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TRANSPARENCY
INTERNATIONAL
Cambodia

Summary

**Cambodia's Mineral Exploration
Licensing Process:**

Governance Risk Assessment

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© Cover photo: Cambodians for Resource Revenue Transparency (CRRT),
January 2015, Ratanakiri.

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About TI Cambodia

Transparency International Cambodia (TI Cambodia) is the fully-accredited National Chapter of Transparency International and was officially founded on 5 July 2010 by a number of anti-corruption activists and professionals committed to the creation of transparent and accountable Cambodia. It has since built a strong institution arduously fighting corruption and promoting integrity, transparency and accountability in the country.

We work together with individuals and institutions at all levels including government, civil society, business, media and the wider public to achieve sustainable economic development, promote integrity, and fight against corruption.



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Transparency International's Mining for Sustainable Development (M4SD) Programme

Transparency International Cambodia (TI Cambodia) is one of 20 national chapters participating in Transparency International's global Mining for Sustainable Development (M4SD) Programme. The Programme is coordinated by Transparency International Australia (TI Australia). The M4SD Programme complements existing efforts to improve transparency and accountability in the extractive industries by focussing specifically on the start of the mining decision chain: the point at which governments grant and award mining permits and licences, negotiate contracts and make agreements.

Phase 1 of the Programme (2016-2017) is about understanding the problem by identifying and assessing the governance risks in the process and practice of awarding mining licences, permits and contracts. This report presents the main findings from the governance risk assessment in Cambodia.

With an understanding of the nature and causes of governance risk, the national chapters will develop and implement solutions to tackle priority governance risks in Phase 2 (2018-2020). They will work with key stakeholders from government, the mining industry, civil society and affected communities to improve transparency, accountability and integrity in the decisions about approving mining projects.

The participation of TI Cambodia in Phase 1 of the Programme is supported by the Australian Department of Foreign Affairs and Trade (DFAT). Globally, the M4SD Programme is also funded by the BHP Billiton Foundation.

Research Objective

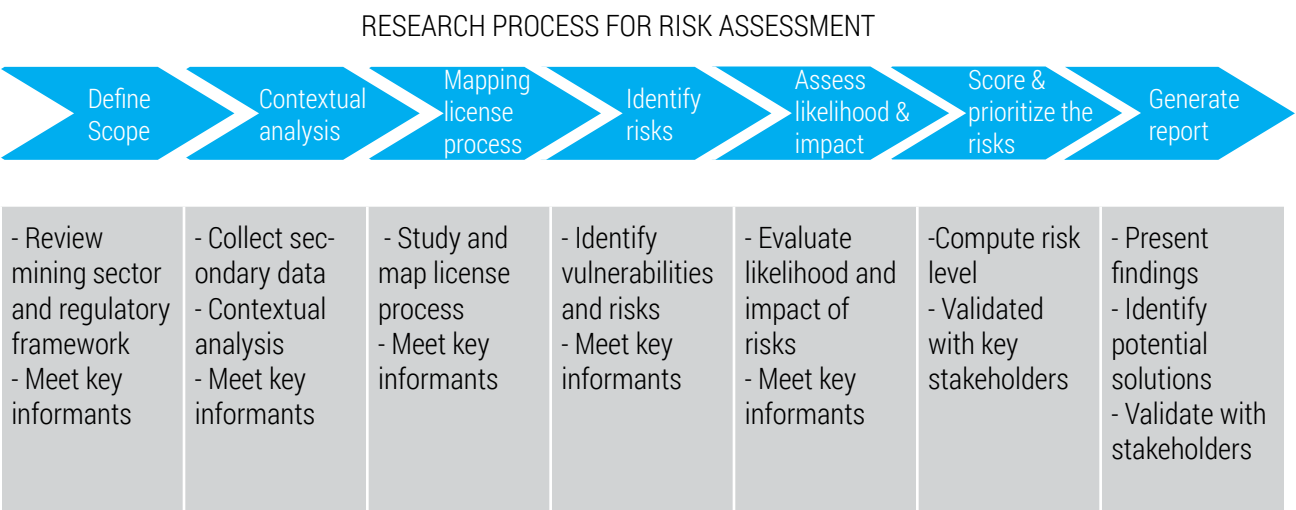
This Governance Risk Assessment was conducted as part of Transparency International’s Mining for Sustainable Development (M4SD) Programme. The aim of this study is to identify the systemic, regulatory and institutional vulnerabilities to malpractice in awarding mining and mining-related licences, permits and contracts. The study will also assess the specific governance risks created by these vulnerabilities and present recommendations. This report presents the main findings from the research and the results of the risk assessment.

Cambodia’s Mineral Exploration Licensing Process: Governance Risk Assessment aims to identify and analyse governance risks associated with the process for granting mineral exploration license in Cambodia.

TI Cambodia’s participation in Phase 1 of the Programme is supported by a grant from TI-Australia. Globally, the M4SD Programme is jointly funded by the BHP Billiton Foundation and the Australian Department of Foreign Affairs and Trade (DFAT).

Research Methodology

This assessment is conducted by Emerging Markets Consulting (EMC) with support from Transparency International Cambodia (TI Cambodia). The assessment adapted the Corruption Risk Assessment (MACRA) tool provided by Transparency International to reflect the local circumstances. To minimize the scoring subjectivity between “Likelihood” and “Impact”, we introduced sub-indicators and weightage system for a more balanced assessment.



The literature review served as the baseline. This research is primarily based on semi-structured interviews with 21 representatives from key stakeholders from government ministries, local authorities, civil society organisations, mining industry association, and mining companies.

NUMBER OF KEY INFORMANTS

Type of sample		Number
Public Sector	Ministries' senior management	2
	Director of department	1
	Government officials	2
Private Sector	Senior executive of multinational companies	2
	Industry representative	1
	Staff of multinational companies	2
Civil Society Sector	Executive director of civil society organisations	3
	Staff of civil society of organisations	3
	Representative of communities	5
Total Sample:		21

This assessment also went through 3 rounds of consultation and validation with stakeholders from the mining sector in Cambodia. Validation was conducted to ensure that the assessment fits within the local context and reflects the actual situation in Cambodia's mining sector.

LIST OF VALIDATION WITH STAKEHOLDERS

N	Purpose	Participant	Date
1	Define Scope	Research Team 1 Senior management of MME 3 Executive Directors of Civil Society Organisation	04th January 2017
2	Validate Preliminary Findings	Research Team 1 Senior management of MME 1 Representative of Industry 3 Executive Directors of Civil Society Organisations	28th April 2017
3	Validate Draft Findings	Research Team Extractive Industry Governance Forum (EIGF) which has 29 members from relevant stakeholders.	09th June 2017

What is not within scope of this study :

- Exploration stage, industrial mining license application stage, and mining operation stage.
- Artisan mining, pits and quarries mining, gem-stone mining, mineral transforming and sand dredging.
- Oil and Gas sector

Findings

The risk assessment identified that the new MME process for granting mineral exploration license eliminated 14 pre-existing risks from the previous process. However, 14 governance risks remain covering 1 contextual (CF) risk, 8 process-design (PD) risks, 3 process-practice (PP) risks, and 2 response-accountability (RA) risks. These risks relate to the understanding of surface rights, sharing of information, timeline of process, application evaluation process, public consultation, beneficial ownership, and approval from other line ministries.

FIGURE 21: GOVERNANCE RISK MATRIX

Likelihood	5 Most Likely	5	10	15	20 PP10, PP11	25
	4 Likely	4	8 PD17	12 PD28, RA13, PD36, RA2	16 PD4, PD9, PP7, PD16, PD13, PD3	20
	3 Neutral	3	6	CF3 9	12	15
	2 Unlikely	2	4	6	8	10
	1 Most Likely	1	2	3	4	5
		1 Insignificant	2 Minor	3 Moderate	4 Major	5 Catastrophic
	Impact					

The **very-high risks** identified related primarily to the application evaluation process, public consultation, beneficial ownership challenges, and the need for better clarity of guidelines.

4 Risks (PP10, PP11, PD4, and PD13), identified in application evaluation, exist due to the lack of a legal and governance framework to define the criteria for evaluation, composition of the evaluation panel (including an independent external expert), and the requirement for a due-diligence on applicant's technical capacities, financial resource, and past lawful compliance.

Under the public consultation category, the 2 identified risks (PP7 and PD16) relate to good stakeholder representation and need for proper public consultation guideline under the legal frameworks.

The beneficial ownership concern (PD9) relates to the lack of transparency in the governance system and involve inter-ministry jurisdiction (MME and MoC). This highlights the potential loss of accountability leading to the possibility of unscrupulous activities being introduced into the mining sector.

PD3 relates to clarity of environmental guideline, which will attract more responsible investors to participate in the license process.

The **significant risks** were identified relating to the issues of limited access to public information and the need for better clarity of guidelines.

3 risks (RA13, PD36, and RA2) relate to limited access to public information. To mitigate these risks, there is a strong case for development of a credible and accessible database system to support MME's reform agenda for greater transparency.

1 risk (PD28) relates to the need for defined timeline of application duration to ensure that MME provides a level playing field for all applicants.

The 2 **moderate risks** (CF3 and PD17) are essentially implementation risks. With stronger enforcement from MME's senior management, we believe that these risks are deemed manageable.

The risks identified are primarily process related. This reflects the early stage of the MME's implementation of the reform agenda and provides a great opportunity for stakeholders to contribute to the governance of mineral exploration license process. The formation of EIGF provides an excellent working platform to progress this development, which will require support and commitment from all relevant stakeholders.



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Recommendations

To mitigate these risks, this research recommends the development of a more robust regulatory framework with support for more stringent enforcement of the intent of Sub-Decree No.72. The research also recommends the setting-up of standard operating procedure (SOP) or guideline for application evaluation, public consultation, and improved access to public information through formal websites (MME and EIGF).

The risks and recommendations were presented to key stakeholders in the validation workshop on 9th June 2017 and accepted by Ministry of Mines and Energy. Summary of the remaining risks and recommendations are as follow:



Extractive Industry Governance Forum, 09 June 2017, Phnom Penh

Summary of Risks and Recommendations

Remaining Identified Risks	Recommendation
CF3: What is the risk that surface rights on mining area will be manipulated?	Improved enforcement of the law.
PD17: What is the risk that information of mining concession area will be selectively distributed with company?	Improved enforcement of the law.
PD28: What is the risk that duration for application submission will be adjusted to favour a particular company?	Application period of 60 days recommended.
PD4: What is the risk that criteria for selecting applicant will not be public knowable?	1) Evaluation panel members to declare that they are not related to or have potential conflict of interests with any applicant. 2) Involvement of External expert to be considered by MME. 3) Clearer evaluation guideline/SOP including the requirement for Initial Environmental and Social Impact Assessment (IESIA) to be developed. 4) The report supporting the application award to be available to the public for greater accountability and transparency of evaluation panel.
PD13: What is risk that assessment panel will not be independent or will be influenced by company?	
PP10: What is the risk that there will be no do due-diligence on applicant's claim technical and financial capacities?	More robust framework incorporating due diligence to raise the quality and integrity of applicants for mineral exploration license.
PP11: What is the risk that there will be no do due-diligence on applicant's past lawful compliance?	
PD9: What is the risk that details of shareholder or beneficial owner of selected company will not be publicly knowable?	1) Adopt the legal framework on declaration of beneficial ownership of applicants and inclusion in the application criteria. 2) Due diligence to cover beneficial ownership and integrity of the company.
PP7: What is the risk that affected community will be misrepresented in public consultation?	1) SOP/guideline to ensure proper representation of stakeholders. 2) Official record of consultation discussions and agreements to be made available. 3) Enforcement of the public consultation agreement by MME. 4) The composition of environmental compliance panel should be discussed at the EIGF and incorporated into the SOP/guideline.
PD16: What is the risk that negotiation or agreement with landholder or community will not be conducted appropriately?	
PD3: What is the risk that requirement for environmental compliance will be unclear?	Implementation of the IESIA requirement as per Sub-Decree No.72.
RA13: What is the risk that details of Additional Agreements will not be publicly knowable?	1) Development of licensing database system. Basic information related to licenses should be publicly displayed. Non-confidential information should be available on requested. 2) MME to be recognised as official source of licensing information. 3) The designated concession area should be visibly marked out by poles.
PD36: What is the risk that the details of licenses that have been awarded will not be publicly known?	
RA2: What is the risk that information about a particular license that has been granted will not be legally available?	

This research team would like to express strong appreciation to senior government officials, public officials, TI Cambodia colleagues, representatives of CSO and community, and representatives of private sector for their frank and open views related to this very important development for Cambodia.

These Recommendations can be categorised under 3 separate Themes.

Theme 1: Application Evaluation

- Risks: PD4 and PD13, PP10, and PP11
- Priority for Action.
- Recommendation:
 - Create Guideline for Application Evaluation;
 - Provide Training of the Guideline to MME staffs;
- Technical Resources
 - MME to lead and approve.
 - Mineral Exploration Companies to provide inputs.
 - External Consultant to develop Guideline.
- Financial Resources:
 - Can be jointly supported by members of EIGF.



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Theme 2: Public Consultation

- **Risks:** PP7 and PD16
- **Priority for Acton.**
- **Recommendation:**
 - Create SoP for Public Consultation;
 - Provide Training of the SoP to MME staffs and Local Authorities;
 - Distribute the SoP to companies, CSO, and community.
- **Technical Resources**
 - MME to lead and approve;
 - Companies, Local Authority, CSOs, and Communities to provide inputs;
 - External Consultant to develop SoP
- **Financial Resources:**
 - Can be jointly supported by members of EIGF.

Theme 3 : Access to Information

- **Risks:** PD9 RA13, PD36, and RA2
- **Priority for Acton.**
- **Recommendation:**
 - Create SoP for Public and Confidential Information;
 - Distribute the SoP to relevant stakeholders
- **Technical Resources**
 - MME to lead and approve;
 - Companies, Local Authority, CSOs, and Communities to provide inputs;
 - External Consultant to develop SoP
- **Financial Resources:**
 - Can be jointly supported by members of EIGF.

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