beneficial owners and a simplification of licensing for natural resources. The forms and instructions for company reporting were updated in 2017. Other primary laws and codes are also quite current and updated periodically. That said, frequent fiscal amendments are of concern to private sector actors.
- **The licensing procedure requires completion of the process in a timely, transparent, unambiguous and consistent manner.** Tenders, Auctions and Licensing Committee meetings are open to the public. The SCIESU works on abiding with the 60-day period of considering the applications. Information on the licensing procedure, the list of licences and the interactive map of licensed areas are updated weekly and are publicly available on the SCIESU's online portal at gkpen.on.kg.

GAPS

- **The level of engagement with communities and other stakeholders during the assessment and planning process is inconsistent.** Although companies are required to consult with local communities when conducting EIAs, there are inconsistencies in the way companies disclose information and engage. There are questions as to whether all companies fully engage in an accessible and culturally relevant format with the communities, and at all stages of the assessment and planning process.
- **The permitting procedures are difficult to predict and often take longer than expected.** In spite of government efforts to improve the procedure for obtaining the right for mining operations, licensees may face longer-than-expected reviews of the technical documentation by the government bodies than specified in the laws.
- **Technical instructions are outdated and in need of revision to reflect best practice.** Numerous geological instructions for drafting and evaluating the technical projects and plans of mining works, regulations on industrial safety, mineral resource audits, mine closures



and other industry-specific instructions (industrial and environmental safety, mineral resources safety, closure, post-closure) are based on Soviet-era (GOST) instructions.

- **Legislative and policy review processes are seen to be too slow, generating uncertainty.** A lack of both long-term policy and strategic visioning in policy-making results in ad hoc and reactive legislation. Systemic changes or attempts to change the fiscal regime also generate uncertainty and an unstable fiscal regime for mining projects. Since most companies currently working in the country are in the prospecting and exploration stages, there is a risk that the legislation may not sufficiently cover the exploitation and closure stages.

FINANCIAL BENEFIT OPTIMIZATION

The MPF's second thematic area focuses on the optimization of financial benefits through taxes, royalties and other payments, and reflects the value of mineral resources to society. The other major subtopic of this pillar is revenue transparency on the municipal and national levels. Policy recommendations under this section fall into the following categories:

- The implementation of a revenue-generation framework that optimizes returns from mining activities and allows some minimum level of financial return during low price periods.
- The integration of planning for the mining sector with that of other economic sectors.
- Providing a policy that optimizes revenues while offering an adequate rate of return to investors, that uses income tax based on net profits and that applies such taxes in a similar manner as to non-mining activities.
- The need for a high level of human and intellectual resources, particularly to administer and audit the country's tax system and obtain maximum benefit from its tax regime.
- The integration of fiscal instruments and policy objectives.
- Increasing revenue transparency and knowledge regarding the distribution of benefits from mining.

KEY LAWS AND POLICIES

- Tax Code (2008)
- Law on Non-Tax Payments (1994)
- Law on State Social Insurance (1996)
- Law on Tariffs of Insurance Payments on State Social Insurance (2004)
- Law on Measures to Implement the Requirements of Norms in the Tax Code (2008)
- Regulation on the Main Directions of the Fiscal Policy of the Kyrgyz Republic for 2018–2020 (2017).

REVENUE-GENERATION SCHEME

Most mining companies in Kyrgyzstan operate under the general tax regime, in accordance with the Tax Code. Taxes for the mining industry include bonus and royalty tax payments in addition to general corporate taxes. The only exception is the Kumtor Gold Company, which complies with a separate tax regime, outlined in the investment and concession agreements the company has with the government, which were approved by the parliament.

According to the Tax Code, the tax base for the one-time bonus tax is the amount of geological reserves and resources and the depth of drilling of water wells. The government determines the rate of bonus based on the type and quality of mineral, the amount of ore reserves in case of development, and the size of the licence area in case of prospecting and exploration. For example,



the bonus rate for the explored gold deposits is USD 60,000 per tonne of ore reserves (Eurasia Foundation of Central Asia, 2017). When a company changes owners, a bonus amount equal to the percentage of changed ownership shall be paid to the government.

Royalty, according to the Tax Code, is the payment for the right to use subsoil for the purpose of natural resource extraction. The tax base of royalties is based on the proceeds from the sale of mineral resource products derived from their processing. The royalty rates for gold, silver and platinum range from 1 to 5 per cent, and are 1 per cent for coal and lignite. Table 4 compares royalty rates in Kyrgyzstan with other countries.

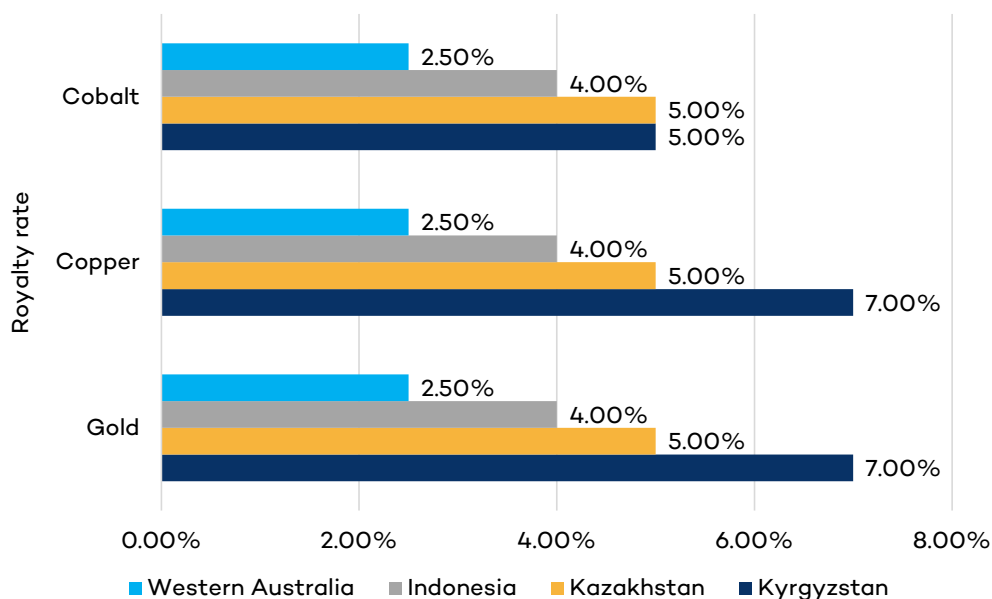


FIGURE 3. COMPARISON OF ROYALTY RATES

Source: Manley, 2018.

The general tax regime established by the Tax Code provides for the payment and reporting of the profits tax (similar to the corporate income tax at 10 per cent), value-added tax (total rate of 12 per cent, 0 per cent for the export of non-metallic goods and up to 20 per cent for other operations), excise tax and sales tax (from 1 per cent to 3 per cent) through a permanent establishment. Notably, after changes to the Tax Code in 2014, the rate of profits tax for gold mining companies was set at 0 per cent. The Tax Code also defines local taxes, such as land and property tax. The Tax Code distinguishes foreign and domestic entities, and the Tax on Income of Foreign Organizations Paid by the Non-Residents not Related with the Permanent Basis in Kyrgyzstan is among the biggest revenue streams for the government from the mining companies (EITI, 2015).

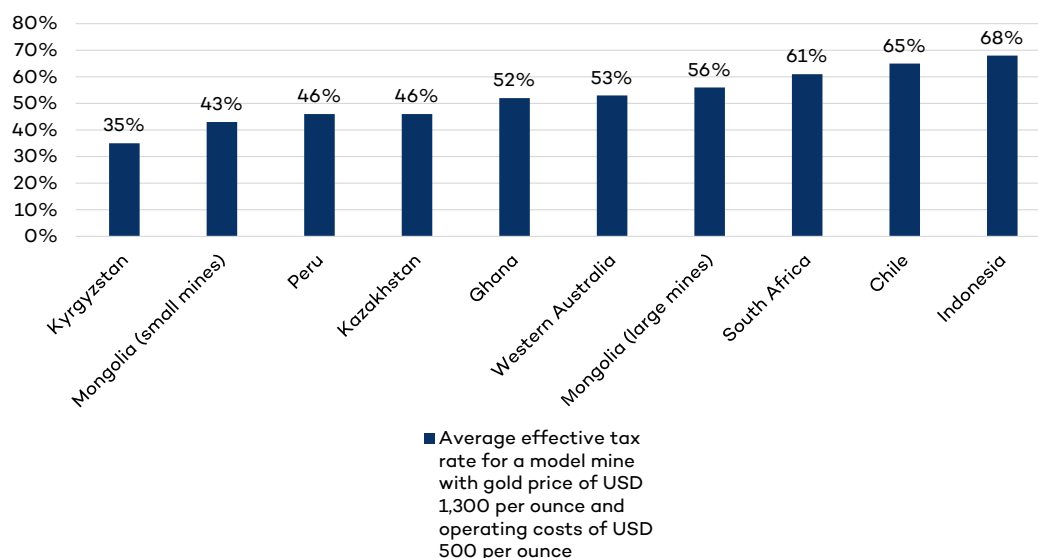


FIGURE 4. AVERAGE EFFECTIVE TAX RATE FOR GOLD COMPARED

Source: Manley, 2018.

The average effective tax rate (AETR) is the government’s share of pre-tax net present value, usually measured at the government’s assumed discount rate. This is one of the indicators of the competitiveness of the tax regime. Relatively high AETR may indicate that the tax regime limits investments. Relatively low AETR could mean that the government does not receive as much income as it could.

The AETR model in Table 5 compares modelled AETR for the gold mining project with operating costs of USD 500 per ounce for a selected group of countries at a gold price of USD 1,300 per ounce.

There is an ongoing discussion between the government and business community concerning the existing tax regime and possible amendments to the fiscal policy. The International Business Council engaged Ernest & Young to assess mining sector contributions, including an assessment of the tax burden in comparison to neighbouring countries. On this question, based on the ratio of taxes paid by the sector to the sector’s revenue, the research shows the tax rate for mining companies in Kyrgyzstan at 17.7 per cent, higher than Kazakhstan and Mongolia at 14.4 and 13.3 per cent respectively (International Business Council, 2018). On the other hand, a recent study by the National Resources Governance Institute (NRGI), using the IMF’s Fiscal Analysis of Resource Industries (FARI) fiscal model, found instead that the burden in the gold sector may be over 10 per cent lower than that of neighbouring Kazakhstan and all other countries of the region (NRGI, 2017). Although the existing statistical classification system makes it difficult to define the size of the tax burden in the mining sector, representatives of the Ministry of Finance believe the real estimated tax burden to be around 11 per cent.

The differing opinions are complicated by the fact the government bases forecasts on tax collection on information from mining companies rather than its own calculations. Without a consistent fiscal model to determine expected tax take, it is difficult to determine what rates should be charged (NRGI, 2017).

The previous and new draft country strategies for sustainable development have sought to integrate the mineral sector into the rest of the economy. The previous plan aimed to integrate the economy into the regional economic system, including the contributions of energy, mining, agriculture, transport and financial services (National Council for Sustainable Development, 2012). The new



draft plan seeks to create mandatory requirements for the contribution of mining enterprises in the development of local communities and general rehabilitation of the natural environment (National Council for Sustainable Development, 2017). Despite these high-level goals in national documents, some stakeholders do not see a clear strategy for fiscal or tariff policy, stimulating investment or creating uniform tax relations (Ministry of Economy, 2014).

During assessment consultations, business representatives stated that the existing tax regime is not a major incentive for investment. They cite frequent additions in regulations and the increase in non-tax payments for making the investment climate unpredictable and risky. In particular, business representatives question the reasonableness of some of the existing mining-related, non-tax rates for fees, such as the ecological fees, licence retention fee and the proposed fee for the export of concentrates.

HUMAN AND INTELLECTUAL RESOURCES

All licences are governed by a common regulatory regime, and the government negotiates only minor aspects within these standard agreements. The exception, because it was developed so soon after Kyrgyzstan became independent, is the contract with the Kumtor Gold Company. In this instance, the government has had difficulty negotiating the agreements and has frequently had to defend its interests in courts.

Under the Deutsche Gesellschaft für Internationale Zusammenarbeit's (GIZ's) Minerals Resources Development Program, managers from SCIESU have been trained on using the Model Mining Development Agreement. The capacity-building exercise drew from experiences in Mongolia, Azerbaijan and Kazakhstan. While the GIZ program ended in 2018, the initiative was used to highlight some areas of legal and organizational reform (GIZ, 2018).

DISTRIBUTION OF BENEFITS

All tax and non-tax payments made by mining companies can be monitored in the Open Budget Portal.⁶ Fiscal policy is formulated in national strategies, three-year fiscal strategies and socioeconomic and budget predictions. For outgoing benefits, only some of the information about the distribution of funds is available; information on expenditures of regional development funds, for example, is accessible. Information on direct tax payments to local budgets is traceable from the Monthly Local Budget Implementation reports; however, flows from the centralized budget to local budgets are not broken down (EITI Secretariat, 2018).

The current Fiscal Concept (2017) lists protection of investors, stimulation of economic growth and improvement of investment climate among the priorities of the fiscal policy for the period 2017–2020. Companies, however, note that the government has been increasing the number of non-tax social payments (for the development and maintenance of local infrastructure) and ecological payments (pollution charges and payments for stump disposal, for example) since 2012, which creates uncertainty for the mining companies.

Kyrgyzstan lost its EITI compliance status in 2017. The EITI Board listed challenges on indicators related to the coverage of social payments, the arrangements of state-owned companies, the reliability of the data, the government's engagement and the governance of the EITI process as the reasons for the suspension (EITI, 2017a). At the same time, the board noted positive progress in government engagement since 2015 and awarded Kyrgyzstan with the EITI Chair's Award for Beneficial Ownership Transparency in 2017 for institutionalization of EITI and beneficial ownership

⁶ Available at <https://budget.okmot.kg>.



requirement into the Law on Subsoil. The next validation to assess Kyrgyzstan's progress is expected to happen in September 2018.

STRENGTHS

- **The Tax Code establishes a favourable fiscal regime for the mining companies.** Revenues are generated through a mix of mechanisms (taxes, royalties, fees, levies), the tax rates for which are seen as fair. The profit tax (like the corporate income tax rate) is set at 10 per cent.
- **Revenue-generation schemes allow for the redistribution of revenues from mining to the local budgets.** Apart from the Land Use Tax, Property Tax and Special Funds Tax, local budgets receive non-tax payments, including the retention of licensing fees, regional development funds, and support to the social infrastructure, among other contributions. Other tax and non-tax payments are accumulated in the central budget.
- **Open and transparent data on tax and royalty flows is provided.** The Open Budget Portal publishes information about payments of all legal parties to the state budget. Kyrgyzstan scored 55 out of 100 in the Open Budget Survey, which is higher than the global average score of 42. Kyrgyzstan has over 10 years of experience in EITI implementation.

GAPS

- **Government capacity to calculate and manage the tax regime is limited.** There is a significant amount of other taxes and fees payable to the government not regulated by the general tax regime. Non-tax payments, such as the retention of licence fees and deductions for the development and maintenance of local infrastructure are believed to be similar to taxes. The government frequently amends the fiscal rules with flaws in tax administration and acknowledges a lack of capacity to evaluate the potential of tender deposits to increase investment attractiveness of the sector.
- **The tax regime is unpredictable.** Companies complain about a prolonged increase in the number and rates of taxes since 2012, and a lack of explanations on tax administration, which contributes to uncertainty and corruption risks. Business representatives are critical of some mining-related, non-tax rates for fees such as those related to the environment, licence-retention fees and a proposed fee for the export of concentrates.
- **There is a lack of clear linkages between the national development strategies and lawmaking.** As an example, although the Fiscal Concept 2018–2020 prioritizes improvement of the fiscal regime, in reality the government proposed numerous amendments, including the new draft of the Tax Code in 2017, without substantial explanation and dialogue with the interested parties.
- **The government's policy toward the management and auditing of state-owned enterprises and mining-related funds should be strengthened.** According to research by NRG1 and an EITI validation exercise, state enterprises in the mining sector are inefficient, and there is little or no public information available about the audits of state enterprises and funds built through contributions from the mining companies (such as the Fund for Nature Preservation, the Special Funds of the government bodies, the Kumtor Fund for the Development of Issyk-Kul Region and the Kumtor Oncological Fund). The government must evaluate options and decide on the benefits or costs of either increasing the efficiency of these institutions or privatizing them.
- **There is no clear scheme to balance volatility in commodity prices.** There is no identifiable process to optimize resource levy revenues during high price periods or help to minimize the need for entities to reduce or end production in low price periods.



SOCIOECONOMIC BENEFIT OPTIMIZATION

The third pillar of the MPF examines how domestic laws and policies promote the conversion of extracted natural capital into human capital so that the socioeconomic benefits of mining are optimized for local, regional and national stakeholders. The policy recommendations under this theme include:

- Integrating the mining sector into community, regional and national fabrics and strategies, for example by making socioeconomic planning a part of the permitting process and by ensuring consultations with affected stakeholders take place at various stages of the mining cycle.
- Working collaboratively with governments to ensure that mining activities consider and support education and community health services.
- Ensuring high standards of occupational health and safety.
- Optimizing employment and business opportunities at and around the mine site with an objective of ensuring economic growth beyond the life of the mine.
- Addressing potential security issues.
- Considering the respect of human rights, Indigenous people and cultural heritage through norms that are aligned with international laws and standards.

KEY LAWS AND POLICIES

- Labour Code (2004)
- Law on Environmental Expertise (1999)
- Law on Protection and Use of Historical and Cultural Heritage (1999)
- Law on Agreements on Sharing of Production Resulting from Development of Mineral Resources (2002)
- Law on Subsoil (2012)
- Law on Industrial Safety of Hazardous Production Facilities (2016)
- Regulation on the Procedure and Conditions for Holding a Tender for the Right to Use Subsoil (2012)
- Regulation on State Inspectorate for Environmental and Technical Safety (2012)
- Regulation on the Procedure for Conducting Environmental Impact Assessment (2015)
- Typical Regulation on the Procedure to Form Regional Development Funds (2014).

INTEGRATION OF COMMUNITY, REGIONAL AND NATIONAL ISSUES

In the current Kyrgyz mining context, socioeconomic benefit optimization is largely understood as socioeconomic assistance to local communities on behalf of mining entities. After more than a decade of conflicts in mining areas, the government undertook a number of measures directed at the formalization and optimization of this assistance. This included the “social package” agreements in the 2012 Law on Subsoil and the promotion of “regional development funds” as a mechanism for providing socioeconomic benefits.

Article 30-1 of the Law on Subsoil stipulates that, at the stage of exploration and development, mineral rights holders of deposits of national importance shall reach an agreement with the relevant administrative territorial unit to develop the social package. The social package agreement shall be executed on the basis of a “program of socioeconomic development of the local community” to be prepared by the relevant administrative territorial unit. The social package should include a program



of investing in the improvement of social and household conditions of the local community. Such investment may include professional development, employment of local population support in building infrastructure and other support.

The Typical Regulation on the Procedure to Form Regional Development Funds (2014) stipulates that individual entrepreneurs and legal entities holding development licences (with an exception for those holding rights for coal, contracting materials or water) shall contribute on a monthly basis 2 per cent of the proceeds from the sale of mineral resources before the deduction of indirect taxes to the regional development funds. These funds shall finance local initiatives directed at socioeconomic development of local communities, and may include creating business opportunities and jobs, the maintenance of infrastructure or the provision of microcredit. From 2014 to 2017, according to a representative from the Ministry of Economy, 40 regional development funds were created throughout Kyrgyzstan in order to redistribute revenues received from mining between the oblast, rayon and *aiyl aimak* (community) levels.

In addition to these relatively new requirements, the Law on Environmental Expertise (1999) and the Regulation on the Procedure for Conducting Environmental Impact Assessment (2015) require that mining companies include socioeconomic impacts in the impact assessment process. The latter regulation includes numerous references to the requirement to describe impacts on socioeconomics, including Annex 5, which requires analysis of economic conditions, demographics, public health, and the historical and cultural value of territory to be affected. As with other environmental areas of the process, Annex 10 requires that the results of the impact assessment be used to develop measures that prevent, minimize or compensate for adverse impacts and improve socioeconomic conditions.

Regional development funds were originally used to optimize benefits from mining for regions where the mining sites are located, but stakeholders consulted widely agree that the scope of many such funds is too broad and creates unrealistic expectations on mining companies. In addition, the past mismanagement of funds has created suspicion that regional development funds should be transparent, which is mentioned in the socioeconomic impact assessment document for a mine in the Talas Oblast (Alyans Altyn, 2016). Previous experience with the Kumtor mine reveals suspicion about how regional development funds are used, and many feel these funds are susceptible to corruption (Radio Azattyk, 2016).

Socioeconomic planning is subjected to review during the process of environmental expertise, also called “environmental review” and the equivalent of an EIA. However, interviews with state agencies and civil society indicate that the review process focuses more on technical and environmental aspects. Other government agencies, such as the Ministry of Health, explain that they have been brought in to consider mining projects, but usually only to deal with specific grievances after a project starts, not in the original permitting process.

EDUCATION AS A NATIONAL PRIORITY

There are no specific legislative or policy requirements for mining companies related to education. The government does not require mining companies to participate in the effort of achieving adequate educational levels, physical infrastructure and human resources. Regional development funds and the social package agreements do not have specific requirements setting education as a priority area for funding.

In a 2016 analysis of local content opportunities and challenges for the mining sector, GIZ listed a lack of skilled or qualified specialists as one of the top three challenges to small and medium-sized enterprises being able to participate more actively in local procurement activities. The same report



also echoes stakeholder feedback, stating that there is a relative lack of business skills in rural areas where many mining projects are to be developed (GIZ, 2016).

Sector specialists and mining companies state that there is a shortage of skilled and educated professionals with technical skills for the industry. While this situation had gradually improved since the early 2000s when such skills were absent, the deficits can be felt in companies who cannot find sufficient workers with practical knowledge and skills, as well as in state agencies that require specialists to conduct permitting and other tasks related to issuing licences and regular reporting (Ministry of Economy, 2014).

COMMUNITY AND OCCUPATIONAL HEALTH

As explained above, the Law on Environmental Expertise (1999) and the Regulation on the Procedure for Conducting Environmental Impact Assessment (2015) require that mining companies include socioeconomic impacts, which includes references to potential impacts on public health. In practice, as with overall socioeconomic analysis, there is variation in how much detail the assessments go into regarding community health.

Aspects of community health may be addressed in a social package or regional development fund, but this is not mandated and depends on the context of those in the planning process for such initiatives.

Key legislation for occupational health includes the Labour Code (2004), Law on Subsoil, and the Regulation on State Inspectorate for Environmental and Technical Safety (2012). Pursuant to Article 27 of the latter, SCIESU has the right to suspend and, if the issue is not rectified, terminate a mining licence if the licence holder's activities are in violation of industrial safety regulations or if the licence holder applies technology that endangers the health and safety of employees or the general public.

Like other legislation in the areas of mining and environmental protection, compliance with industrial safety standards is variable due to complex laws, a lack of human and financial resources, and an insufficient division of powers of state bodies (Ministry of Economy, 2014). Representatives of the State Inspectorate for Ecology and Technical Safety report that they do audit businesses for compliance with health and safety regulations, but that visits are limited to once a year, and there is limited private sector monitoring that generates comparable reports to assess compliance with safety standards. Some companies, given approximately two weeks notice prior to visits, are reportedly able to borrow safety equipment before annual checks.

EMPLOYMENT AND BUSINESS DEVELOPMENT OPPORTUNITIES

In the Law on Subsoil, there are no local content provisions that require specific employment or business opportunities. Such elements may be included in investment, concession and production sharing agreements (World Bank, 2014). The Law on Agreements on Sharing of Production Resulting from Development of Mineral Resources (2002) obliges companies to hire Kyrgyz nationals as at least 80 per cent of staff, but no examples were identified. Kumtor states on its website that it employs 97 per cent Kyrgyz nationals and that this number is increasing as foreign managers are replaced by national employees (Kumtor, 2018). Such reporting is voluntary.

Also, within legislation that requires socioeconomic impacts to be included in the overall impact assessment permitting process, there are no specific requirements related to optimizing local employment. A review of impact assessments has not identified any particular emphasis on employment or business, aside from general statements such as seeking “maximum employment of the KR citizens.”



Permitting related to tenders, as set by the Regulation on the Procedure and Conditions for Holding a Tender for the Right to Use Subsoil (2012), requires the ratio of national and foreign workers, but no minimums are set. Social packages reviewed do not include such elements, suggesting that there is no consistent practice or expectation to include such information in the tender process.

In 2016, GIZ conducted a study to provide an overview of achievements and challenges for local content development in the mining sector. One finding is that even though tender announcements state that companies must purchase goods and services locally where they are of equivalent quality and pricing of those that can be purchased internationally, this is not backed by specific legislation (GIZ, 2016). The study also suggests that the level of scrutiny on local employment can vary and may be influenced by how local procurement is communicated as an overall impact or benefit (GIZ, 2016).

Similar to the 80 per cent requirement for employment of Kyrgyz citizens, the Law on Agreements on Sharing of Production Resulting from Development of Mineral Resources (2002) also states that local orders for equipment, hardware and materials make up at least 50 per cent of all orders. Again, no examples of production sharing agreements (PSAs) implemented under Law were identified.

A draft study completed by the Ministry of Economy cited a lack of a local content strategy as one reason for conflict between mining companies and local communities. It supports the development of local content initiatives, but also warns that such efforts need to consider the country's obligations to the World Trade Organization for competitive markets (Ministry of Economy, 2014).

SECURITY

Conflict between mining companies and mine-adjacent residents has been a recurring issue in Kyrgyzstan. Numerous publications have sought to deal with the potential for conflict over natural resources.

Despite this context, there is no consistently applied or formal approach to dealing with security concerns in the permitting process. There is little evidence that the potential for conflict is matched with specific mitigation measures, and there are no examples of companies adopting the Voluntary Principles on Security and Human Rights.

HUMAN RIGHTS, INDIGENOUS PEOPLE AND CULTURAL HERITAGE

Kyrgyzstan has ratified a series of international human rights treaties, a list of which is included above in the section on International Commitments Relating to Human Rights. As with other socioeconomic issues, impacts related to cultural heritage are included in the Law on Environmental Expertise (1999) and Regulation on the Procedure for Conducting Environmental Impact Assessment (2015). There are no Indigenous Peoples (as defined by the characteristics listed in the IFC Performance Standards) present in Kyrgyzstan.

STRENGTHS

- **The importance of socioeconomic issues is acknowledged by all.** Numerous reports have explored the dynamic between communities and mining companies. All interviewed stakeholders have noted that this is an essential aspect of mining performance that companies need to establish from the earliest stages.
- **Socioeconomic assessment is partly integrated into the EIA process.** Environmental permitting has formal requirements to integrate the socioeconomic situation into the overall environmental baseline and impact analysis.



- **Socioeconomic planning is required in the Law on Subsoil (2012) within the “social package” framework.** Due to conflicts between communities and mining companies, the Law on Subsoil introduced requirements for a social package as a means to demonstrate benefits to nearby communities.
- **Regional development funds focus on local infrastructure development.** The use of regional development funds, like the “social package,” has focused socioeconomic benefits and given more control over benefits to authorities at the local level.

GAPS

- **Environmental and socioeconomic assessments are not widely understood as an integrated concept.** A review of impact assessments shows a gap in understanding the linkages between environment and social aspects.
- **EIAs do not require a plan of measures to mitigate socioeconomic impacts.** Despite requirements to include socioeconomic impacts in the permitting process, there are few projects that have socioeconomic mitigation plans.
- **Requirements for the “social package” are not specific.** Stakeholders describe confusion over what has to be included in social packages and concern that the determination of the amount is largely ad hoc. Few examples are publicly available.
- **Impact assessment legislation relating to socioeconomic aspects is overly general, and there is limited guidance on how to develop formal management plans on socioeconomic topics or how often such plans are reviewed after a permit is received.** A review of current impact assessments and interviews with mining companies indicates that socioeconomic assistance is often not directly connected to the results of the socioeconomic impact assessment and mitigation plans generated in the EIA process. There are few available examples where mining activity has been implemented without substantial community protest, and violence and vandalism are reoccurring problems even for companies that have conducted impact assessments and made efforts to support local development.
- **The social package is only required for projects of “national importance.”** This creates confusion for smaller projects, as there is insufficient guidance for how such projects fulfill community expectations. The legislation is not specific regarding other aspects such as the format of negotiations of social package agreements, the amount and goals of the social package, accessibility of information and the administrative level of regulation the agreements. Absence of guidance leads to variations in company responsibilities, not to mention the aspect of consistency and enforceability of governmental strategies aiming at integration of the mining sector into communal fabrics.
- **The local content strategy is underdeveloped.** Some NGOs and donors have looked more critically at improving the environment for increased employment and procurement. The relevant legislation is general, and few companies are required to demonstrate any planning in the area of local content.

ENVIRONMENTAL MANAGEMENT

The environmental management section of the MPF recognizes the importance of ecosystem management to any society seeking to become more sustainable. The themes covered under this pillar include:

- Management of water resources, surface and groundwater, guaranteeing the quality and quantity of mining effluents discharged to the environment.
- Avoiding and minimizing potential adverse effects to biodiversity through different actions and measures.



- Managing mine wastes by creating facilities, commissioning reviews by experts and preparing reports to submit to the government.
- The development and implementation of an emergency preparedness program prior to the commencement of operations, updating this program during the life of the mine to meet best practice standards.

KEY LAWS AND POLICIES

- Water Code (2005)
- Forest Code (1999)
- Law on Water (1994)
- Law on Ecological Expertise (1999)
- Law on Environmental Protection (1999)
- Law on Production and Consumption Waste (2001)
- Law on Tailings and Mining Dumps (2001)
- Law on General Technical Regulation on Ensuring Environmental Safety (2009)
- Regulation on the Procedure for Conducting Environmental Impact Assessment in the Kyrgyz Republic (2015).

At the highest level, Article 48 of the constitution establishes the right to an environment favourable for a healthy life. The same article also sets out the right to compensation for any damage to health or property resulting from activities related to the use of nature.

The Law on Ecological Expertise (1999) regulates the relationship between the environment and the potentially negative impact of economic activities like mining. It states that it complements the constitution and Law on Environmental Protection (1999).

Another key document is the Regulation on the Procedure for Conducting Environmental Impact Assessment in the Kyrgyz Republic (2015), which establishes the procedures for impact assessment with the goal of preventing or mitigating impacts on the environment. This regulation is subject to the Law on General Technical Regulation on Ensuring Environmental Safety (2009), which determines the permissible levels of impact on the environment. Annex 2 to this regulation also outlines the degree of negative impact through hazard categories.

The environment has been a frequent issue noted in surveys about the mining sector and is often linked to community opposition. With a large number of subsoil use licences, some question whether the State Agency for Environmental Protection has the human resources to thoroughly examine impact assessment documentation. In some cases, environmental protection is merely the practice of payments from companies to compensate for emissions and excess dumping (Natural Resources Governance Institute, 2017).

The 2009 Environmental Performance Review noted that a new Environmental Code had been adopted by the national legislature (the *Jogorku Kenesh*). This legislation was intended to provide more detailed regulation and to strengthen legal frameworks for planning for environmental protection, impact assessment, permitting and audits, public access to information, environmental quality standards and monitoring (UNECE, 2009). However, ultimately the legislation was never finalized, and improvements to environmental legislation are still needed. The present draft of the Environmental Code is being developed in consultation with stakeholders and is expected to be ready for consideration at the end of 2018.



Current shortcomings in environmental regulation are linked to the fact that environmental issues are not considered within the context of an integrated ecosystem; instead, they are viewed as individual objects (i.e., land, water and/or forests). Under this system, the protection of nature is reduced to payments for environmental pollution, i.e., the “polluter pays” principle. Payments for environmental contamination are transferred to special accounts of state territorial funds for nature conservation and the development of the forest industry. In reality, the uses of these payments are not clear and the process would benefit from a legislated mechanism to determine damage to the environment (Ministry of Economy, 2013). In some cases, there has been a trend in environmental inspectors seeing enforcement as a means of compensating for limited funding for environmental authorities. The trend is seen as having a distorting effect on the assurance system and to be eroding the self-confidence and public credibility of enforcement officers (UNECE, 2009).

The payment of money into environmental funds has been the mechanism for resolving disputes between the government and Centerra Gold Inc, the owner of Kumtor Gold Company CJSC. The most recent resolution was in September 2017. In exchange for the government dropping a USD 100 million lawsuit, the company agreed to a one-off payment of USD 50 million into a government-administered environmental development fund and increased annual “environmental payments” from USD 310,000 to almost USD 3 million. In addition, the deal included USD 10 million to upgrade the country’s main cancer treatment hospital and an agreement to move the project’s land reclamation fund from a financial institution in the United Kingdom to a suitable financial institution within the Kyrgyzstan and “accelerate” annual payments of USD 6 million into the fund until it reaches the target of USD 69 million (Eurasianet, 2017).

WATER MANAGEMENT

The Water Code (2005) is the main regulation on protection and development of water resources. It builds on the Law on Water (1994), which seeks to avoid negative environmental impacts on water and includes Article 53, which is specifically related to drilling and other mining operations that require operators to take measures to protect ground water.

The Regulation on the Procedure for Conducting Environmental Impact Assessment in the Kyrgyz Republic (2015) includes Annex 5, which details the procedures for assessing the existing state of the environment. It requires assessing the existing state of surface and groundwater, a description of why water is to be used and existing levels of pollution. Annex 6 outlines requirements related to the source and types of impacts related to discharge, water usage and wastewater. Annex 9 requires a project-related analysis that takes into consideration construction, operation and decommissioning of any planned activities.

Kyrgyzstan has ratified the Convention on Environmental Impact Assessment in a Transboundary Context (2001), also referred to as the Espoo Convention. There was a pilot project to establish ties between Kazakhstan and Kyrgyzstan in 2006, but no other reported projects since the pilot.

POTENTIAL EFFECTS ON BIODIVERSITY

There are no specific references to biodiversity in the core laws related to the environment. Annex 9 of the Regulation on the Procedure for Conducting Environmental Impact Assessment in the Kyrgyz Republic (2015) does, however, require an impact assessment to assess changes to the habitat of animals and changes to animal species.

There are also no specific requirements to avoid or minimize impact on biodiversity through the implementation of management programs or to address this in the mining cycle. Such impacts are



grouped together with broader requirements related to impact management during the mining cycle. Similarly, there is no requirement on reporting to the public in relation to biodiversity, but this should be included with other aspects of the environment to be disclosed to the public under international conventions and laws described above in the Section on Legal and Policy Framework.

Biodiversity is one area that was addressed in the draft Environmental Code. It sought to clarify that the government agencies responsible for environmental protection would also oversee laws related to the conservation of biodiversity, including the organization of monitoring of biodiversity and ecosystems. Article 90 of the same draft code outlined the responsibilities for: i) determining the limits on the natural environment to avoid the destruction of ecological systems and ii) setting biodiversity indicators.

Article 22 of the Forest Code (1999) has provisions for the conservation of biodiversity, and Article 64 deals with the preservation of biodiversity in forests, stating that such biodiversity is the property of the state.

The 2009 Environmental Performance Review of the Kyrgyz Republic reports that funding for biodiversity plans at the national level has been limited, causing national plans meant to improve biodiversity to be left incompletely implemented (UNECE, 2009). Kumtor's latest Biodiversity Management Plan, the only such management plan identified and understood to be voluntary, explains that the State Agency for Environmental Protection and Forestry was expected to update its National Report on Biodiversity in 2013 (Kumtor, 2012). However, this report was not available for review.

Mining is particularly important for biodiversity in Kyrgyzstan. Even though the severe conditions of high-mountain ecosystems host a small number of species—some of which are protected and endangered, such as the snow leopard—their uniqueness means that any loss of such species is more significant (Independent Environmental Expertise, 2008).

A USAID-funded assessment of biodiversity found an overall lack of safeguards for biodiversity in both the hydropower and mining sectors. It noted a lack of strategic environmental assessments, as well as a lack of biodiversity and ecosystem concerns in local development plans, which are found to be more focused on economic considerations than the environment (USAID, 2013).

WASTE MANAGEMENT

The key piece of national legislation on waste management is the Law on Production and Consumption of Waste (2001). The law regulates aspects arising from the formation, collection, storage, use, disposal and transportation of consumer and industrial waste. It includes radioactive waste, emissions into the atmosphere and any discharge into waterbodies.

As it relates to tailings waste, there is an additional Law on Tailings and Mining Dumps (2001). This law builds on general provisions for waste and sets out roles, responsibilities and financing for the management of any tailings and other mining waste. That said, there is no requirement in the legislation for companies to design, operate and maintain mine waste structures to internationally recognized standards and practices. There is also no requirement in the legislation related to independent expert reviews when there are changes in design of waste management infrastructure.

There is no requirement related to internationally recognized standards for mine waste.



EMERGENCY PREPAREDNESS

The Regulation on the Procedure for Conducting Environmental Impact Assessment in the Kyrgyz Republic (2015) explains that an impact assessment must determine the sources of all possible emergency situations throughout the construction, operation and closure of any facility. Annex 11 of that regulation explains that the conclusions of any impact assessment must include the measures needed to prevent or minimize emergencies and the response to them. This builds on aspects of the Law on General Technical Regulation on Ensuring Environmental Safety (2009), which stipulates that activities must use equipment, design techniques and other technological processes to reduce both impact and the possibility of emergencies.

Plans summarizing the measures needed to prevent or minimize emergencies are said to be updated on a regular basis.

STRENGTHS

- **The core topics of water, waste, biodiversity and emergency preparedness are covered in existing legislation.** While the term “biodiversity” is not widely used, related topics on flora and fauna are covered and require consideration under existing legislation.
- **Legislation is in place requiring EIAs, including requirements for developing measures to mitigate adverse impacts.** All mining activities are subject to the EIA process; however, stakeholders report that there is variability in the level of detail in this permitting requirement.
- **There is broad awareness among authorities of the importance of environmental management, including aspects of emergency preparedness, which is regularly monitored.** Environmental legislation and authorities charged with implementing the requirements of the law demonstrate serious consideration of the environmental impacts of mining. Linked to the first gap in Section One, additional efforts are needed to help communities and stakeholders understand the legislation and how it is designed to protect the physical and socioeconomic environment.

GAPS

- **Legislation is seen as confusing for companies, with perceived contradictions and variability in the application of standards.** Interviews with private sector companies illustrate that interpreting existing legislation is subject to confusion. A revised approach would concentrate less on the environmental aspects of specific objects, but rather consider ecosystems as a whole. The draft Environmental Code sought to do this but has not been passed by the legislature.
- **Legislation for environmental monitoring is outdated, causing challenges for regulators and a need for instructions on approaches for specific industries (i.e., mining).** Monitors report having difficulty using Soviet-era standards.
- **There is a lack of evidence that companies monitor themselves.** With a few exceptions, there is very limited information or environmental reporting available, and there are no detailed instructions for reporting in existing legislation. Authorities state that government has the responsibility to monitor sites regularly, but that resources do not allow for sufficient monitoring of environmental changes.
- **Payments for environmental contamination are paid to special accounts with insufficient legislation on how funds are used.** Legislation should be clear in demonstrating how payments are used to repair damage to the environment.



POST-MINING TRANSITION

This pillar of the Mining Policy Framework establishes the need to ensure an organized and planned post-operation transition. Adequate measures and plans required to guarantee this transition need to be taken into account and developed throughout the life cycle of the mining operation. Specifically, this section of the MPF relates to:

- Ensuring that mining companies' closure plans are of a high standard and updated on a regular basis.
- Developing financial assurance mechanisms for mine closure.
- Taking a leading role in exploring options for orphaned and abandoned mines within the state's jurisdiction.

KEY LAWS AND POLICIES

- Water Code (2005)
- Law on Water (1994)
- Law on Ecological Expertise (1999)
- Law on Environmental Protection (1999)
- Law on Production and Consumption Waste (2001)
- Law on Tailings and Mining Dumps (2001)
- Law on Subsoil (2012)
- Regulation on the Procedure for Conducting Environmental Impact Assessment in the Kyrgyz Republic (2015)
- Regulation on Reclamation of Lands Disturbed in the Process of Subsoil Use (2017).

HIGH-QUALITY AND UP-TO-DATE MINING CLOSURE PLANS

Key aspects of mining closure legislation are included in the Law on Subsoil (2012). Article 47 links closure with the initial engineering design and the cost of reclamation funds that are to accumulate from the start of exploration or mining. These funds are to be kept in Kyrgyz banks and not to be spent for other purposes. In cases of bankruptcy, the reclamation fund resources are to be remitted to the account of the land owner for mine reclamation purposes only.

These requirements are further supported by the Regulation on Reclamation of Lands Disturbed in the Process of Subsoil Use (2017) and the Law on Environmental Protection (1999), in which Article 6 includes a requirement for compensation for environmental damage and implementation of rehabilitation measures of damaged environment.

In practice, there is limited experience in mine closure in Kyrgyzstan. As with the other Soviet-era GOST standards, these outdated regulations are used for aspects of topsoil storage and revegetation, but GOST laws are no longer legally binding. Overall, there is a lack of detailed instructions and guidelines on how to develop a closure plan and how to establish financial assurance for closure (Faizuldayeva, 2016). According to one environmental consultant, this has led to situations in which tailings facilities are not capped

In addition to the challenge of insufficient instructions, closure is affected by the overall issue of inconsistent environmental monitoring. In practice, company self-monitoring and reporting on the environment need to be improved. Facility-specific information for all aspects of environmental significance should be publicly available (UNECE, 2009).



While the Law on Environmental Expertise (1999) lists the need for integrated plans, including drafts of ecological rehabilitation of territories and remediation, there is no specific requirement for a closure plan.

Kyrgyzstan has not required any adherence to international standards such as the IFC Performance Standards or closure requirements of the International Council on Mining and Metals (ICMM).

FINANCIAL ASSURANCE MECHANISMS FOR MINE CLOSURE

As stated above, financial assurance is listed in the Law on Subsoil (2012). Yet experience is limited, and practice suggests that the provision is inadequate for protecting against possible environmental risks associated with poor or non-existent mine closure procedures. This also creates financial risks for responsible mining companies who are obliged to provide top-up financing (Faizuldayeva, 2016).

LEADERSHIP ON ORPHANED AND ABANDONED MINES

Kyrgyzstan has extensive legacy issues, primarily linked to uranium waste. One site, Mailuu Suu, in the southern part of the country, has been in use since 1945 and handled local ore production, as well as ore from Bulgaria, China and Czechoslovakia. When the facility shut in 1968, two mills, eight mining waste rock piles and 23 tailings ponds were left. These pose considerable hazard to the environment through the risk of landslides, flooding, damaged drainage systems and insufficiently restricted sites that are being used for pasture (UNECE, 2009).

In total, there are over 60 radioactive sites—36 tailings sites and 25 uranium dump sites—located throughout the country (UNECE, 2009). With support from international organizations such as the Organization for Security and Co-operation in Europe (OSCE) and UNDP, the Ministry for Emergency Situations is working to rehabilitate these sites. While the ministry deals primarily with legacy issues, the State Inspectorate for Ecological and Technical Safety (SIETS) deals with current sites.

The EBRD and the EU have initiated an Environmental Remediation Account for Central Asia. The resources of this account are intended to address the legacy of uranium mining in Kyrgyzstan, Tajikistan and Uzbekistan (EBRD, 2015b). There was no available information to suggest when this money will be distributed.

STRENGTHS

- **The Law on Subsoil links closure with the initial engineering design.** This legislation provides the basis for reclamation of land from mineral exploration. However, the overall level of detail is not considered sufficient for overall post-mining transition and closure.
- **Closure plans are a formal part of the impact assessment process.** Interviews and a review of impact assessments demonstrate that closure needs are considered in the permitting process. However, such requirements are not specific, and additional details are needed.
- **Legacy issues have been identified, and government is working to mitigate negative impacts.** The Ministry of Emergency Preparedness, with support from international organizations, has sought to address the legacy issues related to uranium.

GAPS

- **Current legislation is not specific enough regarding mine closure.** Legislation nominally deals with reclamation, but the emphasis of the law is about restoring land and territory, not dealing with the management of specific infrastructure related to mining, such as tailings facilities and waste dumps.



- **There is limited experience in implementing closure.** With a history of legacy site issues and no modern experience with closure beyond the anticipated closure of Kumtor in 2026, there is limited government or technical experience in managing the impacts of mine closure.
- **The implementation of financial assurance procedures is unclear.** Legislation outlines expectations for financial assurance, but companies express concern with how funds are to be set up and managed.

ARTISANAL AND SMALL-SCALE MINING

Artisanal and small-scale mining (ASM) is the sixth thematic area of the MPF. With regards to ASM, the MPF aims to enhance the health, safety and quality of life of those miners working in the sector informally and outside the legal framework. It also seeks to enhance the contribution of the ASM sector to sustainable development. Policy recommendations within the ASM pillar focus on the following:

- Integrating ASM into the formal legal system through appropriate legal frameworks, technical support and formalization strategies.
- Integrating ASM into the formal economic system through the promotion of savings and investment in the sector, appropriate and transparent revenue policies, certification programs and collaboration with larger mines.
- A reduction in the social and environmental impacts of ASM operations through the provision of technical training, the adherence to minimal health and safety standards, the elimination of child labour, the promotion of the role and security of women in ASM, and the implementation of rural development and job creation policies to promote alternative livelihoods.

KEY LAWS AND POLICIES

- Law on Subsoil (2012)
- Regulation on the Implementation of Individual Prospecting for Placer Gold Mining on the territory of the Kyrgyz Republic (2015).

INTEGRATION OF INFORMAL ASM INTO LEGAL SYSTEM

ASM represents both a challenge and an opportunity for Kyrgyzstan. It is difficult to estimate the scope of ASM. Studies conducted 15 years ago estimated the number at 5,500 people located in Batken, Chatkarak and Naryn (Appel, 2003). The number is assumed to remain relatively stable since the practice is tightly controlled. There is no reported growth in the activities; however, no official statistics were available. It is unclear how much revenue is lost through illegal mining and what should be done with the informal part of the sector.

Artisanal miners are legally recognized in Article 29 of the Law on Subsoil (2012). This states that individuals may develop areas of placer mineralization not included in the cadaster. But the present regulation complicates the management of small-scale mining. In order to be registered, an individual must register with the “statistics bodies” and buy a certificate or patent. This must be followed with an annual report about the individual’s activity. The report contains brief information about annual production, yet the procedure for reporting is unclear.

Overall, information on the sector is limited. While some believe that the practice would benefit from clear legislation, there are no identifiable efforts to formalize and track the sector. Because the topic affects relatively few people, however, it has received limited government attention.



There is no available production or sales information available. Government representatives interviewed during the in-country visit referred questions on ASM to the local authorities where the practice takes place.

INTEGRATION OF INFORMAL ASM INTO FORMAL ECONOMY

There is no evidence of programs designed to support or facilitate access to financing from individuals working in ASM.

While there is a system of collection of ASM information, as stated above, no data on production is available. It is assumed that many artisanal miners remain in the black market.

SOCIAL AND ENVIRONMENTAL IMPACTS

Although government recognizes the environmental and health impacts posed by ASM, there is no specific legal framework in place for environment and safety obligations.

STRENGTHS

- **ASM can operate through acquisition of inexpensive and accessible individual permits.** Though small, there is a system of artisanal mining that takes place. This system is not thought to be growing, but allows an estimate of 5,500 people to earn a livelihood.

GAPS

- **ASM activity is under-legislated.** Overall, the ASM system is not centralized and falls under the responsibility of local authorities with little oversight from national ministries and authorities.
- **Environmental and social impacts, as well as health and safety risks, are not integrated in the legislation.** The government recognizes environmental and health impacts posed by ASM; however, there is no specific legal framework for environment and safety obligation is in place.
- **There is little revenue collection from the sector.** Without data on ASM production, it is difficult to assess the impact or potential of the sector.
- **Current legislation does not specify conditions for child labour or women's role in the sector.** The general Labour Code prohibits child and female labour in employment with dangerous conditions, yet there is no acknowledgement of common risks related to children and women in the ASM sector.



RECOMMENDATIONS

Kyrgyzstan has demonstrated its continued commitment to improving the mining sector and balancing industrial needs with sustainable development. Past and current plans to support sustainable development seek to increase efficiency of mining through the introduction of modern technologies to lessen the sector's impact on the environment.

Government officials and companies have actively sought ways to improve legislation. Key partnerships and the active role of donors, the International Business Council and civil society, have highlighted stakeholders' interest and openness to strengthening governance of the mining sector. Yet there are many challenges, not least of which is the need to allocate limited human and financial resources appropriately. The legacy of Kumtor has played a significant role in the national economic and environmental concerns related to mining. As this project nears its completion, other stakeholders can learn from its mistakes and successes.

Improvements are possible in all six pillars of the MPF. In trying to identify key priorities areas, the team considered where other organizations and efforts have already engaged with relatively less studied topics, as well as areas in which the network of IGF partners might be able to contribute on a practical level. With this in mind, it is recommended that further efforts be made on socioeconomic benefit optimization and post-mining transition. A third aspect—artisanal and small-scale mining—was also considered, but given the comparatively small size of this sector and limited information available, we believe that this topic should be considered further in some of the recommendations related to the socioeconomic pillar.

PRIORITY AREA 1: SOCIOECONOMIC BENEFIT OPTIMIZATION

The introduction of social packages and mining's contributions to regional development funds have been positive steps. However, the agreements and financial contributions have not always generated local communities' trust in procedural fairness and transparency. Regarding socioeconomic benefits, the MPF seeks to have the socioeconomic aspects of mining integrated into the permitting process. To improve this aspect, the government should:

- Emphasize that existing environmental permitting includes the need to understand both baseline conditions and potential impacts, as well as the establishment of mitigation measures for all negative impacts for the socioeconomic environment.



- Expand consultation and public participation in environmental permitting processes beyond the mandated public hearings to include participatory baseline research and impact identification.
- Emphasize an integrated systems approach to environmental and socioeconomic issues within the permitting process. Whereas social packages have negotiated contributions to social needs, this process often has limited linkages to the impact assessment process. A systems approach uses the permitting and EIA processes to identify socioeconomic issues linked to mining's core activities (e.g., local content, land use, etc.).
- Require socioeconomic baseline studies to emphasize not only the potential positive impacts of new employment, but to also look at indirect aspects such as inflation, increased costs of housing and labour, and the way new salaried employment can affect rural economies.
- Study the socioeconomic risks and opportunities related to ASM, using this research as an opportunity to better understand the impact of mining in general, as well as how a well-regulated ASM sector could complement larger projects.

PRIORITY AREA 2: POST-MINING TRANSITION

Global experience has continuously shown that trust in the procedural process around mine closure is critical for the sector. The Soviet legacy of uranium mining in Kyrgyzstan has created a skeptical population who do not trust that the natural environment will be restored when the resources have been depleted. While it is clear that mine closure is included in key legislation, further emphasis on this aspect, particularly with regards to financial assurances to cover associated costs, is critical. To improve this aspect, the government should:

- Develop a mandatory, clear financial assurance mechanism to cover the costs of mine closure, including environmental rehabilitation and management, and a mechanism for incentivizing companies to adopt progressive or concurrent rehabilitation plans throughout the mine's life.
- Put in place stringent and enforced measures and penalties for inadequate post-mining transition and mine closure.
- Develop a formal system within the government for handling the approval of post-mining transition and mine closure plans, and adopt specific regulations, establish an authorized agency and allocate sufficient resources (human, financial and infrastructure) to ensure the effective implementation of this system.
- Invest in the training and development of government representatives in all aspects of post-mining transition, mine closure and rehabilitation, including financial assurances, and consider engaging mine closure experts on a project-by-project basis to review critical mining components.
- Address the need for periodic assessment and auditing of mine closure plans. In contexts of insufficient technical and financial resources, the use of external experts for the development of closure plans and the validation of risk assessments (especially of high-risk elements such as tailings dams) should be a legislated requirement.
- Expand consultation and public participation in the permitting process with an explicit emphasis on the procedures around post-mining transition and mine closure.



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ANNEX: LIST OF LAWS AND POLICIES REVIEWED

The following is a list of laws, regulations and policies reviewed, in chronological order:

- The **Law on Concessions and Foreign Concessionary Entities (1992)** regulates economic, organizational and legal conditions of granting concessions for the purposes of economic development.
- The **Law on Water (1994)** regulates the use and protection of water resources, prevention of environmentally harmful effects from economic activities.
- The **Law on Non-tax Payments (1994)** covers procedures related to the transfer of non-tax payments to the budget, as well as rules related to the granting of benefits to entities that provide such payments.
- The **Law on State Social Insurance (1996)** regulates the system related to state-guaranteed insurance for loss of earnings or income resulting from accidents, occupational diseases, disability and death.
- The **Land Code (1999)** regulates all land relationships, including the procedures for exercising and terminating the right to land. The code develops the market relationships between state, communal and private ownership.
- The **Law on Environmental Protection (1999)** is based on the idea that nature is the property of the country and one of the main factors of sustainable social and economic development. This law regulates the protection and efficient use of natural resources in accordance with the constitution and other laws.
- The **Law on Environmental Expertise (1999)**, also referred to as the Law On Environmental Review, regulates environmental review with the aim of protecting the population from negative ecological consequences associated with economic and other activities.
- The **Forest Code (1999)** establishes the legal basis for the rational use, protection and reproduction of forests, increasing their ecological and resource potential.
- The **Law on Protection and Use of Historical and Cultural Heritage (1999)** establishes the legal norms for the protection and use of objects of historical and cultural heritage.
- The **Law on Production and Consumption Waste (2001)** determines state policy related to waste production and consumption with the aim of preventing negative impacts on the environment and human health.
- The **Law on Tailings and Mining Dumps (2001)** aims to ensure the security of the present and future population and the environment in relation to tailings facilities and mine waste dumps.
- The **Law on Agreements on Sharing of Production Resulting from Development of Mineral Resources (2002)**, also referred to as the Production Sharing Agreement or PSA Law, establishes legal grounds for the relationships arising in the administration of domestic and foreign investments in prospecting and development of mineral deposits.
- The **Labour Code (2004)** establishes state guarantees for labour rights, favourable working conditions and the protection of the interests of workers and employers.
- The **Law on Tariffs of Insurance Payments on State Social Insurance (2004)** outlines the payment of state social insurance for national and international businesses, collective farms and entrepreneurs.



- The **Water Code (2005)** regulates the use, protection and development of water resources with the aim of providing an adequate and safe supply of water to the population, while protecting the environment.
- The **Tax Code (2008)** regulates the establishment, enforcement and collection of taxes, as well as clarifying the responsibilities for violations of requirements under the code.
- The **Law on Measures to Implement the Requirements of Norms in the Tax Code (2008)** of the Kyrgyz Republic sets out a methodology for understanding the application of the Tax Code.
- The **Law on General Technical Regulation on Ensuring Environmental Safety (2009)** defines the main provisions of regulation in environmental safety, establishing general requirements in the design and implementation of activities for the production, storage, transportation and disposal of products that can affect the environment.
- The **Law on Normative Legal Acts of the Kyrgyz Republic (2009)** defines the principles of lawmaking, including drafting, adopting, publishing laws and rules for their enforcement and interpretation. Establishes that any conflict between this and other laws shall conform to this law.
- The **Constitution (2010)** of the Kyrgyz Republic was adopted after the transfer of power in 2010. It was amended by referendum in 2016, transferring some presidential powers to the prime minister. Key elements are related to Article 33, which established the right to seek and receive information from state authorities. Article 48 establishes that all shall have the right to an environment that is favourable to life and health, the right to compensation for damage to health or property and that citizens have a responsibility to care for the environment.
- The **Law on Subsoil (2012)**, also referred to as the Mineral Resources Act, governs the relationship between the state and individuals or legal entities or other states involved in subsurface management. The law requires that all subsurface activities be based on the constitution and other regulations of the Kyrgyz Republic. It also sets out the responsibilities of state, regional and local authorities.
- The Regulation on the **Procedure for Licensing Subsoil Use (2012)**, also referred to as the Licensing Regulation, regulates the responsibilities for the implementation of state policy on subsoil use and establishes that the right to use subsurface resources arises on the basis of a licence.
- The **Regulation on the Procedure and Conditions for Holding a Tender for the Right to Use Subsoil (2012)**, also referred to as the Tender Regulation, sets the procedure for the tender process for each mineral deposit of national importance or “objects of national importance.” These are approved by the government of Kyrgyzstan and published in the media.
- The **Regulation on the Procedure and Conditions for Holding an Auction for the Right to Use Subsoil (2012)**, also referred to as the Auction Regulation, sets out the procedure for the auction process to use subsoil and the conditions for participation.
- The **Regulation on State Inspectorate for Environmental and Technical Safety (2012)** explains the role of the State Inspectorate for Ecological and Technical Safety as the state authority responsible for maintaining compliance with norms and regulations related to the health of people, flora, fauna and preventing negative impacts on them.
- The **Typical Regulation on the Procedure to Form Regional Development Funds (2014)** establishes the basis for development funds for socioeconomic development at the oblast or rayon level.
- The **Regulation on the Procedure for Conducting Environmental Impact Assessment (2015)**, also referred to as the Procedure for EIA, establishes the procedures for conducting and environmental impact assessment for proposed economic activities.



- The **Regulation on the Implementation of Individual Prospecting for Placer Gold Mining on the territory of the Kyrgyz Republic (2015)** manages the activities of individual mining of alluvial gold with a limit of not more than two cubic metres of rock per hour.
- The **Regulation on Procedure and Condition for Granting Geological Information Resources for Use (2016)** was developed in accordance with the Law on Subsoil (2012) and establishes levels of access for geological information.
- The **Law on Industrial Safety of Hazardous Production Facilities (2016)** determines the legal, economic and social basis for provision of safe operations at hazardous material production facilities. It aims to prevent accidents and ensure the readiness of legal entities to eliminate the consequences of such accidents.
- The **Regulation on the Main Directions of the Fiscal Policy of the Kyrgyz Republic for 2018–2020 (2017)**, also referred to as the Fiscal Concept, defines the purposes and conditions used for drafting the budget for the next budget year and the forecast period.
- The **Regulation on Reclamation of Lands Disturbed in the Process of Subsoil Use (2017)** determines the procedure and conditions for carrying out reclamation of land disrupted by subsoil usage. The law aims to preserve the ecological equilibrium and to restore, reproduce and improve resources for future use.



LIST OF CONSULTED STAKEHOLDERS

GOVERNMENT MINISTRIES, DEPARTMENTS AND AGENCIES

- State Committee for Industry, Energy and Subsoil Use (SCIESU) of the Kyrgyz Republic
- Ministry of Economy of the Kyrgyz Republic
- Ministry of Finance of the Kyrgyz Republic
- Investment Promotion and Protection Agency of the Kyrgyz Republic
- State Agency of Environmental Protection and Forestry (SAEPF)
- State Inspectorate for Ecological and Technical Safety (SIETS)
- Ministry of Emergency Situations of the Kyrgyz Republic
- Main Directorate on Hydrometeorology (Kyrgyzhydromet)
- Ministry of Health of the Kyrgyz Republic
- Ministry of Labour and Social Development of the Kyrgyz Republic

PRIVATE SECTOR

- Alтынken, LLC
- Alyans Altyn, LLC
- Baker Tilly Bishkek, LLC
- Chaarat ZAAV CJSC
- EcoPartner, LLC
- Eco-Solutions KG, LLC
- Intellect and Rights Law Firm
- Kalikova & Associates Law Firm
- KAZ Minerals Bozymchak, LLC
- Kumtor Gold Company CJSC
- Kyrgyzaltyn OJSC
- SRK Consulting

CIVIL SOCIETY

- Aarhus Centre, Bishkek
- Camp Alatoo
- GIZ
- Kyrgyz Mining Association
- Kyrgyzstan Extractives Industries Transparency Initiative Secretariat
- International Business Council
- Natural Resources Governance Institute
- Zoï Environment Network



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