

Rapid Assessment on Cambodia's Mining Policy Framework 2015-2020

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Acronyms

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| ASM | Artisanal and small-scale mining |
| CSO | Civil Society Organisation |
| EIA | Environmental Impact Assessment |
| EITI | Extractive Industries Transparency Initiative |
| EI | Extractive Industry |
| EIGF | Extractive Industry Governance Forum |
| MPF | Mining Policy Framework |
| MoE | Ministry of Environment |
| MEF | Ministry of Economy and Finance |
| MME | Ministry of Mines and Energy |
| RGC | Royal Government of Cambodia |

Table of Contents

| | |
|---|-----------|
| EXECUTIVE SUMMARY | 4 |
| I. INTRODUCTION..... | 8 |
| II. METHODOLOGY AND SCOPE OF WORK | 8 |
| 2.1 Objectives of the assessment report | 9 |
| 2.2 Report Limitation | 9 |
| III. CAMBODIAN MINING SECTOR | 10 |
| 3.1 Background of the MME | 10 |
| 3.2 Mining Sector Context..... | 10 |
| IV. OVERVIEW OF LEGAL AND POLICY FRAMEWORK | 11 |
| V. STATUS OF THE IMPLEMENTATION OF MPF FROM 2015-2020 AND MPF ASSESSMENT | 13 |
| 5.1 Strengths and Gaps of Legal and Policy Environment | 13 |
| 5.1.1 The licensing award process | 13 |
| 5.2 Strengths and Gaps of Financial Benefit Optimisation | 16 |
| 5.3 Strengths and Gaps of Socioeconomic Benefit Optimisation | 17 |
| 5.4 Strengths and Gaps of Environmental Management..... | 20 |
| 5.5 Artisanal and Small-Scale Mining..... | 21 |
| VI. CONCLUSION..... | 23 |
| VII. RECOMMENDATIONS | 23 |
| Reference | |

EXECUTIVE SUMMARY

The rapid assessment on Cambodia's Mining Policy Framework (MPF) 2015-2020 is conducted by an independent consultant, with support from Transparency International Cambodia and the Highlanders Association in Ratanakiri Province between April and August 2021. This report summarises the assessment of the mining law and policies of the Ministry of Mines and Energy (MME), and the ministry's institutional capacity to implement the Mining Policy Framework (MPF). The assessment involved extensive desk-based research and virtual meetings with numerous stakeholders from government, civil society, local communities, and the private sector. Following the 2018 national elections in Cambodia, there were many changes in leadership within ministries and MME departments. The timing of the overall assessment provided an opportunity to engage with stakeholders, but also presented challenges to collect data from all necessary government officials.

MAJOR STRENGTHS AND GAPS OF EACH THEME OF THE MPF

| Mining Policy Framework Theme | Strengths | Gaps |
|-------------------------------------|--|---|
| Legal and Policy Environment | <ul style="list-style-type: none"> • The National Policy on Mineral Resources 2018-2028 was endorsed in 2019, and is designed to pinpoint the vision, objectives, goals and roles of the RGC in developing the mineral resources of the nation. The first objective focuses on strengthening public institutions in the management and development of mineral resources. It was developed in tandem with ASEAN Minerals Cooperation Action Plan, AMCAP 2016-2025. • The Mining Law and relevant regulations are developed and updated to reflect changing knowledge and best practice. • Good governance and management with accountability and transparency are key to build investors' trust and public acceptance. | <ul style="list-style-type: none"> • The level of consultation with communities and other stakeholders during the licensing process is limited. • The proliferation of laws and policies results in confusion and lack of clarity among civil society and mining companies. • Mining industry activity in 'Protected Areas' is under increasing pressure to improve environmental and social performance. • The grabbing of community land from indigenous people by mining concession owners, due to lack of clarity and the contradiction between mining laws and other laws, has been documented. • Limited transparency and accountability in the licensing award process. |

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| <p>Financial Benefit Optimisation</p> | <ul style="list-style-type: none"> • The MME conducted a proper assessment of the mineral resource estimation and exploitation costs, in order to set or re-evaluate the cut-off grade; setting the standards (regulations) defining the minimum rates of associated minerals to process. • Non-fiscal revenue from license and permit fees, and other administrative income, increased sharply in the past five years. | <ul style="list-style-type: none"> • There is a lack of clarity regarding budget management of the mining fund under the MME. • There is a lack of transparency and accountability in the licensing award process, and over non-fiscal revenues from licenses and permits. • The MME capacity to audit complex returns and to deal with the collection of royalties and related issues needs to be improved. |
| <p>Socio-economic Benefit Optimisation</p> | <ul style="list-style-type: none"> • This progress shows great socioeconomic benefits, through the improvement of public participation and engagement in the development process of policy and legal frameworks. • The third strategic objective of the 2018-2028 mineral resources policy focuses on developing mineral resources and community. • Mining companies are required to develop a corporate social responsibility plan as part of their feasibility study report when applying for industrial mining licenses. • Since 2016, the MME established a mining fund for community development which is contributed into by the mining companies at a proportional rate to the mineral production. • The MME established a community development mechanism, key for social equity in sharing benefits from mining revenues with local communities as they make decisions on developing their own community. • The multi-stakeholder platform | <ul style="list-style-type: none"> • Home-grown initiatives of the EIGF come with risks of implementation failure and sustainability that need to be considered over the long term. • Poor or deteriorating civic space erodes the MME's ability to operate effectively, their efforts to build trust, and to engage with CSOs and local communities. • The involvement of senior military officers and politicians highlights the importance of needing conflict of interest rules and comprehensive beneficial ownership disclosures. • There is a low level of understanding regarding how to develop and manage agreements between mining companies and the MME to ensure economic benefits reach mine-affected communities. • Requirements for consulting with affected stakeholders at every stage of the mining cycle are lacking. • Support for local business |

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| | <p>(Extractive Industry Governance Forum-EIGF) was initiated and officially established in 2017 by the MME. It aims to build multi-stakeholder governance, building on existing critical partnerships, and balancing interests among key participating players such as mining companies, the government, and civil society organisations (CSOs).</p> <ul style="list-style-type: none"> • Community protests around environmental impacts and water use may have contributed to momentum around reforming the EIA process. | <p>development related to the mining sector is low.</p> |
| <p>Environmental Management</p> | <ul style="list-style-type: none"> • The second strategic objective of the 2018-2028 mineral resources policy focuses on promoting sustainable and responsible mining operations. • Implementation of Sustainable Development Approaches: The primary objective of mineral resources development is to ensure that the sector develops sustainably and responsibly. • The MME will improve good environmental management practices that reflect the responsible development of mineral resources and ecosystems, including animals, plants, soil layer, water and air. • Mine safety assurance has strengthened the capacity of mining inspectors to enforce provisions on mine safety and health by providing short and medium-term training. • To better protect the environment and to minimise the adverse effects on the environment, the MME also enhanced a special monitoring mechanism to ensure strict compliance with the existing laws and regulations and/or international best practice. | <ul style="list-style-type: none"> • Despite the improvement of monitoring requirements, there was inadequate monitoring of impacts on water quantity and quality, . • Requirements for assessing and monitoring of biodiversity impacts are limited. There is a low level of government capacity to oversee and monitor the design, construction, stability and water quality impacts of major facilities such as waste rock repositories, tailings dam, and leach pads. |

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| | <ul style="list-style-type: none"> • There are joint requirements by the MME and the MoE that all mineral operations conduct EIAs and have environmental management plans in place. • Companies must submit annual reports on environmental management plans and recommendations. <p>The MME has been establishing the principle for mine safety and health for each type of mineral resource exploitation.</p> | |
| <p>Artisanal and Small-Scale Mining (ASM)</p> | <ul style="list-style-type: none"> • The MME issued a Prakas on ASM licensing award procedures in January 2015, and Cambodia’s first formal artisanal mining community was established in Monduliri Province in April 2015. • The MME and MoE have been collaborating to prevent and address health and safety concerns of artisanal and small-scale miners and their families. | <ul style="list-style-type: none"> • Many CSOs and mining community representatives indicated that there are legal and technical barriers to formalisation. In particular, the communities lack clarity on how to obtain a community license. • Most of the current ASM in Cambodia are yet to receive proper licenses. The enforcement of laws and the supervision of ASM in Cambodia is limited. • The level of government commitment to diversify economic opportunities and alternative livelihoods is low at the sub-national level. • Efforts to formalise ASM do not sufficiently prevent or mitigate conflicts between small-scale and large-scale miners, thus both mining sectors noted conflicts. • The shortage of the technical training for ASM on minimal health and safety standards has led to the social and environmental impacts. |

I. INTRODUCTION

After the Ministry of Mines and Energy (MME) was established by the Royal Government of Cambodia (RGC) in December 2013, the ministry developed its most important strategic priorities for 2014-2018 under its "Mining, Oil and Gas Strategy". The mining, refining and sale of Cambodia's mineral resources represents a significant opportunity for supporting the enhancement and development of socioeconomic prosperity, and therefore improving the livelihood of Cambodia's citizens.

However, the exploitation of these resources without suitable transparency and accountability often has various negative social and environmental impacts, especially on local communities living near the mining sites. Thus, the main mission of the MME must be to adopt a vision that encourages the sustainable development and exploitation of Cambodia's mineral resources in a way that respects local communities and minimises adverse effects on the environment, and ensures adequate social protection.

Additionally, the MME must learn from past experiences, as well as adopt new techniques and strategies, in order that the country's mining industry mirrors global trends and good governance standards.

Therefore, this assessment will review the achievements and challenges faced by the MME in an effort to understand the ministry's sector reforms, and to define policy recommendations on good governance in Cambodia's mining sector.

The research question for this assessment is: What are the strengths and gaps of the mining policy framework implementation in Cambodia?

II. METHODOLOGY AND SCOPE OF WORK

The Mining Policy Framework (MPF) assessment process is made up of three main steps. First, the consultant evaluates or reviews relevant national laws and regulations, policies, and administrative frameworks for mineral extraction development and management, relative to the mandates of the General Directorate of Mineral Resources of the MME: the legal and policy environment, socioeconomic benefit optimisation, environmental management, and artisanal and small-scale mining (ASM). This work is done through both desk-review and focus group interviews involving diverse stakeholders. The assessment identifies key strengths and gaps in the target country's mining laws and policies and its readiness to implement the MPF through existing measures, compared to the international best practices.

Second, the consultant validates initial findings with the advisory team, civil society organisations (CSOs) working on the mining sector, and the RGC through presenting key findings in a validation workshop, then takes any feedback into consideration when drafting the assessment report. Further validation is undertaken through the advisory team's review and comment on the draft assessment report.

The data required for the assessment were acquired from the following sources: published reports of previous research; published data from the MME and other ministries; raw data from various CSO's mining sector monitoring programmes; and published data from technical reports and environmental impact assessments (EIAs).

Building on outcomes of this assessment process, the third phase involves working with Cambodia's CSO alliance to develop the most appropriate interventions and advocacy tools in the mining sector. Strengthened capacities, experience sharing and increased understanding can help improve national legislation, policies and implementation in ways that enhance the mining sector's contribution to Cambodia's sustainable development.

This assessment was completed in the following timeframe and using the methodology below:

- Desk-based research, including an extensive review of relevant Cambodian mining laws, policies, and literature, as well as information gathering from the MME: April–May 2021
- Virtual meetings and focus group interviews with the sub-national government, local communities, local non-governmental organisations (NGO) and artisanal miners: June and July 2021
- Incorporation of additional stakeholder feedback and drafting of the assessment report: June and July 2021
- Validation meetings with representatives and relevant stakeholders: August 2021
- Completion of final assessment report: August 2021

2.1) Objectives of the assessment report

The objective for this assessment is to provide TI Cambodia, especially CSO representatives in the Extractive Industries Governance Forum (EIGF), with a deeper understanding of the mining sector reforms by the MME, and to define policy recommendations on good governance in the mining sector. The assessment will help the EIGF and MME prepare well-defined, evidence-backed policy responses and key performance indicators, in line with the MME's Work Plan.

This report presents the TI Cambodia's assessment for helping the MME target its efforts in implementing the MPF, informing capacity-building efforts, and allowing for accurate monitoring of progress. The assessment is organised according to the six themes of the MPF: Legal and Policy Framework, Financial Benefit Optimization, Socioeconomic Optimization, Environmental Management, and ASM. Each of the following subsections provides a short summary of the theme, the key legislation and policies applicable to the theme, and the strengths (where implementation is advanced) and gaps (where implementation needs more progress) within each theme. The assessment concludes with some general recommendations.

2.2) Report Limitation

Significant factors to consider among others are the availability of data and time available to perform the assessment. The policy and legal framework documents are easily accessible on the MME's website and social media. But access to annual progress reports and other relevant documents on the results or achievements of the implementation of the policy and legal framework is limited.

The identification of the target groups to whom the results of the assessment will be addressed can further increase the quality of the assessment report. Some identified key informants -- especially from the MME -- who refused and/or hesitated to provide sensitive information, data,

and report documents. However, some senior officials did anonymously provide some documents.

A key limiting factor for the assessment is the lack of comprehensive socioeconomic data and previous literature on the situation faced in the mining communities. Moreover, as ASM communities operate illegally with no license from the MME, some miners were hesitant to provide information about their operations.

This assessment is conducted during the global Covid-19 pandemic. At the time of the assessment, Cambodia was under various lockdown and travel restriction rules. Thus, it was hard to fulfil the objectives of this assessment as had been initially planned.

III. CAMBODIAN MINING SECTOR

3.1) Background of the MME

The MME is a central government ministry responsible for governing Cambodia's mining and energy sectors. In 2013, the RGC split the former Ministry of Industry, Mines and Energy into two ministries, resulting in the present MME and the Ministry of Industry and Handicrafts¹ (renamed the Ministry of Industry, Science, Technology and Innovation in 2020).

The MME acts as a secretariat for the government on missions to lead and manage the mining and energy sectors, including the oil, gas and electricity sectors.

Although various geological surveys have highlighted that Cambodia might possess potentially rich mineral resources, most have not been comprehensively explored. The mining sector is an important pillar in providing revenue and employment in order to boost social development, human resources development, and in building Cambodia's economic diversification.

In order to achieve this, the key policies of the MME in the five years following its formation (2014-2018²) were as follows:

- Build an appropriate and strong institutional capacity to promote and manage the development of the mineral resources.
- Boost the current national revenue stream from the current status to double.
- Establish the economic integration and enhance the development of services, technology and equipment for the development of mineral resources.
- Promote the development of rules and regulations in the field of development and protection of the interests of local communities, society and the natural environment.

3.2) Mining Sector Context

The MME's non-tax revenue in 2019 contributed about 2.5 percent to the total national revenue, and is expected to increase 5 percent from 2020 to 2023, when it is further

¹ The Ministry of Mines and Energy, accessed April 2021. <http://www.mme.gov.kh/en/article/73/html>

² Strategic Framework and Work Programme for upstream mineral resources (mineral resources strategy 2018), the Ministry of Mines and Energy.

expected to jump to 10 percent.³ However, this revenue has not come without environmental and societal cost, as various media reports continue to highlight mining's negative impacts in Cambodia: including on levels of dust, quantity and quality of available water, other environmental damage, impact on community livelihood, and ongoing land conflicts. Stakeholders from all sectors have also raised concerns regarding the lack of clarity on the government's designation of 'strategic' deposits, which are not subject to the same law and policy requirements as other deposits.

Although all stakeholder complaints need to be investigated and urgently addressed if found to be true, stakeholders across all sectors also reported that mining companies have become a scapegoat for many economic, political, social and environmental ills that are beyond industry's control. However, stakeholders say they can openly share their opinions about the sector in multi-stakeholder settings without fear of reprisal. This culture of openness has fostered a healthy debate around mining, encouraged by the on-going work of EIGF that promotes incremental positive change in the sector and advances its contributions to sustainable development.

Cambodia's nascent mining sector is encountering challenges and new opportunities as large-scale mining operations start to enter the country.⁴

Regulation of the mining sector is predominantly managed by the MME, the Ministry of Environment (MoE), the National Committee for Sustainable Development (NCSD), and the Cambodian Development Council (CDC). The governing law and policy frameworks are explained under each MPF theme below.

IV. OVERVIEW OF LEGAL AND POLICY FRAMEWORK

This chapter provides an overview of the legal framework and other regulatory requirements in the Cambodian mining sector. Mineral operations are required to comply with the mining regulatory framework as well as national laws, regulations and guidelines for environmental and social management. This ensures environmental protection, social safety, public order, and the management of environmental and social issues such as solid and liquid wastes, water resources, air pollution, and noise disturbance. The Cambodian legal framework for this assessment consists of the following key laws, policies and regulations.

National Policy on Mineral Resources 2018-2028

This policy is envisaged to solve certain issues such as ineffectiveness in mineral resource management, collection of state revenue, and development affecting the environment and local communities. It was developed with the broad consultation of CSOs, government ministries, and mining companies.

The Minister of Mines and Energy reaffirmed⁵ that the National Policy on Mineral Resources 2018-2028 was formulated based specifically on Cambodia's mining sector, and the thoroughly examined lessons and experience of mineral resources development in various countries, both regionally and globally. The minister stressed that the national policy incorporated international best practice, with a focus on sustainable and responsible development of mineral resources. Three key factors - environmental, social and economic - were taken into consideration. In addition, issues concerning local community development and minority populations in the mining areas and women's issues in mining

³ Mining industry expected to be viable from late this year, The Phnom Penh Post (accessed April 2021), <https://www.phnompenhpost.com/business/mining-industry-expected-be-viable-late-year>

⁴ Oxford Analytica (2017), "Cambodian mining investment need will grow", Expert Briefings. <https://doi.org/10.1108/OXAN-DB222240>

⁵ Minister's speech, H.E Suy Sem on the National Policy on Mineral Resources 2018-2028

have also been incorporated into the national policy.

Strategic Framework on mining 2014-2018

The Strategic Framework and work programmes for mineral resources and the (upstream) oil sector for the years 2014-2018 was endorsed by the Minister of Mines and Energy in November 2014.

Law on Mineral Resource Management and Exploitation 2001

Hereafter the 'Mining Law', this law determines all activities relating to mining operations in Cambodia.⁶ First promulgated in 2001, it has been updated regularly, with the latest amendments introduced in 2018.

Sub-decree 72: Management of Exploration and Industrial Mining License 2016

The objective of this sub-decree is to foster effectiveness, efficiency, transparency, and responsibility of the administration of mineral exploration and industry mining licenses, and to promote socially and environmentally responsible mineral operations and development.⁷

Law on Environmental Protection and Natural Resource Management 1996

This law was established to ensure that all natural resources belonging to the public are protected and managed sustainably. It also aimed to regulate the relations between the government, citizens, business entities, and CSOs in order to guarantee the human right to live in a healthy and safe environment, an ecologically balanced social and economic development, the protection of the environment for present and future generations, and the proper use of natural resources.

Sub-Decree on Environmental Impact Assessment Process 1999

The main objectives of this sub-decree are to:

- Determine an EIA for private and public projects or activities, which must be reviewed by the MoE prior to its submission to the government.
- Determine the type and size of the proposed project and activities, including existing and on-going activities prior to undertaking the EIA process.
- Encourage public participation in the implementation of the EIA process and take their inputs and comments into consideration prior to the implementation of a project.

Relevant regulations on enforcement

The directive on preventive measures of illegal mining in Cambodia was promulgated by the MME in 2004, and remains in effect today. The directive aimed to encourage provincial departments of mines and energy to enforce the preventive measures against illegal artisanal miners and other mineral license holders in collaboration with the sub-national authorities.

Laws and regulations on Indigenous People

The Ministry for Rural Development has a National Policy on the Development of Indigenous Peoples (NPDIP), approved in 2009. The NPDIP aims to promote the livelihoods of indigenous peoples and to improve their quality of life. It concentrates on ten

⁶ Mining law 2001

⁷ Sub-decree on the management of exploration and industry mining license 2016

development sectors: culture, education and vocational training, health, environment, land, agriculture and water resources, infrastructure, justice, tourism, and industry, mines and energy.

The 2001 Land Law makes crucial provisions for communal land titles in articles 23–28. Article 25 provides for collective ownership of land, while Article 26 recognises the role of traditional authorities, mechanisms and customs in decision-making and exercising ownership rights. Under Article 28, no authority outside the community may acquire any rights to immovable properties belonging to an indigenous community.

V. STATUS OF THE IMPLEMENTATION OF MPF FROM 2015-2020 AND MPF ASSESSMENT

The MPF presents the best practices required for good environmental, social, and economic governance of the Cambodian mining sector, and for generation and equitable sharing of benefits in a manner that will contribute to sustainable development. The MPF has universal application to ensuring that mining activities within Cambodia’s jurisdictions are compatible with the objectives of sustainable development and poverty reduction.

This assessment aims to measure the Cambodian government’s level of implementation of the MPF by identifying the strengths and gaps in existing mining laws and policies, to provide information to the Cambodian government in targeting efforts to implement the MPF, to inform capacity-building efforts and to allow for monitoring of progress over time.

5.1) Strengths and Gaps of Legal and Policy Environment

5.1.1) The licensing award process

The first theme of the MPF focuses on the general mining regulations and policy framework regulating the mining licensing process and all mining operations, and encourages good practices with clear lines of responsibility and accountability. This combination of regulations serves as a basis for good governance and sustainable development.

The MPF assessment under this theme falls into the following categories:

- The revision and updating of mining legislation and policies;
- A permitting process that requires:
 - Consultation with communities in the planning and development stages
 - Submission of preliminary assessments (social, economic and environmental)
 - Identification of sustainable development opportunities
 - Addressing indigenous people, cultural heritage, resettlement, and community safety and security issues
 - A timely, transparent, unambiguous and consistent process

The Mining Law of Cambodia states that only a “legal person” (individual, company, or entity) formed and operating under the laws of Cambodia may be granted a mineral exploration or mining license. Article 26 of 2016 Sub-decree 72 on the management of mineral exploration and industrial mining licenses explains the requirements for the

application process and the supporting documents needed for an exploration license. There is no limit to the number of exploration licenses one legal person may hold.

Provincial, District, and Commune authorities that are where the proposed area is located shall promptly publicise the announcement of the Minister of Mines and Energy about the application for the exploration license. The concerned person who is willing to claim against the issuance of the exploration license can file a complaint to the Provincial Department of Mines and Energy or to the MME via relevant Commune authorities within 45 days after the announcement. The Minister of Mines and Energy may check and resolve the complaints within 45 days after receiving a complaint. However, the MME Prakas determining the formality and procedures for resolving any complaint has not yet been endorsed.

Mining license holders must maintain a copy of the mining license, an environmental management plan and report, an exploration work plan reviewed by the MME, the MoE, and the consultation meeting with relevant inter-ministries through EIA procedures. Industrial mining license holders must maintain a copy of the mining license, feasibility study, EIA, environmental management plan, property leases and product sales agreements, records establishing the boundaries of the mining area, and agreements on land and water use and other documents required by the MME. Importantly, a license holder must comply with all environmental laws and regulations.

A mining license holder must prepare an EIA and environmental management plan prior to obtaining a mining license. The assessment and plan must be submitted and approved by the Minister of Environment after the participatory consultation process and then delivered to the Minister of Mines and Energy. Pursuant to the existing minerals regulations and the EIA regulations, prior to the start of annual project implementation, mining license holders must deposit the agreed funds into an account opened by the MME and the Environmental and Social Fund Committee, which is co-managed by the MoE and the Ministry of Economy and Finance.

However, civil society stakeholders, including local communities, reported concerns that they do not have enough information or ability to influence the permitting process. In particular, civil society stakeholders reported that they often did not know about the permit until it had already been granted, and were not adequately consulted during the licensing award process.

The MME has been working on revisions to its mineral regulations and policy framework, with improvements in the licensing award process and the stakeholder engagement among its top priorities. Importantly, for all stakeholders who wish to engage in this process, Cambodia's 2016 Sub-decree 72 required government institutions to conduct a hearing or public forum to introduce the concept and purpose of a new decision they intend to adopt. The purpose of this forum is to hear the opinions from the affected communities and local authorities. This new regulation should improve opportunities for public input on the mining activities and operations.

STRENGTHS

Key strengths in Cambodia's legal and policy environment related to mining are:

The National Policy on Mineral Resources 2018-2028, endorsed in 2019, is designed to pinpoint the vision, objectives, goals and roles of the RGC in developing the mineral resources of the nation, and introduce key strategies and action plans to ensure that the development of mineral resources is carried out sustainably, efficiently, effectively and transparently. This policy aims to manage and develop mineral resources sustainably; bring

benefit to the country and the local community; supply raw materials for the development of infrastructure and construction; and create a new source of revenue for the nation.⁸

The first strategic objective of the national policy on mineral resources 2018-2028 focuses on strengthening public institutions in the management and development of mineral resources. The objective consists of laws and regulations; capacity building for officials and human resource development; creation of a mineral resources inventory; good governance and management with accountability and transparency; and investment promotion.

The national policy was developed in tandem with the ASEAN Minerals Cooperation Action Plan (AMCAP) 2016-2025 to ensure the sustainable development of the mining sector and achieve ASEAN Economic Integration as planned by 2025.

The Mining Law and relevant regulations are developed and updated to reflect changing knowledge and best practice. The Mining Law of Cambodia was adopted in 2001 and most recently amended in 2019, while the 2016 sub-decree 72 requires government institutions to adequately focus on the environmental and social safeguards as the top priority, as mentioned in chapters 2 and 5.

Good governance and management with accountability and transparency are key to building investors' trust and public acceptance of such investments. The MME has shown awareness of the need to deal with the problems arising from mining development. The principle of public consultation and meaningful engagement with stakeholders, including mining companies, civil society, the local community and the sub-national administration has provided opportunities to all parties to share constructive feedback to address issues of common interest.

GAPS

The level of consultation with communities and other stakeholders during the licensing process is limited. While the mining regulations require documentation of community consultation with those likely to be affected by the project (see MME's circulation on licensing award procedures, 2016), stakeholders reported that such 'consultations' are limited at best. Stakeholders noted that consultation may be very limited—targeting one or two government leaders, but not a broad representation of government, civil society or other interested stakeholders. Many civil society stakeholders reported that they do not hear about a permit until it has already been issued. Stakeholders noted that while a ministerial circulation on the procedures of licensing award process was issued in 2016, it was not accompanied with any guidance, and no information has been made available regarding how consultations should be organised or implemented.

The proliferation of laws and policies results in confusion and lack of clarity among civil society and mining companies. The abundance of new laws, policies, and requirements of environmental codes have not been streamlined in recent years, and confusion about which remain relevant to the mining sector has frustrated all stakeholders in their efforts to access, understand and follow the laws. While the environmental framework remains complex, CSOs have frequently commented on confusion regarding the multitude of current laws, the frequency with which they are amended, and whether they fit together into a cohesive framework.

Mining operations in designated 'Protected Areas' are under increasing pressure to improve their environmental and social performance. The RGC is obligated under the UN Convention on Biological Diversity to "establish a system of Protected Areas or areas where special measures need to be taken to conserve biological diversity." Protected Areas are

⁸ MME, National Policy on Mineral Resources 2018-2028

defined as being “dedicated to the protection and maintenance of biological diversity, and of natural and associated cultural resources” (IUCN, 2013). Cambodia’s mining laws prohibit mining in “national cultural, historical, natural and heritage sites,” and in designated Protected Areas. Despite these regulations, the exploration and industrial mining licenses were granted in designated ‘Protected Areas’ without properly consulting local communities and CSOs. The mining is being done by companies that have little incentive to follow international mining standards or to safeguard protected areas. The application for these mining licenses lacks openness and transparency as government approval is required to get public access to mining industry applications, reports, plans, and any data about environmental or social impacts. Responsible mining could be part of the solution to biodiversity loss and poverty as an engine of economic and social development and it would contribute directly to biodiversity conservation activities by minimising social and environmental impacts.

Therefore, to ensure that the mining sector does not contribute to degradation of Cambodia’s rich biodiversity and natural capital, the Sector-wide Strategic Environmental Assessment (SSEA) noted in the draft of the Environment and Natural Resources Code of Cambodia and the draft sub-degree on Strategic Environmental Assessment (last version 31 December 2016) should be comprehensively consulted upon by the MME, MoE, and relevant stakeholders and be endorsed as soon as possible.

Community lands of indigenous people have been stolen by mining concessions due to an on-going lack of clarity on the legal status of such land, and the contradictions between mining laws and other laws. Many leaders of indigenous communities and CSOs said that the lack of implementation and enforcement has left indigenous peoples vulnerable to commercial and state interests, which are increasingly attracted to exploiting the economic potential of gold mining deposits traditionally used and managed by indigenous communities.⁹ The NGO Forum on Cambodia has reported that economic land and mining concessions were granted without the meaningful consultation based on the FPIC principles, leading to land grabbing, deforestation, and illegal logging. All of which has severely impacted the livelihoods of indigenous groups across Cambodia.

Limited Transparency and Accountability in Licensing Award Process

TI Cambodia conducted in-depth research in 2017 on Cambodia’s mineral exploration licensing process. The resulting Governance Risk Assessment aims to identify and analyse governance risks associated with the process for granting mineral exploration licenses in Cambodia. 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 remained: 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, process timelines, application evaluation process, public consultation, beneficial ownership, and approval from other line ministries.¹⁰

5.2) Strengths and Gaps of Financial Benefit Optimisation

The second theme of the MPF covers the optimisation of financial benefits of mineral operations through license and permit fees and other administrative income. The other major subtopic of this section is revenue transparency on both the national and sub-national levels. The policy reflections under this section fall into the following categories:

⁹ <https://vodenglish.news/indigenous-communities-want-more-transparency-around-mining-projects/>

¹⁰ <https://www.ticambodia.org/cambodias-mineral-exploration-licensing-process-governance-risk-assessment/>

- The implementation of a non-fiscal revenue generation framework that optimises returns from mining activities under the management of the MME;
- Increasing revenue transparency and knowledge regarding the distribution of benefits from mining.

STRENGTHS

The second strategic objective of the National Policy on Mineral Resources 2018-2028 focuses on promoting sustainable and responsible mining operations, and also mentions about the Optimising Mining Production. The MME conducted an assessment of the mineral resource estimation and the exploitation costs to set or re-evaluate the cut-off grade; setting the standards (regulations) defining the minimum rates of associated minerals to process; requiring mining companies to appraise associated minerals contained in the primary mineral; defining and regularly evaluating the cut-off grade based on comprehensive economic assessments; and promoting the use of advanced technology and encouraging the use of scientific methods for exploiting mineral resources.

The most important strengths in terms of financial benefit optimisation is non-tax revenue from license and permit fees and other administrative income, which sharply increased in the last five years. With the reform in 2015 on mineral revenue collecting measures, the revenue in 2016 increased to 52 billion riel (13 million US dollars), relative to only 7 billion riel (almost 2 million US dollars) in 2013.

GAPS

There is a lack of clarity regarding budget management of mining fund under the MME. Civil society and local communities expressed great concern regarding the extent to which planned and budgeted transfers of mining funds from national to sub-national government entities are actually realised with significant negative effects on local development plans.

There is a lack of transparency and accountability in the licensing award process, and non-tax revenues from licenses and permits. Civil society and local communities shared concerns regarding the overall lack of transparency in the mining sector.

The MME's capacity to audit complex returns and to deal with the collection of royalties and related issues needs to be improved. These are issues of deep concern in many countries, and Cambodia must build capacity in these areas to better manage potential non-tax revenue issues.

5.3) Strengths and Gaps of Socioeconomic Benefit Optimisation

A secretary of state at the MME mentioned in 2018 during the EIGF meeting that: “the government's mandate 2013-2018 is a mandate for the reforms of the sustainable development of the mining sector under the leadership of the MME”. The launching of EIGF was a vital initiative. Nevertheless, there were many good lessons to learn and challenges to overcome before this initiative was able to build an efficient and accountable governance practice as required by the involved CSOs. One key success of the initiative is noting the importance of building trust. However, closer and more trustworthy partnerships and relationships between all players have not yet fully succeeded.

The EIGF initiative implementation needs stronger political will and more commitments to beat the lack of trust. To be effective, EIGF implementation must effectively mobilise coalitions of interested parties.

The policy reflection under this theme falls into the following categories:

- The integration of mining into community, provincial, and national development. For example, by making socioeconomic planning a part of the permitting process and by ensuring that consultations with affected stakeholders take place at various stages of the mining cycle;
- Ensure that mineral operations and activities consider and support education and community health services, working collaboratively with the civil society;
- Ensure high standards of occupational health and safety through appropriate standards;
- Consider the respect of business and human rights principles, indigenous people rights, and cultural heritage through norms aligned with international laws and standards.

STRENGTHS

The third strategic objective of the National Policy on Mineral Resources 2018-2028 focuses on developing mineral resources and community. The achievements consist of:

- Community Development: requiring that industrial mining companies develop a Corporate Social Responsibility Plan as a part of their feasibility study report when applying for industrial mining licenses. This plan must include the development of public infrastructure for the local community, and in remote areas particularly, the plan also must include education, water supply, and primary healthcare for the people in the community.
- Since 2016, the MME established a mining fund for community development which is contributed into by the mining companies at a proportional rate to the mineral production. This fund is intended to be used for the benefit of local communities where mining operations are located or where they are directly or indirectly affected by the mining operations and support sub-national authorities on community development.
- The MME established a community development mechanism which is key for social equity in sharing benefits from mining revenues to local communities and in making decisions to develop their own community.

The 2017 EIGF aims to build a multi-stakeholders governance, building on critical partnerships and balancing interests among key participating players such as mining companies, the government, and CSOs. A senior MME official involved in the EIGF establishment process said that this type of governance is actually not a new concept internationally, but it is relatively new and very challenging under Cambodia's governance and political context.

Community protests around the environmental impacts of mining may have contributed to momentum around reforming the EIA process. Protests also provided conducive frameworks for the MME to advance its management and monitoring on a stronger evaluation of environmental and social safeguard policy, which may have supported the introduction of reforms to that effect in the National Policy on Mineral Resources 2018-2028. The MME has created legal protections for indigenous peoples in the mineral resource development areas through laws preserving their rights, freedoms, customs, traditions, cultures, beliefs, and religions.

GAPS

Home-grown initiatives of the EIGF come with risks concerning implementation failure and sustainability that need to be considered over the long term. During interviews, a senior MME official claimed the EIGF is a domestic version of an **Extractive Industries**

Transparency Initiative (EITI), but from the TI Cambodia perspective it failed to deliver any results that match EITI requirements. Learning the lesson from this experience, TI Cambodia and the coalition have been advocating for membership of EITI to ensure that commitments made will be honoured and monitored by independent verification mechanisms.

The experience between 2017 and 2020 may hold prospective lessons for the EIGF platform. While the EIGF is seen for now as a successful innovation, the body suffers from ownership risks that may jeopardise its future sustainability. Also, the success of the body still hinges on the leadership of a high level official in government, as its champion. To manage these risks, it is important to build shared buy-in for MSIs. TI Cambodia has recognised this challenge and is pursuing efforts to secure the Minister of Mines and Energy's attendance to a future EIGF meeting. Simultaneously, it reports trying to broaden ownership across ministries, ensuring that political and technical leadership from across ministries (environment, agriculture, interior and others) are invested in the body and its work. Outside the national government, it reports pursuing the involvement of local government officials and communities.

Poor or deteriorating civic space erodes the MME's ability to operate effectively and their efforts to build trust and to engage the CSOs and local communities. DPA and other EISEI members report how government repression of public protests, including in mining areas, has come with accusations of sedition towards CSOs. This has caused delays in activities and created a difficult context for constructive government engagement. Also, they had to spend considerable time building trust with ASM miners as they were generally suspicious of the motives of outside players, with concerns that CSOs may be emissaries of politicians with stakes in the industry. While these concerns need adequate response strategies, CSO members of the EIGF appear to have adopted cautious engagement strategies, including by leveraging supportive champions, which allow them to make progress even in the on-going context of Cambodia's constrained civic space.

The involvement of senior military officials and politicians highlights the importance of preventing conflicts of interest rules and ensuring comprehensive Beneficial Ownership (BO) disclosures. Between 2016 and 2019, many investigative reports on gold mining and sand dredging by a group of environment activists highlighted the embezzlement of public resources linked to politically exposed persons (PEPs), including family members of prominent politicians and senior military officers. This scandal led to public anger, a crackdown on the mining pits, and a lawsuit led by the MME and Military Police. While TI Cambodia reported that the scandal initially created more caution within government circles in engaging with civil society and media, it also pointed to issues in existing conflict of interest rules and the lack of BO disclosures that have provided supportive evidence for CSO's advocacy objectives.

There is a low level of understanding regarding how to develop and manage agreements between mining companies and the MME to ensure benefits to mine-affected communities. CSOs and mining companies have a range of concerns regarding how the new Model Agreement on Mining Funds for Community Development will be negotiated and implemented, and whether agreements under the new model will have a positive or negative impact on existing social and environmental fund arrangements under the MoE. Stakeholders expressed a need for more detailed guidance regarding how to develop and manage these agreements.

Requirements for consulting with affected stakeholders at every stage of the mining process are lacking. The sub-decree on EIA requires the legal entity performing the EIA to "organize, at the report preparation stage, consultations with and formally seek comments from the local authority, the community that is likely to be affected by the project and local residents living in the area where the proposed project is going to be implemented." While the EIA

report must also include notes of these consultations, Cambodia's legal framework does not require on-going consultations throughout the life of the mine. Notably, mining regulations allow a license holder, in cooperation with the local administrative body, to organise a public forum related to the issues of environmental protection, infrastructure development, employment, and related agreements between the company and local government.

Support for local business development related to mining sector is low. Although mining companies shared some recent initiatives to support, build capacity and source from local businesses, MME-led initiatives for local business development related to mines has been relatively low. However, the MME has only encouraged some mining companies to give priority on local procurement and employment. Socioeconomic development models should lead to improvements in this area.

5.4) Strengths and Gaps of Environmental Management

This section of the MPF recognises the importance that environmental management plays in the mining sector in order to achieve a more sustainable development path. The themes of this section include:

- Water management, both surface and ground water, including standards on management and monitoring, and the appropriate penalties when required. Specific requirements on mining effluent stream management meeting stability guidelines, as well as water leaching from waste dumps, tailings storage and leach pads; in effect, requiring that mining entities have in place practices and plans that minimize the likelihood of impacts beyond the mining site.
- Avoiding and minimising potentially negative impacts to biodiversity throughout the mining process. Managing mine wastes by requiring that mining entities design, operate, and maintain waste structures according to internationally recognised standards; and requiring mining entities to commission independent expert reviews and report to government prior to development approval, when changes are proposed and at regular intervals during the operating phase.

STRENGTHS

The second strategic objective of the National Policy on Mineral Resources 2018-2028 focuses on promoting sustainable and responsible mining operations. The achievements consist of:

- **Implementation of Sustainable Development Approaches:** The primary objective of mineral resources development is to ensure that the sector develops sustainably and responsibly. Economic, social and environmental matters are determining factors to decide on an investment request;
- **Environmental Management:** The MME will improve existing environmental management practices to reflect the responsible development of mineral resources and ecosystems, including animals, plants, soil layer, water and air. In general, the MME have set plenty of technical requirements to mining companies to set up a specific implementation plan to protect the environment in different phases of mining development, namely the exploration phase, the development and extraction phase, and the rehabilitation of mine closure phase.
- **Mine Safety Assurance:** Strengthening the capacity of mining inspectors to enforce provisions on mine safety and health by providing short and medium-term training. Particular attention is made to providing basic skills together with on-site training to relevant sub-national officials to enable smooth monitoring and responsiveness to any eventual incidents.

- **Development of Mineral Resources and Natural Protected Areas:** To protect the environment and to minimise the adverse effects on the environment, the MME also enhanced a special monitoring mechanism ensuring strict compliance with the existing laws and regulations or international best practice.

There are joint requirements by the MME and the MoE that all mineral operations conduct EIAs and have environmental management plans in place. Both ministries require mineral license holders to conduct EIAs and environmental management plans, and to submit annual reports regularly.

Companies must submit annual reports on environmental management plans and recommendations. Companies are required to submit annual environmental reports noting any negative environmental impacts and including proposals for how the environmental management plan should be improved to respond to any negative impacts.

The MME has been establishing the principle for mine safety and health for each type of mineral resources exploitation. There are two types of mineral resources exploitation: open-pit and underground mining.

The MME have required mining companies to establish the principle for mine safety and health based on actual type of mining operations and situation of their mining sites. Mining companies are also required to develop mine safety and health management systems that incorporate risk management and operations to ensure safety and good health of the people who may be affected by mining operations. Mine safety and health management systems require auditable documentation, and forms part of the management system, including organisational structure, action plans, responsibilities, operations, operational procedures, and resources for capacity building, implementation and review.

GAPS

The MME monitoring of negative impacts on water quantity and quality is limited. There remains inadequate monitoring of impacts on water quantity and water quality. While there have been some improved monitoring requirements on paper, the extent to which this results in improved practice is unclear after the poisoning case in Kratie and Mondulkiri provinces in 2017. Concerns regarding the negative impacts of mining on water quality and quantity, and lack of related monitoring, are broadly raised by the mining affected communities, local authorities, and CSOs. These groups also expressed concerns regarding the capacity of the MME and the MoE to oversee the monitoring process, take corrective action with international good practices, or impose effective sanctions when these are necessary to assure legal compliance.

Requirements for assessing and monitoring of biodiversity impacts are limited. Cambodia has great biodiversity in its protected areas, but there is a low level of government capacity to oversee and monitor the design, construction, stability and water quality impacts of major facilities such as waste rock repositories, tailings dam, and leach pads. The assessment team did not identify any uniform requirements or criteria governing these facilities, nor requirements that international best practice be followed in their design and construction. Companies and government officials expressed a low level of confidence in the ability of inspectors to adequately monitor these important and high-risk aspects of mining.

5.5) Artisanal and Small-Scale Mining

ASM is the final theme of the MPF. In addressing this theme, the framework aims to enhance the health, safety, and quality of life of artisanal and small-scale miners working

informally outside the legal framework, and to enhance the contribution of this sector to sustainable development. Policy recommendations within the theme focus on the following:

- The integration of ASM into the legal system through appropriate legal frameworks, technical support and formalisation strategies.
- The integration of ASM into the formal economic system through the promotion of savings and investment, 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 policies to promote alternative livelihoods.

There is no official figure on the number of miners involved in ASM. In 2015, it was estimated that there were around 5,000 to 6,000 miners engaged in gold mining. At present, only a few initiatives in Cambodia are being implemented to respond to the growing issues on chemicals management and mercury use in gold mining. The need to eliminate mercury pollution in ASM has been put forward by CSOs, local communities, and the MME. ASM in Cambodia is governed by the 2001 Law on Mineral Resources, Management and Exploitation.

The roles of women and children in ASM are vital issues that require to be addressed. Child labour deprives children of the rights to health, education, and a correct childhood, among other important areas. Likewise, women face inherent discrimination that deprives them of valuable opportunities. Based on the results of our focus groups within the mining communities in Preah Vihear Province, women engage in mining activities out of poverty and lack of other livelihood opportunities. However, their contribution to the family income is seen as a further income to supplement the seemingly inadequate salaries of their husbands. The prevailing conditions and circumstances generally don't provide opportunities for self and economic development. In addition, the shortage of enabling options and safe working conditions violates women's welfare and rights.

STRENGTHS

The Mining Law and related regulations includes a legal framework for ASM. The MME issued a Prakas on ASM licensing award procedures in 2015 and Cambodia's first formal artisanal mining community was established in Mondulkiri Province a few months later, in April 2015. As well as bringing such communities to be in compliance with the law, it allows better management and aims to help raise living standards.

The MME and MoE have been collaborating to prevent and address health and safety concerns of artisanal and small-scale miners and their families. As noted above, the government has collaborated with CSOs and others to improve the ASM.

GAPS

Many CSOs and representatives of mining communities indicated that there are legal and technical barriers to formalisation, particularly the lack of clarity regarding how to obtain a community license. Miners also complained that necessary approvals could only be obtained at the MME even though the ministry already delegated this responsibility to the provincial department of mines and energy. ASM activities are not formalised and most

operations are not registered. The lengthy application process, technical procedures and requirements and costs discourage miners from legalisation.

Most of the current ASM in Cambodia are yet to receive proper licenses, with the enforcement of laws and the supervision of ASM remaining limited. Besides unauthorised mining of construction materials, illegal gold and gems mining within the licensed areas, public and private lands in western and north-eastern provinces are slowly increasing.

The level of government commitment to diversify economic opportunities and alternative livelihoods is low at the sub-national level. Government officials shared a wide range of perspectives on ASM activity. Much of this activity is prevalent in very remote areas and during times when agricultural activity is low or other employment alternatives are lacking.

Efforts to formalise ASM do not sufficiently prevent or mitigate conflicts between small-scale and large-scale miners. Both small-scale and large-scale mining sectors noted conflict between miners in the sector. Land rights continues to be an issue for ASM and disputes over land ownership have driven miners out of their lands, and have affected their livelihoods significantly, pushing them further into informality.

The shortage of technical training for ASM miners on minimal health and safety standards have led to negative social and environmental impacts. There is a need for adequate training and capacity-building support from the government. Local miners lack the technical knowledge on proper exploration and extraction methods. Most of the existing methods used are derived from the operations of big mining companies, and do not guarantee efficiency and safety for artisanal miners. Rehabilitation of artisanal and small-scale mines appears to be extremely limited. The CSOs reported a very low level of rehabilitation of former ASM sites once mining has ended.

VI. CONCLUSION

The mining sector in Cambodia has seen some significant improvements in the implementation of its Mining Policy Framework within 2015-2020. However, sector development and investments are constrained by bottlenecks and areas of weak performance that need attention to strengthen the mining governance and investment environment, as well as the impact of the sector's reform. These include:

- Mineral policy is not well integrated into the national development framework – which would help ensure mining's contribution to sustainable development and broader support for the mining sector;
- The absence of a formal benefit sharing framework, as a result of which company contributions to social development are ad hoc and inconsistent, and their relationship with national development efforts unclear;
- National development plans not integrating the mining sector, and the absence of spatial development planning that could do that;
- Government's limited capacity for oversight of the mining sector;
- The absence of a 'whole of government' approach to mineral development, including in relation to environmental governance;
- Insufficient resources are allocated to attracting new investment (such as for the provision of adequate geological information);
- Weak and inconsistently applied public and inter-ministerial consultation mechanisms;
- A tendency for government to rely on administrative orders rather than on legislative development and parliamentary review processes.

VII. RECOMMENDATIONS

Given the outcomes of this assessment, the recommendations have identified a few areas in particular where the MME could strengthen capacity to implement the MPF. Having assessed the government's legal framework across each of the themes outlined above, the MME can now prioritise those actions that must be taken to improve social and environmental governance in the mining sector:

- The MME should develop a work programme (concrete roadmap) for how it will adjust or reform its legal and regulatory frameworks to achieve its policy objectives and meet its international commitments. In this roadmap, the government should outline where changes in policy, law, institutions, capacities, and resourcing will be needed; the best legal instruments for making positive change; and the steps that the MME will follow to revise the legal framework. This roadmap should be developed in a participatory and inclusive way to ensure that it reflects a variety of diverse stakeholder perspectives, including the voices of women, indigenous peoples, and marginalised communities.
- The MME should identify the social, economic, and environmental risks associated with actions and the benefits of reform, and subsequently prioritise those actions and strengthen its legal frameworks for the sustainable development in the mining sector.
- The MME should endorse the good international standards and practices that are being used across the sector to ensure the effective and safe management of mine development.
- Risks and benefits should be analysed through a gender lens that lays out the gendered impacts of mining, as well as associated risks and opportunities, to ensure that reforms address differentiated risks and vulnerabilities across stakeholder groups. And finally, prioritised actions must be feasible and well communicated. It is better to build, convey, and deliver on realistic expectations for social and environmental governance reform than to overpromise and leave communities and stakeholder groups disappointed.
- Policy interventions should be designed to promote the effective management of chemicals, including mercury, as well as to promote safer and more humane working conditions.. The creation of an enabling environment that paves the way for the formalisation of miners can help eliminate the inherent dangers of mining as well as the existence of illegal practices such as mercury use and child labour. Additionally, the proper identification of work streams and roles and responsibilities for the relevant agencies including the MME and the MoE need to be prioritised and clarified.

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