



# Unpacking Decentralization: Improving How States and Regions in Myanmar Issue Artisanal and Small- Scale Mining Permits

SUMMARY

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## Key messages

- The Myanmar government recently decentralized responsibilities for issuing artisanal and small-scale mining (ASM) permits to the country's states and regions. If well managed, decentralization could make government policy more sensitive to the needs and concerns of miners and the communities impacted by mining activity.
- However, thus far decentralization in the mining sector raises serious concerns. States and regions have new responsibilities but not necessarily the skills and resources to fulfill them effectively. Legal requirements—for example, the criteria on which to award permits—are ambiguous and contradictory; processes and institutional responsibilities are poorly defined. In its current form, decentralization risks driving corruption and mismanagement. Decentralization could trigger an uptick in permits without environmental and social safeguards and could create conflicts with large-scale mining. As a result, states and regions could miss an opportunity to empower ASM operators and communities.
- State and regional officials must act swiftly to avoid potential pitfalls. This includes more clearly defining the procedures and criteria used to allocate permits and the institutions involved in decision-making; putting in place more effective systems to manage and store permit information; promoting transparency; coordinating closely with the Union government; and implementing formalization strategies. Oversight actors have a critical role to play in ensuring state and region officials apply good practices.

## Summary

Recent changes to the legal framework governing Myanmar's minerals sector have decentralized responsibilities for issuing artisanal and small-scale mining (ASM) permits from the Union government to the country's fourteen states and regions. Decentralization could potentially be an opportunity to improve governance of Myanmar's mining sector and support the country's broader political transition. However, there are major challenges around how the government is implementing decentralization. This means that an opportunity to strengthen the livelihoods of ASM operators and empower local stakeholders could be missed. The Natural Resource Governance Institute (NRGI) has written this report with the aim of providing practical guidance to state and regional officials and oversight actors to avoid these potential pitfalls.

Myanmar's ASM sector is a major contributor to the country's economy. Experts estimate that the sector is worth hundreds of millions of dollars annually and supports the livelihoods of millions of people. However, like many countries with large ASM sectors, Myanmar struggles with high levels of informality—most miners operate without legal permits from the government. ASM is associated with serious environmental, social and governance challenges.

Historically, Myanmar's legal framework for the minerals sector was highly centralized. Government policy largely ignored ASM. Following amendments to Myanmar's constitution, the 2015 Myanmar Mines Law and 2018 Mines Rules set in motion a dramatic shift in how the government manages the sector. States and regions now have the power to issue ASM permits and collect revenue.

State and region permit scrutiny boards are responsible for issuing ASM permits. State and regional ministers for natural resources chair these boards, which comprise of representatives from several government departments. The Union government has delineated exclusive ASM zones and encourages (but does not require) states and regions to only issue permits within these zones. Beyond these provisions, the legal framework provides little guidance on how states and regions should issue permits.

In practice, the process by which miners apply for and receive permits involves a multitude of steps and decision-makers at the state and region, township and Union levels. Processes are complex, opaque and vary between states and regions. At the time of writing, most minerals-producing states and regions had started to receive applications but progress on issuing permits was slow. In Sagaing, the regional government received over 4,000 applications between August 2018 and the beginning of March 2019 but did not issue a single permit within this period.

By bringing decision-making and enforcement closer to the mine site, decentralization could potentially improve governance of the sector. International experience shows that decentralization could make it faster, cheaper and easier to operate legally. It could also make government policy more attuned to the concerns of impacted communities. Importantly, decentralization in mining is part of a broader shift to empower subnational institutions after decades of highly centralized, authoritarian rule. Decentralization could help to build the capacity and resources of state and regional governments. In the long term it could lay the groundwork for a move towards federalism—an important component of efforts to end Myanmar's decades-long civil conflicts.



However, the manner in which decentralization is currently unfolding means these potential benefits could go unrealized. States and regions have new responsibilities but not necessarily the skills and resources to effectively fulfill them. Legal requirements are ambiguous and contradictory, institutional responsibilities are poorly defined and there are insufficient checks on decision-makers. As a result, decentralization could have negative governance impacts.

- **Corruption and elite capture.** Corruption is a challenge in Union-level mining governance. Decentralization could replicate and exacerbate these issues at the state and regional level. State and regional processes for issuing permits are complex, slow and involve a multitude of actors. Institutional responsibilities and the criteria for evaluating applications are unclear. This increases the risk of officials requesting bribes in order to approve applications. Township-level reviews appear to be particularly vulnerable to this.
- **Delays and mismanagement.** State and regional processes for issuing permits are prone to inefficiencies and mismanagement due to capacity constraints, the multitude of decision-makers, and the lack of coordination between them. Interviewees consistently complained about the extremely long time it takes to get a permit. This could undermine the potential for decentralization to incentivize formalization.
- **Impacts on national permit systems.** Myanmar is planning to develop a national registry of mining permits, or cadaster, which could make the government's processes for issuing permits more transparent and efficient. However, the lack of consistency between Union and state and region institutions could complicate efforts to roll out this system. This includes the fact that states and regions are not using geographic information systems (GIS), thereby increasing the risk of overlaps between permits.
- **Environmental and social impacts.** Myanmar lacks a sensible legal framework for the management of environmental and social impacts in the ASM sector. The requirements for miners are contradictory, unrealistic and routinely ignored. The practice of requiring miners to pay all taxes and fees upfront, even for multi-year permits, could incentivize officials to issue more permits than they can realistically monitor. Capacity constraints within the Union-level Environmental Conservation Department (ECD) and its lack of coordination with state and regional processes could lead to an uptick in permits without adequate environmental and social safeguards.
- **Conflicts with large-scale mining.** Myanmar's decentralization process is made more complex by the fact that ASM permits are administered by states and regions while medium and large-scale permits remain the responsibility of the Union government. In the absence of effective coordination mechanisms, there is a risk of overlapping claims between ASM and large-scale investors. This could lead to conflicts, harming efforts to formalize ASM and undermining the confidence of large-scale mining investors..

There is a need for far-reaching reforms in order to manage the decentralization process more effectively. This will require close coordination between different levels of government and will likely be a lengthy, complex process. In the meantime, it is essential that state and regional officials take immediate, concerted action to manage the challenges posed by decentralization. The following steps could help state and regional officials fulfill their functions effectively and transparently within the constraints of the existing legal framework.



### Clearly define and communicate review processes, criteria and institutional responsibilities

There is little clarity or consistency in precisely how states and regions review applications. This creates the risk of corruption, mismanagement and delays. State and regional governments should:

- Define the overarching framework for processing applications, applying the principle of “first come, first served” while including safeguards to protect incumbent informal miners and local communities.
- Define detailed business process workflows setting out each step of the review process and clearly describing the tasks officials need to fulfill. Ideally states and regions should rationalize and reduce the number of steps involved.
- Define exactly which institutions are involved and what their precise role is, ideally rationalizing and reducing the number of decision-makers.
- Define clear timeframes for completing each step of the review process.
- Set out objective evaluation criteria with a clear legal basis.

Artisanal tin miners in Kayah State

Yu Yu Myint Than for NRGi

### Establish systems to store and manage permit information

The states and regions we reviewed use hard copy registry books and electronic spreadsheets to manage permit information. This is a good foundation, but states and regions should harmonize their approaches with the Union government. State and regional governments should:

- Consistently record applications in hard copy registry books in a manner that is aligned with the national cadaster. This should include recording the precise time applications are received to underpin the principle of “first come, first served.”
- Harmonize permit spreadsheets with the requirements of the national cadaster, including by using the same GIS coordinates to map permits.

### **Establish transparency mechanisms**

Decentralization could increase the risk of corruption and mismanagement.

Transparency helps to guard against this. State and regional governments should:

- Facilitate public access and understanding of relevant laws and regulations, as well as documents detailing business process workflows, review criteria and timeframes, and institutional responsibilities. States and regions should prepare simplified summaries of these documents and actively disseminate them.
- Ensure public access to the hard copy registry book and permit maps.
- Regularly publish extracts of the permit spreadsheet for all active and pending permits.
- Record and regularly publish revenue data.

### **Ensure coordination with the Union government**

State and regional officials need to be careful to avoid overlaps and potential tensions between ASM and large-scale investors. In the future, the cadaster will facilitate this.

In the short term, state and regional officials should:

- Seek Union government approval before issuing any permits outside ASM zones.
- Coordinate with exploration companies and the Union government to identify areas appropriate for ASM.
- Explore options for cohabitation and partnerships between ASM and large-scale companies.

### **Promote formalization**

Permitting needs to be quick, simple and cheap in order to incentivize formalization.

State and regional governments should:

- Engage with miners to help them understand how to apply for a permit and take measures to reduce the time and money involved.
- Implement longer-term measures to promote formalization, including simplifying application forms, review criteria and submission processes; providing capacity-building support to miners; and promoting the formation of ASM cooperatives.

Decentralization in the mining sector is an important opportunity for Myanmar. It is essential that state and regional officials understand the challenges that are unfolding and take steps to manage them. In doing so, they need to work closely with relevant stakeholders at the state and region, Union and local level. Otherwise the potential benefits of decentralization could go unrealized.

## Good practice checklist

<p><b>Procedures</b></p>	<ul style="list-style-type: none"> <li>• Has the state or regional government clearly defined a “first come, first served” framework for processing permit applications?</li> <li>• Has the state or regional government defined a step-by-step workflow for reviewing applications?</li> <li>• Are the roles and responsibilities of each institution involved in the review process clearly defined?</li> <li>• Are the timeframes for each step of the workflow clearly defined and realistic?</li> </ul>	<ul style="list-style-type: none"> <li>• Do officials use checklists to evaluate applications?</li> <li>• Do officials verify compliance with environmental and social requirements?</li> <li>• Do officials verify surface rights (including customary land rights)?</li> <li>• Does the “first come, first served” framework include safeguards for incumbent informal miners and/or local residents?</li> <li>• Do applicants have access to a grievance mechanism?</li> </ul>
<p><b>Systems</b></p>	<ul style="list-style-type: none"> <li>• Are the categories of information recorded in the hard copy registry book and digital spreadsheet harmonized with the requirements of the national cadaster?</li> <li>• Do officials record applications in a registry book immediately after receiving them?</li> <li>• Do officials give each application a unique serial number or permit code?</li> <li>• Do officials record the precise date and time that an application is received, including the hour and minute?</li> </ul>	<ul style="list-style-type: none"> <li>• Do officials require applicants to counter-sign the registry book?</li> <li>• Do officials issue a date and time-stamped receipt to applicants?</li> <li>• Do officials log applications in a digital permit spreadsheet immediately after receiving the application?</li> <li>• Do officials update the digital permit spreadsheet immediately after approving or rejecting an application?</li> <li>• Do officials use Myanmar 2000 UTM maps to record the coordinates of permits?</li> </ul>
<p><b>Transparency</b></p>	<ul style="list-style-type: none"> <li>• Are all relevant Union and state and region laws, regulations and notifications (full text and summary) readily available to the public in government offices and online?</li> <li>• Are summaries of procedures, review criteria and institutional responsibilities readily accessible to the public in government offices and online?</li> <li>• Are state and regional officials required to sign a conflict of interest declaration?</li> </ul>	<ul style="list-style-type: none"> <li>• Are the registry book and permit maps accessible to the public in the relevant government office?</li> <li>• Is the list of pending, active and expired permits periodically made available at government offices and online?</li> <li>• Do state and regional governments record and periodically publish revenue data?</li> </ul>
<p><b>Coordination</b></p>	<ul style="list-style-type: none"> <li>• Do state and regional officials verify whether or not proposed permit areas are located exclusively within ASM zones before reviewing applications?</li> <li>• If applications are located outside an exclusive ASM zone, do state and regional officials request clearance from the Union government before reviewing applications?</li> </ul>	<ul style="list-style-type: none"> <li>• Do state and regional officials regularly share information on pending, issued and expired permits with the Union government?</li> <li>• Is the state or regional government engaging with the Union government, large-scale companies and ASM operators to identify areas suitable for ASM?</li> </ul>
<p><b>Formalization</b></p>	<ul style="list-style-type: none"> <li>• Are state and regional officials actively reaching out to miners to explain procedures, review criteria, institutional responsibilities, costs and timeframes?</li> <li>• Are state and regional officials actively making application forms available to miners?</li> </ul>	<ul style="list-style-type: none"> <li>• Do state and regional officials use departmental budgets to pay for any field visits (rather than requiring the applicant to pay)?</li> </ul>

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