

Policy brief for decision makers

**Policy Brief Development
On
Development of non-tax revenue (licenses
and permits) from the mining sector and
its policy implications**

**Consultant
Kimsreang BOUY
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Acronyms

AG	Angkor Gold
EIGF	Extractives Industry Governance Forum
EITI	Extractives Industry Transparency Initiatives
HA	Highlander Association
IPs	Indigenous Peoples
MEF	Ministry of Economy and Finance
MoE	Ministry of Environment
MME	Ministry of Mine and Energy
MOI	Ministry of Interior
NGO	Non-Governmental Organization
NTFP	Non-Timber Forest Product
RGC	Royal Government of Cambodia
TOR	Terms of Reference

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I. INTRODUCTION

Indigenous Peoples (IPs) in Cambodia primarily depend on natural resources for their livelihoods, such as land, forests, minerals, non-timber forest products (NTFP) and numerous other resources, including mineral resources. The main mineral resources in Cambodia are gold, metals like manganese and iron, gemstones, and sand. So far, IPs only have access to land, forests and non-timber forest products (NTFPs) for their livelihoods, while the mineral resources are exploited by private companies under the coordination of respective state agencies, such as the MME. Efforts to ensure that IPs are not exploited and miss out on the mineral wealth found on their lands have been mixed.

In 2008, the Royal Government of Cambodia (RGC) granted a license to Angkor Gold (AG), a Canadian mineral exploration company, covering 1,500 square kilometers in Ratanakiri and Mondulakiri provinces. AG's mineral exploration activities have taken place in the territories of indigenous communities, and found strong potential for gold mining. In 2015, AG also sold its license covering 12 square kilometers to the gold mining company Mescos Gold, in Peak village, Preah Vihear Province. In 2018, Mescos Gold officially received a license for mining from the Ministry of Mines and Energy (MME) and the Ministry of Environment (MoE), who approved the company's Environmental Impact Assessment study (EIA) (*Phnom Penh Securities Plc, June 2011*).

Much of this mining will take place in remote areas of eastern Cambodia home to a variety of IPs, who have long been on the margins of formal society. As such, there is a very real risk of exploitation, and loss of property and culture. In 2007, the Highland Association (HA) was created to protect IPs working in and around the mining sector, most often as labourers, in 70 communities in Ratanakiri, Mondulakiri, Kratie, Stung Treng and Preah Vihear provinces. The HA has joined the Extractive Industries Governance Forum (EIGF) as a voice of IPs, and support members better understand their rights, legal expectations and environmental responsibilities.

II. OBJECTIVES AND SCOPE OF THE ASSIGNMENT

The objective of this assignment is to provide the HA with a deeper understanding of the current state of awareness and adoption of non-tax revenues management by the MME, and their transparency and accountability in the licensing procedures. The policy brief will help EIGF and MME prepare well-defined, evidence-backed policy responses and key performance indicators, in line with the objectives of the MME's Work Plan.

III. METHODOLOGY

The methodology used to perform this assignment focused on the:

- a) Reviewing the Terms of Reference (TOR) and literature review (relevant legal documents);
- b) Data collection with respective stakeholders using qualitative research questions from the TOR
- c) Data and information collection from the relevant stakeholders at national, provincial, and community levels through individual and group discussions and meetings;
- d) Data compilation, processing and analysis;
- e) Preparing a report to present key findings to HA and relevant stakeholders;
- f) Revision of key findings based on comments from the meeting;
- g) Preparing the first draft of the policy brief through discussions and consultations with relevant representatives from NGOs, Indigenous Peoples communities and the respective state institutions;
- h) Revising the first draft of the policy brief based on the comments;

IV. THE MINING SECTOR IN CAMBODIA

4.1 Overview of the mining sector

Cambodia's natural resources, accessible markets and the government's tax incentives continue to attract a considerable amount of Foreign Direct Investments (Mining Sector in Cambodia, Phnom Penh Security Plc, June 2011).. In particular, the country's favourable environmental conditions and abundant mineral resources attract increasing foreign investors, alongside local partners. Significant amounts of gold and other minerals have been found in several concession areas in eastern and

north-eastern Cambodia, and. Australian, Chinese, and Japanese mining firms are already working to extract these resources. Mineral exploration projects focus on four main areas: metallic minerals, non-metallic mineral/industry minerals, gemstones, and coal. Currently, there has been an increase in licenses granted to both foreign and local companies for mineral production and exploration. Phnom Penh Security Research Paper 2011). The tables below show the mineral potential and types of license for the mining sector in Cambodia, by province.

Table 1: Mineral potential and types

No.	Province	Mineral potential and type
1	Banteay Meanchey	Bauxite, gold, iron, phosphate, rubies, sapphires
2	Battambang	Bauxite, gold, iron, phosphate, rubies, sapphires
3	Kampong Cham	Gold
4	Kampong Chhnang	Limestone
5	Kampong Speu	Copper, copper-lead-zinc alloy, marble, phosphate, tin and tungsten
6	Kampong Thom	Amethyst, gold
7	Kampot	Graphite, gold, iron, lignite, limestone, phosphate
8	Kandal	Molybdenum
9	Koh Kong	Jet, sapphire, silica
10	Kratie	Copper, lignite
11	Monduliri	Bauxite, copper-lead-zinc alloy, gold
12	Pailin	Rubies, sapphires
13	Praeh Vihear	Copper-lead-zinc alloy, gold, jet, lignite, manganese, molybdenum, iron, sapphire, zircon gems
14	Prey Veng	Fluorite
15	Pursat	Antimony, chromium
16	Ratanakiri	Copper, copper-lead-zinc alloy, gold, zirconium, dioxide
17	Siem Reap	Gold, iron
18	Steung Treang	Amethyst, coal, copper, dolomite, gold, iron, marble
19	Sihanoukville	Lignite, silica
20	Takeo	Molybdenum, tin

Sources: UK trade and investment 2009 and TI2015

Table 2: Types of mineral license in Cambodia

No.	Type of license	Characteristics
1	Artisan mining license	This license is issued exclusively to Khmer nationals for the small scale exploration and exploitation of mineral resources by using locally available common instruments and their own labour or with the help of family with no more than seven persons.
2	Pits and Quarries Mining License	This license is issued to qualified parties or legal entities for the purpose of exploration and exploitation of any construction and industrial minerals used for constructions, chemical and secondary industry, and mined from pits and quarries.
3	Gem-Stone Mining License	This license is issued to qualified and competent parties or legal entities for the exploration and mining of precious and semi-precious stones, and ornament stones including diamonds, rubies, sapphires, smaragdites, and all other similar gem-stone quality minerals.
4	Mineral Transforming License	This license is issued to qualified parties or legal entities for the purpose of transforming precious or semi-precious stones or ornament stones
5	Exploration License	This license is issued to qualified and competent parties or legal entities for the exploration of mineral potential.
6	Industrial Mining License	This license is issued only to the holder of an exploration license for the purpose of conducting exploration and mining of economically viable mineral deposits established within the boundaries of the exploration license.

Source: Law on the Mineral Resource Management and Exploitation, 2001

4.2 Legal and Policy Framework

In order to manage and supervise the non-tax revenue of the mining sector, including licenses, the RGC has developed several legal and policy documents:

(1) Involvement of IPs communities in the mining sector

- **National Policy on Mineral Resources 2018-2028:** The second objective aims to promote sustainable and responsible mining operations taking into account economic, social and environmental factors. The third objective is to benefit the development of local communities by allocating revenues from the mining sector to other economic and social sectors, such as the development of public infrastructure.
- ,
- **Inter-Ministries circular no. 664 Ministry of Economy and Finance (MEF) dated 08 June, 2016 (identification for the price of land for rent):** The fees for the mining areas are divided into two types: fees for land for mining exploration, and fees for land for feasibility studies (which are normally lower). **National policy on the Development of Indigenous Peoples dated 24 April, 2009:** According to this Policy, the revenues from the mining activities shall benefit directly the livelihoods of the IPs via access to proper water, infrastructure (schools, roads, markets) and adequate housing in case for displaced populations.. In addition, the policy states that the IPs shall be employed as workers in the mining operations, and shall receive relevant information and training on mineral exploration..

(2) Legal documents relating to licenses

- **Articles related to the process of granting mineral exploration licenses:** (i) Cambodian citizens may submit in person the application for artisan mining license to the specialized office of the Ministry in charge of minerals, located in provinces/ municipalities where the artisan mining license area is situated; (ii) Natural persons or legal entities shall submit applications for all other licenses issued under the authority of this law to the Minister in charge of mineral resources; (iii) The Minister in charge of mineral resources sector shall provide a response as to his approval or rejection of an application with forty five (45) days at the latest following the date of receiving a complete application and technical compliance; (iv) Except for the artisan mining license, the holder of all other licenses issued under the authority of this law may request to renew, modify, return, mortgage, assign or inherit it with a written approval from the Minister in charge of minerals; (v) A license issued under the authority of this law may be suspended or cancelled for any holder who breaches this law. Procedures of suspension or revocation of a license shall be determined by Sub-Decree; (vi) The holder of a license issued under the authority of the law shall submit to the Minister in charge of mineral resources the application forms, reports, plans and notices at the prescribed date and maintain records and documents; (vii) The confidentiality of all documents and information as provided of article 19 of this law shall be maintained until the termination of such license or subsequent to the receipt of an approval from the holder to allow public disclosure of such information.
- In the selection process, the specialised agencies in charge of granting the license must ensure that companies follow the procedure:: (i) Opening call for companies to apply for license; (ii) Submitting application for license; (iii) Checking application and supported documents (if not, the documents must be returned back to the applicant); (iv) Paying application fees; (v) Registering application on a first come-first served basis; (vi) Maintaining access to the application (technical, financial and working-program) during 15 days and (vii) Announcing the selected company and granting the license. The documents below illustrate the process of receiving the license for mining exploration.

Table 3: Legal documents relating to license

No.	Regulatory framework	Date
1	Royal Kram No. NS/RKM/0701/09: Promulgation of law on the mineral resource management and exploitation.	13th Sept 2001
2	MIME, Circular 001: Suspension and cancel of mineral license.	25th May 2004
3	MIME, Prakas No. 340: Registration and conditions of renewal and authorization of mineral license.	25th May 2005
4	Sub-degree No.08: Determining the investment principles of all types of mineral resources.	31st Jan 2005
5	Ministrial circular No. 172 MIME and 291 MEF: Registration, application for license, extension of license, transferring right of mining exploration and fee for land annually in the concession area for feasibility and mining exploartion and commission fee.	24th March 2009
5	Sub-degree No. 72: Administration of mineral exploration and industrial mining licence.	05th May 2016
6	MME-MEF, Inter-Ministry Prakas No.665: Surface Rental Fee for Mineral License.	08th June 2016
7	MME, Circular No. 360: Guideline for granting mineral exploration license.	07th Oct 2016

Source: Author's consolidation official legal documents and MME documents

(3) **Effectiveness and transparency of mining revenue collection**

- **Circular no. 137 dated 04 May, 2016 (Management and collection of revenue of provision of public properties in terms of provision of licenses on mining enterprises and of fines and the provision of incentives to provincial departments of mines and energy):** The provision of revenue from the above services are divided between three stakeholders: 50% shall be transferred to the national budget; 49% shall be transferred to the provincial department of mines and energy and 1% shall be transferred to the MEF.
- **Strategic framework and working programs on mineral and petroleum resources (2014-2018), MME:** Sector vision and strategic agenda focus on resources for all. One of the strategic goals focuses on measures to protect and promote the benefits for local communities, society and environment; the third working program focuses on promoting the effective collection of revenue from mining and petroleum.
- **Decision no. 401 dated 2017on working group on strengthening mechanisms for collection revenues from mining:** Strengthening the respective agencies for provincial mine and energy mining revenue collecting capacity.; monitoring and inspecting the collection of revenue from mining; and monitoring and recommending actions towards ensuring the effectiveness of mining revenue and records.
- **Circular no. 0284 dated August 2015 on the actions towards strengthening collection for mining revenue:** Stopping illegal mining activities; developing and strengthening management mechanism for collecting revenues from mining; and strengthening the provision of licenses for mineral resources.

4.3 Development Context

Extraction of mineral resources such as sand (in Koh Kong Province) and gold (in Preah Vihear, Kratie and Mondulkiri provinces) has significantly increased in the past 20 years. Many of these mining operations are being conducted by private companies from China and Australia. To ensure the efficient use and management of mineral resources in Cambodia, the RGC has established a legal policy framework for granting permits to private companies who wish to invest in the mining sector. This permit, known as a mineral resource license, grants the holder the right to conduct mining operations.. The RGC) has set the following procedure for granting a mining license for mining exploration:

- The MME is responsible for receiving, processing and administrating mining rights and granting the mining and exploration license.

- The MME determines which land is available for mineral exploration and invites interested parties to submit an application for a mineral exploration license. Before applying, applicants must first conduct an initial environmental impact assessment, which must include consultation with the affected communities
- An evaluation committee made up of members appointed by the MME then conducts due diligence on the applicants and assesses the applications based on technical and financial criteria. The applicant that receives the highest score is granted the license. If two applicants receive the same score, the license is awarded on a first come, first served basis
- The exploration license is valid for three years and may be renewed twice, for two years each time.

According to the procedure described above, after receiving the mining license, mining exploration companies are supposed to consult the IP communities in order to obtain their agreement and to sign a contract with them before starting the exploration activities. Such procedure should have been followed for the Angkor Gold and Mesco Gold licenses. Within the contract, it is clearly indicated that the company will provide several services. However, in practice, there have been cases where companies did not provide some of the services or items as identified in the contract, (mainly health services and water supply systems). Recently, based on the information from the virtual meeting with IP communities, it was revealed that in some cases, companies have built infrastructure or conducted operations, such as digging holes, within the village compound without suitably informing to IP communities beforehand. This subsequently led to conflict among the household owners and IP communities as it's a breach of their contracts. Furthermore, this lack of communication is compounded when IP staff are dismissed, as they were often the only source of information on mining exploration and activities for their communities, including when compensation was owed.

V. IMPLEMENTATION STATUS OF POLICY FRAMEWORK ON NON-TAX REVENUES

5.1 Legal and Policy Environment

Existing legal documents and policies relating to the exploitation of mineral resources and mining, focus mainly on the management and use of natural and mineral resources, strengthening mechanisms and management of revenues from mining, effective mining exploration licensing, and how local communities might benefit. However, in practice, over the past 20 years the government has invested very little of the mining revenues to support livelihoods beyond basic rural infrastructure such as roads or community buildings. Furthermore, local communities do not have access to information on mining revenues and the type of mining operations being conducted.

The MME plans to draft regulations to ensure transparent and effective collection of revenues from the mining sector, mainly from licensing. Based on this, the MME has created a working group to ensure the proper collection of revenue. However, there is no representation of IP communities or CSOs within the working group. Besides this, the MME has not yet issued any specific regulations to ensure further transparency and accountability in the management of non-tax revenues.

5.2 Financial Benefit Optimisation

In the existing legal documents relating to mining and mineral resources, there is no mention of the level of involvement of IP communities in the mining activities on their territory, nor the percentage of revenue from mining that should be invested into the development of local communities. Therefore, the government invests very scarce amounts of funding from mining revenues to support livelihoods, contributing mainly to improve basic infrastructure. In addition, there are no legal documents obliging companies to publically disclose the revenues from mining activities, meaning local communities and NGOs have no access to this information.. Therefore, the financial benefits from mining remains a grey area for communities.

5.3 Socio-economic Benefit Optimisation

Based on discussions with NGOs and respective stakeholders, there is evidence that IP communities in territories subjected to mining exploration have benefited to some extent from mining operations, through basic infrastructure development. Between 2 to 5 percent of workers employed in the mining sector come from the IPs communities (DPA source). However, DPA indicates that only about 5 percent of IPs employed in the mining exploration areas gain direct benefits (income) from mining

activities and indirect benefits through the use of road infrastructure and sanitation latrines. In short, the negative impacts of mining on the livelihoods of local communities (loss of land, forest resources, etc.) outweigh the scarce positive impacts.

VI. ANALYSIS OF STRENGTHS AND GAPS

Overall, the legal framework including policies, strategies and decisions, is relatively strong and specifically mentions: (i) encouragement of community participation in natural resource management, (ii) use of revenue to develop infrastructure within the community areas affected by mining activities, (iii) access to information on mining activities to the public, (iv) setting up mechanisms for effective mining revenue management and (v) bringing direct benefits to the local communities through mining exploration.

However, in practice, local communities benefit significantly less from mining activities than they ought to, according to the existing policies and legal framework. Although the law aims to ensure that revenues from mining are invested into the development of roads and public infrastructure, health and sanitation facilities, water supply and school construction for local communities, in reality the government has so far constructed only a few roads, mainly for the use of mining companies and without the participation of IP communities.

While the procedure to receive a mining license requires the involvement of IP communities, the existing legal framework does not mention their participation in the process of revenue collection and management. Also, there is no clear mechanism regulating the disclosure of information on non-fiscal revenues from mining with the IPs, IP communities and relevant NGOs... Thus far, the government and local authorities are responsible for the collection and management of fiscal and non-fiscal revenues from mining, without the involvement of IP communities and relevant NGOs, who are kept out of the process and have no information on the revenues from mining activities within their areas.

, It appears that there is a general lack of accountability and transparency on aspects such as land management and revenue collection, in particular towards the IP communities who live in or around the mining areas. As a result, many communities have lost their land and access to the natural resources that they depend on for their livelihoods. Moreover, the legal framework on mechanisms of compensation for communities affected by mining is not clear. The transparency and public accountability of mining activities as well as the participation of IP communities in decision-making processes should be strongly encouraged.

There is a clear management mechanism for revenue and activities from mining exploration shall be made and IP or IP communities and relevant NGOs shall be in. So far, there is no clear policy or legal document specifying the share of fiscal or non-fiscal revenue from mining activities to be received by IP communities to improve their living conditions. However, there is a strong need for a regulatory framework on this matter. In addition, there is currently no participation of IP communities in the Extractives Industry Governance Forum (EIGF) which holds regular meetings to discuss matters relating to the mining sector.

In fact, for the past 12 years, since the government started mining sand and gold by contracting international mining companies mainly from China, Vietnam, India and Australia, the five aforementioned points have not been applied. Local and IP communities living in or around mining areas in Kratie, Preah Vihear and Mondulkiri provinces did not receive any benefits from the mining and had no information on the type of mining or the revenues perceived from the mining activities. In some cases, mining activities have led to deaths among local communities (mainly due to water pollution).

In conclusion, there is a clear lack of mechanisms in the regulatory framework defining the participation of local communities throughout all the stages of the mining project: (i) feasibility studies for mining areas; (ii) identification of the communities' needs in terms of community development; (iii) collection and management of revenues from the mining sector. As a result, currently, local communities perceive very little benefits from the mining sector towards improving their living conditions, as several companies do not follow the common agreement signed before the start of mining operations. In this regard, there are still gaps in this area. Currently, there are several companies who are conducting mining activities. However, only a few of them put a small percentage of their revenues from mining towards supporting community development, by providing water filters, computers, sanitation latrines for public schools, supporting the chicken farming and vegetable gardening, and providing access roads from the village to the mining site (Mesco Gold and Angkor

Gold). Therefore, there is a lack of transparency and accountability in terms of community involvement in the non-fiscal revenue collection and management (licensing and permits) from mining sector. Thus, there needs to be a higher degree of transparency and a broader participation of the stakeholders in the management of revenues and wealth distribution from mining operations.

VII. RECOMMENDATIONS AND CONCLUSION

7.1. Policy Recommendations:

The existing regulatory framework on mining licenses contains very few mentions of the participation of IP communities and relevant CSOs in the decision-making processes for establishing and running operations. Below is a list of recommendations based on the above:

- To enable IP communities to have access to relevant information and legal documents at all stages of the mining project and its procedures (mining exploration, licensing, commission fee, non-fiscal revenues from mining operations) which should be publically disseminated through meetings, forums and workshops with the relevant stakeholders.;
- To enable IP communities to have access to information on the percentage of fiscal revenue from mining licensing they can receive for community development under the guidance of respective state agencies and non-governmental organizations;
- To ensure the participation of IP communities in all stages of the mining process, and in the special working team for evaluation and selection of application for license. The respective agencies including non-governmental agencies should define the exact roles and responsibilities of local communities in this process;
- To a technical working group with the participation of relevant stakeholders from the mining sector, including representatives from the IP communities. Members should schedule monthly meetings to address relevant issues.
- To introduce the necessary regulations to ensure transparency and accountability in revenue collection and management in. The framework should involve the following four stakeholders working in partnership: The government, donor agencies, mining exploration companies, and communities, CSOs and relevant NGOs.. The mining exploration companies should support the Extractive Industries Transparency Initiative (EITI), and the capacity building for community development, and perform a risk analysis at both national and regional levels,=. The communities, NGOs and civil societies should have the right to access and manage the revenue from the mining sector and should be able to receive direct benefits.. In addition, the government should adopt the EITI, ensure sound macro management and ensure public administration reform in a transparent manner, while donor agencies should provide capacity building to communities at a sub-national level on revenue management.
- The government, mainly the MME should set up guidelines on the disclosure of tax and revenue from mining licenses to ensure that benefits from mining operations are invested into community development.
- To establish an evaluation system for a regular assessment of check companies' activities and to issue penalties, in case of breach of contract.

To implement the above recommendations, the following legal documents should be amended in order to ensure that NGOs and IPs communities have access to benefits from mining activities:

- Revision of the order on strengthening the management of non-fiscal revenue from mining no. 04 dated on 15 November 2006 to ensure the participation of relevant NGOs and representatives of IPs communities in decision-making processes;
- Revision of Circular no. 137 dated 04 May 2016, to ensure the participation of relevant NGOs and the representatives of IPs communities;
- Revision of Decision no. 0156 MME dated 03 April 2015 to ensure the participation of relevant NGOs and representatives of IP communities in the working group;
- Revision of Circular no. 360 SRCH dated 07 October 2016 to ensure the participation of relevant NGOs and representatives of IP communities.
- Elaboration of a new legal document on revenue distribution specifying the percentage of non-fiscal revenues and other revenues from mining that communities can expect to receive for community development such as construction of rural infrastructure (roads, water supply, sanitation and health facilities), specific agricultural training (growing vegetables, animal farming) and providing support for small businesses..

- The elaboration of a legal principle to include the IPs and CSOs in the specialised team to evaluate and select the companies to receive a mining license.

7.2. Conclusion:

Based on the findings of this assignment, we can identify several gaps in the legal framework on non-tax revenues (licenses and permits) from the mining sector, specifically in the areas of collection of revenues from mining licenses and the participation of for IP communities and CSOs in the process, on management of revenues in a transparent and effective manner, and on revenue distribution and the share of revenue from mining licensing r to be used for community development.. Therefore, there is an urgent need to strengthen the regulatory framework by introducing legal principles to as ensure transparency and accountability in the matter.