

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

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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.

Abbreviations and acronyms

ASM	Artisanal and small-scale mining
DGSE	Department of Geological Survey and Mineral Exploration
ECC	Environmental Compliance Certificate
ECD	Environmental Conservation Department
EIA	Environmental Impact Assessment
EITI	Extractive Industries Transparency Initiative
GAD	General Administration Department
GIS	Geographic information system
IEE	Initial Environmental Examination
MMK	Myanmar kyat
MONREC	Ministry of Natural Resources and Environmental Conservation
MATA	Myanmar Alliance for Transparency and Accountability
MCRB	Myanmar Centre for Responsible Business
ME-1	Mining Enterprise 1
ME-2	Mining Enterprise 2
NRGI	Natural Resource Governance Institute
PEP	Politically exposed person
TANKS	Transparency and Accountability Network of Kachin State
UTM	Universal Transverse Mercator
VFV Law	Virgin, Vacant and Virgin Lands Management Law

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

Objectives and scope

NRGI has prepared this report in the context of the 2018 decentralization of responsibilities for issuing ASM permits from the Union government to Myanmar's states and regions.

The report has three objectives:

- To provide practical guidance to state and regional authorities around how to implement their new responsibilities in a manner that is coherent and transparent, and harmonized with national laws and approaches.
- To strengthen understanding within the Union government of areas in which more harmonization and coordination is needed between the Union and the states and regions.
- To strengthen the understanding of miners and oversight actors like civil society, parliamentarians and journalists about what good practices look like. This will help them to better hold government officials to account.

The report focuses specifically on the allocation of ASM permits by state and regional authorities. In Myanmar the process of issuing permits is commonly referred to as “permitting” and this is the term that we use in this report. The permit types under state and regional jurisdiction listed in the Myanmar Mines Law translate as “subsistence” and “small-scale.” In line with terminology used more widely internationally, this report uses the term “artisanal and small-scale,” or ASM, to describe the sector. The definitions of artisanal and small-scale permits, as set out in Myanmar's legal framework, are described in Section 1.2.

Our aim is to provide practical guidance to officials and oversight actors on how to implement the new responsibilities defined in the 2015 Myanmar Mines Law and 2018 Mines Rules. The following issues therefore fall outside the report's scope:

- Subnational permitting in the gemstones sector, which is governed by a separate law and institutions.¹ The report also does not analyze quarrying permits issued by the General Administration Department (GAD) at the township level.²
- Permitting for medium and large-scale mines, including the de facto influence of subnational institutions in these processes.³
- State and regional responsibilities for environmental approvals, monitoring and post-closure rehabilitation.
- Minerals permitting in areas of contested authority between the Myanmar government and ethnic armed organizations. While most of our recommendations apply in any context, special considerations apply in such areas to avoid mining becoming a driver of conflict.

1 Paul Shortell and Maw Htun Aung. *Mineral and Gemstone Licensing in Myanmar* (Natural Resource Governance Institute, 2016), 3. resourcegovernance.org/analysis-tools/publications/mineral-and-gemstone-licensing-myanmar.

2 Su Myat Mon, “Sackings, Secrecy and a Surprise Visit: A Quarry Dispute Turns Nasty in Kayin State,” *Frontier Myanmar*, 4 May 2018. frontiermyanmar.net/en/sackings-secrecy-and-a-surprise-visit-a-quarry-dispute-turns-nasty-in-kayin-state.

3 Sebastian Sahla, Andrew Bauer and Natalie Kirk. *Natural Resource Federalism: Considerations for Myanmar* (Natural Resource Governance Institute, 2018), 21. resourcegovernance.org/analysis-tools/publications/natural-resource-federalism-considerations-myanmar.

- Longer-term requirements for legislative changes. Section 4 provides high-level considerations in this area. However, the primary purpose of this report is to provide immediate, practical guidance on how to implement current laws in the best way possible.
- Analysis of state and regional legislative powers in the minerals sector.

The report draws on over 40 research interviews with Union and state and regional officials, ASM operators, large-scale mining companies, civil society organizations and international ASM experts.⁴ The focus of our research was on Sagaing, Mandalay and Kachin. (See figure 4 for a map of Myanmar's states and regions.) These are among the states and regions with the largest ASM presence and which, at the time of writing, were among the most advanced in implementing their new responsibilities. We also conducted research interviews with state and regional officials in Shan State and with national stakeholders and experts in Nay Pyi Taw and Yangon. Our research benefited from participation in multi-stakeholder workshops and consultations organized by the Myanmar Alliance for Transparency and Accountability (MATA) in Monywa, the Transparency and Accountability Network of Kachin State (TANKS) in Myitkyina, the Shan State subnational unit of the Extractive Industries Transparency Initiative (EITI) in Taunggyi, and the Myanmar Centre for Responsible Business (MCRB) in Monywa. The report builds on NRCG's existing body of research on subnational resource governance and permitting good practices in Myanmar and around the world.⁵

Section 1 of the report describes the current status of decentralization for minerals permitting in Myanmar. Section 2 evaluates the potential opportunities and challenges that decentralization could present. Section 3 sets out practical recommendations to help state and regional officials better carry out their responsibilities. Section 4 provides high-level considerations for broader reforms. The appendices include sample documents such as registry book and permit database templates, review checklist templates, a sample permit application form and an overview of key permitting corruption risks. State and regional authorities can use these documents to help implement their new responsibilities effectively. The documents are illustrative examples only and would need to be reviewed and adapted to ensure full compliance with legal requirements.

4 We conducted structured and semi-structured interviews. Given the sensitive nature of some conversations, we are withholding the names of our interviewees.

5 On subnational resource governance see for example: Sahla, Bauer and Kirk, *Natural Resource Federalism*; Andrew Bauer, Lorenzo Delesgues and Paul Shortell, *Sharing the Wealth: A Roadmap for Distributing Myanmar's Natural Resource Revenues* (Natural Resource Governance Institute, 2016). resourcegovernance.org/analysis-tools/publications/sharing-wealth-roadmap-distributing-myanmars-natural-resource-revenues; Rebecca Iwerks and Varsha Venugopal, *It Takes a Village: Routes to Local-Level Extractives Transparency* (Natural Resource Governance Institute, 2016). resourcegovernance.org/analysis-tools/publications/it-takes-village-routes-local-level-extractives-transparency; Andrew Bauer et al. *Natural Resource Revenue Sharing* (Natural Resource Governance Institute and United Nations Development Program, 2016). resourcegovernance.org/analysis-tools/publications/natural-resource-revenue-sharing; Varsha Venugopal, *Assessing Mineral Licensing in a Decentralized Context: The Case of Indonesia* (Natural Resource Governance Institute, 2015). resourcegovernance.org/analysis-tools/publications/assessing-mineral-licensing-decentralized-context-case-indonesia. On broader permitting good practices see for example: Natural Resource Governance Institute, *Natural Resource Charter: Second Edition* (2014), Precept 3. resourcegovernance.org/sites/default/files/NRCJ1193_natural_resource_charter_19.6.14.pdf; Natural Resource Governance Institute, *Primer: Granting Rights to Natural Resources* (2015). resourcegovernance.org/analysis-tools/publications/primer-granting-rights-natural-resources; Natural Resource Governance Institute and Open Contracting Partnership, *Open Contracting for Oil, Gas and Mineral Rights: Shining a Light on Good Practice* (2018). resourcegovernance.org/sites/default/files/documents/open-contracting-for-oil-and-gas-mineral-rights.pdf.

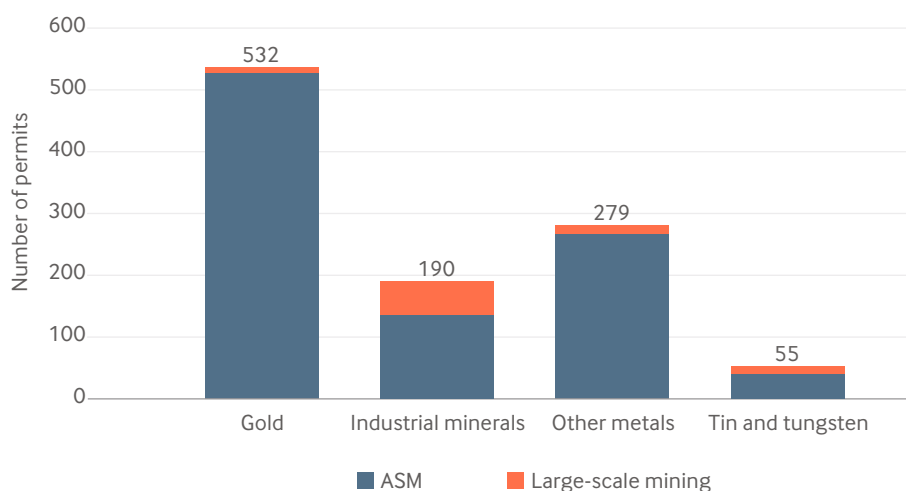
1. Status of decentralization in Myanmar’s artisanal and small-scale mining sector

Major shifts are underway in how Myanmar manages its ASM sector, with states and regions assuming responsibility for issuing permits and collecting revenue. Section 1.1 provides an overview of the economic importance of Myanmar’s ASM sector and some of the key governance, environmental and social challenges associated with it. Section 1.2 describes the legal framework for decentralization of ASM governance. Section 1.3 evaluates current permitting practices by Myanmar’s states and regions.

1.1 OVERVIEW OF MYANMAR’S ARTISANAL AND SMALL-SCALE MINING SECTOR

ASM plays an important role in Myanmar’s mining sector. According to the Myanmar EITI, in 2016 to 2017 ASM permits made up over 90 percent of official government-issued production permits in the mining sector. (See figure 1.) A recent study by Pact estimates that the sector accounts for most gold, tin and industrial mineral production. (See figure 2.) The sector employs hundreds of thousands of people and supports the livelihoods of millions. In gold and tin mining, ASM accounts for as much as 95 percent and 80 percent, respectively, of employment. (See figure 3.) While ASM operations are spread across Myanmar, the highest concentrations are in Kachin, Mandalay, Sagaing, Shan and Tanintharyi.⁶ (See figure 4.)

Figure 1. ASM as a proportion of official production permits⁷



6 Dylan McFarlane and Rebecca Villalobos. *The State of Artisanal Mining in Myanmar – Draft* (Pact, 2019), 13-15, 68.

7 Based on license data in Myanmar Extractive Industries Transparency Initiative (MEITI), *The Fourth Myanmar EITI Report for the Period 1 April 2016 to 31 March 2017* (2019). Other metals based on MEITI data for antimony, iron ore, lead, zinc, nickel and copper. Industrial minerals based on MEITI data for clay, limestone, granite, marble and slate.

Figure 2. ASM as a proportion of officially reported production in Myanmar⁸

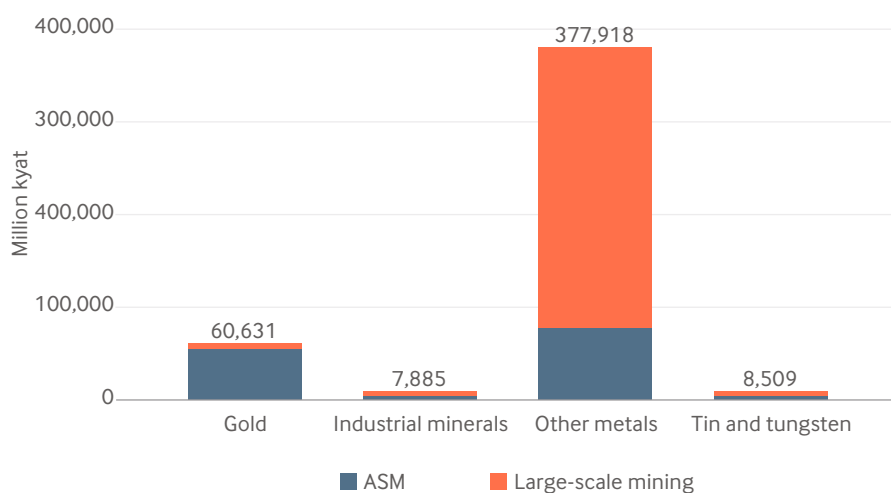
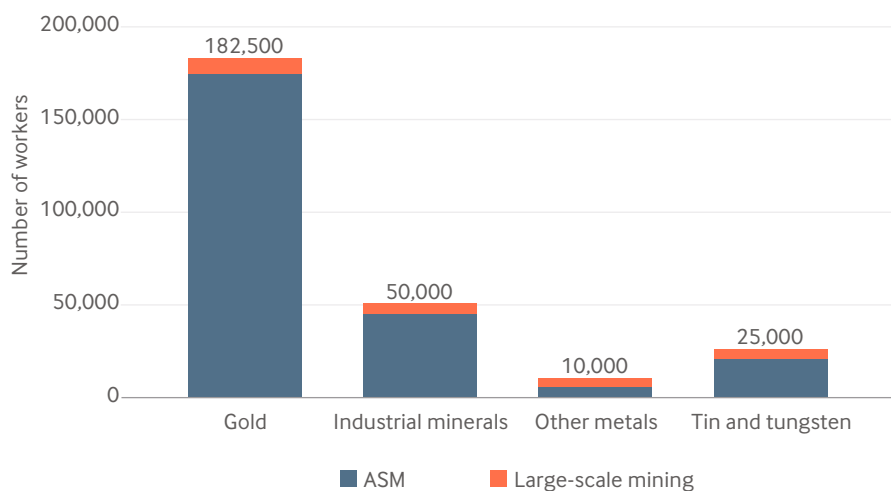


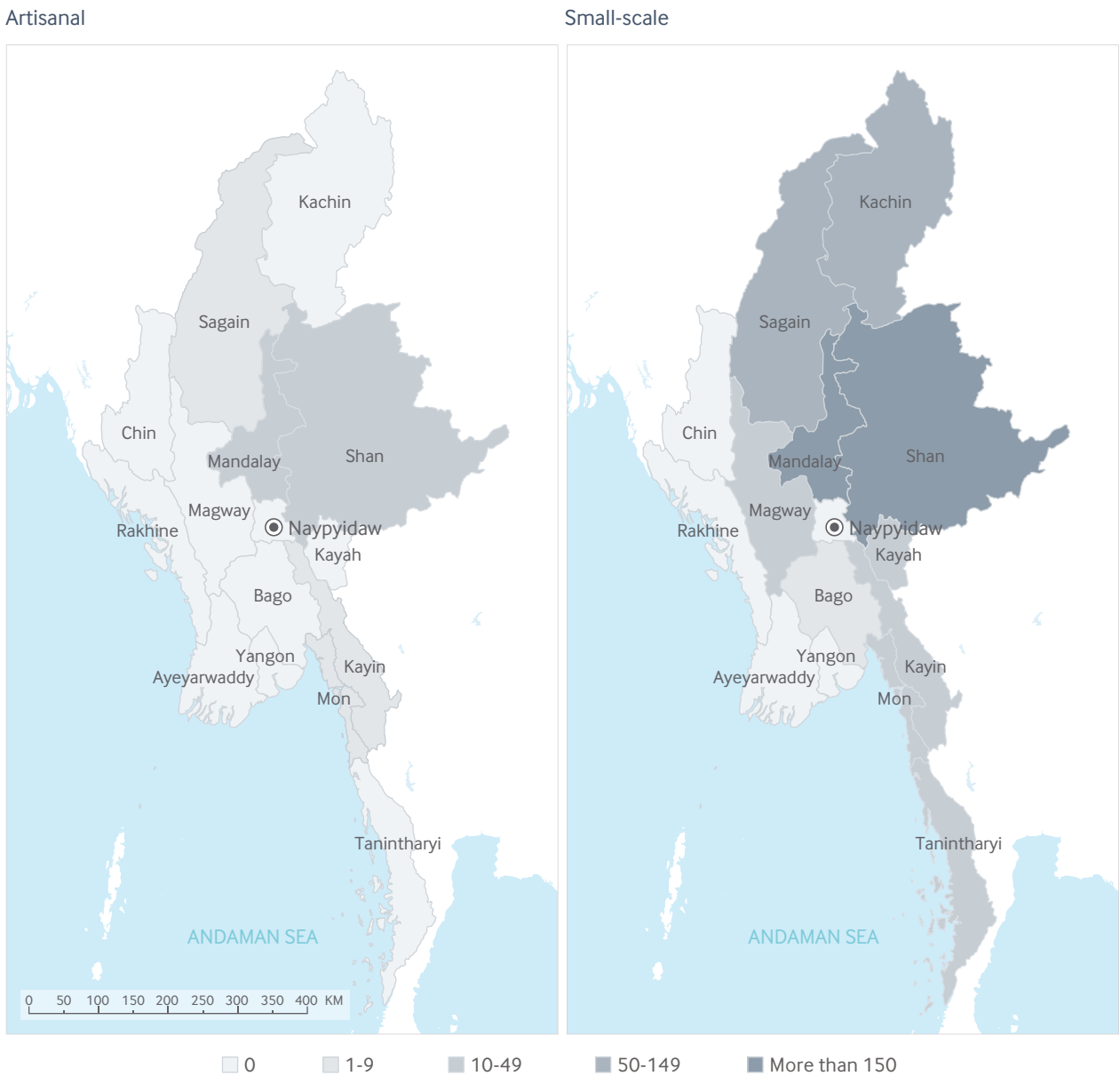
Figure 3. ASM as a proportion of mining sector employment in Myanmar⁹



8 Production values based on MEITI, *Fourth Myanmar EITI Report*. Other metals based on MEITI data for antimony, iron ore, lead, zinc, nickel and copper. Industrial minerals based on MEITI data for clay, limestone, granite, marble and slate. Estimate of proportion of ASM based on McFarlane and Villalobos, *State of Artisanal Mining*.

9 McFarlane and Villalobos, *State of Artisanal Mining*.

Figure 4. Distribution of official ASM production permits prior to decentralization¹⁰



Like many countries with large ASM populations, Myanmar struggles with high levels of informality. Experts estimate that over 90 percent of mining in Myanmar is informal.¹¹ In January 2018, shortly before the promulgation of the mines rules and the commencement of decentralization, there were approximately 800 official ASM permits across the country.¹² By contrast, one recent study estimated that Sagaing’s Homalin township—one of the country’s main areas for ASM gold production—has between 1,000 to 10,000 individual informal gold mining operations.¹³

10 Data from 31 January 2018. Myanmar Centre for Responsible Business. Sector-wide Impact Assessment of Limestone, Gold and Tin Mining in Myanmar (2018), 34. www.myanmar-responsiblebusiness.org/swia/mining.html. See Section 1.2 for a description of the legal definitions of artisanal and small-scale mining in Myanmar.

11 McFarlane and Villalobos, *State of Artisanal Mining*, 7.

12 Myanmar Centre for Responsible Business, *Sector-wide Impact*, 34.

13 Graham Prescott, *Gold, Farms and Forests: Enforcement and Alternative Livelihoods Are Unlikely to Disincentivize Informal Gold Mining – Draft* (Conservation Biology, 2019), 17.



Low levels of formalization contribute to the sector’s negative impacts. While few miners operate with a permit, it is common for them to pay off local authorities and community or religious leaders to obtain unofficial permission to mine.¹⁴ In parts of the country, armed groups exercise unofficial permitting and taxation powers.¹⁵ The sector causes serious environmental impacts, including water pollution, land degradation and deforestation. Of particular concern is the widespread use of mercury in gold mining, which has serious environmental and public health impacts. The sector is also associated with social challenges like labor rights violations and drug abuse.¹⁶

Artisanal copper miners in Sagaing

Lauren DeCicca for NRGi

1.2 LEGAL FRAMEWORK FOR ISSUING ARTISANAL AND SMALL-SCALE MINING PERMITS

ASM was largely neglected within Myanmar’s formerly highly centralized mining governance framework. This contributed to high levels of informality and the lack of effective regulation and oversight.

The 2008 constitution defines the basis for Myanmar’s decentralization process. (See box 1.) Schedule 2 of the constitution sets out the administrative responsibilities of the country’s states and regions while schedule 5 lays out their tax collection powers. Historically, the role of states and regions in governing the mining sector as defined in the constitution was minimal. However, constitutional amendments made in 2015 changed this. Specifically, the amendments gave states and regions the power to issue ASM permits and collect revenue. The amendments also gave states and regions responsibility over “safety of mine workers, environmental conservation, and restoration.”¹⁷ The constitution states that all of these powers must be exercised “in accordance with the law enacted by the Union.”¹⁸ This provision places limits on the powers of states and regions by creating a requirement to comply with Union laws, rules and notifications.¹⁹

¹⁴ *Ibid.*, 13.

¹⁵ Sahla, Bauer and Kirk, *Natural Resource Federalism*, 21 and 36.

¹⁶ Myanmar Center for Responsible Business, *Sector Wide Impact Assessment*.

¹⁷ Republic of the Union of Myanmar, *Constitution of the Republic of the Union of Myanmar* (2008). The wording of the constitution is ambiguous as to whether state and regional responsibilities for “safety of mine workers, environmental conservation, and restoration” apply only to ASM or all types of mining activity.

¹⁸ *Ibid.*

¹⁹ Interview with a Yangon-based environmental lawyer.

Box 1. Myanmar's decentralization process

Decentralization is typically defined as the transfer of governance responsibilities from the central government to subnational institutions. Myanmar's 2008 constitution provides the framework for the country's decentralization process.²⁰

The Republic of the Union of Myanmar is made up of 14 states and regions, five self-administered zones, one self-administered division and the Union Territory of Nay Pyi Taw. Decentralization focuses primarily on the transfer of power from the Union government to the states and regions. The constitution created 14 state and regional governments, with executive, legislative and judicial branches.

A Chief Minister who is selected by the Union President from among state and regional parliamentarians leads the executive branch of each state and region. The Chief Minister appoints a cabinet of state and regional ministers. These ministers typically cover multiple portfolios. The departments they oversee are usually the subnational offices of Union ministries. This has created a system of "ministers without ministries" and, in most sectors, of dual accountability where state and regional departments report both to a state and regional minister and their parent ministry at the Union level. In the mining sector, for example, the state and regional Department of Mines is formally part of the Union Ministry of Natural Resources and Environmental Conservation (MONREC) but also accountable to the state and regional minister overseeing natural resources. (See figure 5.) While this means that Union influence remains strong, state and regional ministers are reportedly increasingly exerting influence over the departments under their remit.²¹

Below the state and region level are districts, townships, urban wards and village tracts. However, none of these represent a formal level of government. Instead, the Union government maintains a strong local presence—it is normal for more than 30 government agencies to have a township-level presence. As with state and regional-level departments, township-level governance is made up of a complex system of dual accountability to both Union ministries and state and region government.²²

GAD is a critical player at the subnational level. GAD is a department under the Ministry of the Union Government Office. It has historically acted as the Union government's primary link to subnational institutions. It fulfills a wide range of mandates, including the administration and supervision of institutions at the district, township, ward and village tract level. GAD also plays a critical role at the state and regional level. The head of the state or regional GAD acts as the executive secretary of the state or regional government. GAD staff support state and regional "ministers without ministries" and serve as the main conduit between the ministers and the departments they oversee. While GAD has historically been a means for the Union government to maintain influence at the subnational level, GAD's structures are reportedly becoming more decentralized and the institution is becoming increasingly accountable to the state and regional governments in which they operate.²³

The passage of the amended Myanmar Mines Law in 2015 and promulgation of the accompanying Mines Rules in February 2018 provide the legislative and regulatory framework for the decentralization of permitting powers in the ASM sector. The law grants state and regional permit scrutiny boards the power to award ASM permits. According to a MONREC notification, the boards comprise the state and regional MONREC minister, a representative each from GAD, Department of Agricultural Land Management and Statistics, Forest Department, ECD and Department of Mines and an additional official appointed by the state and regional government. The minister chairs the board while the state and regional director of the Department of Mines is the secretary.²⁴ At the time of writing, governments in all key mineral-producing states and regions had formed permit scrutiny boards. The exact composition of these boards varies slightly due to each state and regional government's right to appoint one official of their choice.

20 Asia Foundation. *State and Region Governments in Myanmar: Policy Brief (2018)*. asiafoundation.org/wp-content/uploads/2018/10/State-and-Region-Governments-in-Myanmar-2018-Policy-Brief_Eng.pdf, 2-4.

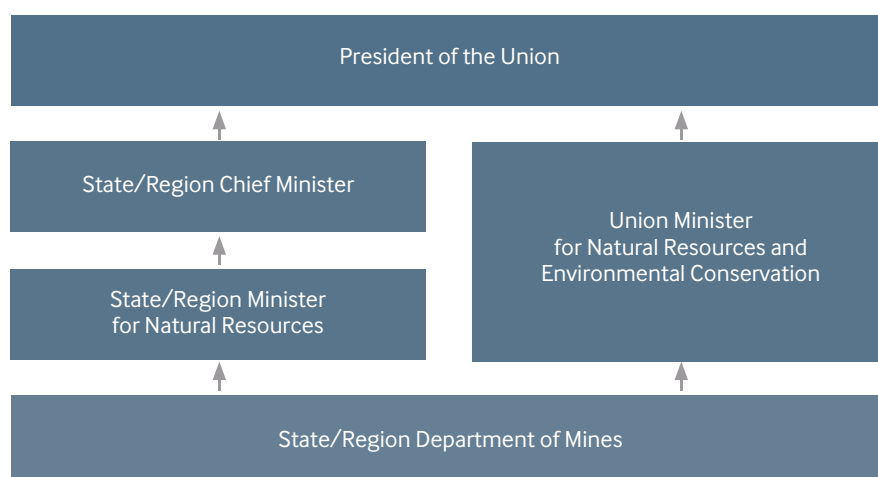
21 *Ibid.*, 13.

22 *Ibid.*, 4.

23 Asia Foundation. *State and Region Governments in Myanmar*, 54.

24 Republic of the Union of Myanmar-Ministry of Natural Resources and Environmental Conservation. *Notification 11/2018 (2018)*.

Figure 5. Dual lines of accountability of state and regional Department of Mines offices



The mines law sets out the legal definitions of artisanal and small-scale mining. The law defines small-scale mining as commercial minerals production by companies with low capital investment and production volumes.²⁵ The law defines artisanal mining as minerals production by individuals using only ordinary hand tools and basic machinery.²⁶

The most important criteria used to classify different mines is the acreage of a permit. Table 1 shows acreage limits used for different permits.²⁷ Small-scale production permits are valid for five to 10 years, depending on the mineral being produced and can be renewed for a maximum of two years per renewal. The mines rules state that renewals can be issued by state and regional scrutiny boards in consultation with Union MONREC but provide no further detail on the steps and costs involved.²⁸ Artisanal permits are valid for one year only. The rules make reference to the possibility of extending artisanal permits but do not provide any additional details (e.g., what the length of these extensions is).²⁹ The mines rules also give states and regions the right to issue small-scale exploration permits.³⁰

Table 1. Artisanal and small-scale production permit sizes and length of tenure according to the 2018 Myanmar Mines Rules

Permit type	Maximum permit size	Length of tenure
Small-scale		
Gold and other precious metals	Up to four acres	Five to 10 years (plus two-year extensions)
Other metals	Up to 10 acres	
Industrial minerals	Up to 20 acres	
Artisanal		
Gold and other precious metals	Up to one acre	One year (renewals possible but timeframes unclear)
Other metals	Up to three acres	
Industrial minerals	Up to five acres	

25 Republic of the Union of Myanmar, Law Amending the Myanmar Mining Law 72/2015 (2015), s. 2(i). The legal framework does not provide a numerical definition of acceptable levels of capital investment or production.

26 Republic of the Union of Myanmar, Law Amending the Myanmar Mining Law 72/2015 (2015), s. 2(m).

27 Despite the categorization of permits into three broad categories as described in table 1, the government issues permits for specific minerals.

28 Republic of the Union of Myanmar-Ministry of Natural Resources and Environmental Conservation, *The Myanmar Mines Rules (2018)*, Rules 86, 89-92.

29 *Ibid.*, Rules 96 and 98.

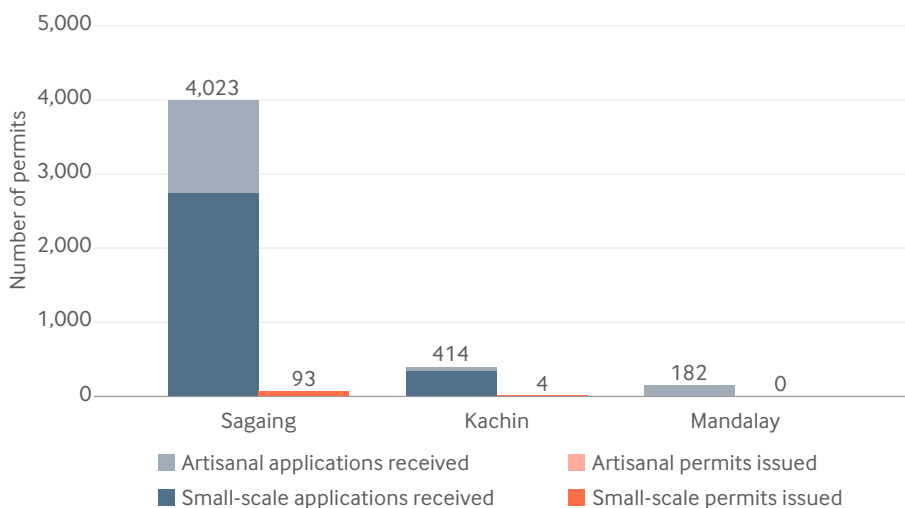
30 *Ibid.*, Rule 22.

The mines law and rules specify the requirements for getting a permit. (See appendix 1.3.) Full compliance with many of these terms, especially around environmental approvals, is reportedly virtually impossible. State and regional governments reportedly do not consistently check compliance with technical requirements when reviewing applications. (See section 1.3.)

Myanmar’s legal framework provides few further details on how exactly the permitting process should work. According to the mines rules, a “first come, first served” process—in which the government issues permits to the first qualified applicant based on the order in which applications are received—is used to allocate small-scale exploration permits. The rules make an exception for areas in which multiple companies express an interest in an area whose commercial viability has already been established. In this case, the government issues permits using competitive bidding.³¹ However, the rules provide no further detail on how a bidding process would work (e.g., what sort of financial or technical criteria the government would use). In addition, a representative of the Union Department of Mines told NRGi that in the gold sector (where the bulk of state and regional permitting has been concentrated to date) companies can apply for production permits without first conducting exploration. It is unclear what the legal basis for this is and whether the principle of “first come, first served” still applies.³² The mines rules provide no detail about the choice between “first come, first served” and competitive bidding in the case of artisanal permits.³³

State and regional governments have started to receive applications but had issued only a small number of permits at the time of writing. (See figure 6.) In Sagaing, for example, the regional government received over 4,000 applications between August 2018 and the beginning of March 2019. The government had not yet issued any permits at the time of our field visit but reportedly issued approximately 100 permits at the end of March.³⁴

Figure 6. Status of permits as of February/March 2019³⁵



31 *Ibid.*, Rule 24(c)-(d).

32 The Mines Rules require a competitive process if there is more than one applicant and the exploration permit holder does not wish to continue work. See *ibid.*, Rule 82(d).

33 *Ibid.*, Chapter 9.

34 Information provided to MCRB by the Sagaing Department of Mines. Based on a further update from the Union Department of Mines, state and region governments around the country had issued approximately 300 permits as of May 2019. Further detail is in appendix 1.

35 Data for Kachin and Mandalay are based on interviews conducted with the Department of Mines in mid-February 2019. Data for Sagaing are based on information for the end of March 2019 provided to MCRB by the Sagaing Department of Mines.



Miners working in a small-scale underground gold mine in Mandalay

Andre Malerba for NRGi

Some state and regional parliaments are going further in asserting their new governance responsibilities by drafting their own mining laws.³⁶ These subnational laws are based on a template prepared by the Department of Mines at the Union level. The draft bills reviewed by NRGi appeared to largely copy sections of the Union mines law related to state and regional responsibilities. Given the constitutional requirement that states and regions act “in accordance with the law enacted by the Union,” it was unclear to legal experts interviewed by NRGi to what extent state and regional legislation could deviate from the Union mines law, rules and notifications, and therefore what the purpose of these separate laws is. It is unclear what would happen if states and regions attempted to exercise greater legislative autonomy and to what extent the Union could alter or roll back state and regional responsibilities in future.³⁷

1.3 CURRENT PRACTICES FOR ISSUING PERMITS IN THE ARTISANAL AND SMALL-SCALE MINING SECTOR

The legal framework provides little guidance on how exactly the permitting process works, which institutions are involved and what criteria they use to approve or reject applications. There were significant variations in how government, industry and civil society interviewees described the permitting process to us. Even within the same state and region, descriptions varied, indicating that processes were still in flux and poorly defined at the time of research.

Despite variations, there was consistency among our interviewees as to the basic steps and institutions involved. This section describes those steps but acknowledges that actual processes are likely to be less clearly defined. Box 2 summarizes the key actors involved. Figure 7 sets out a high-level overview of the process for obtaining a small-scale gold permit in Sagaing, as described to us by an industry representative who had recently obtained a permit. This description differs from the process presented to us by both government and civil society interviewees and may not reflect the experiences of other applicants. We provide further detail on the permitting process in appendix 1.

36 Kayah, Sagaing, Shan and Kachin have already started drafting laws with varying degrees of stakeholder consultation. Not all states and regions have plans to do so. The Mandalay regional government told NRGi that it had decided not to write its own law as it views the Union’s legal framework as sufficient.

37 According to a Yangon-based environmental lawyer, for example, there does not seem to be any legal guarantee that the Union government in future will not redefine and reduce the number of minerals that states and regions have the right to issue permits for.

Box 2. Key government stakeholders involved in issuing ASM permits

Union MONREC. Overarching governance responsibility for the mining sector, including defining the mining and environmental legal framework with which states and regions need to comply. Direct responsibilities related to ASM permitting include the Department of Geological Survey and Mineral Exploration (DGSE) delineating ASM zones, the Department of Mines checking for overlaps and reviewing applications that fall outside ASM zones and ECD issuing Environmental Compliance Certificates (ECC).

State or regional permit scrutiny board. Responsible for reviewing and approving ASM permit applications. Comprises representatives from several state or regional-level departments. Exact composition varies between states and regions.

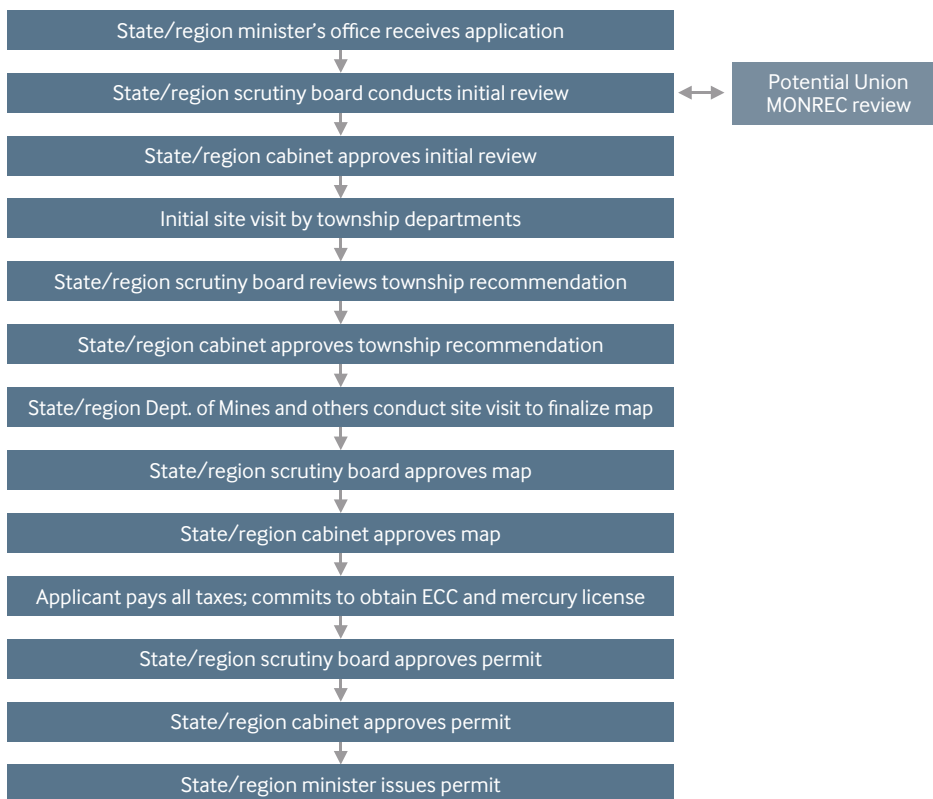
State or regional natural resources minister. Receives permit applications and chairs the permit scrutiny board. Partial oversight of state and regional Department of Mines and mining state-owned enterprises.

State or regional Department of Mines. Secretariat of the state or regional permitting process. Coordinates application review. Stores and manages permit information. Reports to state and regional natural resources minister and Union MONREC.

State or regional cabinet. Role not defined in mines rules but critical in approving permits.

Township-level scrutiny team. Consists of several state-/regional- and township-level departments. Conducts field visit during permitting. Typically chaired by GAD. In some states and regions, private sector representatives, state or regional parliamentarians and community representatives also participate in field visits.

Figure 7. Overview of process for obtaining a small-scale gold mining permit in Sagaing as described by an industry representative



a. State and regional government receives application

In principle, it is the office of the state or regional minister for natural resources that receives permit applications.³⁸ In practice, approaches differed in the states and regions we reviewed. In Sagaing and Mandalay, a subcommittee receives applications. The subcommittee's size and composition varied between the two regions and reportedly changes depending on the availability of staff and the quantity of applications received. It typically includes representatives from the minister's office, Department of Mines and potentially other government departments or state-owned enterprises.³⁹ In Kachin, the Department of Mines receives applications directly.

At this stage, officials conduct a very basic assessment of eligibility. The exact nature of the check varies between states and regions. In Sagaing and Mandalay, officials seemingly only check if applicants have submitted all required documents. In Kachin, officials reportedly also conduct an initial check for overlaps with existing and pending permits in the presence of the applicant. They conduct this check manually using hard copy maps. Officials told NRGi that they apply the principle of "first come, first served" when evaluating applications. However, as discussed further in Section 2.2, institutions currently lack the processes and systems to ensure this principle is consistently applied.

If an applicant meets basic requirements, officials record the application in a registry book.⁴⁰ The registry books are based on templates provided by the Union Department of Mines and are administered by the state and regional Department of Mines.

There are variations in how states and regions receive applications. Mandalay only receives applications by post. In Kachin, applicants can submit applications by post and in person at the state capital. In Sagaing, authorities accept applications once a week in the regional capital. Potential challenges associated with accepting postal applications are discussed further in Section 2.2.

b. Initial assessment

The next stage of the permitting process involves members of the state or regional permit scrutiny board conducting checks for overlaps. Officials reportedly conduct these checks by comparing the coordinates in the permit application with departmental hard copy maps. Officials reportedly do not use GIS to check for overlaps. Members report their findings to the scrutiny board, which decides whether to forward the application for a more detailed township-level review. According to one industry interviewee, the state or region cabinet also needs to approve this decision.

This stage appears to primarily involve the Department of Mines checking whether the application falls within one of the designated ASM permitting zones. (See box 3.) Officials also check whether the application overlaps with existing or pending mining permits. The officials we spoke with said that they apply the principle of "first come, first served," though as noted above, they currently lack the systems and processes to do this consistently. Depending on the state and region, other departments or state-owned enterprises (e.g., Mining Enterprise 2 [ME-2], Forest Department, Department of Agricultural Land Management and Statistics) may also conduct checks for overlaps using their own maps. However, it was unclear from our interviews what criteria these departments use to recommend whether the board should reject or proceed with an application.

38 Form 31 for small-scale applications, Form 40 for artisanal applications.

39 In Sagaing, interviewees told NRGi that the subcommittee comprises representatives from Mining Enterprises 1 and 2 (ME-1 and ME-2), the Forest Department and the Department of Mines (one interviewee also suggested that ME-2 no longer participates). In Mandalay, the subcommittee reportedly comprises staff from the regional minister's office, the Department of Mines and ME-2.

40 Officials in one state and region reported that they had initially recorded all applications in the registry book without checking whether basic eligibility criteria were met. This reportedly caused major delays as state and region scrutiny committees subsequently found large numbers of applications to be ineligible.

In principle, the state and regional scrutiny boards also conduct a technical review against application requirements. (See appendix 1.3 for an overview of these requirements.) However, interviewees described the technical review as largely a box-ticking exercise with little substantive verification of the details in application forms and supporting documentation. The technical review is reportedly led by the Department of Mines. It was not clear from our interviews to what extent other members of the scrutiny boards are involved in assessing technical requirements.

Box 3. Myanmar's ASM zones

Myanmar's decentralization process is made more complex by the fact that state and regional governments are now responsible for ASM permits, while the Union government continues to administer medium and large-scale permits. This creates the risk of overlap.

To manage this risk, DGSE has delineated zones for different scales of mining in all states and regions except Yangon. At the time of writing, there were a total of 62 ASM zones across the country, the majority of which were designated for gold. The smallest zone was a limestone zone in Chin State covering only 0.02km², the size of approximately three football pitches. This zone would be able to accommodate only one five-acre artisanal permit for industrial minerals. The largest, a gold zone in Sagaing, covered 10,000 km², or approximately ten percent of the region's total land area. This zone would theoretically be able to accommodate over 2.4 million one-acre artisanal gold permits or over 600,000 four-acre small-scale gold permits (in practice, large parts of this zone would likely be unsuitable for ASM).⁴¹

While miners can in principle submit applications anywhere, the Union government intends to encourage states and regions to restrict their permitting to ASM zones. If an application falls within an ASM zone, state and regional governments can process the application without consulting the Union government. If the application falls within a Union-managed medium or large-scale zone (or an area specifically designated for gemstone mining) it is reportedly automatically rejected. If the application falls between zones, the state and region needs to coordinate with Union MONREC to check for overlaps and can only proceed with permitting if the Union has given the green light. According to an interview with the Union Department of Mines, MONREC would typically reject applications that fall outside ASM zones.

c. Township-level review

Following initial approval by the state and regional scrutiny board, the application is forwarded for township-level review. Interviewees described this stage of the permitting process as particularly opaque and prone to corruption and delays.

A township scrutiny group, formed by the state and regional government, leads this stage of the process. The composition of the group varies between states and regions and potentially from one township to another. Typically, GAD chairs it, though in some cases the Department of Mines or ME-2 fulfill that role. The group typically involves approximately eight different institutions, drawn primarily from the township-level offices of national ministries. (We provide more detail on the composition of these groups in appendix 1.4.) Most of these institutions have dual lines of accountability to Nay Pyi Taw and the state and regional government. (See box 1.)

The members of the group conduct field visits to the proposed permit area. The focus of this review is to check for overlaps with other land uses (e.g., residential areas) and other application requirements (e.g., maintaining minimum distances from watercourses). (We provide more detail on the types of information that should be checked in appendix 1.4.) Community leaders, industry representatives and parliamentarians often join field visits. However, no systematic community consultation takes place.

41 Data provided by the Union Department of Geological Survey and Mineral Exploration to NRGi in March 2019.

The members of the township group comment on the application. The comments are then submitted to the state or regional scrutiny board (and according to one industry interviewee, also reviewed by the state or regional cabinet).

This stage is critical. State and regional scrutiny boards are unlikely to issue permits without a positive endorsement from the township. However, this stage is also the most opaque. There is little clarity about precisely who is involved and what criteria they use to make their decisions. Interviewees note that the township review can take three months or more. Applicants reportedly have to cover the cost of the officials' trip to the permit site though there is no clear legal basis for this. Interviewees also reported that applicants need to engage directly with each township department to secure a recommendation, which is often conditional upon payment of a bribe. We discuss these corruption risks in more detail in Section 2.2.

d. Finalization of permit map

If the scrutiny board (and potentially also the cabinet) is satisfied with the findings of the township review, the Department of Mines together with other departments conducts a field visit to finalize a map of the permit.⁴² The scrutiny board then meets again to sign off on the final map. According to one industry interviewee in Sagaing, the map is also signed off on by the state or regional cabinet.

e. Final approval and issuing of permit

Once the map has been finalized, applicants are requested to pay a range of taxes and fees. The amounts due differ between artisanal and small-scale permits and between different minerals. Amounts also vary by state and region. Table 2 compares rates for gold permits in Kachin and Sagaing. Applicants are required to make a fixed upfront payment covering the duration of the validity of the permit.⁴³ This means, for example, that the holder of a five-year small-scale gold permit only pays taxes and fees once. According to interviewees, responsibility for determining the amounts due varies between revenue streams; some revenue streams are determined by state and regional governments, others by Union MONREC. The basis for calculating these amounts is unclear to us. All taxes and fees are transferred to accounts held by the state and regional government. In Sagaing, applicants make payments into three different bank accounts held by the regional government; one for mine closure and environmental conservation funds, one for a corporate social responsibility fund and one for all other payments. It is not clear who is responsible for monitoring revenue flows, including disbursements from earmarked funds.

As a final step before receiving the permit, applicants need to sign a declaration stating their commitment to prepare an Initial Environmental Examination (IEE) and, in the case of gold permits, obtain a mercury license.⁴⁴ According to an industry interviewee in Sagaing, both the scrutiny committee and cabinet issue a final approval and the permit documents are then presented at a ceremony hosted by the regional government. Once issued, permit information is stored in an electronic spreadsheet at the state and regional office of the Department of Mines.

42 According to discussions with the Sagaing Department of Mines, this stage is led by the Department of Mines, with support from GAD, Department of Agricultural Land Records and Statistics and the mining enterprises. We were unable to verify whether the same process is followed in Mandalay and Kachin.

43 The approach described here applies to gold permits. We were unable to verify whether the same approach is used for other commodities as the states and regions we reviewed had received very few non-gold applications at the time of our research.

44 The approach described here is based on discussions with the Sagaing Department of Mines. We were unable to verify whether other states and regions apply the same approach.

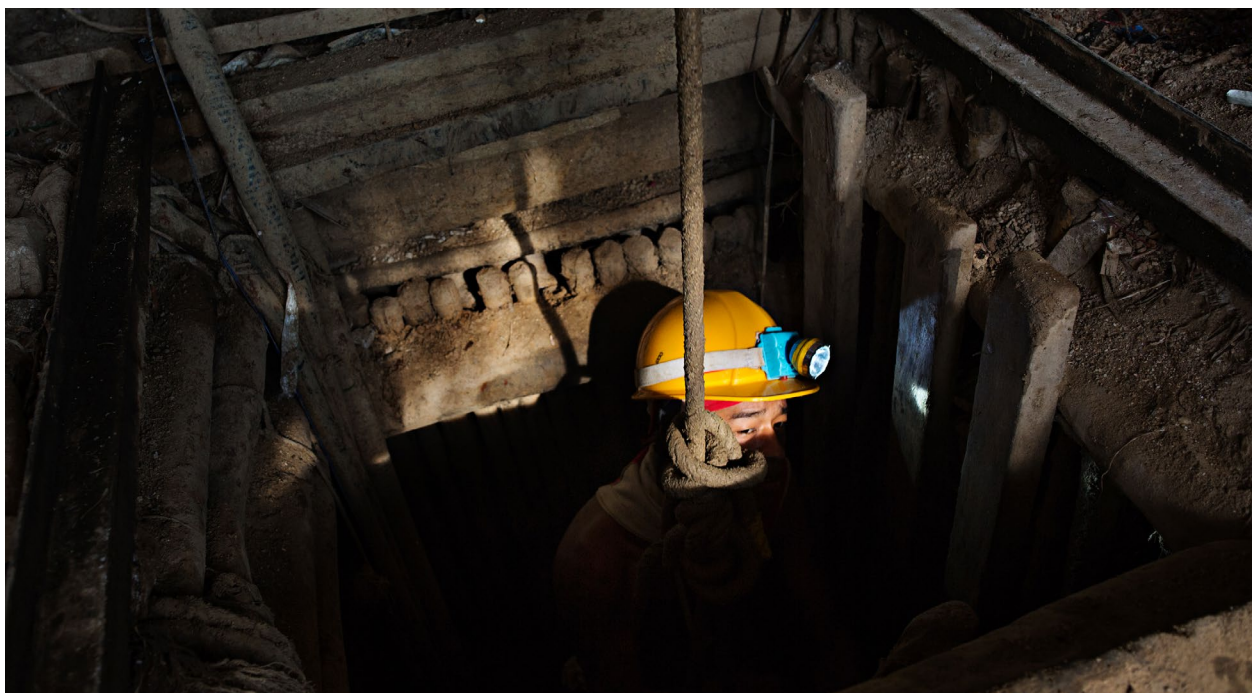


Table 2. Fixed tax rates for one-year artisanal and five-year small-scale gold permits in Sagaing and Kachin (in Myanmar kyat)⁴⁵

Underground gold mine Mandalay

Andre Malerba for NRGi

Revenue stream	Artisanal		Small-scale	
	Sagaing	Kachin	Sagaing	Kachin
Dead rent	12,140	12,141	48,563	48,563
Production share and royalty	1,000,000	1,050,000	7,000,000	4,200,000
Permit fee	60,000	60,000	200,000	200,000
Proposal fee	75,000	-	300,000	300,000
Stamp duty	-	-	-	100,000
Mine closure fund	-	-	2,000,000	-
Environmental conservation fund	-	-	2,000,000	-
Corporate responsibility/ development fund	-	-	400,000	200,000
Total	1,147,140	1,122,141	11,948,563	5,048,563

⁴⁵ Data sourced from interviews with state and regional government officials in Sagaing and Kachin in February and March 2019.

2. Opportunities and challenges of decentralized responsibilities for issuing mining permits

The decentralization of ASM permitting could be an opportunity to improve resource governance in Myanmar. However, the way in which the government is currently implementing the process presents serious risks. This section evaluates potential opportunities and challenges. Our analysis is based on observations from how Myanmar’s decentralization process has unfolded to date, as well as lessons from international experience.

2.1 POTENTIAL OPPORTUNITIES

Many countries around the world have decentralized ASM permitting. By bringing governance functions closer to mine sites and impacted stakeholders, decentralization can improve governance of the sector.⁴⁶ This section sets out the potential opportunities that decentralization presents for Myanmar.

Formalization of artisanal and small-scale mining

Formalization is the process of integrating ASM actors into the formal economy. An important part of this is ensuring miners obtain legal permits to operate. Formalization is critical to efforts to improve governance of the sector. It allows governments to know who is mining and where they are operating. This is important for revenue collection and management of environmental and social impacts. Formalization is beneficial for miners because it helps to create a safe and stable working environment. It strengthens tenure security and access to legal protections, making miners less vulnerable to extortion by corrupt officials or powerbrokers. Formalization also strengthens livelihoods by enabling access to support services like loans and geological information, and by making it easier for miners to sell their products legally.⁴⁷

Decentralization can support formalization by reducing the physical, administrative and financial barriers to obtaining a permit. ASM miners often operate in remote areas and have limited financial means. International experience shows that if it is difficult and costly to apply for a permit, miners will operate illegally.⁴⁸ In many countries around the world, including Mongolia, Colombia, the Democratic Republic of Congo, the Philippines and Tanzania, decentralization of permitting responsibilities has been a critical element of formalization strategies.⁴⁹

Decentralization can support formalization by reducing the physical, administrative and financial barriers to obtaining a mining permit.

46 For an evaluation of the potential benefits of decentralization in facilitating formalization with examples from Mongolia, Colombia and the Democratic Republic of Congo see Patience Singo and Kady Seguin. *Best Practices: Formalization and Due Diligence in Artisanal and Small-Scale Mining* (IMPACT, 2018), 21. www.africaportal.org/publications/best-practices-formalization-and-due-diligence-artisanal-and-small-scale-mining.

47 UNITAR and UN Environment. *Handbook for Developing National ASGM Formalization Strategies within National Action Plans* (2018). www.unitar.org/cwm/portfolio-projects/artisanal-and-small-scale-gold-mining-asgm.

48 Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF). *Global Trends in Artisanal and Small-scale Mining (ASM): A Review of Key Numbers and Issues* (IISD, 2017). www.iisd.org/library/global-trends-artisanal-and-small-scale-mining-asm-review-key-numbers-and-issues.

49 See for example: Singo and Seguin. *Formalization and Due Diligence*, 11-19; Philippines Extractive Industries Transparency Initiative. *Volume II of the PH-EITI Country Report 2015* (2015), 85-86. eiti.org/sites/default/files/documents/volume-ii_of_the_ph-eiti_country-report_2015_1.pdf; Willison Mutagwaba, John Bosco Tindyebwa, Veronica Makanta, Delphinus Kaballega, and Graham Maeda, *Artisanal and Small-Scale Mining in Tanzania – Evidence to Inform an ‘Action Dialogue’* (IIED, 2018), 61-62. pubs.iied.org/pdfs/16641IIED.pdf.

Myanmar's decentralization process could aid formalization of a sector in which miners overwhelmingly operate without official permits. (See section 1.1.) According to an interviewee who had conducted research in Sagaing's gold mining areas, miners are enthusiastic about decentralization if it means they can get legal title and reduce their vulnerability to official inspections and informal extortion. However, the interviewee stressed that if permitting processes are too slow, costly or complex, miners will continue to operate illegally.

Decentralization could make permitting cheaper and faster by reducing the physical distance that miners need to travel to submit their applications. Previously, permitting was administered in the capital Nay Pyi Taw with miners having to make repeat trips to secure approvals from several government departments. Since the promulgation of the 2018 Mines Rules, miners only need to travel to state and regional capitals to submit their applications.⁵⁰ However, even this can present a significant financial and logistical obstacle and there was a consensus among interviewees that state and regional permitting is currently too slow and expensive to incentivize formalization. (See section 2.2.)

Decentralization could also facilitate formalization by making government policy more attuned to the concerns of miners. For formalization efforts to work, government needs to understand what is preventing miners from operating legally and then put in place measures to address these challenges. Obstacles and solutions may differ between states and regions. Decentralization could facilitate a more nuanced approach. In the Philippines, ASM permits are issued by local boards composed of central and subnational government officials, industry and civil society representatives. While the country struggles to tackle informal mining, the province of South Cotabato has gained recognition for its innovative formalization strategy. The provincial government initiated an identification system for miners and required participation in trainings on issues like health, safety and environmental management as a prerequisite for registration. The program contributed to a dramatic increase in permitted operations and government revenues.⁵¹

Decentralization could help to ensure that decisions on where to allow mining are sensitive to community concerns.

Community relations

ASM can have major negative impacts on communities living in the vicinity of mining sites. In many cases in Myanmar, tensions arise between long-term residents and migrant miners. Decentralization could help to ensure that decisions on how to facilitate formalization and where to allow mining are sensitive not only to the concerns of miners but also the communities impacted by mining. State and regional officials may have a greater sense of accountability towards local stakeholders, compared to officials based in the national capital. The case of South Cotabato in the Philippines (see above) provides an example of models for drawing multi-stakeholder perspectives into sector strategies. In Myanmar, the involvement of township-level authorities and community leaders in the permit review process is, in principle, a means of integrating local perspectives into decision-making. However, as discussed in section 2.2, these processes are currently too complex and slow to serve that purpose. Especially for artisanal mining, it would be more efficient to draw on community perspectives when broadly defining where mining can and cannot happen rather than in each individual permitting decision.

50 In Sagaing, for example, most ASM is concentrated in the remote north of the region. In order to travel to the regional capital Monywa, miners need to travel by road or river for two days or alternatively take an expensive bi-weekly flight.

51 Philippines Extractive Industries Transparency Initiative. *Volume II of the PH-EITI Country Report 2015*, 85-86.



Decentralization reduces the physical distance between mine sites and the officials tasked with monitoring and enforcement. This can reduce the time and money required to carry out field inspections. It can also potentially make it easier for impacted stakeholders to raise concerns around environmental and social impacts. From a political perspective, state and regional officials may be more attuned to local concerns and feel more motivated to ensure good oversight. In Myanmar, the formation of local multi-stakeholder monitoring committees could be a step in the right direction. In Kachin State, for example, the government has formed township-level monitoring committees comprising various government departments, as well as community and industry representatives.⁵²

Artisanal gold miner in Kachin State

Minzayar Oo for NRGi

Democratization and peace-building

Decentralization in the mining sector is part of a broader shift to empower Myanmar's states and regions.⁵³ This is an important element of Myanmar's political transition following decades of highly centralized authoritarian rule. Decentralization in the mining sector could be one way to build up technical and human capacity within subnational institutions, helping to make state and regional authorities more efficient and effective. State and regional revenue collection related to permitting could also be an opportunity to develop public financial management systems (though subnational revenue collection also poses risks, as discussed in section 2.2).

The empowerment of subnational stakeholders is also important for efforts to end Myanmar's civil conflicts. In May 2017, peace talks between the government, military and ethnic armed organizations led to agreement on principles for a future peace accord, including that Myanmar should become a federal democracy. While the principles did not directly address how the government should manage the mining sector in a federal system, many ethnic minority representatives demand greater local-level control over natural resources.⁵⁴ Decentralization could potentially lay the groundwork for the transfer of greater powers in a future federal state.

52 According to the Kachin Department of Mines, these committees intend to inspect mine sites every six months and are planning to develop a monitoring checklist to guide their activities.

53 Asia Foundation, *State and Region Governments*.

54 Sahla, Bauer and Kirk, *Natural Resource Federalism*, 9-10.

2.2 POTENTIAL CHALLENGES

Without concerted efforts by the Union government, state and regional authorities and oversight actors, decentralization could exacerbate many of the environmental, social and governance problems caused by ASM. (See section 1.1.) This section sets out the potential challenges for Myanmar associated with decentralized permitting.

Corruption and elite capture

Corruption is a major challenge across Myanmar’s economy. The country has shown some improvement in recent years but continues to trail behind most regional peers in international governance rankings. (See figures 8 and 9.)

Figure 8. Transparency International Corruption Perceptions Index

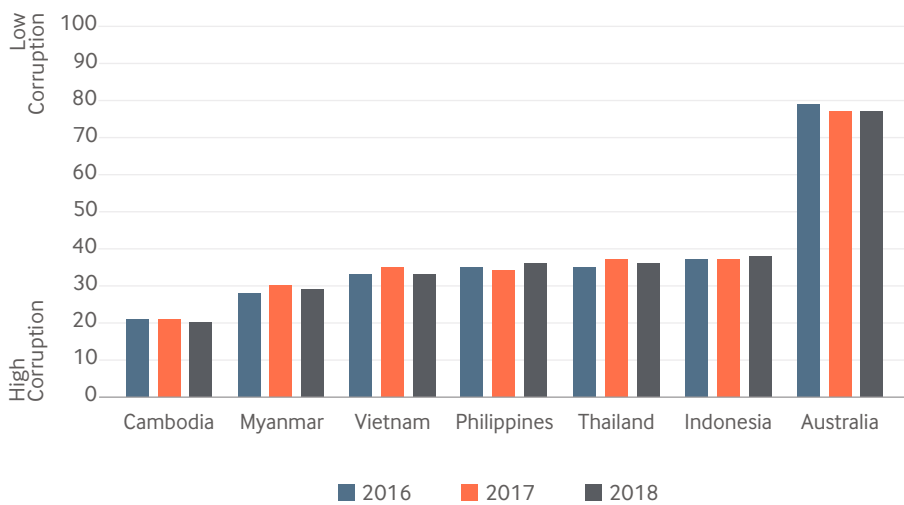
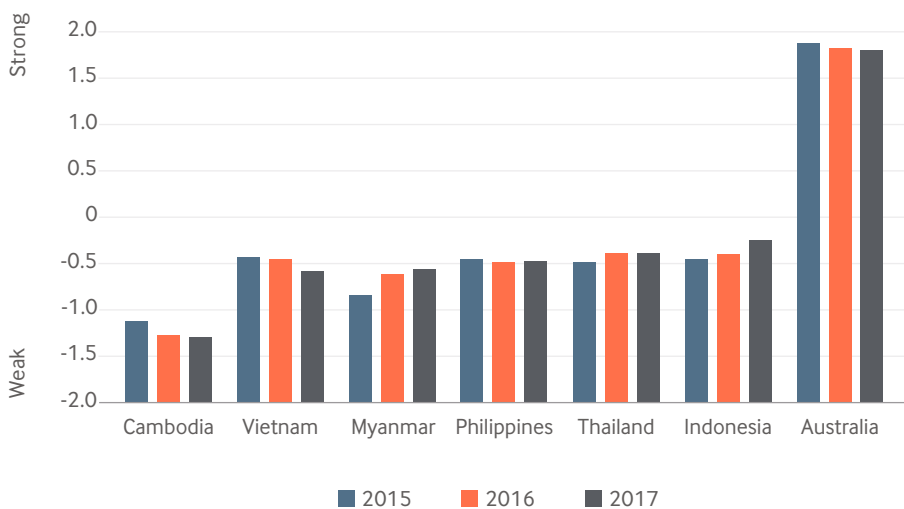


Figure 9. World Bank Worldwide Governance Indicators: Control of corruption



Corruption risks are particularly pronounced in permitting. (See appendix 6 for a summary of a global review of common corruption risks in extractive sector permitting.) Corruption is a major challenge in Union-led permitting.⁵⁵ These risks are driven by a lack of transparency around the institutions involved, procedures and criteria used to evaluate applications, and the outcomes of decision-making.

Decentralization has the potential to shift some if not most of the corruption risks from the Union level to the states and regions. The complexity of subnational processes and the multitude of actors involved (see section 1.3) could exacerbate these risks. Interviewees expressed particular concern about the involvement of township departments in the review process. Miners and civil society representatives reported that the unofficial payments that applicants need to make to township level institutions far exceeded official fiscal obligations. Miners reported having to make several payments to government officials and community leaders in order to receive positive recommendations. The lack of clear guidelines around the practice of requiring applicants to pay for the travel expenses of officials could make township approvals very vulnerable to corruption. Applicants and officials could use inflated costs to disguise bribery. The lack of clear evaluation criteria and review timeframes compound this and make it harder to ensure applicants are treated in an objective and non-discretionary manner.

The fact that state and regional-level permitting procedures are not aligned with good practice standards like recording the precise time that an application is received and issuing a time-stamped receipt to the applicant also exacerbate corruption risks. There is no guarantee that applications will be treated in the order received, potentially enabling officials to give priority to well-connected applicants.

The complexity and costs of subnational permitting increases the risk of elite capture. Civil society representatives in Sagaing told NRGi that it is common for applicants to hire brokers with political connections to navigate permitting processes. While we were unable to verify how widespread this practice is, it could present a serious corruption red flag. (See appendix 6.) Several civil society representatives and miners from Homalin told NRGi that currently most small-scale permits are held by businesspeople from towns like Monywa who then unofficially transfer or subcontract mining rights to local people. They expressed concern that decentralization would continue a pattern where only individuals with financial resources and political connections obtain permits.

Without checks and balances, each permitting decision could become an opportunity for local officials to collect bribes and enrich themselves. In Indonesia, decentralization became a major source of corruption, incentivizing local officials to issue a vast number of permits without respect for good governance practices. (See box 4.)

Decentralization could continue a pattern where only individuals with financial resources and political connections obtain permits.

55 Myanmar Centre for Responsible Business, *Sector Wide Impact Assessment*, 11.

Box 4. Decentralization in Indonesia's mining sector

Indonesia's decentralization process accompanied the transition to democracy in the late 1990s and early 2000s following decades of highly centralized rule. In 2001, minerals permitting responsibilities were decentralized to the country's districts.

Decentralization created major challenges. Officials issued thousands of mining permits, primarily to small-scale companies. Each permit was an opportunity for officials to raise revenue (and potentially to enrich themselves through bribes). Permits were issued without systems to manage the process consistently and transparently. Different subnational governments used different procedures, including coordinates and codification systems. This resulted in a huge increase in overlaps and tenure insecurity. Large-scale investment dropped off dramatically within a year of decentralization. In 2013, the Ministry of Energy and Mineral Resources conducted a review of over 10,000 mining permits and found that only half were free of overlaps and in full compliance with the mining law.⁵⁶

Decentralization also impacted other land uses. In West Kalimantan province, more than 134,000 hectares of mining concessions overlapped with protected forests, while nearly two million hectares overlapped with palm oil, forestry or timber concessions.⁵⁷ In 2014, the central government responded to these challenges by shifting permitting powers from the district to the province level.



Abandoned tin mine in Indonesia, Andrew Bauer for NRGi

Delays and mismanagement

State and regional permitting is prone to inefficiency and mismanagement. This could cause delays and harm formalization efforts. These challenges are driven by a lack of streamlined processes, the multitude of actors involved, and the limited resources and experience of state and region officials.

Miners consistently complained about how slow the permitting process is. One small-scale operator told NRGi that permitting was now slower than the previous centralized processes. In Sagaing, the government issued no permits between August 2018 and early March 2019. In Kachin, officials told NRGi that permitting takes an average of six months. Slow processes increase the risk of miners operating without a permit. In some cases, applicants had already paid all taxes and fees but months later were still waiting to receive their permit.

56 Venugopal, *Assessing Mineral Licensing*, 10. See also Enrique Ortega Girones, Alexandra Pugachevsky and Gotthard Walser. *Mineral Rights Cadastre: Promoting Transparent Access to Mineral Resources* (World Bank, 2009), 30. documents.worldbank.org/curated/en/574121468159912093/Mineral-rights-cadastre-promoting-transparent-access-to-mineral-resources.

57 Iwerks and Venugopal. *It Takes a Village*, 29.

A major potential cause of delays relates to a seeming lack of understanding among state and regional officials of how to design efficient procedures. As discussed in section 1.2, the mines law and rules are ambiguous about whether ASM permits should be allocated on a “first come, first served” basis or through competitive bidding. “First come, first served” is widely seen as the most efficient way to allocate mineral rights in areas with limited geological information and low competitive interest. It is an appropriate approach in contexts of low government capacity given that it is relatively simple to administer. “First come, first served” may also be more appropriate than competitive bidding in the ASM sector given that applicants will often have limited financial means and will therefore be unable to meaningfully compete against each other on the basis of financial criteria. Bidding could advantage wealthier and better-connected applicants (though, as discussed in section 3.1, “first come, first served” also require safeguards to avoid abuses).

While state and regional governments told NRG I that they typically allocate permits on a “first come, first served” basis, it was clear that they lack systems and processes to ensure this is done properly.⁵⁸ For example, while state and regional Department of Mines offices record new applications in registry books, they do not record the exact time that an application was received or issue a receipt to the applicant. This makes it difficult to ensure that they are processing applications in the order received. The fact that the registry book is kept at the Department of Mines while applications are generally received by the state or regional minister’s office, as well as the practice of allowing postal submissions, further complicates this.

The large number of decision-makers exacerbates inefficiencies and delays.

In cases where multiple applicants are interested in the same area, state and regional Departments of Mines reportedly ask applicants to resolve the matter between themselves.⁵⁹ This appears to be the case regardless of whether any geological data has previously established the viability of the permit area. This is not only an inefficient way of resolving competing claims, but also conflicts with the principle of “first come, first served” and does not guarantee fair and objective treatment of applicants. If the parties cannot resolve the matter privately, the government uses competitive bidding. This has reportedly not yet happened and it is unclear what criteria would be used to evaluate one applicant against another.

Further sources of inefficiency and delays come from staff shortages and capacity gaps within subnational institutions.⁶⁰ The large number of actors involved in permitting exacerbates this. The practice of conducting individual field visits for each application, involving multiple township departments is a drain on the time of government officials and significantly slows down the permitting process (aside from the associated corruption risks discussed above). Particularly for one-year artisanal permits, this is an overly cumbersome process.

A lack of coordination between Union and state and regional institutions further increases the risk of delays. While state and regional governments can in principle process applications for permits within designated permitting zones without involvement of the Union government, environmental approvals must be reviewed

58 Enrique Ortega, *Myanmar Mineral and Gemstone Cadastre System Conceptual Design: Final Report* (Myanmar Extractive Industries Transparency Initiative, 2018), 10.

59 Interviews with representatives from the Sagaing and Mandalay Department of Mines.

60 The lack of institutional capacity and understanding of permitting concepts and methodologies is one of the key challenges identified in a diagnostic study for Myanmar’s cadaster project. See Ortega, *Myanmar Cadastre Conceptual Design*, 10. Capacity gaps are often an obstacle to successful decentralization. For example, while Mongolia is generally seen as an example of good practice in ASM governance, subnational capacity constraints are a challenge to successful implementation of formalization strategies. See United Nations Industrial Development Organization, *Follow the Money: A Rapid Assessment of Gold and Financial Flows Linked to Artisanal and Small-Scale Gold Mining in Mongolia* (2017), 18. [www.unido.org/sites/default/files/files/2019-02/Follow the Money_Mongolia.pdf](http://www.unido.org/sites/default/files/files/2019-02/Follow%20the%20Money_Mongolia.pdf).



Artisanal gold miners
in Kachin State

Minzayar Oo for NRGi

by ECD in Nay Pyi Taw. ECD has limited capacity to review and approve IEEs. Even before decentralization potentially vastly increased the number of IEEs pending for review, ECD faced a major backlog.⁶¹ This means that even if it were possible to ensure an efficient subnational process, the application would likely face bottlenecks at the Union level (in practice, environmental requirements are simply ignored). (See box 6.)

Impacts on national permit systems

The lack of consistency in processes and systems between the Union and state and regional levels, could complicate efforts to harmonize and streamline permitting practices across the country. The key tool to promote harmonization is Myanmar's national cadaster, a system that in future will store and manage all permit information through one digital platform. (See box 7.) The cadaster has the potential to make permitting faster and more transparent. At the click of a button, officials will be able to check for overlaps and monitor active and expired permits. The cadaster will also ensure that officials process all applications using a legally defined workflow and criteria. While MONREC is initially only implementing the cadaster at the Union level, the intention is to eventually roll it out to the states and regions.

To date neither the Union government nor states and regions have made efforts to align state and regional systems with the requirements of the cadaster. Currently state and regional departments rely primarily on hard copy maps rather than GIS to check for overlaps. One regional minister told NRGi that his government wants to record permit coordinates using older Lambert maps rather than the UTM Myanmar 2000 maps that the national cadaster will use.⁶² Such inconsistencies could slow down the eventual expansion of the cadaster to the states and regions.

61 Myanmar Centre for Responsible Business, *Sector Wide Impact Assessment*, 101.

62 For more detail on the existing cartographic and geodetic infrastructure in Myanmar and the recommendations of the cadaster project see Enrique Ortega, *Myanmar Mineral and Gemstone Cadastre System Conceptual Design: Final Report* (Myanmar Extractive Industries Transparency Initiative, 2018).

Environmental and social impacts

ASM can cause major environmental and social impacts. (See section 1.1.) As discussed in section 2.1, one of the key potential benefits of decentralization is that it could promote formalization and help to tackle the sector's negative impacts. However, if decentralization leads to an increase in permits without adequate environmental and social safeguards, an opportunity to promote more sustainable practices could be missed.

A key risk arises from the absence of a sensible environmental legal framework for ASM. The laws setting out the requirements that miners must follow are contradictory and unrealistic. (See box 6.) Environmental approval processes are designed for large-scale mining and are not adapted to the realities of ASM: they are expensive and time-consuming and require a level of technical capacity that most applicants do not have. Miners consistently flagged that the requirement to commission an IEE is virtually impossible to comply with. As a result, state and regional authorities reportedly ignore this requirement. This creates the risk of the government approving permits without ensuring miners understand how to manage their impacts. Particularly within state and regional permitting zones, where officials will potentially issue many permits within a small geographic area, there is a risk of creating hotspots for negative impacts. Changes to the mines rules in July 2019 have removed the IEE requirement for artisanal miners. However, it is unclear whether MONREC has put in place alternative measures to ensure miners operate responsibly. Interviewees flagged that other requirements related to managing social impacts, such as submitting local employment and health and safety plans, were also not suited for ASM, increasing the risk of non-compliance.

Environmental approval processes for artisanal and small-scale mining are expensive, time-consuming and virtually impossible to comply with.

Decentralization could lead to an increase in ASM permits without adequate environmental and social safeguards. The practice of requiring miners to pay all taxes and fees upfront (see table 2) means that each new permit represents an immediate source of government revenue (as well as a potential opportunity for personal enrichment) and could incentivize state and regional officials to issue large numbers of permits. In Indonesia, decentralization led to a dramatic increase in the number of permits, with many granted within protected areas. (See box 4.) Similar patterns are already observed in Myanmar. In the gemstones sector, the government issued more than 22,000 permits prior to introduction of a moratorium in 2016.⁶³ This number far exceeded the government's monitoring capacity resulting in severe environmental and social impacts.⁶⁴

Capacity constraints and a lack of coordination between state and region and Union processes exacerbate environmental and social risks. While states and regions are responsible for issuing mining permits, Union level ECD is responsible for issuing ECCs. ECD is severely understaffed and underfunded. At the time of writing, miners had submitted thousands of applications to state and regional governments around the country. Even if these applicants submitted an IEE, it is unlikely that ECD would have the capacity to adequately assess potential impacts and monitor compliance.⁶⁵

If decentralization leads to an increase in permitting, it could have a particularly strong impact on land rights. According to government officials, township level reviews are a means of verifying that mining permits do not overlap with other land uses. In practice however, the review process only considers formal land uses and ownership

63 See 2014-15 EITI report data in "License Explorer," Open Data: Myanmar Jade, accessed 29 April 2019, openjadedata.org/tools/licenses-explorer.

64 Paul Shortell, *Losing Luster: Addressing Tax Evasion in Myanmar's Jade and Gemstone Industry* (Natural Resource Governance Institute, 2019). resourcegovernance.org/analysis-tools/publications/losing-luster-addressing-tax-evasion-myanmars-jade-and-gemstone. 18-19.

65 Interview with environmental lawyer.

structures. Particularly in conflict-affected areas, there are insufficient safeguards to protect customary land rights. Myanmar’s controversial Vacant, Fallow and Virgin Land Management (VFV) is likely to exacerbate this issue. (See box 5.)

Box 5. Myanmar’s Vacant, Fallow and Virgin Land Management Law

In 2018, the Myanmar government amended the 2012 Vacant, Fallow and Virgin Land Management (VFV) Law. The amended law required users of land classified as VFV to apply for a VFV permit by March 2019. Anyone who failed to do so is committing criminal trespass unless they can prove they have customary tenure over the land. Many land users are unaware of the time limit, the customary exemption and even the VFV law itself. Rights groups have expressed concern that the VFV Law will be used to facilitate land grabs by companies. Approximately 30 percent of the country has been classified as VFV land, mostly in ethnic minority areas. Land users displaced by conflict are particularly vulnerable to these changes.⁶⁶

If decentralization leads to an increase in minerals permitting, the mining sector could become a flashpoint over land rights. According to the 2015 Mines Law, permit holders need to acquire permission from land owners after being granted the mining permit and before starting operations.⁶⁷ However, in interviews with NRG, government officials and miners said that the mining permits automatically confer surface rights (others reported having to secure surface rights before submitting their mining permit application). Interviewees suggested that risks of land disputes are marginal because the township-level review checks for overlaps with other land uses and verifies that minimum distances are maintained between mining permits and agricultural land or residential areas. However, these reviews focus only on formalized land uses and residential settlements that have been officially designated by GAD. Land users who have failed to acquire a VFV permit or those who do not require a permit because they have a claim to customary use risk being dispossessed by mining investors. “Unofficial” villages—which are common in conflict-affected areas—may not be able to demand that buffer zones are respected.

Conflicts with large-scale mining

The fact that states and regions administer ASM permits while medium and large-scale permits remain the responsibility of the Union government makes Myanmar’s decentralization process more complex. Without good coordination, this could lead to overlapping claims and generate tensions between ASM operators and large-scale investors.

Currently, the Myanmar government’s primary mechanism for avoiding overlaps between Union and state and regional permits is the delineation of exclusive zones for different permit types. (See box 3.) In principle this could be an effective means of coordination.

In practice however, international experience shows that zoning is not without challenges.⁶⁸ Making decisions on where to allow certain types of mining requires geological information. DGSE told NRG that zoning decisions were primarily based on geological survey maps rather than exploration work. Decentralization could harm ASM operators and large-scale companies alike. If the government identifies too few

66 Interview with Yangon-based environmental lawyer.

67 Republic of the Union of Myanmar. *Law Amending the Myanmar Mines Law* (2015), Chapter V.

68 For example, in 2017, the Ugandan military evicted tens of thousands of miners operating illegally within an exploration concession held by a large-scale mining company. Attempts to relocate miners to new ASM zones failed. Miners did not believe that the proposed zones were geologically prospective and government officials admitted that they would only be able to accommodate a small proportion of those evicted. Following lengthy negotiations between the company, the government and artisanal miners, an agreement was reached whereby the company relinquished 30 percent of its concession. In March 2019, several local mining associations were granted permits and allowed to return. See Christopher Tusiime, “Mubende Gold Row - Museveni Petitioned Over Eviction Notice,” *The Observer*, 30 June 2017, allafrica.com/stories/201706300375.html and Misairi Thembo Kahungu, “Mubende Artisanal Miners Return to Gold Mine Fields,” *The Monitor*, 15 March 2019, allafrica.com/stories/201903150314.html.

ASM zones or identifies zones which are not commercially interesting, it will confine miners to operating illegally elsewhere. If ASM zones overlap with large deposits, investors may not be able to develop large mines that could generate revenue and jobs. ASM operators and large-scale companies interviewed by NRGi expressed concern about how DGSE selected the zones. Interviewees also reported a general lack of awareness among ASM operators as to the location of these zones.

The reliance on zones as the sole coordination mechanism means that decentralization could become a source of tensions between ASM and large-scale companies. There is already evidence of this. In one case, informal miners had approached the Union government with demands to issue permits to them in an area that had already been granted to a large-scale exploration company. The informal miners were concerned that the arrival of the company would lead to their eviction. The Union government reportedly told the miners that they should informally negotiate access with the company. In another case, a large-scale company reported that it had submitted applications for prospecting and exploration permits to the Union government before the promulgation of the Mines Rules and subsequent delineation of ASM zones. When the company eventually received its permits, it discovered that ASM zones had been carved out of the area it had applied for.⁶⁹ With states and regions reportedly pressuring MONREC to delineate more ASM zones these types of challenges are likely to increase.

The reliance on zones to avoid overlaps between Union and state or region-issued permits could become a source of tension between ASM and large-scale mining companies.

69 Interviews with industry representatives.

3. Recommendations

As discussed in previous sections, decentralization of ASM permitting could improve governance and empower subnational stakeholders. However, the way the government is currently implementing it poses serious risks that could undo any potential benefits. Government officials need to understand these risks and manage them in a proactive and strategic manner.

The following section sets out practical recommendations for how to ensure states and regions issue ASM permits in a coherent, efficient and transparent manner. Our recommendations also provide guidance to oversight actors on what permitting good practices look like. This will help them hold government officials accountable. Our recommendations cover permitting procedures; systems to manage and store information; transparency mechanisms; coordination with the Union government; and formalization initiatives. A brief discussion of considerations for broader reforms is in section 4.

3.1 CLEARLY DEFINE PROCEDURES, INSTITUTIONAL RESPONSIBILITIES AND REVIEW CRITERIA

At present there is little clarity or consistency in precisely how the permitting process works. This could open the door to corruption, perceptions of unfair decisions, slow and inefficient processes and, therefore, potentially deter ASM operators from attempting to secure permits at all.

Ideally, permitting procedures should be consistent around the country. However, until such a time as the Union government takes more concerted steps to ensure harmonization, state and regional governments should at least ensure internal consistency. They should do this by defining the overarching framework guiding permitting, developing a detailed workflow that sets out each step of the process, the institutions and timeframes involved, and defining objective review criteria.

Define a “first come, first served” process

As a first step, state and regional governments need to define the basic framework guiding permitting. As discussed in section 1.2, there are ambiguities in the legal framework as to whether states and regions should apply “first come, first served” or competitive bidding processes. Until this legal ambiguity is resolved, we recommend using “first come, first served” processes. Using “first come, first served” for ASM permitting would be consistent with practices in many countries around the world, including Mongolia, Ghana and Zambia.⁷⁰

Implementing a “first come, first served” system would mean that officials review applications in the order received and award permits to the earliest applicant that meets clearly defined criteria. “First come, first served” means automatically rejecting applications that overlap with existing permits and with pending permit applications that are currently being reviewed. In Ghana, prior to submitting permit applications, the government requires miners to first verify with them whether the area they want to apply for is located within a designated ASM zone, and whether there are

"First come, first served" means reviewing applications in the order received and awarding permits to the earliest applicant that meets clearly defined criteria.

⁷⁰ World Bank. *2019 State of the Artisanal and Small-Scale Mining Sector* (2019), 29. beta.delvedatabase.org/uploads/resources/Delve-2019-State-of-the-Artisanal-and-Small-Scale-Mining-Sector.pdf; Republic of Ghana-Ministry of Lands and Natural Resources, *Artisanal and Small-Scale Mining Handbook for Ghana* (GEUS and PanAfGeo, 2017), 43. www.oagsafrica.org/images/training/WP3SUCCESSSTORY/FINAL-Artisanal-Handbook-for-Ghana.pdf; Republic of Zambia, *Artisanal and Small-Scale Mining Handbook for Zambia* (GEUS and PanAfGeo, 2018), 57.



Artisanal miner's gold dust pan, Kachin State

Minzayar Oo for NRG1

no overlaps with existing or pending permits. Once the government has verified the availability of the area, it temporarily holds the area while the applicant submits their application. This sequencing helps to preserve the principle of “first come, first served” while avoiding the risk of applicants expending time and effort preparing an application only for the government to reject it due to an overlap.⁷¹

While “first come, first served” is the most appropriate means of allocating permits, it needs to be coupled with safeguards to protect the rights and interests of miners with limited financial means and political connections. States and regions might consider including permitting requirements that give some protections to incumbent informal miners and/or local residents. Processes also need to be simple and cheap so that they do not disproportionately advantage more sophisticated, literate, wealthy and politically connected applicants.

Myanmar should also consider how artisanal permit renewals work. While the Mines Rules allow for extensions if an application is made two months prior to expiration of the permit, the form is the same as that used for the original application and no grounds for refusal are specified, unlike for small-scale permits.⁷² Ambiguity in the legal framework potentially creates the risk of artisanal permit holders losing their permit at the end of their tenure only for it to be reallocated to someone else. In general, permit holder should be entitled to renewal unless they have violated permit terms or the permit area is to be removed from an ASM zone. The renewal process should be considerably faster and simpler than the original application. (These considerations are discussed further in section 4.)

State and regional governments could set up a grievance mechanism through which miners can lodge complaints in case they believe they have been treated unfairly in the permitting process.

71 Republic of Ghana, *Artisanal and Small-Scale Mining Handbook*, 43-45.

72 *The Myanmar Mines Rules*, Rule 98.

Define a detailed workflow

While the main steps of Myanmar’s ASM permitting process are broadly consistent across the states and regions we reviewed (see section 1.3), there is little clarity on precisely how each step is administered. State and regional governments should define a detailed workflow that sets out precisely what officials need to do at each step. The permitting guidelines for artisanal miners published by Ghana’s Ministry of Lands and Natural Resources provide an example of what such a workflow might look like and what some of the key steps to integrate in Myanmar might be.⁷³

At a minimum, the permitting process should include the following steps:

- 1 *Pre-screening.* The state and regional official receives the application and immediately conducts a basic check of eligibility against criteria defined in the mines rules (e.g., the applicant is a Myanmar citizen, the application is for an artisanal or small-scale permit, the application is for a commodity that falls under the state and regional remit). To ensure consistency and efficiency, officials could use a pre-screening checklist. (See appendix 4.1 for an example of what this might look like.) This step should be quick and simple, focusing on whether the application meets basic eligibility criteria, whether the applicant has completed all fields in the application form and whether s/he has attached all required supporting documents. If everything is in order, the official registers the application (Step 2). If not, the official rejects the application (potentially after a grace period allowing the applicant to provide missing information).⁷⁴
- 2 *Registration.* The official logs the application in the registry book, including the date and time received, and issues a signed and time-stamped receipt to the applicant. The official should also record the application in a permit spreadsheet at this stage. It is crucial that registration happens immediately after the application is received. Once the application has been properly registered it is forwarded to the state or regional scrutiny board for review. At this stage Union MONREC should be informed that there is a new pending application.⁷⁵
- 3 *Overlap check.* The state and regional Department of Mines checks whether the application falls within an ASM zone and, if not, coordinates with Union MONREC. The department also checks for overlaps with existing or pending mining permits, applying the principle of “first come, first served.” This should happen immediately after registration.
- 4 *Technical review.* The state or regional scrutiny board reviews the application using clear and objective evaluation criteria based on the mining law and other applicable legislation. This stage should include government departments checking for overlaps with other land uses (e.g., protected areas) and verifying compliance with technical requirements (e.g., equipment restrictions). Ideally, officials should use a review checklist for this task. (See appendix 4.2 for an example.) If the application meets all legal requirements, state and regional scrutiny boards issue the permit (Step 5). If not, they reject the application. If the permitting process involves a review by township or Union officials, state and regional governments should clearly define when in the workflow this happens. Like the state and regional scrutiny boards, these institutions should use clear and objective criteria for evaluating applications. This stage would likely require a more rigorous review for small-scale than artisanal permits.

States and regions should define a detailed workflow that sets out precisely what officials need to do at each step of the application review process.

⁷³ Republic of Ghana, *Artisanal and Small-Scale Mining Handbook*, 43-52.

⁷⁴ Ghana’s Ministry of Lands and Natural Resources gives applicants 10 days to correct errors before rejecting applications.

⁷⁵ This is in line with the recommendations set out in Ortega, *Myanmar Cadastre Conceptual Design*, 10.

- 5 *Receipt of fees and issuing of permit.* Once the application has been approved, the relevant official informs the applicant and requests payment of all required fees. Immediately after fees have been received, the official issues the permit to the applicant. It is crucial that state and regional officials systematically record the receipt of all fees.
- 6 *Recording of permit.* Immediately after issuing the permit, the relevant government official updates the permit spreadsheet to record that the permit is now valid. The official should share this information with relevant institutions, including Union-level MONREC and the chief minister. Information should regularly be shared with the public. (See section 3.3.)

States and regions may want to reduce the number of institutions involved in decision-making.

State and regional governments may want to review current procedures to see whether they can streamline them. For example, it is unclear why state and regional cabinets need to sign off permitting decisions (and potentially approve individual steps of the permitting process). (See figure 7.) Likewise, in the interest of speed, states and regions should issue permits immediately after receiving the required fees. This should be a quick administrative step. The current practice of holding permitting ceremonies causes unnecessary delays.

Define which institutions are involved

We recommend publishing an overview of which institutions are involved at each step of the permitting process and explaining the rationale for their involvement. The permitting guides published by the governments of Ghana, Sierra Leone and Mongolia provide examples of what this might look like.⁷⁶ It is notable that significantly fewer actors are involved in permitting in these countries than in Myanmar. States and regions may want to reduce the number of actors involved. Only departments with a clear legal rationale for providing input should participate. As part of this, states and regions should also be clear who is responsible for managing permit information and monitoring permits after they have been issued.

Any government official involved in permitting should be required to sign a conflict of interest declaration and recuse themselves from the review process if they or their immediate family members have a financial interest in a permit application. Definitions of conflicts of interest should include official shareholdings as well as beneficial ownership.⁷⁷

Define clear timeframes for each step

The permitting process is currently far too slow to incentivize formalization. According to one international expert, governments should aim to complete all steps of ASM permitting within a month. By contrast, at the time of writing, some applicants in Myanmar had been waiting for eight months to receive their permit.

To aid swift approvals, each step of the permitting process should include clearly defined timeframes within which officials need to complete their functions.⁷⁸ Clarity

76 Republic of Ghana, *Artisanal and Small-Scale Mining Handbook*, 52; Government of Sierra Leone, *Information for Mineral Right Acquisition*; Sustainable Artisanal Mining Project, *How to Extract Minerals from Artisanal and Small-Scale Mines* (Swiss Agency for Development and Cooperation and Government of Mongolia-Ministry of Mining, 2015), 3. drive.google.com/file/d/0BzzumgffifF6bU9LWWRtRnBkRzg/view.

77 Myanmar EITI definition of beneficial ownership is when an "individual holds, directly or indirectly, 5 percent and above of the shares in the public or private company or corporate entity. The individual holds, directly or indirectly, 5 percent and above of the voting rights in the public or private company or corporate entity. The individual holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of the public or private company or corporate entity. The individual has the right to exercise, or actually exercises, significant influence or control over the public or private company or corporate entity."

78 In Mongolia, for example, the national government has ten days to approve or reject subnational permitting requests. See Sustainable Artisanal Mining Project, *How to Extract Minerals*, 3.

around expected timeframes is essential to giving applicants confidence that applying for a permit is worthwhile. These timeframes should balance the need for efficiency with the importance of ensuring applications are properly reviewed. Equipping state and regional officials with the human and technical resources to do their jobs properly is critical to them complying with these timeframes. In the future, the cadaster will be a key tool for speeding up processes.

In order to ensure swift processes, officials should:

- Check basic eligibility and register the application in the presence of the applicant immediately after submission.
- Schedule regular meetings of the state or regional scrutiny boards (interviewees in Kachin, Mandalay and Sagaing expressed their intention to schedule these on a weekly basis). For artisanal permits, which ideally have very simple application requirements, boards should aim to approve or reject any new applications received since the previous meeting. For small-scale, timeframes may need to be longer. Nonetheless, they should be clearly defined.
- Set strict timeframes for township departments to conduct their field visits. Precisely what timeframe is realistic will likely vary between states and regions.
- Issue permits immediately after receiving the required taxes and fees.
- Update the permit spreadsheet (and in future the cadaster) immediately after issuing permits.

Establish objective evaluation criteria

The review of the application should be objective and non-discretionary. States and regions should clearly communicate against what criteria they will evaluate each application. These criteria need to have a clear legal basis. States and regions could develop review checklists. This would help to reduce administrative burdens by giving authorities a simple overview of the legal requirements against which they need to evaluate the application. The use of checklists would also reduce the risk of favoritism and corruption by ensuring that they assess each application against the same criteria. We have included templates of pre-screening and review checklists in appendix 4 as examples.

A key challenge to the development of effective evaluation criteria is the fact that many of Myanmar's legal requirements for ASM are virtually impossible for miners to comply with. This is a particular issue when it comes to environmental approvals. Interviewees consistently told NRGi that environmental assessment requirements are so burdensome that officials and miners simply ignore them. (See box 6.) Legislative and regulatory changes are needed to ensure that permitting requirements are robust yet realistic. (See section 4.)

Box 6. Environmental approvals and monitoring in the ASM sector

An obstacle to addressing the ASM sector's environmental impacts revolves around the costs and complexity of environmental approvals and the lack of effective monitoring and enforcement. Requirements are ambiguous and contradictory. The 2015 Environmental Impact Assessment (EIA) Procedures state that miners need to obtain an ECC from ECD based on submission of an IEE. This needs to happen "before any permit is granted or issued."⁷⁹ The mines rules on the other hand state only that officials shall "request" that applicants for small-scale permits prepare an IEE. For artisanal permits, the rules initially stated that applicants shall prepare the IEE after receiving their mining permit.⁸⁰ Recent changes to the mines rules have removed the IEE requirement for artisanal miners and replaced it with a more general requirement to comply with environmental regulations.⁸¹

The time and money associated with obtaining an IEE make it difficult for miners to operate legally. Miners must commission independent experts to prepare the IEE. One miner told NRG I that this costs around MMK 1.5 million for a four-acre block. An environmental lawyer estimated that it takes approximately six months to prepare an IEE, but subsequent review and approval by ECD takes much longer. ECD is severely under-resourced and faces a large backlog.⁸²

In practice, several interviewees said that state and regional officials have been sidestepping the IEE requirement. In at least two states or regions, permitting authorities do not require miners to have an IEE before processing their application. Instead they simply ask applicants to sign a statement promising that they will do so within six months of receiving their permit. This approach contradicts the requirements set out in the EIA Procedures. Interviewees also told NRG I that officials do not actually follow up to ensure that permit holders are indeed getting their environmental approvals. In the rare cases where IEEs are prepared, interviewees noted that they are seen purely as tick box exercises that have little to no bearing on how miners operate. There is virtually no monitoring and enforcement of compliance once operations start.

An alternative approach would be for the Union government to prepare simplified, standardized environmental management templates that miners are required to follow. These should promote good practices while being sensitive to the capacity constraints of ASM operators. In Mongolia, the national government partnered with international experts, local governments and miners to develop a standardized rehabilitation methodology and environmental code of practice.⁸³ Similar approaches have been applied in Tanzania.⁸⁴ In Myanmar, the Myanmar Gems and Jewellery Entrepreneurs Association commissioned experts to develop a standardized environmental management plan for the jade sector, which includes simplified guidance for artisanal miners.⁸⁵

Simplified approvals would need to be coupled with greater emphasis on monitoring and enforcement. The government needs to clarify whether the Department of Mines, ECD or state and regional governments are responsible for this and ensure they have sufficient resources to fulfill their functions.⁸⁶ State and regional governments should be aware of the risks of cumulative impacts from large numbers of ASM operations in one area. MONREC could commission impact assessments to decide how many permits to issue and where to identify environmentally sensitive "no go" areas. In Mongolia, there are legal limits on the number of permits and total acreage that can be allocated for ASM in one district.⁸⁷

79 Republic of the Union of Myanmar-Ministry of Natural Resources and Environmental Conservation. *Environmental Impact Assessment Procedure* (2015), Article 83 and Annex I.

80 Republic of the Union of Myanmar, *Mines Rules*, Rules 82f and 97c.

81 The environmental regulations however maintain the need for artisanal miners to acquire an ECC based on an IEE.

82 Myanmar Centre for Responsible Business, *Sector-Wide Impact Assessment*, 102.

83 Government of Mongolia Ministry of Mining, Swiss Agency for Development and Cooperation and the Asia Foundation. *Frugal Rehabilitation Methodology: Field Handbook* (2016).

84 Mutagwaba et al., *Artisanal and Small-Scale Mining in Tanzania*, 62-63.

85 "Lonkin / Hpakant: Environmental management plan for gems tract," Valentis Resources, accessed 21 May 2019. www.valentisresources.com/case-studies/lonkin-hpakant.

86 Sahla, Bauer and Kirk, *Natural Resource Federalism*, 45.

87 United Nations Industrial Development Organization, *Follow the Money*, 78.

3.2 IMPLEMENT SYSTEMS TO STORE AND MANAGE PERMIT INFORMATION

States and regions need systems to properly store and manage permit information to ensure consistent and transparent processes. There are two basic elements to this: a hardcopy registry book and a digital database. The primary function of the registry book is to record the order in which the government has received applications and therefore in which order it should review them. This is particularly important if there is a dispute between multiple applicants interested in the same area. Pending the development of Myanmar’s national cadaster, spreadsheets should serve as the main digital repository for permit information and tool for monitoring permits.

Each state or region should maintain only one registry book, used exclusively to record permit applications, and one permit spreadsheet.⁸⁸ This will help to ensure coherent information management and make it easier for state and regional officials to check for overlaps.

The states and regions we reviewed are already using registry books and spreadsheets. However, states and regions need to refine their approach to ensure conformance to good practices. We have included templates for registry books and permit spreadsheets in appendices 2 and 3.

Consistently record applications in a registry book

Permitting officials should record all applications in a registry book as soon as they receive them. Consistent and prompt registration is essential to maintaining the principle of “first come, first served.” If two applicants are interested in the same area, the registry book serves as the point of reference to resolve whose application was received first.

State and region Department of Mines offices currently use registry books that Union MONREC distributed to them. However, the way in which officials record information does not meet good practice standards.

Officials should:

- *Record new applications immediately after receiving them.* This is essential to ensuring that applications are processed in the order received. To enable this, the same entity that receives the applications should be in possession of the registry book. Currently the office of the state and regional minister receives applications while the state and regional Department of Mines maintains the registry book. Applications are periodically processed in batches. This increases the risk that the principle of “first come, first served” is not upheld.
- *Give each application a unique serial number or permit code.* This ensures each application has a unique identifier that can be used to maintain a clear record of the priority in which applications were received.
- *Record the precise time that an application is received.* Officials need to record the date, hour and minute of an application. Only recording the date is insufficient in case two applications for the same area are received on the same day. For states and regions that accept postal applications, applications should be sent by registered mail, with the postmark used as the submission date. In general, we would caution against accepting postal applications.

⁸⁸ State and regional governments may also consider maintaining a separate registry book to record applications for renewals. Importantly however, these registry books should be used exclusively for recording permit applications and not any other departmental business.

- *Sign off each new entry.* It is important that both the official and the applicant acknowledge the submission with their signature to avoid manipulation of entries. This is another reason why state and regional governments may want to avoid accepting postal applications.
- *Formally close the registry book at the end of each day.* The supervisor overseeing the registration of new applications should “close” the registry book at the end of each day. This involves signing off below the final application received that day and noting that no further applications will be received. This is important to avoid the risk of officials accepting applications or tampering with entries after hours.
- *Allow public access to the registry book.* The registry book is an important tool for transparency and should be publicly accessible. (See section 3.3.)

Harmonize permit spreadsheets with the requirements of the national cadaster

A comprehensive and up-to-date digital permit database is a critical tool for effective governance of the mining sector. The database should be the main point of reference to check for overlaps and to monitor whether permits have expired, if payments have been made, reports submitted, etc. In the future, Myanmar’s national cadaster will be a tool for officials to manage permit information. (See box 7.) However, it will likely take several years for it to be implemented in all states and regions.

In the meantime, state and regional governments should ensure that the spreadsheets they currently use to store permit information are harmonized with the requirements of the cadaster.⁸⁹ This will help the proper management of permit information in the short term and will facilitate the integration of state and regional permitting into the national cadaster in the long term. Where possible the spreadsheet should consist of drop-down menus where officials select options to populate fields rather than manually filling them in. This will reduce the risk of inaccuracies and inconsistencies in the spreadsheet caused by user error.

One of the areas in which harmonization is crucial is the coordinate system used to record the location of permits. In line with the requirements of the national cadaster, states and regions should record coordinates using Myanmar 2000 UTM maps.⁹⁰ By ensuring harmonization with the cadaster, state and regional governments can speed up the process of checking for overlaps. In Ghana, the development of a computerized cadaster played an important role in reducing reliance on hard copy documents and the risk of errors when checking for overlaps.⁹¹ In future, Myanmar’s cadaster will allow for Union and state and regional permitting to be integrated into a single system. Ensuring harmonization now will help to speed up this process.

A comprehensive and up-to-date digital database should be the main point of reference to check for overlaps and to monitor whether permits have expired.

89 Extractive Industries Transparency Initiative, *Guidance Note 3: License Registers* (2016), eiti.org/sites/default/files/documents/guidance-note-3-license-registers-en_2016.pdf.

90 For more detail on the recommendations for the design of the national cadaster see Ortega, *Myanmar Cadastre Conceptual Design*.

91 IGF, *Global Trends*, 54.

Box 7. Myanmar's mining cadaster

A minerals cadaster is a register of a country's mining permits. It typically includes details of a permit's ownership, length of tenure and location. While the term is sometimes used to refer only to the list or map of mining properties, it is nowadays more commonly also used to refer to the public institution responsible for administering mineral rights.⁹²

Myanmar currently does not have a minerals cadaster. Several MONREC departments and enterprises have permitting responsibilities. Permit information is not stored in one unified system. This makes permitting slow and opaque. The absence of a cadaster is a burden on government officials and increases corruption risks.⁹³

To address these challenges, MONREC is developing a unified system to administer and monitor all mineral and gemstone permits through support from the Myanmar EITI.⁹⁴ At the time of writing, the EITI multi-stakeholder group was in the process of selecting external experts to develop this system. The project is at an early stage and it is hard to know exactly what Myanmar's cadaster will eventually look like. However, in principle, the cadaster should be an independent unit within MONREC which receives all mineral and gemstone permit applications, records them in a digital system, and considers them in a streamlined and legally defined process before granting (or denying) exploration or production rights. The cadaster should also provide a publicly available online map of all mining titles.

3.3 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 oversight throughout the permitting process. Transparency is not only important for government and civil society but also helps to generate a good business environment by leveling the playing field between applicants.⁹⁵

Facilitate public access to laws, procedures and other key documents

State and regional governments should promote public understanding of how the permitting process works. To ensure this, they should guarantee access to any Union or state and regional laws, regulations, and notifications that have a bearing on the permitting process. State and regional governments should also publish details on the elements defined in section 3.1, i.e., the permitting workflow, review criteria, institutional responsibilities and review timeframes, as well as application forms, permit templates and maps showing the location of ASM zones.

At a minimum, state and region governments should make the full text versions of official documents publicly available. State and regional governments should also promote public understanding by publishing summaries, factsheets or infographics. Sierra Leone and Mongolia's guidelines for artisanal permitting provide an example of such summaries.⁹⁶

All of these documents should be made available at relevant state and regional and township-level government offices. In addition, all documents should ideally also be published online. State and regional governments that have their own website could use these to host the documents. Others could set up a Facebook page dedicated

92 Ortega Girones, Pugachevsky and Walser, *Mineral Rights Cadastre*, 4-5.

93 Sebastian Sahla, "Modernizing Permitting to Drive Development of Myanmar's Mining Sector," *Global New Light of Myanmar*, 14 December 2018. www.globalnewlightofmyanmar.com/modernizing-permitting-to-drive-development-of-myanmars-mining-sector/.

94 *Ibid.*

95 For more detail on general considerations related to transparency mechanisms in permitting processes see Natural Resource Governance Institute and Open Contracting Partnership, *Open Contracting*.

96 Government of Sierra Leone, *Guidelines for Applying for an Artisanal Mining Licence*; Sustainable Artisanal Mining Project, *How to Extract Minerals*.

to sharing mining sector information (Kachin's state government already uses Facebook to share information).⁹⁷ The website of Sierra Leone's National Minerals Agency provides an example of government making a wide range of documents (e.g., summaries of key policies and laws, permitting steps, application requirements, institutional responsibilities) available on a single platform.⁹⁸ State and regional governments could also organize information sessions in mining areas to explain the permitting process and distribute documents.

Ensure public access to the hard copy registry book and permit maps

Public access to the hard copy registry book and permit maps is important for tackling corruption and ensuring the fair treatment of all applications. It is crucial to allow applicants to verify which areas are available before submitting applications.⁹⁹ The public should be allowed to visit the office where the registry book and permit map are kept and request to review them under the supervision of a government official.

Regularly publish extracts of the permit spreadsheet

Making information from the permit spreadsheet publicly accessible is important as it provides an overview of the status of all permits. State and regional governments should publish information that allows the public to see who holds (or has applied for) permits, the location of the permit, dates of application, award and expiry, and the commodity being produced.¹⁰⁰

In the future, the national cadaster will serve as a unified platform for enabling public access to permit information. The online repository of Sierra Leone's National Minerals Agency provides an example of what an online system combining different permit types might look like.¹⁰¹ Until the Union government expands the cadaster to the subnational level, states and regions should periodically (e.g., on a monthly basis) publish extracts from the permit spreadsheet allowing the public to see a list of all active, pending and expired permits. They could publish this information on state and regional government websites or Facebook pages (in a machine-readable format) and in hardcopy in state and regional or township-level government offices. State and regional governments could go further by setting up a computer terminal in the Department of Mines office and allowing the public to review the "live" database.

Record and publish revenue data

Properly recording revenue data and promoting transparency around this is important to manage corruption risks. It can also help to build support for formalization efforts by demonstrating the benefits of ASM to public finances. At a minimum, state and regional governments should maintain a spreadsheet in which they record all revenue payments made by permit holders. State and regional governments should go further by publishing revenue data. In line with EITI guidance on ASM reporting, states and regions could release data on the total revenues collected, disaggregated by revenue stream on an annual basis.¹⁰² Governments should also consider disaggregating this further to show how much each permit holder has paid. Sierra Leone's online

97 "Kachin State Government Office," Facebook, accessed 30 May 2019. www.facebook.com/pg/kachinstate.gov.mm/posts.

98 "Useful Resources," Government of Sierra Leone-National Minerals Agency, accessed 28 May 2019. www.nma.gov.sl/home.

99 Girones, Pugachevsky and Walser. *Mineral Rights Cadastre*, 15.

100 Extractive Industries Transparency Initiative, *License Registers*.

101 "GoSL Online Repository," National Minerals Agency, Sierra Leone, accessed 8 May 2019, sierraleone.revenuedev.org (requires users to complete free registration process).

102 Extractive Industries Transparency Initiative, *Guidance Note 21: Coverage of Artisanal and Small-Scale Mining (ASM) in EITI* (2016), 10. <https://eiti.org/sites/default/files/documents/guidance-note-21-asm.pdf>.

repository provides an example of a system that allows the public to track revenue payments against individual small-scale permits.¹⁰³ Pending the development of more sophisticated online systems, state and regional governments could unilaterally disclose revenue data on their websites or Facebook pages, or through the subnational units of the Myanmar EITI.

3.4 ENSURE COORDINATION WITH THE UNION GOVERNMENT

One of the biggest challenges for effective resource governance in Myanmar is the complexity created by the fact that ASM permitting has been decentralized while medium- and large-scale permitting remains the responsibility of the Union government. As discussed in section 2.2, this creates risks of overlaps and tensions between ASM and large-scale investors.

Seek Union approval before processing applications that fall outside ASM zones

While zoning is an imperfect solution (see section 2.2), it is currently the most effective mechanism to ensure coordination between the Union and states and regions. Until the national cadaster is implemented in the states and regions or an alternative mechanism for allowing cohabitation between different permit types is agreed with the Union government (see section 4), we would advise state and regional governments to focus their permitting on existing ASM zones and, critically, to coordinate closely with Union MONREC in case of applications outside these zones.

States and regions should inform Union MONREC as soon as they receive permit applications that fall outside ASM zones.¹⁰⁴ Union MONREC should respond promptly and inform states and regions whether there are any active permits or pending applications for the area in question. If the area is available, Union MONREC should temporarily reserve it for state and regional permitting. States and regions should then inform Union MONREC as soon as they have approved or rejected the application. Information needs to be shared promptly to avoid the risk of applicants proceeding in the permitting process only to discover later that the area they had applied for was not available. In Mongolia, local governments issue ASM permits but must seek clearance from the national government. The national government is required to respond to the request within ten working days.¹⁰⁵ While information sharing is particularly important for applications that fall outside ASM zones, states and regions and Union MONREC should in general share information whenever applications are received, as well as whenever they are approved or rejected.

Until the national cadaster is implemented, states and regions should focus on issuing permits within existing ASM zones and coordinate closely with the Union government if applications fall outside these zones.

Coordinate with exploration companies, ASM operators and Union MONREC to identify areas appropriate for ASM

States and regions should be cautious about demanding that the Union government establish new zones in areas that have not been proven to be suitable for ASM. Ideally, zoning decisions should be based on geological data that demonstrates that the area has potential for ASM (and does not overlap with a large deposit that would be more suitable for large-scale mining). Without this, the Myanmar government risks creating a patchwork of zones that may undermine large-scale investments while not being fit for the purpose of formalization.

103 "GoSL Online Repository," National Minerals Agency, Sierra Leone, accessed 8 May 2019, sierraleone.revenuedev.org (requires users to complete free registration process).

104 Ortega, *Myanmar Cadastre Conceptual Design*, 11.

105 Sustainable Artisanal Mining Project, *How to Extract*, 3.



States and regions should engage ASM operators, exploration companies and Union MONREC to identify areas for ASM. Exploration companies typically acquire large permit areas and then relinquish acreage back to the government as they build up their understanding of the geology and narrow down their exploration interests. This process generates data that can be used to decide where to permit ASM. Exploration companies should make data available to Union MONREC and state and regional governments and work with them (and ASM operators) to identify areas for ASM. In Colombia, Canadian mining company Continental Gold supported local small-scale miners to formalize in areas that it had classified as uneconomical for large-scale mining.¹⁰⁶

Worker in an underground tin mine in Kayah State

Yu Yu Myint Than for NRGi

Explore options for cohabitation and partnerships between ASM and large-scale companies

State and regional governments may want to discuss with the Union government and large-scale companies the possibility of allowing for cohabitation and partnerships between ASM and large-scale mining. One option would be to allow overlaps between large-scale exploration permits and ASM production. This approach would require changes to Union regulations. (See section 4.)

Another option would be to allow large-scale companies to subcontract production to ASM operators. Often large-scale permits include deposits that can only be commercialized using ASM methods. ASM operators may be able to mine these areas and potentially act as a supplier to the large-scale company. In the Democratic Republic of Congo, mining company Chemaf acquired a permit in an area with a long-standing presence of informal miners. Rather than trying to evict them, Chemaf engaged a local mining cooperative as a subcontractor. Chemaf restricts the cooperative's activities to a designated area within the concession. The cooperative then sell their product to Chemaf at rates adjusted to international market prices.¹⁰⁷

¹⁰⁶ Despite its proactive approach to formalization, Continental faces challenging ASM dynamics. For more information see: "Continental Gold Executes Formalization Agreements With Small-Scale Miners at its Buriticá Project, Colombia," Continental Gold, 12 May 2014; Arthur Dhont, "Violent Risks to Colombian Mining Projects," IHS Markit, 24 September 2018, [ihsmarkit.com/research-analysis/violent-risks-to-colombian-mining-projects.html](https://www.ihsmarkit.com/research-analysis/violent-risks-to-colombian-mining-projects.html).

¹⁰⁷ "From ASM to Semi-Mechanised Mining at Mutoshi Cobalt, DRC." Trafigura, accessed 22 May 2019. www.trafigura.com/responsibility/responsibility-performance/2018-responsibility-report/2018-case-studies/from-asm-to-semi-mechanised-mining-at-mutoshi-cobalt-drc.

4.5 SUPPORT FORMALIZATION

Having a framework in place for subnational permitting will not be enough to encourage informal miners to operate legally. Government policy needs to be realistic about what they expect artisanal and small-scale miners to do in terms of permitting, environmental management and tax payments. The costs and complexity of existing processes risk empowering local elites while missing an opportunity to incentivize informal miners to get permits.

States and regions should actively encourage formalization. Some elements of a formalization strategy can be implemented almost immediately, requiring states and regions only to streamline existing procedures and more actively engage with miners. Other measures will require a longer-term commitment and potentially changes to the regulatory framework.

Short-term measures include:

- *Outreach and communications.* As discussed in section 3.3, state and regional officials should actively engage with miners to disseminate guidance documents and application forms.
- *Reduced application timeframes.* State and regional governments should streamline the application process by rationalizing the number of institutions and steps involved and putting in place timeframes for the completion of each step of the process. (See section 3.1.)
- *Reduced costs.* State and regional governments should stop requiring applicants to pay for the costs of field visits. State and regional governments should also assess the overall fiscal burden on miners. Especially for artisanal miners, the costs of permitting should be very low.

Longer-term measures include:

- *Simplified application criteria and procedures.* Many application criteria are impossible for miners to comply with. This disincentivizes formalization and creates the risk of officials demanding bribes in order to approve permits. States and regions, the Union government and ASM operators need to have a conversation about how to simplify criteria without incentivizing bad practices. In Colombia, the government's ASM policy is based on the idea of different grades of formalization of which obtaining a legal title is only the first step. The system makes it easy to obtain permits but requires miners to progressively comply first with environmental and technical requirements, second with social and labor requirements, and third with economic and tax requirements. Simplified procedures bring ASM operators into the legal fold and make it easier to engage them on how to operate in full compliance with the law.¹⁰⁸ Establishing a one-stop-shop (e.g., where environmental approvals are secured alongside mineral rights) could further incentivize formalization.
- *Reduced physical distance to submit applications.* Several ASM operators interviewed noted that traveling to state and regional capitals is too costly and time-consuming. Once the Union government has expanded the cadaster to the states and regions, it could link township offices to the national system and allow them to receive applications.

The costs and complexity of existing processes mean states and regions risk missing an opportunity to incentivize informal miners to get permits.

¹⁰⁸ Cristina Echavarría. *What is Legal: Formalizing Artisanal and Small-Scale Mining in Colombia* (IIED, 2014), 48. www.responsiblemines.org/wp-content/uploads/2017/05/What-is-legal-C-Echavarria.pdf.

- *Capacity building support.* State and regional governments could provide technical assistance and extension services, which could be conditional upon having a permit.¹⁰⁹ States and regions could seek donor or private sector support to provide:
 - Engineering advice and geological information
 - Access to finance (e.g., private or non-profit micro-finance providers)
 - Access to mineral price information
 - Health, safety and environmental training
 - Access to processing equipment
 - Alternative livelihoods support
 - Post-mine rehabilitation planning and support
- *Formation of cooperatives.* Cooperatives allow miners to pool their resources and make it easier for the government to engage them. In Mongolia, cooperatives are a pillar of the government’s formalization strategy. This approach reduces compliance burdens on individual miners—the head of the cooperative is responsible for permitting and revenue payments. An estimated 10 percent of Mongolia’s ASM workforce operate within legally recognized cooperatives.¹¹⁰ It is important to be aware of potential pitfalls: cooperatives can create power imbalances between leaders who hold the permit and the miners on site. In some cases, cooperatives can come under the control of criminal groups.^{111,112}

109 For more information on options for incentivizing formalization see IGF, *Global Trends*, 53-62.

110 Singo and Seguin, *Formalization and Due Diligence*, 16-18.

111 International Conference on the Great Lakes Region (ICGLR), *Pilot Study: Advancing Transparency in Artisanal and Small-Scale Mining and Mineral Supply Chains in the Great Lakes Region (2015)*, 20. icglr-rnr.org/images/resources/reports/ICGLR-Report-EITI--et-ASM-EN.pdf, 20.

112 Verite, *The Nexus of Illegal Gold Mining and Human Trafficking in Global Supply Chains: Lessons from Latin America (2016)*, www.verite.org/wp-content/uploads/2016/11/Verite-Report-Illegal_Gold_Mining-2.pdf.

4. Broader considerations for reform

Our objective in writing this report has been to provide practical guidance to ensure decentralized ASM permitting is as coherent and transparent as possible within the constraints of the existing legal framework. However, there are broader issues that need to be addressed, many of them through reforms to the legal framework. Issues for consideration include:

- **Developing an ASM strategy.** An ASM strategy (at the Union and/or state and regional level) could help to ensure government policy is more coherent and attuned to the complexities of the sector. Strategy development could be a means of clarifying government objectives, identifying challenges and developing an action plan to promote formalization. The policy should be based on multi-stakeholder input. IGF has developed guidance on this.¹¹³
- **Expanding the cadaster to states and regions.** International experience shows that integrating ASM and large-scale mining into the same cadastral systems helps to avoid overlaps, facilitates monitoring and ensures transparent and streamlined processes.¹¹⁴ The Myanmar government already intends to expand the cadaster to states and regions in due course. This should be a matter of priority.
- **Clarifying approaches for issuing permits.** As discussed in section 3.1, the legal framework is ambiguous as to the choice between “first come, first served” or competitive bidding. We would recommend more clearly enshrining the principle of “first come, first served” while providing some legal safeguards for incumbent informal miners and/or local residents. The government might also consider increasing tenure lengths and permit sizes for artisanal miners and clarifying the steps, costs and criteria for permit renewals.
- **Reforming environmental approval and monitoring practices.** Environmental approval processes need to be adapted to the constraints of the ASM sector while ensuring they provide sufficient safeguards. A potential approach would be to reconsider the requirement for miners to prepare individual IEEs and instead develop simplified, standardized operational guidelines with which they are required to comply. Critical to this would be a far greater emphasis on effective monitoring and enforcement.
- **Generating and sharing geological data.** Better geological data could help MONREC make better decisions about where to permit ASM and large-scale mines. MONREC should streamline the processes for acquiring large-scale exploration permits and ensure companies share data from relinquished areas with MONREC.¹¹⁵

113 Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF). *IGF Guidance for Governments: Managing Artisanal and Small-Scale Mining* (IISD, 2017). www.iisd.org/sites/default/files/publications/igf-guidance-for-governments-asm_0.pdf.

114 Ortega Girones, Pugachevsky and Walser, *Mineral Rights Cadastre*, 42.

115 Ortega, *Myanmar Cadastre Conceptual Design*, 89 and 102.



- **Allowing cohabitation between large-scale exploration and ASM.** Myanmar’s mining law does not allow overlaps between different permit types.¹¹⁶ This could lock ASM operators out of large areas held by exploration companies, potentially inhibiting formalization and generating tensions with companies. The Myanmar government could explore options for allowing overlaps between ASM and large-scale exploration permits. This would require sophisticated regulations and enforcement, in particular to manage scenarios where exploration is successful, and a large-scale company wants to develop a mine in an area with ASM activity.¹¹⁷

Workers in an underground tin mine in Kayah State
Yu Yu Myint Than for NRGi

¹¹⁶ Republic of the Union of Myanmar, *Mines Rules*, Chapter 8.

¹¹⁷ Ortega Girones, Pugachevsky and Walser, *Mineral Rights Cadastre*, 42.; for further considerations in this area see Owen, John, and Deanna Kemp, *A Large-Scale Perspective on Small-Scale Mining* (Centre for Social Responsibility in Mining, Sustainable Minerals Institute, University of Queensland, 2019). www.csrmi.uq.edu.au/publications/a-large-scale-perspective-on-small-scale-mining.

Conclusion

ASM is an important contributor to Myanmar’s economy, generating hundreds of millions of dollars in value each year and supporting the livelihoods of millions, particularly in rural areas. However, the sector is marred by high levels of informality, which aggravates environmental, social and governance challenges.

The decentralization of ASM permitting could represent an opportunity to improve governance. International experience shows that decentralization can facilitate formalization by making it faster, easier and cheaper to operate legally and by making government policy more attuned to the concerns of miners and local communities. Decentralization could also help to tackle the sector’s negative impacts by reducing the physical distance between mine sites and the officials tasked with monitoring and enforcement. Importantly, decentralization is a critical element of Myanmar’s broader political transition. The transfer of power to subnational stakeholders could help to solidify the country’s democratization and efforts to end decades of civil conflict.

However, without careful management, decentralization could replicate and potentially exacerbate many of the governance challenges already seen at the Union level. States and regions need the capacity, knowledge and systems to properly manage permitting processes. Otherwise decentralization could increase the risk of corruption and mismanagement. If decentralization leads to a proliferation of mining permits without adequate safeguards, an opportunity to address the sector’s environmental and social impacts could be missed. Without careful coordination between states and regions and the Union, decentralization could generate tensions between ASM and large-scale investors.

While some of these challenges can only be tackled through far-reaching, long-term reforms at the Union, state and regional and local level, there are steps state and regional officials can take to implement their new responsibilities in an effective and transparent manner. State and regional officials should: clearly define the permitting process; put in place systems to manage and store permit information; put in place transparency mechanisms; coordinate carefully with Union MONREC; and implement formalization strategies. Oversight actors have a critical role to play in ensuring state and regional officials apply good practices. NRG I would be pleased to act as a resource for state and regional governments and oversight actors seeking to better understand the recommendations set out in this report.

Gold nugget, Kachin State

Minzayar Oo for NRG I



Appendix 1. Additional detail on current practices

1.1 COMPOSITION OF STATE AND REGIONAL PERMIT SCRUTINY BOARDS

The composition of state and regional permit scrutiny boards varies. In Shan State, the Immigration Department, which primarily reports to Nay Pyi Taw, is a member of the board.¹¹⁸ In Mandalay, state-owned mining company ME-2, is a member.¹¹⁹ ME-2 reports both to Nay Pyi Taw and the regional government.¹²⁰ In Kachin, representatives from the Kachin Mining Association are often invited to join board meetings although, as private sector representatives, they do not hold an official position.¹²¹

There are also potential differences in who fulfills the chairmanship and secretariat functions. In some states and regions there is no subnational Minister for Natural Resources and Environmental Conservation. In such cases the chairmanship may fall to another minister. In Sagaing, for example, this is the Minister of Agriculture, Livestock and Irrigation. In Mon, Bago, Rakhine and Ayeyarwady there is no state and regional Department of Mines office. It is not clear who fulfills the board's secretariat functions in these cases.

1.2 STATUS OF PERMITTING

State and regional governments have started to receive permit applications but only a very small number of permits had been issued at the time of writing. In Sagaing, the regional government received over 4,000 applications (2,763 small-scale and 1,260 artisanal) between August 2018 and the beginning of March 2019. The government had not yet issued any permits at the time of our field visit but reportedly issued 70 small-scale and 23 artisanal permits at the end of March.¹²² In Kachin, the government received 414 ASM applications (366 small-scale and 48 artisanal) between June 2018 and February 2019 and had issued 56 small-scale gold production permits, six artisanal gold production permits, and one exploration permit as of mid-February 2019.¹²³ In Mandalay, the government received 188 ASM applications (34 small scale and 148 artisanal) between January and February 2019 but had not yet issued any permits at the time of writing.¹²⁴ Beyond our focus states and regions, Kayah had issued four artisanal lead production permits and Shan had issued three artisanal bauxite production permits and four quartz exploration permits as of February 2019.¹²⁵ In May 2019, the Department of Mines provided a further update to NRG1: at this point, around the country state and region governments had issued 238 small-scale production permits, 22 small-scale exploration permits and 79 artisanal production permits.¹²⁶

118 Interview with representative of Union Department of Mines in February 2019.

119 Interview with representative of Mandalay Department of Mines in February 2019.

120 Based on Bago example in Asia Foundation. *State and Region Governments in Myanmar*, 50.

121 Interview with representative of Kachin Mining Association in February 2019.

122 Information provided to the Myanmar Centre for Responsible Business by the Sagaing Department of Mines.

123 Interview with Kachin Department of Mines in February 2019.

124 Interview with Mandalay Department of Mines in February 2019.

125 Presentation by Union Department of Mines to the Myanmar Extractive Industries Transparency Initiative in February 2019.

126 Interview with Union Department of Mines in May 2019.

1.3 APPLICATION REQUIREMENTS

Application requirements for small-scale mining include:

- Mineral exploration report
- Workforce training plan
- IEE
- Mineral production program
- Environmental management plan
- Workplace health and safety program
- Company registration documents
- Profiles of company directors
- Bank recommendation/bank statement
- Any documents required by state and region permit scrutiny board (e.g., police recommendation letter in Sagaing)

Application requirements for artisanal mining include:

- IEE
- Description of previous mining experience
- Local employment plan
- Mineral production plans
- Documents required by state and region permit scrutiny board (e.g., household registration document, police recommendation letter, village head recommendation letter in Sagaing)

Most of these requirements are set out in the Mines Rules and Forms 33 and 40. As state and regional permit scrutiny boards can require applicants to submit documents as they see necessary, there might be some variation between states and regions.

1.4 TOWNSHIP-LEVEL REVIEWS

The composition of township scrutiny groups varies between states and regions and potentially from one township to another. Typically, they are chaired by GAD, though in some cases the Department of Mines or ME-2 fulfills that role. The committee may include representatives from the Forest Department, Department of Agricultural Land Management and Statistics, ME-1, ME-2, Department of Mines, Department of Agriculture and Irrigation, the Water Resources Utilization Department, Department of Fisheries or the Internal Revenue Department. A village/ward administrator, village elder, industry representative and in some cases state or regional parliamentarians, are often also part of the group.

The group's members conduct field visits to the proposed permit area. The focus of this review is to ground-truth the overlap checks already conducted by the state and regional scrutiny board and to conduct a more detailed review of the permit area's suitability for mining. For example, the groups are tasked with verifying whether any watercourses, agricultural land, residential areas, infrastructure (e.g., roads, air fields, railways, power lines, pipelines), recreation or conservation areas, or religious sites fall within the permit area or its immediate vicinity. The participation of village/ward administrators, elders and parliamentarians in the field visit ostensibly serves to ensure community acceptance of the permitting decision. However, no systematic community consultation takes place.

Appendix 2. Registry book template

The table below sets out the minimum categories of information that state and region authorities need to record in a hardcopy registry book when they receive permit applications. The categories are based on the recommendations drafted by the international consultant leading the conceptual design phase of Myanmar’s cadaster project.¹²⁷ Harmonization of registry books between the Union and states and regions is one of the consultant’s key recommendations.¹²⁸ Given the relatively early stage of the cadaster project at the time of writing, we would recommend that state and regional governments confirm these categories with Union MONREC before finalizing their registry books.

Correctly recording the receipt of applications is essential to ensuring the fair and equal treatment of all applicants and guaranteeing the principle of “first come, first served.” The registry books currently in use at the state and regional level already meet many of these requirements. However, important elements are missing, including fields for officials to record the precise time they received an application. Ensuring that state and regional registry books are aligned with international standards will make it easier to integrate state and regional permitting into the national cadaster in due course. It is worth noting that many countries use separate registry books for new applications and requests for renewals, enlargements, transfers etc.

Permit code	Applicant name	Permit type	Permit size	Application date					Applicant signature	Official signature
				Y	M	D	H	M		

127 Ortega, *Myanmar Cadastre Conceptual Design*, 102-103.
 128 *Ibid.*, 11.

Appendix 3. Permit spreadsheet template

The table below sets out the minimum categories of information that state and regional authorities need to record in the permit spreadsheets they are currently using. These categories should be harmonized with the national cadaster.¹²⁹ As much as possible, officials should populate fields using drop-down menus rather than manually filling in information. This will help to reduce the risk of inaccuracies and inconsistencies due to user error.

To facilitate good coordination between states and regions and the Union government, it is important that officials record permit coordinates consistently. In order to ensure harmonization with the national cadaster, state and regional officials should use Myanmar datum 2000 UTM maps, including benchmarks and turning points of the area.

Permit code	Name	Permit type	Permit size	Commodity type	Permit status	Application date			Issuing date			Expiry date			History of permit (e.g., renewal, transfer)	Address / telephone number	Permit location (village, township, state / region)	Permit GIS coordinates
						Y	M	D	Y	M	D	Y	M	D				

129 The categories listed are based on conversations with MONREC’s pre-cadaster team. However, as the cadaster was still at a relatively early stage at the time of writing, these categories are subject to change. We would advise state and regional officials to confirm these categories with Union-level MONREC prior to finalizing their electronic permit database.

Appendix 4. Application evaluation checklist templates

The sections below provide templates of review checklists for state and regional officials to use in the permitting process. Checklists can help to make it easier for state and regional officials to fulfill their review functions in an efficient, consistent and objective manner. Checklists also provide a systematic record of how officials made permitting decisions and can be used as a point of reference in the case of a dispute.

State and regional officials should view the checklists below as illustrative examples only. The review criteria are based on the 2015 Myanmar Mines Law and the application forms attached to the 2018 Myanmar Mines Rules. However, we have simplified the criteria to show how processes could be adapted to better incentivize formalization. For example, for the purposes of an artisanal application, we have removed the need to provide capital investment amounts or local employment plans. The criteria do not cover legal requirements set out in other laws and regulations.

In order to operationalize these checklists, state and regional governments would need to update and refine them in consultation with relevant government departments at the Union, state and regional, and township level in order to ensure all necessary legal requirements are checked. For example, the review checklist (appendix 4.2) should include criteria for the Forestry Department's checks for overlaps with protected forests. It would also be important for the checklists to include environmental and social criteria, such as verifying that minimum buffers from residential areas, agricultural land and waterways are maintained. Ultimately the checklist should include a precise record of all the criteria that the different departments, including at the township level, use to evaluate applications.

State and regional governments should also assign and specify the institutional responsibilities for reviewing different criteria. We have intentionally left these blank in the templates below.

4.1 PRE-SCREENING CHECKLIST

The table below provides an example of a pre-screening checklist. The pre-screening stage should be fast and simple, focusing on verifying whether all required information has been provided without reviewing the content of the application in any detail. It is important that the pre-screening stage is completed immediately after submission of the application and in the presence of the applicant.

Review category	Review criteria	Responsible entity	Yes?	No?
Basic eligibility	The applicant is a Myanmar citizen	[insert responsible entity]		
	The NRC number in the application form matches the NRC number of the individual submitting the application	[insert responsible entity]		
	The application is for a small-scale or artisanal permit	[insert responsible entity]		
	The application is for a commodity that the state and region has the right to issue permits for	[insert responsible entity]		
Completeness of submission	The applicant has submitted the correct form for the type of permit requested: <ul style="list-style-type: none"> Form 33 for a small-scale mineral production permit Form 39 for a small-scale mineral production permit extension Form 40 for an artisanal mineral production permit 	[insert responsible entity]		
	All required fields in the application have been completed	[insert responsible entity]		
	All required supporting documents have been submitted with the application	[insert responsible entity]		
Registration	The application has been logged in the registry book	[insert responsible entity]		
	The applicant has been issued a time-stamped receipt	[insert responsible entity]		
	The application has been recorded in the electronic permit database	[insert responsible entity]		

4.2 APPLICATION REVIEW CHECKLIST

The table below provides an example of a potential review checklists for use by permitting officials for artisanal permit applications. Review checklists can help to ensure officials assess applications in a consistent, efficient and objective manner.

Form 40 checklist: Artisanal permit application

Section of application	Review criteria	Responsible entity	Action ¹³⁰	Yes?	No?
Type of mineral	1.1 The application is for a mineral that the state and region has the right to grant permits for	[insert responsible entity]	Verify that the state and region is allowed to issue permits for the mineral listed in Form 40, Section 1		
Applicant details	2.1 The applicant is a Myanmar citizen	[insert responsible entity]	Verify the NRC number listed in Form 40, Section 2		
	2.1 Neither the applicant nor any other member of their household hold any other mining permit	[insert responsible entity]	Review the department's permit database to verify that there are no existing entries linked to the applicant's NRC number or the NRC numbers of other family members listed in the applicant's household registration document		
	2.2 The applicant is not suspended or barred from holding mining permits	[insert responsible entity]	Review the department's permit database to verify that there are no suspended or cancelled permits linked to the applicant's NRC number due to violations by the permit holder ¹³¹		
Permit details	3.1 The application is for a small-scale or artisanal permit	[insert responsible entity]	Review Form 40, Section 3.b to verify proposed permit size		
	3.2 The application relates to an area in which the state and region is allowed to issue permits	[insert responsible entity]	Review Form 40, Section 3.c to verify that the proposed coordinates do not overlap with exclusive Union permitting zones		
	3.2 There are no active or pending exploration or mining permits for the same area	[insert responsible entity]	<i>For applications within state and region permitting zone:</i> Review the department's permit database to verify that there are no active or pending permits for the selected area. In case of multiple pending applications for the same area, review the registry book to verify which application was received first. <i>For applications that fall between Union and state and regional permitting zones:</i> Review state and regional and Union databases to verify that there are no active or pending permits for the selected area and ensure Union approval to proceed with permitting. In case of multiple pending applications for the same area, review the application registry book to verify which application was received first.		
4. Technical review	3.3 The proposed machinery to be used does not exceed the limits for artisanal production	[insert responsible entity]	Review Form 40, Section 3.c to verify that horsepower of no machine listed exceeds legal limits Review Form 40, Section 3.c to verify that the total number of machines does not exceed legal limits		
	[insert additional criteria, e.g., checks for overlaps with protected areas, review of surface rights]	[insert responsible entity]	[insert required action]		

¹³⁰ The steps listed under "actions" are merely illustrative. States and regions would need to determine the most effective and efficient way to review and verify application details.

¹³¹ State and regional governments, in coordination with MONREC, should define the timeframe for how long an individual or company should be barred from applying for new permits following suspensions or cancellations due to violations of permit terms.

Appendix 5. Sample Form 40

The following section sets out a simplified version of Form 40. We intend this to provide an example of a form that would be more suitable for incentivizing formalization. We have intentionally only provided this highly simplified version for artisanal permits. Small-scale forms should be more rigorous in the information they require, though simplification of existing forms may still be useful. The template should be treated as an example only and should be finalized based on further consultation and expert input, as well as legal review.

Form 40 template:

To:

Chairman
State or regional permit scrutiny board
Name of state or region

Subject: Application for artisanal mineral production permit

In accordance with Mines Rule 95, the applicant would like to apply for an artisanal mineral production permit by providing the following information:

- 1. Type of mineral**
- 2. Applicant details**
 - (a) Name
 - (b) National registration card number
 - (c) Permanent address
 - (d) Phone number
 - (e) Email address (if available)
- 3. Permit details**
 - (a) Location of proposed permit
 - (i) village tract
 - (ii) township
 - (iii) district
 - (iv) state and region
 - (b) Coordinates of permit area
 - (c) Number of machines to be used and horse power of each machine (one machine shall not exceed 25 horse power. The total horse power of all engines may not exceed 50 horse power.)
- 4. Declaration**

I hereby certify that the information and particulars mentioned above and attached herewith are true and correct, that I am not suspended or barred from holding a mineral permit, and that I undertake to abide by the Law, Rules, Orders, Directives and Conditions contained in the Permit and any relevant operational and environmental regulations.

Appendix 6. Common corruption risks

In 2017, NREGI published a global review of corruption risks in the award of oil, gas and mining permits. The review identified 12 common red flags. The presence of any individual red flag is not proof of corruption. Likewise, a permitting process lacking any of these signs is not necessarily corruption-free. Nonetheless the red flags can help to inform the design of award processes by government officials and provides a useful tool for oversight actors like parliamentarians, journalists and law enforcement. While NREGI's review focused on the award of large-scale oil, gas and mining contracts, many of the same considerations apply in Myanmar's decentralized permitting framework for artisanal and small-scale mining.

The red flags are:

- 1 The government allows a seemingly unqualified company to compete for or win an award.
- 2 A company or individual with a history of controversy or criminal behavior competes for or wins an award.
- 3 A competing or winning company has a shareholder or other business relationship with a politically exposed person (PEP) or a company in which a PEP has an interest.¹³²
- 4 A competing or winning company shows signs of having a PEP as a hidden beneficial owner.
- 5 An official intervenes in the award process, resulting in benefit to a particular company.
- 6 A company provides payments, gifts or favors to a PEP with influence over the selection process.
- 7 An official with influence over the selection process has a conflict of interest.
- 8 Competition is deliberately constrained in the award process.
- 9 A company uses a third-party intermediary to gain an advantage in the award.
- 10 A payment made by the winning company is diverted away from the appropriate government account.
- 11 The agreed terms of the award deviate significantly from industry or market norms.
- 12 The winning company or its owners sell out for a large profit without having done substantial work.

132 A politically exposed person is an individual who is or has been entrusted with a prominent public function, such as a parliamentarian, government official, member of the judiciary or executive at a state-owned enterprise. Their position or influence can make them more susceptible to involvement in bribery and corruption.

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