

## MINING FOR SUSTAINABLE DEVELOPMENT

### HOW ETHICAL AND FAIR IS THE PROCESS FOR OPENING LAND TO MINING?

# CASE STUDY 2: RULES AND CRITERIA FOR OPENING LAND TO MINING

Clear rules and criteria about *which land* is opened to mining and *under what conditions* means that these decisions can be made on sound land-use principles, not to personally benefit decision-makers. This strengthens the integrity of licencing decisions and other mining related approvals.

#### RISKS

##### Corruption is more likely to arise when:

- **Land rights are poorly protected and not properly registered** > increasing the chance that licence-holders will not compensate land owners for access to land or will abuse the licence area to conduct other activities
- **Rules and criteria for opening land to mining are not clear or transparent** > enabling investors to take advantage of decision-makers' discretion by pressuring them into opening areas in exchange for kickbacks

Where the discretion of government officials about which areas to open to mining is kept in check by clear rules and decision-making criteria, it is less likely that their decisions will be influenced by personal interests or will favour particular stakeholders in exchange for personal benefit.

In **Indonesia**, reforms to the national Mining Law introduced an opaque system for establishing mining zones. Upon the recommendation of a national minister, provincial governor or district mayor, the Ministry for Energy and Mineral Resources surveys nominated land and determines the boundaries of the mining zone. Within the zone, different areas are allocated to large-scale mining, small-scale mining, mining by the state and conservation.

This determination must be ratified by parliament, but clear procedures and criteria for these decisions have not been developed to guide parliamentary decision-making. The decisions are not open to public scrutiny, consultation or participation.



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This lack of transparency along with parliamentary discretion creates a high risk of corruption. There have already been several bribery investigations involving Indonesian Parliamentarians and mining companies. Furthermore, the lack of clear procedures allegedly enabled a provincial governor to allocate forested areas to mining so he could issue mining licences in that area to a company in exchange for kickbacks. The national Corruption Eradication Commission is currently investigating this case.



### MITIGATING THESE RISKS

#### Measures to ensure land is opened to mining in a transparent and ethical way:

- Clear criteria and transparency in processes for opening land to mining
- A clear and fair role for local authorities in land use planning and mining approvals
- A complete and coordinated register of land uses and rights
- Surface (land) rights are clear in law and protected in practice

**Chapter 2 of Transparency International’s Global Report *Combatting corruption in mining approvals: assessing the risks in 18 resource-rich countries* provides further details about the risks arising from the processes of opening land to mining.**

## MINING FOR SUSTAINABLE DEVELOPMENT

Transparent and accountable mining can contribute to sustainable development. This begins with corruption-free approvals – the very first link in the mining value chain.

As part of Transparency International’s Mining for Sustainable Development Programme (M4SD), national chapters – from Africa, Latin America, Central Asia, the Asia Pacific, and North America – have identified and assessed corruption risks in mining approvals of 18 resource-rich countries.

The six case studies in this series highlight some of the most common and serious corruption risks. These are the key questions to ask *before* corruption gets a foothold in mining approvals processes.

The next phase of M4SD will focus on addressing corruption risks.



### POLITICAL & ADMINISTRATIVE CONTEXT

Who benefits from mining approval decisions?



### LAND ALLOCATION

How ethical and fair is the process for opening land to mining?



### LICENCING

How fair and transparent is the licencing process?



### LICENCING

Who gets the right to mine?



### ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENT

How accountable are companies for their environmental and social impacts?



### COMMUNITY CONSULTATION

How meaningful is community consultation?

