OSCE ACADEMY in Bishkek
NUPI Norwegian Institute of International Affairs

POLICY BRIEF

#60, MAY 2020

Regulating Corporate Social Responsibility (CSR) in the Large-Scale Mining Sector of Kyrgyzstan

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EXECUTIVE SUMMARY

The recent regulation of CSR in large-scale mining in Kyrgyzstan – despite its many positive effects – presents an elusive framework of action for the mining companies. While mining entities across the world tend to apply CSR within the prism of 'risk management' rather than altruistic concerns, in Kyrgyzstan this is, in addition, linked to obscure legislation and weak enforcement. The new legislative framework does not provide specific guidelines as to how to define the scope, content, and extent of social corporate responsibility. Applied differently to each individual mining project in the absence of a general principle, CSR becomes a source of contention between the mining entities, local communities, and the central government. Often such ad hoc corporate programs are accompanied by adverse effects since they lead to a distorted development on the ground and further conflicts with communities. However, compliance to and engagement with social responsibility still offers the companies a chance to secure access to land and to continue operations amidst local protests and a volatile political and institutional environment.

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The OSCE Academy's Policy Briefs became possible with financial support from the Norwegian Ministry of Foreign Affairs via the Academy's Cooperation with the Norwegian Institute of International Affairs.

List of Abbreviations

CSR – Corporate Social Responsibility
SDG – Sustainable Development Goals
SCIESU – State Committee for Industry, Energy and Subsoil Use
EIA - Environmental Impact Assessment
CRD – Community Relations Development
CSC – Case Study Company
SIETS - State Inspection for Ecological and Technical Safety

Introduction

Since the early years of independence, the Kyrgyz government, under the advice of international financial organizations, has defined gold mining as the driving force of the economy in the post-independence era. The Kyrgyz government depends on Kumtor, the country's largest and long-serving gold mine, for over 8.6% of its revenues (Beril et al. 2020).[1] However, the industry has also attracted social criticism from local residents and non-governmental organizations. In their opposition to mining, local residents have raised different concerns, ranging from fears related to environmental risks (Wooden 2013, 2017) to distrust towards the government's ability to oversee foreign companies (Doolotkeldieva 2016), fair distribution of income from extraction (Eurasia Foundation of Central Asia 2017), and lack of transparency in the sector (Oxus 2013; Gullette 2013, 2014; Furstenberg 2015). In 2012, the combination of political instability and growing anti-mining opposition resulted in changes to corporate social responsibility (CSR) approaches in large scale mining. In this policy brief, I analyze how the government and gold mining companies framed a range of socio-political pressures as various types of risks and positioned formal CSR activities as the central strategic response to them. I then use the fieldwork data to explore preliminary thoughts of the risk and CSR nexus on local development.

Methodology

The present research project was carried out using existing data as well as novel data produced via ethnographic research. The existing data includes a politico-legal analysis of national laws and policy documents governing the mining industry, and reports produced and made publicly available by mining companies and local communities. Ethnographic study involved five site visits, semi-structured interviews with residents affected by mining, observations of mining-related local events, and interviews with government officials, mining companies and experts. Company anonymity was granted as a condition of access.

CSR practices as 'risk management' in emergent economies

Following severe violations of human rights and environmental degradation in mining sites around the world, large-scale mining became subjected to heavy criticism in the 1980s as an industry causing destruction and dispossession in the poor South so that lifestyles can be sustained in wealthy North (Bridge 2004; Moody 2007). The growing awareness of multifold impacts produced by the industry gave rise to several global initiatives directed towards incorporating ethical conduct in their work (McBarnet 2009). International financial organizations and large corporations tried to rethink and re-brand the industry in terms of 'sustainable mining' along the lines of sustainable development goals (Dashwood 2012). A central element to these initiatives is the corporate social responsibility practices (CSR) of mining

[1] Aside from Kumtor, there are eight gold mines of medium and large sizes in production (NRGI, 2017). The country has an estimated 1,349 active extractive licenses (IGF 2018).

companies. The World Business Council for Sustainable Development qualifies CSR as "the continuing commitment by business to contribute to economic development while improving the quality of life of the workforce and their families as well as of the community and society at large."[2] Guided by such a broad conceptual framework, corporations choose to emphasize different aspects of their CSR on the ground: environmental and human rights stewardship, championship in labor conditions, ethical business, promotion of poverty alleviation, community welfare, etc.[3] In the mining industry, they prioritize community relations and development (CRD) functions under the rubric of 'social license to operate.'

However, many critics have demonstrated how CSR became a hypocritical mechanism allowing transnational corporations to reduce costs by superficially meeting some of the communities' needs, silence their grievances, and depoliticize opponents (Madeley 1999; Coleman 2018; Walker-Said 2015; Christian Aid 2004). Another point of contention in the literature is that CSR may not be associated so much with ethical and moral stands but rather with the core business interests. In other words, CSR makes a business case "because without this function, mining companies would be unable to acquire or maintain access to land and other key resources."[4] This later consideration leads some firms to associate CSR with 'risk management' rather than commitment to vulnerable communities, as operations in developing countries might entail additional operational and reputational risks (Frederiksen 2018; O'Faircheallaigh 2010; Owen and Kemp 2013; Trebeck 2008). In Kyrgyzstan, there is a dearth of literature exploring this issue. In their study of a mining conflict in Batken province, Nogoibaeva et al. found that the social license to operate has a local equivalent under the term 'bata beruu', which can be translated as 'giving someone a blessing'. They revealed the importance of the bata beruu process for the local communities as it would mean that the miners take the community seriously.[5]

'Seeing' CSR through the prism of risk management bears concrete implications not only for the national mining governance but also for sustainable development. By sustainable development in extractive industry, the authors imply not only the well-being of populations, usually identified in non-material and socio-economic conditions (Tianen et al 2014), but also inclusive participatory processes (Newell 2005) and strong accountability (Kemp et al., 2010). As critics point, the association of social responsibility with risk management orients corporate activities along a short-term perspective and can therefore harm the sustainable development goals. Owen and Kemp (2012) and Constanza (2016) note that guided by the motivation to minimize risks and maximize benefit, mining entities may want to prioritize negotiations with power holders instead of promoting participatory decision-making processes and access of information to all. Murrey (2018) observes that extractive projects may lead to distorted development results when the nature of desired development is not discussed with local communities. These challenges are particularly salient in mining zones marked by conflict, corruption, and poverty (Franks et al. 2012). In this policy

2 Phil, Watts and Lord Holme, "Corporate Social Responsibility: Meeting Changing Expectations", World Business Council for Sustainable Development, Report N3, 1999.

3 Walker-Said, Charlotte. "Introduction: Power, Profit, and Social Trust," in *Corporate Social Responsibility? Human Rights in the New Global Economy*, eds. Charlotte Walker-Said and John D. Kelly (Chicago and London: University of Chicago Press, 2015), 1-26.

4 Kemp, Deanna and John R. Owen, "Community Relations and Mining: Core to Business but Not "Core Business," *Resources Policy* 38 (2013): 523-531.

5 Nogoibaeva, Elmira, "The Gold of Batken. Socio-Cultural Aspects of Relationships Between Local Communities and Investors in Kyrgyz Republic: Based on Fieldwork Research in Batken Province in the Sphere of Natural Resources Extraction." Bishkek, 2016.

brief, I will discuss how CSR in Kyrgyzstan became viewed as risk management not only in relation to the perceived volatile political environment but also to the regulation itself, and the implications of such construct on local development.

Enforcement of CSR policies in Kyrgyzstan

In Kyrgyzstan, as in other emergent economies, law recently came to play "an increasing role in enforcing 'voluntary' CSR policies"[6] by binding large mining companies to compulsory social policies. These changes were reflected in the new Law on Subsoil, adopted in late 2012. In this section, I will first analyze the recent innovations pertaining to CSR and specifically the norms around the 'social package' from a legal-political perspective and, second, will show the business responses on the ground.[7] Before delving into this analysis, it is worth noting that the recent enforcement of CSR was a result of long-standing internal pressure to improve the industry. Although the space constraint does not allow for elaboration here on the past political economy of natural resources, whereby informal rents benefited the elites only (Doolot and Heathershaw 2015), the rise of anti-mining protests pointed to the exclusionary nature of the industry.[8] To improve mining acceptance on the ground, the national government has adopted a series of innovations under the rubric of social license to operate: 'social package' and non-tax payments such as Regional Development Funds which are redistributed to local budgets. From 2012 on, miners are held responsible for paying attention to the needs and interests of communities affected by mining operations.

However, despite the initial intentions and their significance for the industry and for the local development, the regulation of these innovations is vague. For example, the Law on Subsoil provides only three short paragraphs to explain the social package. It says that a social package is constituted as an "agreement between a mining company and an executive body of the corresponding administrative-territorial unit" based on "a program of socio-economic development of a given territory." The obligation to have a social package applies to mining deposits of 'state significance' (large deposits) in the phase of exploration and development only. The content of the social package may include "programs of investment in socio-economic conditions of living of local communities," but also "training of workers, employment of residents, building infrastructure and other" (Article 30-1 of the Law on Subsoil). However, the legislation provides no further details, neither on the size and timeframe of social package nor on the process of negotiations between miners and local executive bodies.[9]

What becomes clear from this short framework is that the new CSR is defined as a direct

6 McBarnet, Doreen, "Introduction," in *The New Corporate Accountability: Corporate Social Responsibility and the Law*, eds. Doreen McBarnet, Aurora Voiculescu and Tom Campbell (Cambridge University Press, 2007), 31.

7 Due to the space constraints, I will not be able to extend my analysis to the entire new legislation. For the analysis of the new tax regime, see for example: Natural Resources Governance Institute (NRGI). *Improving Resource Governance in the Kyrgyz Republic: 12 Priority Issues for the Mining Sector*, 2017; Manley, D. Kyrgyz Republic Mining Tax Analyses. Natural Resource Governance Institute, 2018. For an alternative analysis of the fiscal regime in mining, see: International Business Council, *Non-Ferrous Metals Production and Processing: The Sector's Total Contribution to the Economy of the Kyrgyz Republic and the effects on it of fiscal initiatives*. Bishkek, 2018.

8 Centerra mining company operating the country's largest and long-serving gold mine Kumtor has been engaging in CRD and social policies before the new innovations. A number of junior companies has been also implementing informal charity activities, but these programs were neither systematic nor morally sound. One company, whose license was ultimately revoked from operating in Talas province, was allegedly allocating private pensions and stipends to every households.

9 The Law on Subsoil of the Kyrgyz Republic no. 160 dated 9 August 2012.

responsibility of local bodies and mining companies with limited intervention from the national government. This approach is further exemplified in the interviews I collected with various officials at the Ministry of Economy and the State Committee for Industry, Energy and Subsoil Use (SCIESU), both responsible for the mining policy at the national level. They conveyed a vision in which localized mining conflicts should be detached from the central policy and regarded exclusively as a narrow business between local communities and miners.[10] Such vision does not take into account that local communities have a weak institutional capacity to deal with mighty foreign economic actors and expertise in geology, international law and finance, to name the few. Still, to enhance the role of local bodies in the mining industry, the Law on Subsoil makes them directly responsible for granting the mining companies access to land and maintaining it (Article 9 of the Law on Subsoil). Thus, the mining policy is dependent on the successful conceptualization and enforcement by the central state agencies on the one hand, and its implementation by the local bodies on the other hand. Yet in practice, what most miners experience is that the central policy rarely travels outside of the capital and the local bodies conduct business as they see and can. In such circumstances, the social package becomes a company risk management mechanism in order to secure access to land and operations.

Another source of contention included in the new legislation concerns the source of social package. The law stresses that in their negotiations with mining entities, the local executive bodies should employ local programs of development as a basis for social packages. This was designed in order to ensure that corporate programs and state programs of development coincide and respond effectively to local challenges. And since each locality is specific, there was no need to detail the content of the social package in the national legislation.[11] Yet, in practice the social package turned out to be rather an ad hoc agreement reflecting the mixture of shareholders' and communities' interests.[12] This happens because meaningful local programs of development rarely exist; for that, a larger vision of national development and the role of mining in it is missing.[13]

One more gap is linked to the fact that the law does not differentiate the social package among different types of license holders. In other words, the national framework is indifferent to whether the miner is at the stage of exploration or production; all must contribute to social policies. But within the realities of the Kyrgyz mining industry, the entities who are at the exploration stage are not in the same position to contribute as companies who are in the production phase.[14] Again, in the words of the law designers, miners were expected to negotiate directly with the local bodies on the scope and timeline of social packages depending on the investors' type of license. But in practice the evasiveness of regulation leads to contention between companies and communities who are said to have 'unrealistic expectations' and lacking sensitivity about the different operational phases (Kotilainen et al. 2015). That is why the legislative framework, despite its enforcing character, remained elusive on the nature of CRS.[15]

Most importantly, the nature of current

10 Interviews with officials at the Ministry of Economy and the SCIESU, Bishkek.

11 Interview with one of the authors of the Law on Subsoil, Bishkek.

12 Interviews with CSR officers at case study company N1, operating in Jalal-Abad province.

13 Ministry of Economy. Medium and Long-Term Strategy of Mining Industry Development of the Kyrgyz Republic (Unpublished draft), 2014.

14 Interview with a representative of the International Business Council, Bishkek.

15 Interview with one of the authors of the Law on Subsoil, Bishkek.

agreements raises questions of whether the social packages duly reflect the needs of residents and the ways these needs are identified in the absence of official programs. Also, if CSR agreements are a result of bilateral negotiations, the institutional capacity of local bodies to negotiate and defend local interests from legal, ecological, and economic perspectives is questionable. The lack of institutional capacity on the ground may lead to weak achievements for local communities. In Chatkal valley, where several foreign investors develop gold deposits, local authorities were missing basic information about these operations and complained that the lack of transparency in the sector hinders their capacity to negotiate better terms.[16] The lack of institutional capacity may also lead to differentiated local governance and inequal development where some executive bodies fare better than others in negotiations with private actors. Finally, do local executive bodies enjoy legitimacy in the eyes of communities if elections are fraught with corruption? Do they reflect the needs and interests of all residents to ensure inclusive development, or do the interests of local elites crowd out those of vulnerable groups? In other words, who gets excluded and marginalized in the process of extraction of natural resources and distribution of rents?

Business responses on the ground

Because of the lack of specification, the recent mining regulation has inadvertently resulted in broadening of corporate responsibility's scope to the acclamation of the local population who tends to view large enterprises as auxiliary providers of state services due to the socialist past.[17] Encouraged by new legislation, the local bodies began filling up their social packages with requests to invest into roads, schools, water and electricity systems, and other costly material infrastructure. Such an enlarged definition of corporate responsibility is, obviously, not well received by miners. The International Business Council, which represents private business interests in Bishkek, heavily criticizes these innovations stating that business should not be responsible for state services.[18] Many companies share this view: if investors make their tax contributions to the local infrastructure development, they should be exempt from social package contributions which also target local infrastructure.[19] Thus, the recent regulation of CSR came to be viewed as a new source of risks since it does not contain community expectations. How to negotiate a social package that will not ruin business at an early stage of exploration and that will still convince the local bodies? Will the local community try to renegotiate the terms using gaps in the legislation at a later stage? Does the social package address the needs of all local stakeholders or will someone who is left out threaten to disrupt the operations in the future? Will the social package guarantee a secured and continuous access to land despite its effective implementation? These are the questions that junior and senior companies ask themselves in connection to the new CSR regulation.

Yet, against the background of institutional uncertainty pervasive on the national level (Ocakli et al. 2020), companies view CSR as a meaningful way to manage risks on the

16 Interviews with village administrations in Chatkal district, Jalal-Abad province. Another study revealed that companies make public only "technical descriptions of deposits." See Juha Kotilainen, Evgenia Prokhorova, Rauno Sairinen, and Heidi Tiainen, "Corporate Social Responsibility of Mining Companies in Kyrgyzstan and Tajikistan," *Resources Policy* 45 (2015): 202–209.

17 Interview with a CSR officer at a case study company N2, operating in Jalal-Abad province.

18 Interview with a representative of the International Business Council, Bishkek.

19 Interviews with a case study company N1, case study company N2, case study company N3. Mining companies operating in Kyrgyzstan, especially in the exploration phase, would like to see their social responsibilities delimited to taxpaying only.

local level. Local risks are associated with possible disruptions of operations in the forms of petitions to government to revoke licenses, road blockades, protests, attacks on company property and equipment, taking local authorities hostage, etc. The recent past has offered ample evidence of the disruptive power of both authoritarian regimes and aggrieved residents over operations (Gullette 2014; Doolot and Heathershaw 20015; Wooden 2013). As one CSR officer at a CSC N1 noted, "without a social license there is no access to land."[20] The CSR programs thus offer important tools for managing operational risks if even companies complain about their cost. This logic led other mining companies, whose operations are not legally bound by mandatory CSR, to also adopt social programs.[21]

If we turn our attention to the effects of CSR programs, it would not be surprising to hear that CSR helps to acquire community approval. The financial flows linked to social package, tax and non-tax payments are substantial, and mining communities have seen a dramatic increase in development assistance. The annual budget of Kok-Tash administration, a community of 4000 people hosting the large gold mining company Kaz Minerals Bozymchak in southern Kyrgyzstan, skyrocketed from 3 mln som in 2008 to 120 mln som in 2019.[22] The company development assistance and mining-related financial flows supersede governmental programs by 40 times. The company's social programs include skills training, giving of agricultural inputs, policies that support purchasing services and goods from local businesses, but mainly the employment of residents and major social infrastructure projects. In comparison, the budget of the neighboring Kok-Serek village administration, whose roads are used for company operations and whose residents suffer from dust, was 8 mln som in 2019. This is clearly a problematic distortion created by the CSR regulation that is amenable to tensions between territories in the future. From the ethnographic interviews with local authorities in Jalal-Abad and Talas districts, these tensions already pose a challenge for mining operations.

Despite this substantial development assistance, many questions arise as to the functioning of CSR as well as the impacts it causes on inclusive and equal development across the country. Which conditions explain the successes and failures of CSR programs launched by different companies? Does the quantification of development assistance, as it ends up being calculated in social packages, suffice to address the long-term socio-economic and environmental impacts from mining? While a local community might benefit from CSR policies, does the extractive industry contribute to the entire country? Finally, in general, if CSR is approached through the prism of risk management, does it privilege local and national stakeholders with significant power over ordinary citizens whose well-being was the primary concern of legislative innovations? These questions make up an important agenda both for policy and academic research in the future.

Conclusions

Since the adoption of the new CSR regulation in late 2012, experiences of mining companies in securing access to land and continued operations have varied and localized conflicts still occur. These experiences lead mining entities to develop diverse views on the effectiveness of mandatory CSR in their operations. While the majority identifies the

20 Interviews with CSR officers at case study company N1, operating in Jalal-Abad province.

21 Interview with a CEO running a small company mining coal in Naryn province.

22 In 2015, Kaz Minerals built a factory on the territory of Kok-Tash village administration, Ala-Buka district, Jalal-Abad province. Before the economic recession related to COVID-19 pandemic, when the dollar/som exchange rate was at about 1/70, the budget in 2008 was roughly $42,860 and in 2019 – $1,714,286.

stakeholder engagement as their primary concern on the ground and recognize the necessity of CRD, not everyone agrees with their legally enlarged social responsibility. However, as the ethnographic study demonstrates, the enforced CSR bears implications not only for the miners, but also for local governance and the state. The nature of CSR in the context of weak statehood and political volatility will continue being approached through the lens of risk management and will therefore impact local development in a specific way.

Recommendations

- National legislation should review the shortcomings within the CSR regulation. Particular attention should be paid to the distribution of mining benefits which currently creates significant inequalities across territorial units. If uncorrected, institutional governance of mining might produce economic mismanagement both on the local and national levels. A better management of financial flows resulting from CSR programs should be adopted in order to benefit the entire population and not only a segment of it.
- National legislation should enforce openness and transparency of CSR programs and Environmental Impact Assessments (EIA). Only a few companies currently make both their CSR and EIAs available on their websites, e.g., Kumtor, Altyn Alliance, Kaz Minerals Bozymchak, but even then their disclosure is partial.
- National legislation should consider connecting EIAs to CSR programs. The former includes a subsection on socio-economic impacts by mining. The CSR programs should reflect not only official programs of development, but also socio-economic and environmental impacts. It is critical that CSR contributes not only to the present challenges but helps communities to address impacts in the future. Without including these impacts, CSR will continue serving short-term effects and fail to address the issues of gender, age, education, health and post-mining livelihoods.
- National legislation should enforce monitoring, evaluation and control over the implementation of CSR programs. Only starting in 2019 were mining companies obliged to submit annual reports on their CSR activities.
- National legislation should enforce

institutional correspondence between the SCIESU, responsible for overseeing the implementation of CSR and mining policy, and the State Inspection for Ecological and Technical Safety (SIETS), responsible for monitoring and controlling of EIAs.

- In order to ensure that the environmental, social and economic needs and interests of local communities and ecosystems are met, the Kyrgyz government should develop a mining strategy in connection to the SDGs the country has adopted.

Acknowledgement

This research study was funded by the Norwegian Institute of International Affairs (NUPI).

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