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សហប្រតិបត្តិការដើម្បីកម្ពុជា  
Cooperation Committee  
for Cambodia  
Comité de Coopération  
Pour le Cambodge

1990-2010  
2 Decades of  
NGO Solidarity  
and Cooperation

## The Expansion of Mining Activities and Indigenous Peoples' Rights in Mondulkiri Province

*Case Studies of Gati Village, Keo Seima District and Pou Rapeth Village, Pechreada District*



Analyzing Development Issues  
Trainees (Round 20) and Team

October 2010

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## Abstract

This ADI study seeks to raise awareness about issues related to the expansion of mining activities and indigenous peoples' rights in Mondulkiri province. The research, conducted in May 2009, employed quantitative and qualitative methods. A survey questionnaire was administered to 32 Bunong households in Gati village in Keo Seima district and to 39 Bunong households in Pou Rapeth village in Pechreada district. Key informant interviews were conducted with village leaders and residents, commune authorities, and provincial officials. The researchers likewise consulted extensively with legal documents and secondary sources.

Bunong people in Gati and Pou Rapeth did not give their free, prior and informed consent to mining operations in their respective villages. Some Gati villagers were informed about the mining activities but only after the company came and started operations in the village. Generally Pou Rapeth villagers were not informed about the mining activities of the company before or after it started operations in the village. Even at this early stage of mining exploration households surveyed in both villages reported adverse impacts of mining activities such as the reduction of wildlife in hunting and trapping, the reduction of fish catches, the reduction of forest products, vegetables and fruits gathered, and the destruction of resin trees. Meanwhile mining had not provided opportunities for alternative, more remunerative, work for local residents.

The existing 2001 *Mining Law* does not provide an adequate legal framework for dealing responsibly with mining in indigenous areas. A comprehensive national legal framework must be developed and enforced before mining companies embark on full scale mineral exploration and exploitation in hill tribe areas. Recognition and protection of indigenous peoples' rights as a preminent principle of responsible mining can no longer be deterred.

## Introduction

Since the second half of the 19<sup>th</sup> century Cambodia's mineral resources were charted by French and Chinese geologists.<sup>1</sup> Early known minerals were bauxite, carbonate rocks, gemstones, gold, manganese, phosphate, salt, silica and zircon. Minerals subsequently discovered included chromium, copper, iron ore, limestone, nickel, and tungsten.<sup>2</sup> Entering into the 21<sup>st</sup> century these mineral resources remained largely unexplored and undeveloped due to the decades of war and lack of capital investment. Only recently have large transnational corporations invested heavily in Cambodia's nascent mining industry. Remarkably, investments for mining projects approved by the Council for the Development of Cambodia (CDC) increased from US\$ 181 million in 2005 to US\$ 403 million in 2006.<sup>3</sup> Mineral assets together with gas and oil resources are now considered by the government to have a high potential for generating revenue.

Deputy Prime Minister, H.E. Sok An, in a speech delivered in November 2007 spoke of "Cambodia's Resource Breakthrough" and of the government's commitment "to ensuring that the benefits of that resource breakthrough are distributed throughout all levels of society." According to the Deputy Prime Minister increased revenues from the oil, gas, and mineral sectors would support the government's social and economic development objectives "diminishing reliance upon donor aid and upon burdensome loans; more money for education, health, infrastructure and social programs; and the increased employment opportunities for young Cambodians, both skilled and unskilled." H.E. Sok An indicated that the number of mineral exploration licenses granted to both foreign and local companies had increased and mentioned in particular the license awarded to BHP Billiton and Mitsubishi Corporation which "could lead to eventual investment of billions of US dollars."<sup>4</sup> That agreement signed in 2006 gave BHP Billiton and Mitsubishi Corporation exclusive right to explore for bauxite in an area of 996 square kilometers of Mondulakiri province, with the prospect of building an aluminum refinery.

In 2009 BHP Billiton and Mitsubishi Corporation subsequently withdrew from their bauxite mining concession in Mondulakiri province. However, several other large mining companies are actively pursuing exploration efforts. Oz Minerals, formerly Oxiana Limited, holds exploration licenses covering 439 square kilometers of Mondulakiri province and finds tests results on its O'Khvau gold concession encouraging.<sup>5</sup> Southern Gold has licenses covering 1,600 square kilometers of Kratie and Mondulakiri provinces and reports that high-grade gold and base metal deposits have been identified in preliminary geological mapping.<sup>6</sup> Kenertec Limited has rights

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<sup>1</sup> Chea Sieng Hong, "Mineral Exploration and Mining Projects in Cambodia," Paper presented at the Conference on Mining Opportunities in the Greater Mekong Sub-Region, Vientiane, Lao PDR, 16-17 June 2006.

<sup>2</sup> Wu, John C. "The Mineral Industry of Cambodia," in US Geological Survey Minerals Yearbooks, 2006 and 2007.

<sup>3</sup> Wu, "The Mineral Industry of Cambodia," in US Geological Survey Minerals Yearbook, 2007.

<sup>4</sup> H.E. Sok An, "Oil, Gas and Mineral Development – Cambodia's Resource Breakthrough," Speech delivered at the Conference on Cambodia's Investment, Trade and Infrastructure 2007, Phnom Penh, 8 November 2007.

<sup>5</sup> Kinetz, Erika and Yun Samean, "Mining Companies, Villagers Vie for Gold in Mondulakiri Province," *The Cambodia Daily Weekend*, 14-15 July 2007.

<sup>6</sup> Commonwealth Communications, "Invest in Cambodia," London, 2009; Prospectors & Developers Association of Canada, "Cambodia's Mining Sector," 30 May 2007.



Prime Minister H.E. Hun Sen, in the keynote address delivered at the International Conference on Mining in Phnom Penh in May 2010, observed that Cambodia has been late to develop its mining sector due to lack of security in mountainous areas where mine deposits are located, and to lack of human resource and weak institutional capacity. “However,” the Prime Minister continued, “if the development of mining sector is in a positive situation in the socio-economic development process we will not give up this option. Hence, the government will continue tightening its measures which is consistent with existing regulation and mechanism for the management of this sector.... Undeniably, extracting the natural resources without conservative philosophy will manipulate the history, lose cultural heritage and cause environmental instability.” The words of the Prime Minister are instructive for while he underscored the potential of the mining sector as “an important source of revenue for national development and poverty reduction” he likewise warned that without strict government regulation mining could “transform a green area into a deserted, polluted and destabilized area because the natural resources are under great destructive pressure.”<sup>12</sup>

## **The Phnom Penh International Conference on Mining, May 2010**

Douglas Broderick, the UNDP Resident Representative in Cambodia, in his introductory remarks at the International Conference on Mining, noted that corporate mineral exploration in Cambodia shows exciting geological potential. But he added: “[W]e have to work wisely to get it right. Ensuring that the right practices and policies are in place - and adhered to - is the only way to responsibly develop Cambodia’s mining industry.” Welcoming the speakers and delegates to the conference, he elaborated on the aim of the gathering: “It is important that we view this conference as one step in a longer process of ensuring appropriate mechanisms are in place to develop the sector responsibly. Most importantly, this means that environmental and social protection is written into all rules and regulations, so the legacy of this country’s mining sector is positive.”<sup>13</sup>

By way of sensitizing readers to our own study we summarize key messages that emerged from the International Conference with respect to the global demand for mineral products, the risks and rewards in mineral exploration and development, the importance of including people in mine development, an initiative for responsible mining in Mongolia, and the summary report and closing speech.<sup>14</sup>

### **Global Demand for Mineral Products**

Richard Schodde, an associate consultant at CRU Strategies, in a paper presented at the International Conference maintained that world metal commodity prices have significantly risen over the last decade after a long period of real decline.<sup>15</sup> This has led to higher sales revenues for mining companies and significantly higher profits. In the recent years most of the

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<sup>12</sup> Prime Minister H.E. Hun Sen, English translation of “Keynote Address” delivered at the International Conference on Mining: Staking a Claim for Cambodia, Phnom Penh, 26-27 May 2010.

<sup>13</sup> Broderick, Douglas, “Introductory Remarks,” presented at the International Conference on Mining: Staking a Claim for Cambodia, Phnom Penh, 26-27 May 2010.

<sup>14</sup> Papers and presentations made at the conference may be accessed on the UN website: [www.un.org.kh/undp/international-conference-on-mining](http://www.un.org.kh/undp/international-conference-on-mining).

<sup>15</sup> Schodde, Richard, “Setting the Stage: Global Context for Mining and Extractive Industries,” Paper presented at the International Conference on Mining: Staking a Claim for Cambodia, Phnom Penh, 26-27 May 2010.

growth in the world's metal demand came from China which accounted for 70 to 90 per cent of all growth in world demand for copper, aluminum, nickel and iron ore during the period 2003 to 2008. While most of the minerals imported by China are used for domestic consumption, around 20 to 40 per cent of the metals are subsequently re-exported as manufactured products to the rest of the world. China's demand for minerals is thus affected in part by economic situations in other countries. The global financial crisis caused a sudden and severe reduction in metal demand which resulted in a substantial decrease in metal commodity prices and industry profitability. Schodde argues nonetheless that the reduction in metal demand is temporary and forecasts that the world's economy will return to its 2007 pre-crisis levels by 2012 or 2013 with China the principal engine of growth. Of relevance to Cambodia demand for iron ore, copper, and cooking coal will be strong over the medium term with demand for gold also reasonably high. To maximize the benefits of mining Schodde urges the government to encourage foreign investment in mineral exploration by offering a competitive tax rate and lowering the level of business risk through good governance and transparency. To earn their social license to operate in Cambodia, Schodde similarly exhorts mining companies to act in a socially and environmentally responsible manner.

### **Risks and Rewards in Mineral Exploration and Development**

Roderick G. Eggert, a professor at the Colorado School of Mines, views mineral exploration and development as investigative activities prior to mining. In a paper presented at the International Conference, Eggert argues that the rewards of successful exploration and development may be substantial, once a mineral deposit is discovered, evaluated, and developed into a mine. At the same time, he cautions that mineral exploration and development entail risks.<sup>16</sup> The collateral effects from mining may outweigh the potential benefits if most jobs go to outsiders, environmental degradation becomes severe, local communities suffer major disruptions, mining revenues go principally to national rather than local development, or governments spend taxes and royalties unwisely.

Eggert divides the mineral supply chain into four stages: mineral exploration and development, mining, metallurgical processing, and fabrication and manufacturing. Exploration and development are further subdivided into four substages: 1) grassroots exploration prior to the identification of a geologic deposit; 2) advanced stage exploration evaluating whether a geologic discovery should proceed to development; 3) deposit development using technical and economic assessments to decide whether to proceed to mining; and 4) mine development where all associated facilities and infrastructure are planned, designed, and constructed. The lead time from grassroots exploration to mine operations may take from five to 15 years of continuous activity.

Eggert explains that each stage of exploration and development has effects on local communities and the natural environment. During grassroots exploration effects are usually minimal. Small numbers of people are involved and techniques for the most part are noninvasive. Advanced exploration effects are more significant but still moderate compared to those of mining. These may involve road building, drilling and trenching, and the presence of outside geologists and mine workers residing in the area for one or more years. By contrast, deposit development and the start of mine operations pose potentially serious social and environmental risks. The construction of facilities and infrastructure in inhabited areas may

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<sup>16</sup> Eggert, Roderick G., "Mineral Exploration and Development: Risk and Reward," Paper presented at the International Conference on Mining: Staking a Claim for Cambodia, Phnom Penh, 26-27 May 2010.

lead to the displacement of peoples from their homes and livelihoods. An influx of outside mine workers may place strains on existing public infrastructure serving the needs of local residents. Outsiders may be culturally different from the local people resulting in a clash of cultures and lifestyles. With respect to the environment, surface operations necessitate the disposal of waste rock from mine stripping and mineral processing produces tailings waste from converting ore into concentrate. Eggert maintains that many of the social impacts of a new mine can be minimized or controlled through deliberate planning although he acknowledges that some community change is inevitable and permanent.

### **Recognizing the Importance of Including People in Mine Development**

Kuntala Lahiri-Dutt, a Fellow of the Resource Management in Asia Pacific Program at the Australian National University, in a paper presented at the International Conference spoke of the importance of people's inclusion in mine development and of the largely unrecognized imperative to understand the cultural and social contexts where mining operations take place.<sup>17</sup> Not unlike geology and engineering, the subject of people's interactions with mining is complicated and complex and requires considerable expertise. Lahiri-Dutt argues that while mining is good for business it more often than not leads to the erosion of local communities. While mining may provide a modest source of employment and a source of revenue for developing countries, mine operations may transform traditional and self-sufficient groups into dependent, impoverished and disempowered communities.

Lahiri-Dutt asserts that mining operations must acknowledge the rights of local people not only to be informed, but also to engage and participate in decisions about mining. Four concerns are crucial: 1) the right to ownership and control of territories by local and indigenous communities; 2) the right of self-determination through informed consent, participation and engagement; 3) the right of the local and indigenous groups to represent themselves through their own institutions; and 4) the right to have food security. Mining must develop approaches to address these concerns otherwise mineral extraction will invariably lead to social unrest and protests even though some stakeholders may benefit.

Lahiri-Dutt suggests ways that local people's participation could be incorporated into various stages of the mining project cycle. During the *exploration stage* it is important to understand the social and cultural landscape of the area; to identify local inhabitants and to begin to recognize, understand, and respect their customs and cultural practices. During the *deposit evaluation stage* prior and informed consent should be obtained from the community. Women must be actively involved in the negotiations so that they are not marginalized. During the *mine planning stage* cultural impact assessments will help to identify potential negative impacts on traditional local cultures. Resettlement and rehabilitation planning should be integral to mine planning. Community development plans should enhance local capacity to diversify livelihoods and opportunities, to improve equity, and to increase social sustainability. During the *construction stage* the company should continuously engage the community to mutually develop ways of safeguarding ecological health, economic stability and community well-being. During the *mine operation stage* the company should focus not only on the welfare of the mine workers and their families but also on the well-being of the local residents and their need to prepare for the eventual mine closure. During the *mine closure stage*, while environmental

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<sup>17</sup> Lahiri-Dutt, Kuntala, "The People Dimension of Mining: An Overview of Issues around Workers and Communities," Paper presented at the International Conference on Mining: Staking a Claim for Cambodia, Phnom Penh, 26-27 May 2010.

rehabilitation and restoration processes are underway, the company should engage intensively with the local residents to help sustain their livelihoods through projects, training, and credit.

### **Responsible Mining for Sustainable Development**

Zinaameder Batbayar, a member of the board of directors of the Responsible Mining Initiative for Sustainable Development in Mongolia, in a presentation made at the International Conference shared a valuable concrete experience of how the government, the mining industry, and civil society in his country are working in concert to promote responsible mining.<sup>18</sup> He explained that in November 2006 the first multi-stakeholder forums were held to discuss responsible mining in Mongolia, comprising more than 80 organizational representatives from government, civil society, industry, and academia. At the end of 2007 the participants of the multi-stakeholder forums developed a definition of responsible mining and eight principles. As defined by the participants in their declaration: Responsible mining is a comprehensive and transparent minerals activity respecting the rights of all stakeholders, especially of local people, environmentally friendly and free of human health impacts, embracing the best international practices and upholding rule of law whilst generating a sustainable stream of benefits for Mongolia. The eight principles of responsible mining are stated as: secure multi-stakeholder participation, transparent and open, law-abiding and enforcing, responsible for environment and human security, investing into the future, efficient, humane and ethical, and technologically advanced. In April 2008 the Responsible Mining Initiative started its operation with the aim to implement the declaration. The 15 member steering committee consists of five government representatives, five industry representatives, and five civil society representatives.

### **Summary Report and Closing Speech of the International Conference**

H.E. Sok Leng, Director General of the General Department of Mineral Resources, MIME, delivered the summary report at the International Conference. His summation clearly demonstrated that the government had heard and appreciated the valuable points raised by the eminently qualified speakers.<sup>19</sup> H.E. Sok Leng emphasized several points:

- We have discussed the importance of good governance and the ... kind of roles the government can play in developing the mining sector.
- We are aware that laws to be enforced in this sector will need to be upgraded by additional regulations.
- We have also studied the Extractive Industries Transparency Initiative that could also be applied for achieving the goal of transparency.
- We must also take into consideration which mineral resources have the most significant value for our economy during the next decade .... and so will need to increase the capacity of our officials in charge of the mining sector.
- We are also acutely aware of a number of common challenges [among other Asian countries] in ensuring environmental protection, addressing social issues in communities that conduct small-scale mining, and in the strategy to manage our mining industry.
- We are also aware ... [of] the need to provide skilled geological and mining training in administrative, financial and technical aspects of mining exploration and extraction.

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<sup>18</sup> Zinaameder Batbayar, "Responsible Mining Initiative for Sustainable Development," Presentation made at the International Conference on Mining: Staking a Claim for Cambodia, Phnom Penh, 26-27 May 2010.

<sup>19</sup> H.E. Sok Leng, "Summary Report," made at the International Conference on Mining: Staking a Claim for Cambodia, Phnom Penh, 26-27 May 2010.

- We need to be mindful to attract only mining companies that apply the best practices to invest in the mining sector of Cambodia.
- We must think about the stakeholders involved in this business .... The grassroots communities involved in the mining business should have technical skills that can be used in other fields sustainably when mine extraction business is closed.

H.E. Suy Sem, the Minister of the MIME, delivered the closing remarks at the International Conference and reiterated that the comments, experiences and recommendations made at the conference were an essential contribution to the specific actions needed to be designed and implemented for a successful outcome of Cambodia's mining sector.<sup>20</sup> H.E. Suy Sem declared that: "In addition to providing revenue for the national budget, mineral development also contributes to the implementation of government policy ... including the creation of employment for local people, curtailing people's displacement from rural areas to the city, expansion of livelihood options for people in the region, and thus providing impetus to respond to target on poverty reduction."

The Minister continued: "Investors operating in the mining sector in the country [need] to bear the social and environmental responsibility by complying with all the provisions in the law and regulations.... When considering mining the country companies need to take into account community living in the mining area through their engagement and the respect for their local traditions and practices."

The Minister concluded: "The outcome from the conference will be essential for the officials in charge of the mining sector, the mining investors, and relevant stakeholders and we want to see practical and constructive actions that would bring forward the outcome from the conference. We will make all our effort to eliminate all inherent difficulties through management and development of the sector in a transparent, efficient and sustainable manner."

## **Mineral Resource Breakthrough: Boon or Bane for Cambodia?**

Substantial corporate investments in mineral exploration in Cambodia acknowledge the substantive capital returns to be accrued by company shareholders. Large-scale mining operations likewise promise to generate huge revenues for government coffers. At the same time mining is an inherently disruptive enterprise which poses potential threats to the integrity of the environment and to the well-being of local communities. The question thus arises: Will the rapid growth of the mining industry in Cambodia contribute to the broad-based economic development of the country or will benefits be captured by foreign owners and local elites at the expense of biodiversity sanctuaries and the displacement of local inhabitants? The answer to this question is particularly crucial in Mondulhiri province. Here the cultural survival of the Bunong indigenous people depends on government and corporate adherence to responsible mining practices for the territories of the Bunong encompass much of the mineral exploration areas.

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<sup>20</sup> H.E. Suy Sem, "Closing Speech," made at the International Conference on Mining: Staking a Claim for Cambodia, Phnom Penh, 26-27 May 2010.

## Research Objectives

This Analyzing Development Issues (ADI) study seeks to raise awareness about issues related to the expansion of mining activities and indigenous peoples' rights in Monduliri province. As a way to illustrate these issues it focuses on the experience of two indigenous villages in areas where corporate mineral exploration has commenced. Specifically the research aims: 1) To inquire into the expansion of mining activities in Monduliri province and the study villages; 2) To examine indigenous peoples' rights and the engagement of indigenous people in the mining operations at the study sites; and 3) To assess the livelihood security of indigenous peoples in the study villages and the impact of mining activities on village livelihoods.

## Research Methods

The research was conducted in Monduliri province with Bunong indigenous people in Gati village in Keo Seima district and in Pou Rapeth village in Pechreada district as part of an ADI course in May 2009. The villages were selected as sites where corporate mining activity was taking place and on account of their relative accessibility and ability to accommodate about 10 course participant and team researchers per place. These villages were also at an early stage of mineral exploration and, unlike some villages in Memong commune of Keo Seima district, had yet to suffer "environmental damage nearly too severe for salvage."<sup>21</sup>

The study employed mixed quantitative and qualitative methods. A survey questionnaire was administered to 32 of 35 Bunong households in Gati village over four days and to 39 of 58 Bunong households in Pou Rapeth village over three days. Key informant interviews were likewise conducted with village leaders and residents, commune authorities, and provincial mining officials. The researchers also consulted extensively with secondary sources which included news reports on mining activities within the country, laws governing mining in Cambodia, and international human rights instruments related to indigenous peoples.

The study benefited too from the researchers' participation in several workshops and seminars on mining issues. These included a half-day consultation in Keo Seima district initiated by Development and Partnership in Action (DPA) in May 2009, a full-day issue briefing workshop in Phnom Penh convened by CCC/ADI and DPA in November 2009, and a half-day seminar in Phnom Penh arranged by the Heinrich Boll Foundation in October 2010. In addition the researchers consulted extensively with the speeches, papers, and presentations of the International Conference on Mining in Phnom Penh sponsored by UNDP in May 2010.

Much like the experience of other researchers who have conducted research on the mining sector, the ADI team and participants encountered several challenges in gathering information for this study.<sup>22</sup> At the field level the researchers in Pou Rapeth village were prohibited by the Krang Tes commune police from conducting interviews on the second day of the fieldwork.

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<sup>21</sup> Assessment of WWF Project Manager cited in Kinetz and Samean, "Mining Companies, Villagers Vie for Gold in Monduliri Province."

<sup>22</sup> For example, an Oxfam America study conducted in collaboration with the MIME reports that: "[S]ome local people and miners were unwilling to give information to the survey team for legitimate fear of retribution against them by the local armed forces or mining company security guards. In some cases the local armed forces would not allow the survey team to visit gold mining areas." See Sieng Sotham, *Small-scale Gold Mining in Cambodia: A Situation Assessment*, Oxfam America, July 2004.

The police maintained that the research team did not have a letter of permission from the provincial governor to conduct the fieldwork. Despite the police injunction, the researchers continued to conduct their fieldwork as CCC/ADI had officially informed the provincial governor of their work in Pou Rapeth village two weeks before. The research team had also met with the commune chief at his home in Pou Rapeth at the start of the field work. On the third day of the fieldwork the commune police returned and this time the ADI research team leader was unsuccessful in her attempts to negotiate a continuation. The fieldwork in Pou Rapeth was thus terminated on the third rather than on the fourth day as planned. However, by this time the researchers had already gathered sufficient information for their purposes.

At the provincial and national levels the researchers were unable to obtain detailed data on the respective mining companies operating in Gati and Pou Rapeth villages as this information was considered confidential and not open to public access. More general information on the mining industry in Cambodia requested from the MIME and the Council for the Development of Cambodia (CDC) was likewise not forthcoming. The researchers had to piece together and crosscheck information on mining coming from a variety of different sources including public presentations by government representatives, informal conversations with government officials and mining company staff, available empirical studies, news reports, and corporate public records. This has resulted in obvious data gaps and underscores the need for greater transparency and accountability in the Cambodian mining industry.



## **The Expansion of the Mining Industry in Mondulakiri Province and the Study Villages**

The northeastern region of Cambodia, which includes Mondulakiri province, constitutes the ancestral homeland of diverse groups of indigenous people. Until the 1980s the region was largely inaccessible to Khmer miners. Prior to this French geologists had identified 12 gold deposits in western and northwestern regions of Cambodia. The discovery in the 1980s of seven new gold deposits in northeastern Cambodia sparked a gold rush of artisanal Khmer miners to the area. As of 2004 there were still 19 known gold deposits in Cambodia.<sup>23</sup> This section begins with a discussion of the expansion of small-scale gold mining in Cambodia then moves to consider the more recent expansion of large-scale corporate mining in Mondulakiri province and its consequences for artisanal miners in concession areas. It likewise makes note of the corporate and civil society associations recently formed in response to large-scale mining. Laws governing mining in Cambodia are then examined in some detail before reviewing the broad impact to date of mining activities on local, and largely indigenous, communities in Mondulakiri province. An inquiry into the expansion of mining in the two study villages is then presented in greater depth.

### **Small-scale Gold Mining**

The Oxfam America study on small-scale gold mining in Cambodia, undertaken in collaboration with the MIME and published in July 2004, includes two case studies from northeastern Cambodia. Coming at the end of the era of independent mining, the study provides valuable insights into the country's mining industry in the state of transition. The research reveals several trends occurring within the mining sector at that time. These include: 1) decreasing numbers of independent miners as concessionaires exercise exclusive control over mining areas; 2) more complex and deeper mine excavations; 3) the introduction of chemical-based gold recovery techniques; and 4) the failure of concessionaires to abide by the terms of their license agreements with the government. The study calls on the government for greater enforcement of mining regulations and for mining companies to take more responsibility for their operations.<sup>24</sup>

### **Types of Gold Miners**

The Oxfam America study finds that at the time of the research gold miners fall broadly into four main types: local people, poor migrant workers, wealthy migrant miners, and concessionaires. Local people are principally farmers living nearby mining areas who prospect for gold to earn additional income. For the most part local miners pan for gold and do not own or use machinery or sluices. These people, almost exclusively men, work close to their villages and do not seek mining opportunities in far away locations. Recently, local people have been hired to work for wealthy miners, mining companies and concessionaires.

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<sup>23</sup> Sieng, *Small-scale Gold Mining in Cambodia*.

<sup>24</sup> Sieng, *Small-scale Gold Mining in Cambodia*.

Poor migrant workers are usually landless people who move from one mining site to another prospecting for gold to support their subsistence. They often travel with their entire family and establish semi-permanent dwellings at the camp sites. These migrant miners work year round and involve all family members including children in the mining tasks. They normally rely on hand tools and home made equipment for breaking rocks and sluicing.

Wealthy migrant miners live in district and provincial centers and employ local people or migrant laborers to work for them. Their operations normally entail capital investments for machinery and equipment such as rock crushers and heap leaching tanks which allow them to produce higher volumes of gold than local people and poor migrants. Mining enterprises by wealthy miners are sometimes backed by local authorities or armed forces. In instances where gold deposits are located in a concession area, the wealthy miners pay fees to the concessionaire to access the mine.

Concessionaires obtain licenses from the government and enforce exclusive rights to explore and exploit mineral resources in designated areas. The concessionaires normally establish field offices at the mine sites and employ local people and migrant miners to provide the labor for their operations. Sometimes concessionaires grant wealthy miners permission to work the mining areas in exchange for a fee.

The 2001 Law on Management and Exploitation of Mineral Resources deems all mining undertaken without a mineral license as illegal. When companies rigorously enforce their exclusive rights to access mining areas, independent miners, either local or migrant, are prohibited from entering those sites and engaging in mining activities. As described in the Oxfam report, “In early times, access to gold deposits and the right to exploit them was available to anybody who had appropriate knowledge and equipment. However, with the advent of mineral concessions granted to large companies by the Government, in numerous instances local people have been denied freedom of access to their ancestral land and mines.”<sup>25</sup>

### **Ore Extraction Methods**

The Oxfam America study identifies open trenching and underground shafting/tunneling as the two primary methods of extracting gold ore in Cambodia. The method used depends on the location of the gold-bearing ore. Home made equipment such as manual winches and wooden rails are used to hoist miners and the ore from the bottom of the shafts and trenches. All deep trenches, shafts and tunnels dug into loose alluvial materials have timber supports to prevent the collapse of the excavation. The research indicated that increasingly mines were excavated to greater depths, some up to 80 meters deep.

In the mines studied extraction activities resulted in damaged landscapes. Trenches and shafts were left open and posed a serious hazard to animals and people at risk of falling into the pits. Deforestation also resulted from clearing mining areas and cutting timber supports for shafts.

### **Gold Processing Techniques**

The Oxfam America research noted three gold processing techniques used in Cambodia to extract gold from ore: sluicing and panning, mercury amalgamation, and heap leaching with

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<sup>25</sup> Sieng, *Small-scale Gold Mining in Cambodia*.

cyanide. The first method involves grinding the ore into a powder using rock crushers, sluicing the powder, and then panning the residue to retrieve the gold concentrates that accumulate. Increasingly the traditional method of sluicing and panning has given way to the chemical processing techniques which are able to recover lower concentrations of gold. Both mercury and cyanide are highly toxic chemicals which can adversely affect human health and severely damage the environment if not properly used. The study recorded the untrained handling and improper use of mercury and cyanide at the mining sites which resulted in environmental pollution and illness and death to humans, fish, cattle, and wildlife.

Among the chemical processing techniques, the researchers observed an increasing preference for heap leaching with cyanide over mercury amalgamation. Heap leaching has a greater processing capacity and its greater use was seen to accompany the expanding operations of wealthy miners and concessionaires as well as the exhaustion of higher grade gold deposits.

### **Abiding by License Agreements**

The Oxfam America study points out that companies granted mining licenses by the government do not always abide by the terms of their agreements. For example, while most companies operate under exploration permits they unlawfully charge fees to others to exploit mineral resources in their concession areas. Meanwhile, environmental, health and safety standards included in the agreements to protect workers and local communities are often disregarded. The study urges the government to take steps to ensure that concessionaires abide by the terms of their license agreements and adopt responsible operating standards.

### **Large-scale Corporate Mining**

The Oxfam America report on small-scale gold mining observed that, unlike in other countries, the mining industry in Cambodia was dominated by Cambodian, Korean, or Chinese firms while mainstream mining companies were not represented. This was soon to change. From 2006 several large-scale Australian mining companies and joint ventures such as BHP Billiton and Mitsubishi Corporation, Oz Minerals, Southern Gold, and Transol controlled mining licenses to explore large areas of Mondulakiri province for gold, bauxite and other minerals (Figure 2). As of July 2008, before the withdrawal of BHP Billiton and Mitsubishi Corporation, 15 mining companies held mining licenses to explore 4,473 square kilometers or 31 percent of Mondulakiri's 14,288 square kilometer area (Figure 3).<sup>26</sup> The transition from independent miners to small concessionaires was drawing to a close and a new era of mineral exploration by large transnational corporations in Mondulakiri province had begun. At the same time large-scale corporate mining at high value sites has recently sparked an apparent resurgence of artisanal activity and renewed debate over the legitimacy of artisanal mining.

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<sup>26</sup> A similar trend was evident in Ratanakiri province. In August 2010 Ratanakiri provincial authorities provided data which indicated that 40 per cent of the province or about 4,400 square kilometers had been licensed to 10 mining companies for exploration in recent years. See Neou Vannarin and Paul Vrieze, "Ten Mining Firms Exploring 40 Percent of R'kiri," *The Cambodia Daily*, 3 August 2010.

**Figure 2. Known Companies with Mining Licenses in Mondulkiri Province,  
as of July 2008**

| <b>Company</b>  | <b>Ownership</b>     | <b>Location (district)</b>                 | <b>Year license granted</b> | <b>Area (square kilometers)</b> |
|---|----------------------|--|-----------------------------|---------------------------------|
| Anqing Cambodia Investment Company Co, Ltd                          | Chinese              | Keo Seima                                  | 2006                        | 216                             |
| AZ Distribution Co. Ltd*  | Cambodian            | O’Raing                                    | 2005                        |                                 |
| BHP Billiton World Exploration Inc and Mitsubishi Corporation**     | Australian, Japanese | Sen Monorum, Pechreada, O’Raing, Keo Seima | 2006                        | 996                             |
| CAMBO CANAKIRI Development Ltd                                      |                      | Pechreada                                  | 2006                        | 160                             |
| Cambodia Hai Lan Mineral Company Limited                            | Chinese              | Keo Seima                                  | 2004                        | 80                              |
| Chin Siv Nginh CSN Cambodia Import Export                           |                      | Keo Seima                                  | 2006                        | 216                             |
| China Forwin International Investment Phnom Penh Mining Co, Ltd *** | Chinese              | Keo Seima                                  | 2006                        | 112                             |
| D&Z Investment Co, Ltd  |                      | Koh Neak                                   | 2006                        | 156                             |
| Gold Metal Group Co, Ltd  | Vietnamese           | Pechreada                                  | 2006<br>2006                | 158<br>204                      |
| Liberty Mining International Pty Ltd****.                           | Australia            | Keo Seima                                  | 2008                        | 62                              |
| Maxum Metal Pty Ltd.*****   | Australia            | Keo Seima, Pechreada, O’Raing, Sen Monorum | 2008                        | 823                             |
| Moeung Sok  |                      | Pechreada                                  |                             |                                 |
| Oksan Cambodia Inc  | Korean               | Keo Seima                                  | 2003                        | 84                              |
| Oz Minerals***** and Shin Ha Mining Company                         | Australian           | Keo Seima                                  | 2007                        | 439                             |
| Sonuba Paul Cham Co.Ltd.*   | Cambodian            | O’Raing                                    | 2004                        |                                 |
| Southern Gold Ltd   | Australian           | Keo Seima                                  | 2007<br>2007                | 271.5<br>274                    |
| Summer Gold Investment PVT Ltd                                      |                      | Keo Seima                                  | 2005                        | 202                             |
| Zhong-Xin Industry Investment Cambodia Co                           | Chinese              | Keo Seima                                  | 2007                        | 19.6                            |

\*Owned by BHP Billiton and Mitsubishi.

\*\*BHP Billiton and Mitsubishi reportedly withdrew from their concession in the second half of 2009.

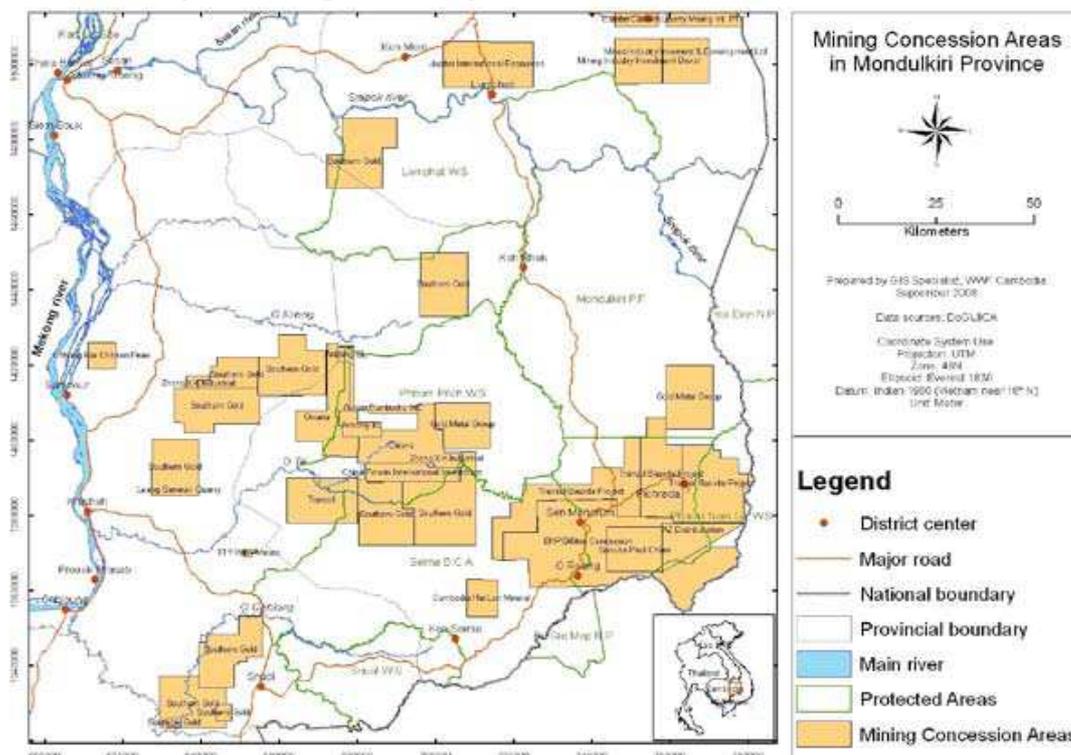
\*\*\*China Forwin reportedly withdrew from Cambodia after a Chinese expert died of malaria.

\*\*\*\* Owned by Transol Corporation

\*\*\*\*\*Oz Minerals was established in July 2008 as the result of a merger between Oxiana Limited and Zinifex.

Sources: Pearl Beaumont, *Extractive Industry Mining Study, Social and Environmental Impacts, Ratanakiri & Mondulkiri*, Development and Partnership in Action, July 2008; NGO Position Paper, *Environmental and Social Impacts of Expansion of the Extractive Industries Sector*; Kinetz and Yun, “Mining Companies, Villagers Vie for Gold in Mondulkiri Province”; and Lazarus, Kate A., *In Search of Aluminum: China’s Role in the Mekong Region*, Heinrich Boll Stiftung Cambodia, WWF Denmark, and the International Institute for Sustainable Development, 2009.

**Figure 3. Map of Mining Concession Areas in Mondulkiri Province**



Source: World Wide Fund for Nature (WWF) *Livelihood Sustainability Analysis in Mondulkiri Province*, Phnom Penh: WWF Greater Mekong-Cambodia Country Program, 2008.

### **Artisanal Miners Caught Up in Mondulkiri's Rush to Mineral Exploration**

In June 2010 Keo Seima district officials in Mondulkiri province ordered artisanal miners to leave the site known as Okvau Ochung where Oz Minerals have identified an initial gold resource of 605,000 ounces towards a target set at 2 million ounces. The artisanal miners are from Kompong Cham, Kratie, Kompong Thom, Svay Rieng and Prey Veng provinces and estimates of their numbers have ranged from 45 to 69 families. Keo Seima district officials maintain that the artisanal miners came to the area in 2006 after Oz Minerals was awarded the concession, while the provincial coordinator of the human rights group Adhoc asserts that the miners moved to the area earlier between 2002 and 2004. Keo Seima district officials have considered deploying security forces to evict them. They have also thought about cutting off their supply of processing chemicals, and have deliberated filing a lawsuit at the provincial court accusing the families of operating without a proper license.<sup>27</sup>

One artisanal miner threatened with eviction reported that the miners have appealed to the local authorities to award them proper mining licenses. She lamented, "The big and wealthy firms from abroad and local companies have been granted a license. Why are small-scale operations

<sup>27</sup> Kuch Naren and Simon Marks, "Artisanal Miners Told to Leave OZ Miners Site," *The Cambodia Daily*, 22 June 2010; Marks, Simon and Kuch Naren, "Seeking Legalization, Miners Face Uphill Battle," *The Cambodia Daily*, 3-4 July 2010.

for gold and other mines prohibited?”<sup>28</sup> Actually the 2001 Law on Mineral Resource Management and Exploitation does provide for the issuance of an Artisan Mining License (Article 11, 1) although it is unclear as to how or to what extent artisanal miners must comply with provisions in the law for undertaking mine feasibility studies, environmental impact assessments (EIAs), and public safety plans.<sup>29</sup>

One speaker at the International Conference on Mining explained that while several Asian countries have laws that legally recognize small-scale mining, artisanal activity is often dealt with as “illegal.”<sup>30</sup> At the same International Conference H.E. Suy Sem, the Minister of MIME, declared that illegal artisanal activities in mine concessions will have to be eliminated although he conceded that the solution to the problem could include their legalization with operations limited to designated low-potential areas and organized into small scale-mining community groups.<sup>31</sup> In Keo Seima district the immediate question facing the artisanal mining families in what now constituted the Oz Mineral concession was whether or not they would receive fair compensation before being forced to leave the area.<sup>32</sup>

Responding responsibly to artisanal mining in Monduliri province is not without its challenges. The Oxfam America study clearly underscored the environmental hazards caused by small-scale miners with their casual use of mercury and cyanide in metal processing techniques. The same study also noted that the depletion of surface gold deposits had resulted in deeper and more hazardous open trenches and underground shafts and tunnels. While small-scale miners in Monduliri province appear to have decreased in the past decade, it is possible that mineral exploration by large corporations at high value sites may lead to a resurgence of artisanal activity. An extractive industries advisor for the UNDP in Cambodia argues that artisanal mining represents an important source of income and may be one of the few economic opportunities available to some families, adding that short-term solutions such as forced evictions have proved unsuccessful around the world.<sup>33</sup>

These sentiments were echoed in papers presented at the International Conference on Mining. One author mentioned that Africa provides examples of how large mining companies adopt practices of mutual co-existence rather than employ police force to stop artisanal mining.<sup>34</sup> Another author argued that the livelihood potential for small-scale gold mining remains high with the provision of clean gold technologies and by moving the miners into the formal sector through cooperatives and other trading schemes.<sup>35</sup> A third presenter advocated shifting to a livelihoods approach, engaging artisanal miners as “informal sector” rather than as “illegal” workers. This presenter recommended that governments re-examine policy and institutional

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<sup>28</sup> Marks and Kuch, “Seeking Legalization, Miners Face Uphill Battle.”

<sup>29</sup> Article 11 (1) of the 2001 Mining Law states that “An Artisan Mining License may be issued only to persons of Khmer nationality for the purpose of conducting the exploration and exploitation of mineral resources by using locally available common instruments and their own labor or with the help of family with no more than 7 (seven) persons.”

<sup>30</sup> Spiegel, Samuel, “Governance Approaches in Artisanal Gold Mining Communities: Supporting Livelihoods and Enhancing Social Opportunities in the Asia Pacific Countries,” Presentation made at the International Conference on Mining: Staking a Claim for Cambodia, Phnom Penh, 26-27 May 2010.

<sup>31</sup> H.E. Suy Sem, “Closing Speech.”

<sup>32</sup> Marks, Simon, “NGOs Appeal for Resolution at Oz Minerals Gold Mine Site,” *The Cambodia Daily*, June 2010.

<sup>33</sup> Marks and Kuch, “Seeking Legalization, Miners Face Uphill Battle.”

<sup>34</sup> Lahiri-Dutt, “The People Dimension of Mining.”

<sup>35</sup> Ali, Saleem H., “Developing Cambodia’s Mining Sector: An Environmental Perspective,” Paper presented at the International Conference on Mining: Staking a Claim for Cambodia, Phnom Penh, 26-27 May 2010.

approaches, ensure that legalization procedures produce actual benefits, and develop proactive programs of engagement with informal sector miners.<sup>36</sup>

### **Miners and NGOs Form Associations in Response to Large-scale Corporate Mining**

During the artisanal mining controversy in Keo Seima district, representatives from corporate mining and civil society associations expressed their disparate views on the unfolding events.<sup>37</sup> Of note, the rapid increase of large-scale corporate mineral exploration in Cambodia has given rise to the formation of corporate and civil society associations seeking to promote their respective interests in the mining sector. These initiatives help to provide a public forum where corporate miners and civil society advocates can engage the government in discussions and debates on the development and implementation of responsible mining laws and practices. Mention is made here of the Cambodian Association of Mining and Exploration Companies (CAMEC), Cambodians for Resource Revenue Transparency (CRRT), and the Extractive Industry Social and Environmental Impact (EISEI) Network

#### ***Cambodian Association of Mining and Exploration Companies***

The Cambodian Association of Mining and Exploration Companies (CAMEC) is an association of mining companies registered with the Ministry of Commerce in January 2010 with a mission “to assist with the development of an active exploration and mining sector, operating to international standards which recognizes and respects all stakeholders. Its principal role is to present to government the concerns and issues facing the industry, to address these issues and to advocate for beneficial changes to both existing and proposed new legislation and policy that affect the mining sector.” CAMEC members include Oz Minerals, Liberty Mining International, Southern Gold, Indochine Resources Cambodia, Cambodian Resources Limited, Kingdom Resources, and Prairie Pacific Mining.

CAMEC has acquired a seat on the government-private sector Working Group on Law, Tax and Good Governance co-chaired by Finance Minister H.E. Keat Chhon. CAMEC’s president asserts that one of the initial goals of the association is to obtain more tax incentives such as a reduction on tariffs on imported mining equipment. CAMEC’s president likewise points to the need for laws to guarantee companies the right to exploit minerals after they have made huge up-front investments in exploration and for more clarity in legislation related to how much companies will pay in royalties. The CAMEC vice president acknowledges that the association does not yet have a common position on environmental safeguards and on the displacement of people.<sup>38</sup>

#### ***Cambodians for Resource Revenue Transparency***

Cambodians for Resource Revenue Transparency (CRRT) was registered with the Ministry of Interior in April 2009 by a group of NGOs to monitor revenues from Cambodia’s extractive industries sectors of oil, gas, and mining. CRRT’s vision is for wealth generated from extractive industries to be managed in a socially responsible manner that is transparent,

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<sup>36</sup> Spiegel, “Governance Approaches in Artisanal Gold Mining Communities.”

<sup>37</sup> Marks and Kuch, “Seeking Legalization, Miners Face Uphill Battle” and Marks, “NGOs Appeal for Resolution at Oz Minerals Gold Mine Site.”

<sup>38</sup> Marks, Simon, “Hoping Industry Will Mature, Miners Join Forces,” *The Cambodia Daily*, 13-14 February 2010; Marks, Simon, “Government Offers Pretty Words on Mining,” *The Cambodia Daily*, 28 May 2010.

accountable, and participatory to equitably benefit all Cambodians. Members of the CRRT network share three core beliefs: 1) an informed public should participate in open discussions to contribute to decision-making on the financial management of revenues from extractive industries; 2) information should be widely available on operations for exploitation of extractive resources and earned revenues to facilitate public oversight of the extractive industries sector; and 3) revenues from extractive industries should be efficiently and fairly used for sustainable development for the benefit of current and future generations.

CRRT encourages the government to join the global Extractive Industries Transparency Initiative (EITI), a coalition of governments, corporate investors, civil society and multilateral agencies with the aim of improving governance in resource rich countries. EITI requires member companies and states to regularly publish all oil, gas and mining payments and revenues to “a wide audience in a publicly accessible, comprehensive and comprehensible manner.” Payments and revenues are the subject of a credible, independent audit with oversight by a multi-stakeholder group including civil society. EITI’s Asia and Europe Regional Director maintains that EITI membership improves the investment climate, strengthens institutions and combats corruption, addresses governance risks and reduces conflict, improves collaboration between government and NGOs, provides a platform for debate on reforms, as well as makes good business sense.<sup>39</sup>

CRRT chairman states that the government should reconsider signing the EITI and publish how much it earns from both signature bonus payments and money that goes to social development funds. The government’s bidding process for exploration rights and details on royalties should also be made available to the public. In April 2010 the Supreme National Economic Council Deputy-Secretary General announced that the government would adopt the principles set out in the EITI but that Cambodia would not become an EITI member until laws on taxation and transparency had been established to meet membership requirements.<sup>40</sup>

### ***Extractive Industry Social and Environmental Impact Network***

The Extractive Industry Social and Environmental Impact (EISEI) Network was organized by a group of NGOs with the aim to promote and sustain dialogue among affected communities, government ministries and the private sector in a way that enables all stakeholders to benefit from the development of extractive industries in Cambodia while minimizing adverse impacts on its land and people. This dialogue is intended to facilitate greater access to information and to provide underrepresented communities with a voice for addressing issues arising from the exploration and exploitation of mineral resources.

The EISEI network pursues five major activities to achieve its aim: 1) promulgating the idea and requirement of obtaining free, prior and informed consent from potentially affected communities as early as possible in the extractive industry development process; 2) minimizing the potential for extractive industry projects to force communities from their land or restrict their access to natural resources; 3) minimizing the potential for extractive industry projects to result in long term adverse social and environmental impacts; 4) minimizing the presence of

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<sup>39</sup> Bartlett, Samuel R., “The Case for Implementing the Extractive Industry Transparency Initiative (EITI),” Presentation made at the International Conference on Mining: Staking a Claim for Cambodia, Phnom Penh, 26-27 May 2010.

<sup>40</sup> Marks, Simon, “Gov’t Should Join Transparency Push, NGOs Say,” *The Cambodia Daily*, 26-27 June 2010; See also Marks, Simon, “Gov’t Urged to Address BHP Probe,” *The Cambodia Daily*, 24-25 April 2010.

extractive industry projects in areas of high cultural and/or ecological value; and 5) proactively supporting responsible management of pollutants and contaminants associated with extractive industry projects.

## Laws Governing Mining in Cambodia

Investment in Cambodia's mining sector was expedited through the government's *Law on Mineral Resource, Management and Exploitation* or *Mining Law* enacted on 13 July 2001. The *Mining Law*, consistent with Article 58 of the 1993 *Constitution of the Kingdom of Cambodia*, declares that all mineral resources are State property (Article 2). The *Mining Law* provides for six categories of mining licenses including mineral exploration and industrial mining licenses (Article 11) and considers all mining activities illegal which do not operate under a license granted by the competent authority, presently the Ministry of Industry, Mines and Energy (MIME) (Article 5). The rapid acceleration of corporate mining activity since 2006 has exposed several deficiencies in the *Mining Law* with consequences for the expansion of the industry in Mondulkiri province. The legal framework for mining is thus reviewed here in some detail.

### Mining Concessions and Licenses

To conduct large scale mining operations in Cambodia, a company must obtain a mining concession and a mining license. A mining concession marks out the geographical area where mining can take place. A mining license grants permission to conduct mining operations in the specified area under certain conditions. As noted above licenses are covered by the *Mining Law* and awarded by the MIME. Regulations governing mining concessions are less clear, specifically with respect to the stage at which the concession must be obtained and to the procedure detailing the granting of the concession. The legal framework for issuing licenses is still incomplete and apparently licenses for mineral exploitation are currently being issued under a "Mineral Resource Agreement" between the company and the MIME on a case to case basis. This document details the coordinates of the concession, the type of mineral to be exploited and the length of the mining period.<sup>41</sup>

According to the *Mining Law*, an Exploration License may be issued to qualified and competent persons or legal entities for the purpose of conducting exploration of minerals and studying their potential (Article 11, 5). Companies who hold an exploration license can take samples from the area, but cannot exploit the minerals commercially.<sup>42</sup> Exploration licenses are granted for two years and can be renewed for up to six years. Further extensions can be granted subject to the discretion of the MIME.<sup>43</sup> If the exploration activities indicate deposits in quantities that are commercially viable for exploitation the company may apply for an Industrial Mining License.

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<sup>41</sup> Personal communications with Mark Grimsditch, 10 September 2010.

<sup>42</sup> NGOs report accusations made by local communities that mining companies with exploration licenses were engaged in exploitation in contravention to the law. See "Environmental and Social Impacts of Expansion of the Extractive Industries Sector," in *NGO Position Papers on Cambodia Development in 2007-08: Monitoring the Implementation of 2007 CDCF Joint Monitoring Indicators and the National Strategic Development Plan 2006-10*, Phnom Penh, November 2008.

<sup>43</sup> Prakas on Registration and Conditions to Issue, Renew and Transfer Mineral Licenses (Article 6, 4) cited in Grimsditch, Mark, *Analysis of the Legal Framework Related to Mining in the Kingdom of Cambodia*, April 2010.

As stated in the *Mining Law* an Industrial Mining License shall be issued only to the holder of an exploration license for the purpose of conducting exploration and mining of economically viable mineral deposits established within the boundaries of the exploration license. Furthermore the holder of the exploration license shall submit technical, financial, environmental, social and economic analysis to determine the socio-economic feasibility of proceeding with a mining operation (Article 11, 6). Pursuant to the *Sub-decree on Principles for Investment in Mineral Resources* all requests for Industrial Mining Licenses must be approved by the Council for the Development of Cambodia (CDC).<sup>44</sup>

The *Mining Law* makes provisions for a sub-decree to prescribe the form and content of the final feasibility study required under Article 11, 6 for the issuance of the Industrial Mining License. However, as of early 2010 the sub-decree had yet to be passed and Industrial Mining Licenses were being issued under a Mineral Resource Agreement, effectively a MoU between the company and the MIME. The details of these agreements are apparently being negotiated on a case to case basis and include critical information on the geographical areas covered, the duration of the license, land rental, and royalties. The agreements are also confidential.<sup>45</sup>

### **Conduct of License Holders**

The *Mining Law* holds licensed companies and contractors responsible for the proper conduct of mining operations. Standards include conducting operations in a technically and financially effective and efficient manner, protecting the environment as detailed in the 1996 *Law on Environment Protection and Natural Resource Management*, ensuring the protection of worker health and safety, protecting public safety in and around the mine sites, providing for adequate training for mine employees, and using Cambodian goods and services to the extent possible (Article 21, 1-6). Several documents are required to meet compliance with these standards such as an exploration work program or mine feasibility study, a mine restoration and rehabilitation plan, financial guarantees, a mine plan for health and safety, and an education, training and employment plan. Guidelines for the details of these documents are to be determined in a Prakas (Article 22). Tellingly the *Mining Law* contains no provisions which specifically address standards for responsible engagement with indigenous people.

The *Prakas on Registration and Conditions to Issue, Renew and Transfer Mineral Licenses* supplements this Chapter of the *Mining Law* but still does not enumerate the specifics of the documents required by Article 22. The Prakas does however list the documents that should accompany the application for a mineral license following registration with MIME. These include application form and copy of registration certificate from MIME, detail of the proposed area(s) where the operations will take place, report on the company's financial capability or annual audited financial statements for the previous 3 years, plans for exploration or mining including budget, documents of evidence showing company's technical experience in mining or industrial sector, environmental impact assessment (EIA) reports and restoration plans, plans for recruitment of Cambodians and plans for education and training (Article 4).<sup>46</sup>

In Mondulkiri province the conduct of mining companies has not always been up to standards. A meeting presided over by Commerce Minister H.E. Cham Prasidh in March 2009 revealed that 12 mining companies in Mondulkiri province had failed to inform the MIME about their

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<sup>44</sup> Grimsditch, *Analysis of the Legal Framework Related to Mining in the Kingdom of Cambodia*.

<sup>45</sup> See Grimsditch, *Analysis of the Legal Framework Related to Mining in the Kingdom of Cambodia*.

<sup>46</sup> Grimsditch, *Analysis of the Legal Framework Related to Mining in the Kingdom of Cambodia*.

activities. One MIME Secretary of State said that it was important for the 12 delinquent companies to keep officials notified of their operations so that the Ministry could monitor compliance with the terms of their license agreements. The Department Director of Industry, Mines and Energy in Mondulakiri province acknowledged that: “All of the companies have business licenses, but they have never reported to us what they are doing.” The 12 companies were requested to submit reports within 15 days.<sup>47</sup>

## **Fees, Royalties and Revenues**

Much like the confidentiality that surrounds the granting of mining concessions and licenses, fee payments made in connection with such agreements have similarly raised concerns about the lack of disclosure and transparency. The government legitimately exacts revenue from the mining industry and the *Mining Law* provides that an applicant or holder of a license shall pay the State the fees of registration, application for suspension, renewal, transfer and annual land rental (Article 27). Questions arose about the official or unofficial nature of these fees when a controversy concerning payments made by BHP Billiton became a flashpoint of public debate.

In May 2007 *The Cambodia Daily* reported that Minister for Water Resources, H.E. Lim Kean Hor told the National Assembly that BHP Billiton had paid US\$ 2.5 million to secure a bauxite mining concession in Mondulakiri province. Surprisingly, payment was further described as ‘tea money’ a local term denoting an unofficial payment.<sup>48</sup> BHP Billiton subsequently confirmed that it had set up a Social Development Projects Fund of US\$ 2.5 million for Cambodia but rejected the assertion that these contributions were ‘tea money.’ BHP Billiton also confirmed that it had paid the Government US\$ 1 million in accordance with the terms of a minerals exploration agreement which granted its joint venture with Mitsubishi Corporation the right to explore for bauxite in Mondulakiri province.<sup>49</sup>

In April 2010 the BHP Billiton controversy once again erupted on newspaper headlines when the company acknowledged that it had provided the US Securities and Exchange Commission with evidence regarding possible violations of anticorruption laws involving interactions with government officials. Under the US Foreign Corrupt Practices Act, BHP Billiton and other companies whose securities are traded in the US are prohibited from bribing government officials overseas. BHP Billiton declined to confirm whether the possible violations took place in Cambodia.<sup>50</sup>

Subsequently the opposition Sam Rainsy Party (SRP) called on the government to explain its dealings with BHP Billiton and to clarify how the government manages revenue from the mining industry. Cambodians for Resources Revenue Transparency (CRRT) supported the SRP request asking the government to disclose information on the management of the social fund and those directly involved in allocating its funds.<sup>51</sup> Speaking at the International Conference on Mining on 26 May 2010 the Prime Minister said that social fund payments received from private companies go directly into the national budget although he did not provide details as to

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<sup>47</sup> Kimsong, Kay, “Government Targets Miners,” *The Phnom Penh Post*, 29 April 2009.

<sup>48</sup> ‘Gov’t Gets \$2.5 Million for Mine Exploitation Contract,’ *The Cambodia Daily*, 22 May 2007.

<sup>49</sup> Global Witness, *Country for Sale*, February 2009.

<sup>50</sup> Gillison, Douglas and Kuch Naren, “Minister’s ‘Tea Money’ Remark Vexes BHP,” *The Cambodia Daily*, 23 April 2010.

<sup>51</sup> Yun Samean and Simon Marks, “SRP Calls for Explanation of ‘Social Fund’,” *The Cambodia Daily*, 6 May 2010.

where they are deposited or as to how much has been received by the government to date.<sup>52</sup> No doubt questions regarding the nature of fees will persist until the government develops a system which makes full disclosure of all revenue from the mining industry.

### **Confidentiality and Disclosure of Documents**

Ironically, lack of transparency and public accountability in the mining sector is built into the legal framework. Article 19 of the *Mining Law* provides that the holder of a license issued under the authority of the law shall submit to the Minister in charge of mineral resources the application forms, reports, plans and notices at the prescribed date and maintain records and documents. But subsequent Article 20 ensures that the confidentiality of all documents and information as provided in Article 19 of this law shall be maintained until the termination of such license or subsequent to the receipt of an approval from the holder to allow public disclosure of such information. Information related to environmental and social issues may be released to the public at the discretion of the Minister in charge of MIME.

The confidentiality provisions contained in the *Mining Law* pose serious obstacles for independent monitoring of the mining industry. The public sector and even relevant ministries such as the Ministry of Environment (MoE) are not able to monitor and report on compliance of mining companies without access to information on the agreed upon concession boundaries, length of operations, minerals to be extracted, and payment of rents, revenues and royalties. Moreover, it is unclear whether the confidentiality restrictions of the *Mining Law* extend to the mine feasibility study, the mine restoration plan, the health and safety program, and the education training and employment plan required under Article 21 for the conduct of license holders.<sup>53</sup>

By contrast, the 1996 *Law on Environmental Protection and Natural Resource Management or Environment Law*, which also covers mining activities, promotes transparency and accountability. That Law declares that the Ministry of Environment shall, following proposals of the public, provide information on its activities, and shall encourage participation of the public in environmental protection and natural resource management. The conflicts and inconsistencies in the laws governing mining activities underscore the need for a comprehensive review of the legal framework.

### **Environmental Impact Assessments**

The *Environment Law* requires that environmental impact assessments (EIAs) be carried out on all development projects and be approved by the Ministry of Environment (MoE) (Article 6). The *Mining Law* reiterates this principle and requires miners to complete EIAs (Article 21). The 1999 *Sub-decree on Environmental Impact Process* sets down the procedure for conducting EIAs. A company must first submit an initial environmental assessment (IEIA) and project feasibility report to the MoE. If the MoE considers that the project will have serious impact on natural resources, ecosystems, health or public welfare, the company must then submit a full EIA for review. The MoE has 30 days to review the IEIA and, if necessary, a further 30 days to review the full EIA, after which it must provide its findings and

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<sup>52</sup> Yun Samean and Simon Marks, "PM Says 'Social Funds' Go Into National Budget," *The Cambodia Daily*, 27 May 2010.

<sup>53</sup> Grimsditch, *Analysis of the Legal Framework Related to Mining in the Kingdom of Cambodia*.

recommendations. If the MoE fails to respond within this period the Sub-decree assumes that the company's IEIA or EIA complies with the law (Articles 6-8, 15, 17, 18).

Given the limited capacity of the MoE with respect to staff numbers, levels of technical expertise, and budget constraints, concerns have been raised that the 30 day assessment period provided by the Sub-decree may be inadequate for the MoE to adequately evaluate the EIAs of large-scale mining operations in remote areas of the country. The 2000 *Prakas on Guideline for Conducting Environmental Impact Assessment* adds a further constraint in that it does not adequately articulate what information actually needs to go into the EIA. Recently a *Prakas* has been passed that sets out what should go into the EIA.<sup>54</sup>

Responsible mine development requires rigorous environmental analysis with proactive public involvement.<sup>55</sup> The *Sub-decree on Environmental Impact Process* encourages public participation in the implementation of the EIA process and takes into account their input and suggestions prior to project implementation (Article 1). However, the rush to award exploration licenses appears to have overtaken this provision of the law. In late 2007 the MoE reportedly announced that mining companies no longer had to undertake EIAs as a precondition for receiving an exploration license.<sup>56</sup> This position contravenes the *Mining Law* which unequivocally requires EIAs for exploration license holders (Article 21, 2). In 2008 NGOs in Mondulkiri expressed concerns that mining companies were not conducting EIAs.<sup>57</sup>

### **Mining in Protected Areas**

As the pace of granting mining concessions and licenses has accelerated particularly in biodiversity rich areas, the inviolability of Cambodia's designated protected areas has come under question. Cambodia's 23 protected areas created in 1993 by the *Royal Decree on the Protection of Natural Areas* are managed by the MoE and cover 32,289 square kilometers. A subsequent 1994 *Prakas on the Protection of Natural Areas* prohibited mining in these protected areas (Article 4). However as the 2001 *Mining Law* does not explicitly ban mining in protected areas, legal protection for these conservation zones was lost.<sup>58</sup> At a 2004 workshop MoE officials and conservation NGOs determined that mining was already taking place in nine protected areas and posing threats to another 13 of them.<sup>59</sup>

Mondulkiri province contains areas of four protected wildlife sanctuaries and two protected forests which in their entirety total 1,267,322 hectares. The wildlife sanctuaries under the MoE are Phnom Prich (222,500 hectares), Phnom Nam Lyr (47,500 hectares), Lumphat (250,000 hectares) and Snuol (75,000 hectares). The protected forests under the Ministry of Agriculture, Forestry and Fishery (MAFF) are the Mondulkiri protected forest (372,971 hectares) and the Seima Biodiversity Conservation Area (298,851 hectares). As of 2008 no less than 282,700 hectares or 22 percent of these protected areas were covered by mining concessions.<sup>60</sup>

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<sup>54</sup> Personal communications with Mark Grimsditch, 2 October 2010.

<sup>55</sup> Miranda et al, *Framework for Responsible Mining*.

<sup>56</sup> "Environmental and Social Impacts of Expansion of the Extractive Industries Sector," November 2008.

<sup>57</sup> Beaumont, Pearl, *Extractive Industry Mining Study, Social and Environmental Impacts, Ratanakiri & Mondulkiri*, Development and Partnership in Action, July 2008.

<sup>58</sup> Global Witness, *Country for Sale*.

<sup>59</sup> Douglas Gillison, "Cambodia Braces for a Mining Invasion," *Asia Sentinel*, 21 September 2007.

<sup>60</sup> "Forests, Plantations and Concessions," in *NGO Position Papers on Cambodia Development in 2007-08: Monitoring the Implementation of 2007 CDCF Joint Monitoring Indicators and the National Strategic Development Plan 2006-10*, Phnom Penh, November 2008.

The passage of the 2008 *Protected Areas Law* promised to provide a framework for protecting biodiversity while permitting the exploitation of natural resources, including mineral resources for national development. Under the law the territories of each protected area are to be carefully mapped into four zones: a core zone, a conservation zone, a sustainable use zone and a community zone. Mining within core and conservation zones is not allowed (Article 11). Mining activity may take place in sustainable use zones with a request from the MoE after consulting with relevant ministries and institutions, local authorities, and local communities (Article 11, 3). Despite these provisions NGOs expressed concern over the MoE's announcement in December 2007 that zoning of protected areas would be done only after mineral resource master plans had been developed with the MIME and mining companies.<sup>61</sup>

The country director of the Worldwide Fund for Nature (WWF) in Cambodia argues that core zones must be protected from mining activities as the viability of other ecosystems depend upon them. As such high biodiversity zones in protected areas must be mapped before mining rights are granted.<sup>62</sup> This position is consistent with evolving international standards for responsible mining which stress the unassailability of "No Go" Zones, i.e. areas with mineral potential that may be so environmentally or socially sensitive that risks posed by development in these locations are too high.<sup>63</sup>

### **Mining in Forests**

The *Law on Forestry* or *Forestry Law* promulgated on 31 August 2002 permits mining within the Permanent Forest Reserves subject to a prior study-evaluation from the Ministry of Agriculture, Forestry and Fisheries (MAFF) and authorization by the Royal Government of Cambodia which includes protection and restoration measures. According to the *Forestry Law* the holder of the mining license must: 1) Avoid causing or aggravating soil erosion, damage to growing vegetations, damage to the hydrologic systems and the quality of water; and 2) After project completion restore the site of quarrying, soil and sand excavation, mining, or other natural resources extraction, to their original state within the time frame set by the permit (Article 35). In addition the holder of mining rights must comply with the general provisions of the *Forestry Law* which ensure public participation in any government decision that has the potential for heavy impact on concerned general citizens, livelihoods of local communities and forest resources (Article 4). Consistent with the *Law on Environmental Protection and Natural Resource Management* the *Forestry Law* requires that an environmental impact assessment (EIA) be prepared and made available for public comment on related activity that may cause adverse impact on society and the environment of any major forest ecosystem (Article 4).

The 2002 *Forestry Law* reaffirms the protection of resin tapping rights of local communities contained in the 1988 *Forestry Law*. In contravention with the common practice of forest concessions operating before the 2001 logging ban, the law prohibits the cutting of trees that local communities have tapped to extract resin for customary use (Article 29). The 2002 *Forestry Law* likewise recognizes and protects the traditional user rights of local communities

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<sup>61</sup> "Environmental and Social Impacts of Expansion of the Extractive Industries Sector," November 2008.

<sup>62</sup> Kinetz and Yun, "Mining Companies, Villagers Vie for Gold in Monduliri Province"; Gillison, "Cambodia Braces for a Mining Invasion."

<sup>63</sup> Miranda, Marta, David Chambers, and Catherine Coumans, "Framework for Responsible Mining: A Guide to Evolving Standards," 19 October 2005.

to collect and use forest products and by-products. These provisions of the *Forestry Law* ensure that local inhabitants are not prohibited access to forest areas by mining concessionaires.<sup>64</sup>

## **Mining Expansion in Mondulkiri Villages**

Since the coming of the large corporate mining companies to Mondulkiri in 2006 there has been little empirical research conducted in the province on the impact of mining on local communities. An overview of community concerns is captured nonetheless in a study undertaken by Development and Partnership in Action (DPA), an NGO working in Keo Seima district. In April and May of 2008 DPA researchers interviewed mostly indigenous people in 18 villages of 7 communes in 4 districts of Mondulkiri province to gauge their current and future concerns about mining activities undertaken near their communities. In general the respondents were concerned about the lack of consultation and compensation, loss of livelihoods, environmental degradation, land grabbing and encroachment, deforestation, respect for sacred sites, and the threat of eviction (Figure 4).<sup>65</sup>

While mining companies in Mondulkiri province have to date only been granted exploration licenses NGOs have observed that some companies have moved on to exploitation. Conducting mining exploitation under exploration licenses constitutes a breach in the agreement requiring the license to be suspended pending investigation.<sup>66</sup>

Cognizant of the findings provided by previous investigations, the Analyzing Development Issues (ADI) researchers undertook fieldwork for this empirical study in Gati village, Keo Seima district and Pou Rapeth village, Pechreada district. What follows is an account of the development of mining activities in each of these villages.

## **Mining Expansion in Gati and Pou Rapeth Villages**

Mining expansion in Gati village, Keo Seima district and Pou Rapeth village, Pechreada district followed similar paths. Bunong people consider the gold deposit areas in both villages as sacred sites. Mining began when migrant Khmer miners came to Gati in the mid 1990s and to Pou Rapeth in the mid 1980s. The subsequent influx of Khmer miners including those with more advanced equipment and techniques led to the rapid exhaustion of surface gold deposits and by the early to mid 2000s the era of independent artisanal mining had all but ended in both villages. In 2006 the Chinese owned Hai Lan Company started exploration activities in Gati village and the Vietnamese owned Gold Metal Group Company initiated mining operations in Pou Rapeth village. Both companies hold licenses to explore gold within wide areas extending from the two Bunong villages.

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<sup>64</sup> McAndrew, John P., and Oeur II, "Access to Natural Resources: Case Studies of Cambodian Hill Tribes," in Jayantha Perera ed., *Land and Cultural Survival: The Communal Land Rights of Indigenous Peoples in Asia*, Manila, Asian Development Bank, 2009.

<sup>65</sup> Beaumont, *Extractive Industry Mining Study, Social and Environmental Impacts, Ratanakiri & Mondulkiri*.

<sup>66</sup> "Environmental and Social Impacts of Expansion of the Extractive Industries Sector," November 2008.

**Figure 4. Summary Results of Community Concerns Documented by DPA Researchers in 18 Villages Near Mining Sites in Mondulkiri Province, April and May 2008**

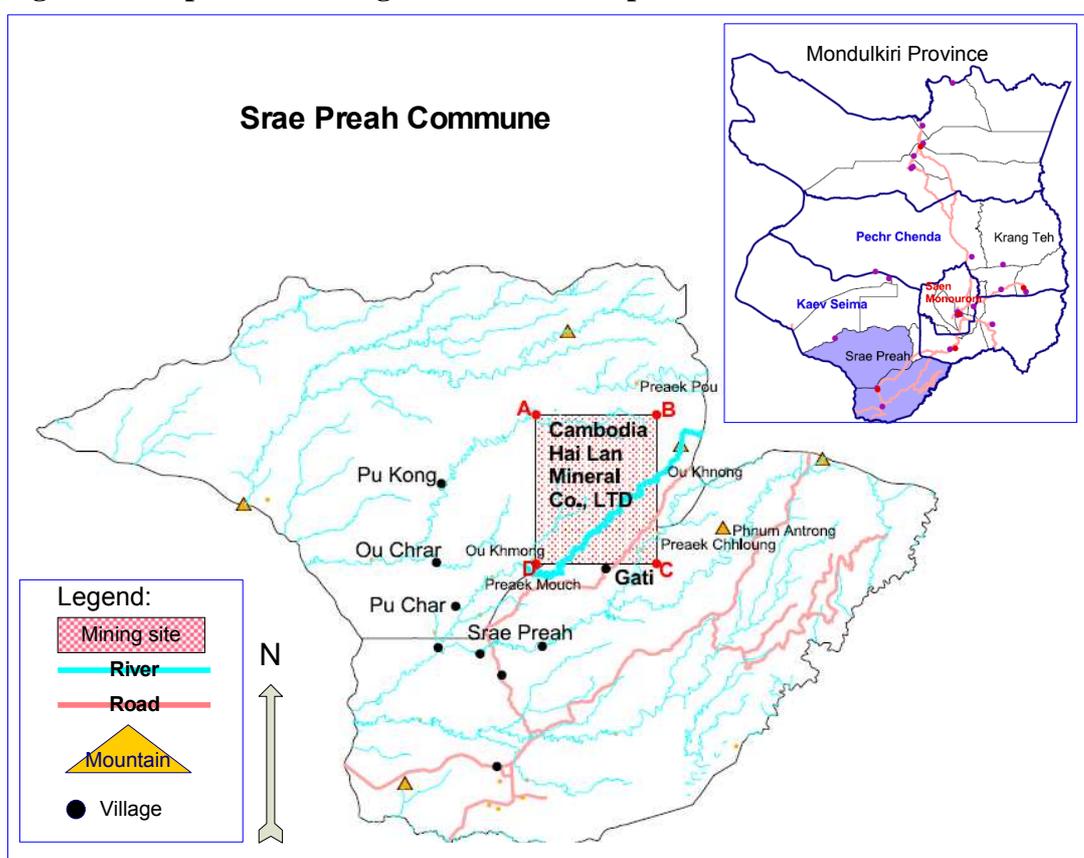
| <b>Village Locations</b>  | <b>Community Concerns about Mining Activities</b>  |
|---|--|
| Pou Chhop village<br>Pou Antreng village<br>Pou Les village<br>(Dak Dam commune<br>O’Raing district)              | Consultation taking place only with village elders, village and commune chiefs and not with villagers<br>Drilling undertaken along the road<br>Animals falling into holes<br>Loss of sacred land   |
| Pou Rapeth village<br>Tram Kack village<br>Krang Tes village<br>(Krang Tes commune<br>Pechreada district)         | Company consultation taking place only with former commune chief, district governor and provincial governor<br>Loss of resin trees, wild animals, and non-timber forest resources important for income generation<br>Water pollution<br>Loss of marketplace<br>Loss of land  |
| Bou Sra village<br>La Mes village<br>Pou Cha village<br>Pou Lu village<br>(Bou Sra commune<br>Pechreada district) | Environmental concerns<br>Loss of mining areas for future generations<br>Loss of sacred land<br>Increased incidents of disease and death<br>Loss of resources for future generations   |
| Pou Taing 1 village<br>Pou Taing 2 village<br>Pou Taing 4 village<br>(Rom Nea commune<br>Pechreada district)      | Consultation taking place only with village elders, village and commune chiefs and not with villagers  |
| Gati village<br>(Sre Preah commune<br>Keo Seima district)   | Consultation taking place only with village elders, village and commune chiefs and not with villagers<br>Loss of non-timber forest resources, especially resin trees<br>Loss of wild animals<br>Environmental hazards such as water pollution<br>Animals falling into holes  |
| O’Clor village (Me Sam area)<br>(Chung Plas commune<br>Keo Seima district)  | Growth and expansion of the mining camp<br>Villagers forced to sell land under threat that it would be mined anyway<br>Loss of farm land, rice fields, and ability to raise animals<br>Loss of livelihoods<br>Adverse effects on human health and well being<br>Deaths from accidents in mining holes<br>Environmental degradation |
| O Kvav village (O Kvav area)<br>(Chung Plas commune<br>Keo Seima district)  | Use of chemicals to process gold very harmful to health and environment<br>Loss of farm land, rice fields and ability to raise animals<br>Loss of livelihoods  |
| Ke Neat village<br>Nong Kelich village<br>(Nong Kelich commune<br>Koh Neak district)                              | Consultation only with local authorities<br>Loss of farmland, rice fields, and grazing land<br>Loss of forests<br>Loss of housing  |

Source: Pearl Beaumont, *Extractive Industry Mining Study, Social and Environmental Impacts, Ratanakiri & Mondulkiri*, Phnom Penh, Development and Partnership in Action (DPA), July 2008.

## Mining Expansion in Gati Village

Considered a spirit forest by the Bunong people the gold deposit in Gati village lies along the O'Knong stream about four kilometers from the settlement area (Figure 5). As a sacred site the *prey meas* or forest of gold was never cleared for shifting cultivation, although the Bunong people frequently gathered forest products, fished, and hunted wildlife in the area. In the mid 1990s an itinerant Khmer prospector who had worked in the Memong mines arrived in the village and started to pan for gold along the O'Knong stream. His success, spread by word of mouth at the gold markets, led other Khmer migrant miners to come to the area to try their luck. These independent Khmer miners built shelters at the mining site and lived and worked alone or with their wives and children. Several Bunong villagers joined in the individual mining efforts as a way to earn cash to supplement their upland farm cultivation.

**Figure 5. Map of Gati Village and Hai Lan Exploration Area in Srae Preah Commune**



Initially the Khmer miners used mostly hand tools such as shovels and hoes they bought locally. With these tools the miners would dig shallow open pits no more than a half a meter deep and then sluice and pan the ore for gold. The Khmer miners worked alone or with their families or in teams where they dug pits and divided the gold recovered into equal shares. The area produced high quantities of gold and Khmer miners with access to capital bought equipment and machines for digging, pumping and sluicing. These more wealthy miners then began to hire laborers to process the higher volumes of ore that they were able to extract and produce.

By 1998 about 100 Khmer migrants both independent miners and hired laborers were prospecting for gold in the area along the O'Knong stream. This large population of miners attracted food and beverages sellers as well as local police seeking unofficial tax payments. The growth of independent mining in the area had, however, reached its peak and was now headed into a downturn. The huge influx of miners combined with the exhaustion of accessible surface gold made prospecting in the area unprofitable. Wealthy miners were not earning enough to pay for costs of hired labor and fuel. Similarly independent miners processed only one or two *hun* (one *hun* = 0.375 gram) per day and sometimes worked several days without recovering any gold. The number of Khmer miners working in the Gati area rapidly diminished. Some people claimed that the miners also left because the work was too dangerous or because they ran a high risk of malaria infection.

### ***Mining Exploration of the Korean Company***

In 1999 representatives from a Korean mining company came to Gati village with a Khmer translator to talk with the village chief and elders. The Korean visitors explained that they had obtained a license valid for two years to explore gold in the area of the O'Knong stream. They did not specify the exact dimensions of the permit granted. The Korean miners were careful to establish good relationships with the Gati villagers. The Bunong villagers responded positively to the outsiders and after several meetings the indigenous leaders allowed the Korean miners and their Khmer workers to take up residence in the village. The company then built a 10 meter longhouse for their workers and installed a generator that supplied electricity to the village.

During the early stages of exploration the Korean company officials regularly visited the village and work at the mine site proceeded without interruption. Workers dug open pits, filled bags with samples of gold ore, and drove them away for testing. Several Bunong villagers worked for the Korean company at the mine site for 10,000 riels (US\$ 2.50) per day. Then suddenly after the first few months of intense activity the presence of the Koreans and even the Khmer workers became more sporadic. In succeeding months the miners spent only a few days at the mine area or did not come at all. There was talk that one of the company officials had contracted a disease and died. But this was never confirmed. After one year the mining operations of the Korean company in Gati village abruptly ceased.

### ***Mining Operations of the Hai Lan Company<sup>67</sup>***

In 2006 representatives from the Chinese Hai Lan Mining company came to Gati village to collect samples of gold ore at the mining site. Unlike the Korean miners they did not meet with the elders or village authorities to explain their purpose. For about one year small numbers of Chinese miners came in and out of the mine area a few times to gather ore samples without provoking a response from the Bunong villagers. However in 2007 when the Chinese company staff came to the mine site with a truckload of workers and equipment, the Bunong villages stopped them from proceeding.<sup>68</sup> The Chinese miners informed them that they had a license from the government to explore gold in the area. When the Bunong villagers challenged this

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<sup>67</sup> In August 2010 the researchers learned that the Hai Lan concession had been transferred to a Vietnamese company but no further details have been forthcoming.

<sup>68</sup> In 1998 Gati villagers protested against the Samling Logging Concession's felling of their resin trees by seizing their chainsaws and bringing them to the district center. See McAndrew, John P., Mam Sambath, Hong Kimly, and Ly Bunthai, *Indigenous Adaptation to a Decline in Natural Resources: The Experience of Two Phnong Communities in Northeast Cambodia*, Phnom Penh, CIDSE, September 2003.

with the local government authorities they learned that the authorization had come from the national level and that they had no choice but to accommodate the mining operations of the company.

Initially the Chinese miners rented a house in the village proper and built a makeshift longhouse in front for their Khmer workers. But relations between these miners and the Bunong villagers were always uneasy. After about a year the miners moved out of the village proper into accommodations they had built for themselves at the mine site. Early on the Chinese company had hired several Bunong villagers to dig the open pits to retrieve the gold ore. These indigenous workers all stopped after one month complaining that they had worked “like machines.” Similarly many Khmer laborers found the work too difficult and left.

In November 2008 the Chinese company trucked in more than 60 Khmer workers and armed guards. They also brought in heavy equipment such as bulldozer, back hoe, rock crusher machine, and generator. With this heavy equipment the company was able to dig much deeper open pits: two to three meters in depth, five meters in length, and one meter in breadth. The machines enabled the company to double the amount of gold ore that they were able to extract. The company also improved the road into the mining site to make transportation easier. At the end of the dry season in April 2009 the bulldozer and back hoe were taken out of the mining area for repair and only a small labor force remained at the site.

In April 2009 the Hai Lan Company informed the Bunong people at a meeting in Gati village that the company would expand its exploration activity from the present 20 square kilometer area to the full 80 square kilometer area covered by its license. This meant that the company’s exploration activities would now extend beyond Gati village into Pou Ya, Pou Kong and Ochra villages. The company also announced that it would likely apply for an exploitation license in the near future.

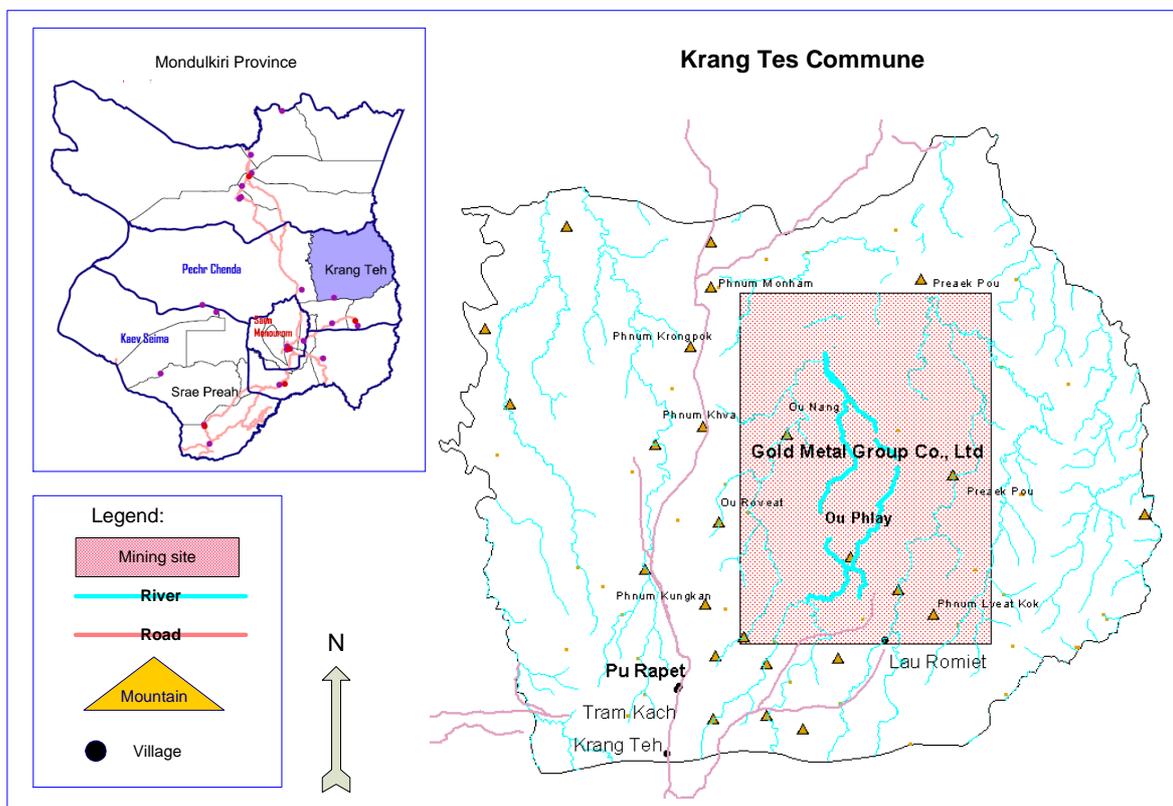
### **Mining Expansion in Pou Rapeth Village**

Known also as *prey meas* or forest of gold the highland area along the O’Phlai stream about 20 kilometers distant from Pou Rapeth village in Krang Tes commune contains rich deposits of gold and gemstones (Figure 6). While the Bunong people indigenous to the area collected stones at the site they relied mainly on shifting cultivation, fishing and gathering forest products to support their livelihoods. Gold mining along the O’Phlai stream did not start in earnest until the mid 1980s when ethnic Khmer and Lao migrant miners moved into the area. Some of these miners stayed at the mine site while others rented houses in Pou Rapeth village. At that time the independent migrant miners numbered about 30 people. In addition about 10 Bunong villagers took up mining to supplement their more traditional livelihood activities. For the most part gold mining in the forested area was limited to the dry seasons from November to March.

Initially prospecting along the O’Phlai stream was done mainly by individual miners and their families. A common practice was also for three to four miners to dig open pits together and share the gold produced equally among themselves. The miners used traditional tools such as hoes and shovels to clear the areas and dig the pits. Some pits were dug deep and miners suffered injuries from falling into the holes. The miners had no way of knowing whether a pit would or would not produce substantial quantities of gold and therefore the returns on the work were rather uneven; at times prospectors struck it big and at times earned practically nothing.

The uncertainties of traditional independent mining meant that the number of miners along the O'Phlai stream remained rather steady through the 1990s. It was not until the turn of the century with the advent of more advanced equipment and techniques that the next influx of miners occurred.

**Figure 6. Map of Pou Rapeth Village and Gold Metal Exploration Area in Krang Tes Commune**



Starting in 2000 migrant miners arrived in large numbers in Pou Rapeth village. Khmer migrants from Kampong Cham, Svay Rieng and Kratie provinces had come to Mondulkiri province to join in the gold rush and had learned about the O'Phlai gold deposit by word of mouth. At the same time wealthy Khmer miners introduced new gold processing techniques to the area which were able to recover more gold from the ore and increase profits. Some miners in the area rented the machines and equipment from the owners to process their own ore, other miners just sold their gold ore to the machinery owners. Very quickly at the start of the new millennium, the number of migrant miners in the O'Phlai area reached 100 people.

Bunong people from Pou Rapeth village took renewed interest in mining activities. Some indigenous villagers worked as hired laborers for the wealthy Khmer miners and earned 7,000 riels per day whatever the quantities of the gold produced. Others worked together in teams of four to five persons digging an open pit together for four or five days. After processing the ore team members could earn 3 to 4 *chi* of gold each (one *chi* = 3.75 grams). One Bunong villager claimed that he occasionally recovered 10 *chi* from this work in four or five days. But higher gold recovery resulted in environmental degradation. The advanced gold processing techniques added highly toxic pollutants to the O'Phlai stream.

By the mid 2000s exaggerated claims of gold recovery at the O'Phlai mining site had increased the number of migrant miners in the area to at least 500 people. This created a demand for food and beverage sellers and soon these enterprises were thriving. At the same time the rapid growth of the migrant miners at the site together with the exhaustion of accessible surface gold deposits signaled a downturn for the independent miners. Rather than risk malaria by going deeper into forested areas Khmer miners started to leave the area. By 2006 artisanal mining for gold and gemstones along the O'Phlai stream had reached a peak and was in decline.

### ***Mining Operations of the Gold Metal Group Company***

In 2006 the Vietnamese Gold Metal Group Company exercised exclusive rights over the gold deposit area along the O'Phlai stream several kilometers from Pou Rapeth village. As a consequence all of the Khmer migrant and Bunong miners were forced to leave the site. The company then fenced off a one square kilometer area and built a mining camp inside this property. The camp shelters the company's Vietnamese workers and heavy equipment. Company officials have little contact with the commune authorities in Krang Tes or with village leaders in Pou Rapeth and have never called a public meeting to inform the indigenous people of their activities. While Bunong people still fish, hunt and gather forest products along the O'Phlai stream they have to walk around the mining camp or risk confrontation by the armed guards. The Bunong villagers are concerned that inside the camp the company is processing ore with chemicals that will pollute the stream and adversely affect fish and wildlife. Villagers also complain that the company's trucks have destroyed the main access road built with commune funds.

In 2006 the Gold Metal Group Company was granted a license to explore 204 square kilometers in the O'Phlai area of Pechreada district. In 2008 this license was extended for another two years with the area reduced to 173 square kilometers. In addition in 2006 the company was granted a license to explore 158 square kilometers of the Phnom Ngort area in Pechreada district. The director of the Gold Metal Group Company is a French Cambodian married to a Vietnamese business woman. While the company currently operates on its own it will seek partnerships with others once it determines the feasibility of its operations and obtains a license for exploitation.



## **Indigenous Peoples' Rights and Mining Operations**

Large-scale mining exploration in Mondulkiri province takes place not only in designated protected areas; it likewise occurs in the ancestral homelands of the Bunong indigenous people. This raises the question of indigenous peoples' rights over their lands and natural resources and the imperative of the State to recognize and respect these rights. This section begins with a discussion of the international conventions which protect indigenous peoples' rights and their relevance to an emerging framework for responsible mining. Crucially, indigenous peoples have the right of free, prior and informed consent over mining operations which affect their territories and livelihoods. The right of community consent also makes good business sense. These arguments are examined in the context of the current Cambodian legal framework and applied to actual situations taking place in the study villages.

### **Indigenous Rights Enshrined in International Conventions**

International human rights conventions protect the rights of the individual, and indigenous people enjoy the full range of personal rights under law. However, indigenous peoples have distinct and unique cultures, which require the recognition of specific collective rights for their survival as human groups. Indigenous peoples have rights to their lands, territories and resources; to maintain their cultures and distinct identities; and to self-government and self-determination. To be realized in any meaningful way these rights must be affirmed collectively. This has led the United Nations and its agencies to develop a separate body of international instruments which acknowledge and enshrine the collective rights of indigenous peoples.<sup>69</sup>

The General Assembly adoption of the *United Nations Declaration on the Rights of Indigenous Peoples* on 13 September 2007 marks a historic occasion for the recognition and protection of indigenous rights. The Declaration recognizes indigenous peoples' rights to self-determination; to decide their own development priorities; to control their lands, territories, and resources; to have free, prior and informed consent over the development, use and exploitation of mineral resources; and to have redress for the misuse of these resources (Box 1). Indigenous peoples are granted special protection over their lands, territories, and resources because their relationships with these assets define integral aspects of their lives and culture: spirituality, social organization, food security, economy, and health. The indigenous right to ownership and control over lands and territories ensures that natural resources are disposed of freely and requires that relations with outsiders be consent based.<sup>70</sup>

*Convention (No.169) Concerning Indigenous and Tribal Peoples* adopted on 27 June 1989 by the International Labour Organization (ILO) establishes an important legally binding precedent for the recognition and protection of indigenous peoples' rights. This Convention likewise upholds the rights of indigenous peoples to decide their own development priorities, to own and control lands, and to participate in the use and management of the natural resources on these lands. The Convention also requires Government parties to guarantee protection of indigenous

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<sup>69</sup> United Nations Development Group Guidelines on Indigenous Peoples' Issues, February 2008.

<sup>70</sup> Miranda et al, *Framework for Responsible Mining*.

rights of ownership and possession of land and resources and to consult indigenous groups prior to undertaking or permitting programs of mineral exploration or exploitation. Indigenous peoples have the right to participate in the benefits of mineral exploitation and to receive compensation for damages resulting from this exploitation (Box 2).

**Box 1. Excerpts from the *United Nations Declaration on the Rights of Indigenous Peoples* adopted by the General Assembly on 13 September 2007**

**Article 3**

Indigenous people have the right to self-determination.

**Article 26**

Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

States shall give legal recognition and protection to these lands, territories and resources.

**Article 28**

Indigenous peoples have the right to redress ... for the lands, territories and resources which they have traditionally owned ... and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

**Article 32**

Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

States shall consult and cooperate in good faith with the indigenous peoples ... to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

**Box 2. Excerpts from *Convention (No.169) Concerning Indigenous and Tribal Peoples* adopted by the ILO on 27 June 1989**

**Article 7**

The peoples concerned shall have the right to decide their own priorities for the process of development ... and the lands they occupy or otherwise use, and to exercise control ... over their own economic, social and cultural development.

**Article 14**

The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized.

Governments shall ... identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.

**Article 15**

The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.

In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples ... before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands.

The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

Pursuant to the *United Nations International Convention on the Elimination of All Forms of Racial Discrimination* adopted by the General Assembly on 21 December 1965, State signatories are obliged to recognize, respect and guarantee the right “to own property alone as well as in association with others” and the right to inherit property, without discrimination (Article 5). In its *General Recommendation No. 23 on Indigenous Peoples* made on 18 August 1997 the UN Committee on the Elimination of Racial Discrimination calls on State signatories specifically to “recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return these land and territories.”

Under the *United Nations International Covenant on Economic, Social and Cultural Rights* and the *United Nations International Covenant on Civil and Political Rights* both adopted by General Assembly on 16 December 1966: “All peoples have the right of self-determination” and by virtue of that right “freely determine their political status and freely pursue their economic, social and cultural development.” Thus: “All peoples may ... freely dispose of their natural wealth and resources” and “In no case may a people be deprived of its own means of subsistence” (Articles 1). State signatories guarantee that the rights in these Covenants will be exercised without discrimination or distinction of any kind as to “national or social origin” (Articles 2). State signatories to the *Covenant on Economic, Social and Cultural Rights* also recognize “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions” (Article 11).

## **Indigenous Rights and Responsible Mining**

Mining operations cause environmental and social change wherever they occur. In all mining ventures some disturbance to local habitats and communities is inevitable. This notwithstanding many negative social and environmental impacts could be avoided if companies were held accountable to best practice standards. Stakeholders increasingly have come to acknowledge that company compliance with the laws of countries in which they operate may not be adequate to protect the environment or vulnerable communities. Many stakeholders advocate for, and some mining corporations accept, the need for compliance with international codes, protocols, covenants, declarations, instruments, and customs that protect basic human rights, self-determination, cultural integrity, labor and social rights, and the natural environment. In response to this need NGOs, retailers, investors, insurers, and technical experts in the mining sector are in the process of developing a framework for responsible mining to establish standards for responsible sourcing and investing policies.<sup>71</sup>

Indigenous peoples are increasingly affected by mining activities as companies expand their operations into more remote parts of the globe. Indigenous lands often contain valuable natural resources like minerals and as a consequence indigenous groups are disproportionately affected by mining activities. Earthworks and Oxfam America estimate that half of the gold mined

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<sup>71</sup> This section draws substantially on Miranda et al, *Framework for Responsible Mining*.

between 1995 and 2015 is likely to come from tribal lands.<sup>72</sup> Without respect for their rights, indigenous people frequently become involuntary bearers of risk.

Potential social risks faced by indigenous groups from mining activities include:

- Increased poverty resulting from environmental degradation of farmlands and forests which support subsistence or from a rise in the cost of living brought about by mine workers with higher wages;
- Increased economic inequality between those with jobs at the mine and those without, between men and women with access to these jobs, and between those who are able to capture the spillover effects of the mine and those who are not;
- Destabilized power relations and conflict resulting from the breakdown of traditional social structures and solidarity;
- Economic dependency and ultimate vulnerability as the community reorganizes its economic activities to meet the needs of the mine;
- Militarization as a result of the need to protect the mine from thieves or from local people who oppose it;
- Displacement as a consequence of forced eviction or relocation;
- Conflict arising from the in-migration of outsiders with different values and customs;
- Health risks such as influenza and HIV/AIDS associated with exposure to outsiders;
- High incidence of alcohol and drug use, prostitution, and gambling as local men rapidly accumulate wealth and migrant male miners refuse to accept local social constraints;
- Human rights abuses resulting from the above mentioned militarization, forced relation or sexual violence;
- Loss of livelihood from small-scale mining as companies enforce exclusive mining rights over indigenous land;
- Loss of cultural unity accompanying the destruction of sacred sites;
- Loss of control over community decision making and choices for future development; and
- Breaches in health, safety and labor standards for those who work in the mine.

The framework for responsible mining draws on international human rights law to define state obligations with respect to indigenous peoples and resource extraction on their lands. Minimally, mining should not leave indigenous communities worse off than they were before operations began. Potential social and environmental risks such as those highlighted above must be identified at the start of a project, acknowledged, and discussed in dialogue with indigenous groups. Steps should be taken to minimize risks and these should be backed up with financial guarantees. Legally binding agreements should also be concluded to ensure that tribal communities capture benefits from the mines more broadly.

### **The Indigenous Right to Free, Prior and Informed Consent**

The defining right enshrined in international law that governs responsible mining with indigenous groups is that their free, prior, and informed consent must be obtained as a requirement for the approval of projects affecting their lands and resources. Consent that is free is obtained without coercion or manipulation. Consent that is prior takes place before government authorization or the commencement of company activities. Consent that is

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<sup>72</sup> Earthworks and Oxfam America, *Dirty Metals: Mining, Communities, and the Environment*, 2004 cited in Miranda et al, *Framework for Responsible Mining*.

informed is based on full disclosure of relevant information presented in a way that is understandable and accessible to indigenous communities. Free, prior, and informed consent must be obtained at each stage of mine development and may be withheld before entering a subsequent phase.<sup>73</sup>

Governments often claim that national interests take precedent over the indigenous right of free, prior and informed consent. But indigenous rights experts counter that this principle is a human right and therefore not nullified by claims of sovereignty.<sup>74</sup> Similarly, governments often insist that sub-surface mineral resource rights legally belong to the state. The United Nations Development Group Guidelines on Indigenous Peoples' Issues maintain otherwise: "In the case of state owned sub-surface resources on indigenous peoples' lands, indigenous peoples still have the right to free, prior and informed consent for the exploration and exploitation of those resources and have a right to any benefit-sharing arrangements."<sup>75</sup>

Of note, the Philippines is an example of an Association of South East Asian Nations (ASEAN) country that has adopted laws to recognize and protect the rights of its indigenous people. The Philippine Mining Act (1995) and the Philippine Indigenous Peoples' Rights Act (1997) both support the right of free prior and informed consent for indigenous peoples. The 1995 Philippine mining Law asserts that: "No ancestral land shall be opened for mining operations without the prior consent of the indigenous cultural community concerned." The Philippine Indigenous Peoples' Rights Act (1997) provides for the National Commission on Indigenous Peoples (NCIP) Ancestral Domains Office to "issue, upon the free and prior informed consent of the ICCs/IPs [Indigenous Cultural Communities/Indigenous Peoples] concerned, certification prior to the grant of any license, lease or permit for the exploitation of natural resources affecting the interests of the ICCs/IPs or their ancestral domains and to assist the ICCs/IPs in protecting the territorial integrity of all ancestral domains."

To be sure the primary focus of mining companies remains on obtaining mining licenses from government authorities and on fulfilling the official or unofficial requirements to obtain permits. However, mining companies are increasingly coming to realize that they also require a social license to operate. Mining corporations commonly engage indigenous communities in some type of consultation process and several have established social projects or funds to provide development assistance. Consultations are usually convened to inform communities about the general mining operations and to assure them that they will receive compensation for present damages and obtain substantial benefits in the future. Mining companies rarely enter into consultations with indigenous groups openly acknowledging and respecting their right to withhold consent for the project. Unless community opposition threatens to disrupt the mine operations, companies look to the government granting the permit to secure community assent.<sup>76</sup>

### **The Business Case for Community Consent**

The World Resource Institute (WRI) study *Development Without Conflict: The Business Case for Community Consent* argues that the risks arising from the failure to obtain free prior and

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<sup>73</sup> Miranda et al, *Framework for Responsible Mining*; see also United Nations Development Group Guidelines on Indigenous Peoples' Issues.

<sup>74</sup> Miranda et al, *Framework for Responsible Mining*.

<sup>75</sup> United Nations Development Group Guidelines on Indigenous Peoples' Issues.

<sup>76</sup> Miranda et al, *Framework for Responsible Mining*.

informed community consent are significant and quantifiable, as are the benefits ensuing from serious community consultation.<sup>77</sup> The report enumerates the potential risks related to community opposition as: 1) Increased costs from delays in construction and operation; 2) Reduced demand for project outputs; 3) Reduced access to critical project inputs; 4) Increased costs of mitigating environmental and social impacts; 5) Government intervention to impose fines, revoke permits, or stop operations; and 6) Threats to the project's commercial success or financial viability.

Drawing on four case studies from the Philippines, Thailand, Argentina, and Peru the research recommends six principles for companies to adopt as obligatory procedures to reduce the business risks associated with lack of local community engagement. These six components are:

- *Information.* Affected communities should be provided sufficient information in their own languages on the proposed project and be given sufficient time to review and discuss the information provided to them.
- *Inclusiveness.* All interested community stakeholders should be permitted and encouraged to take part in the process of free prior and informed consent, including those affected indirectly.
- *Dialogue.* Dialogue within the free prior and informed consent process should be formalized, continue throughout the life of a project, and include representatives from local communities and government.
- *Legal recognition.* Free prior and informed consent outcomes should be formally recognized in binding legal agreements.
- *Monitoring and evaluation.* Procedures for independent and appropriate community monitoring should be put in place to ensure that community concerns are addressed throughout the life of the project.
- *Corporate buy-in.* Project proponents should view free prior and informed consent as an inherent and necessary cost of project development.

The authors of the study observe that the process of obtaining free prior and informed community consent works better in countries where the government upholds the principle as a matter of law or policy. They encourage project proponents to work with governments to gain their endorsement and involvement in the community participation and consent process.

## **The Legal Framework of Indigenous Rights in Cambodia**

Cambodia, with 142 other member states, voted to adopt the *United Nations Declaration on the Rights of Indigenous Peoples* on 13 September 2007. Cambodia's vote in favor of this non-binding Declaration marked an important step forward in the country's recognition and commitment to the protection of indigenous peoples' rights. State policies consistent with the Declaration must ensure that mining exploration and exploitation will not infringe on the rights of indigenous people.

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<sup>77</sup> This section draws substantially on Herz, Steven, Antonio La Vina, and Jonathan Sohn, *Development Without Conflict: The Business Case for Community Consent*, World Resources Institute, May 2007. See also Power, Thomas, *Metals Mining and Sustainable Development in Central America: An Assessment of Benefits and Costs*, Oxfam America, 2008.

Cambodia is a signatory to the *United Nations Convention on the Elimination of all Forms of Racial Discrimination* (on 28 November 1983), the *United Nations International Covenant on Economic, Social, and Cultural Rights* (on 26 May 1992), and the *International Covenant on Civil and Political Rights* (also on 26 May 1992). The 1993 *Constitution of the Kingdom of Cambodia* makes the covenants part of the domestic legal framework. As stated in Article 31 the Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women's and children's rights. To date Cambodia has yet to ratify the International Labor Organization (ILO) *Convention (No. 169) Concerning Indigenous and Tribal People*.

Cambodia's *Constitution* has no special provision for indigenous peoples although it does affirm that every Khmer citizen shall be equal before the law, enjoying the same rights, freedom and fulfilling the same obligations regardless of race, color, sex, language, religious belief, political tendency, birth origin, social status, wealth or other status (Article 31). While the notion of 'Khmer citizen' grants citizenship to 'Khmer Leu' (hill tribes) it does so only by linguistically imposing the majority ethnic identity on members of cultural groups who do not share it. Thus the wording of the *Constitution* demonstrates that the Cambodian state is nation-building, diffusing a common societal culture throughout the territory of the state.<sup>78</sup>

The Inter-Ministerial Committee (IMC) for Highland Peoples' Development created by the government in 1994 drafted a *General Policy for Indigenous and Highland Peoples Development* with support from international organizations such as the Asian Development Bank (ADB), the United National Development Programme (UNDP), and ILO. The policy document, which was strongly informed by ILO Convention No. 169, was submitted to the Council of Ministers (COM) in 1997 and discussed in two sessions. The Policy was not endorsed by the COM because it reportedly addressed land and forest rights of indigenous groups, which were not sanctioned by the 1992 Land Law. The IMC was subsequently dissolved and replaced by the Department of Ethnic Minorities (DEMD) in the Ministry of Rural Development (MRD). This department continued to draft a policy paper although another version submitted to the COM in April 2007 was not approved.<sup>79</sup> In April 2009 the COM approved the *National Policy on the Development of Indigenous Peoples*. This Policy upholds the provisions of the *Mining Law* and *Land Law* with respect to mining and the relocation of indigenous people and encourages mining concessionaires to build schools and hospitals in indigenous areas and to provide jobs and training for indigenous people at all levels of the mining industry (Article 10, 4-6).

### **Mining on Land of Indigenous People**

The *Land Law* promulgated on 30 August 2001 provides a legal framework for recognizing the land rights of indigenous groups. The *Land Law* enables indigenous communities to gain collective title to their traditional land defined as residential land, agricultural land, and the land kept in reserve as part of traditional shifting cultivation (Article 25). The *Land Law* furthermore protects the rights of indigenous communities to use and manage their traditional lands, even before their full ownership rights have been formalized through the issuance of a collective

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<sup>78</sup> Ehrentraut, Stefan, "The Theory of Multiculturalism and Cultural Diversity in Cambodia," Potsdam University, 2004.

<sup>79</sup> Andersen, Kirsten Ewers, *Indigenous Communities' Rights to Land and Natural Resources in Cambodia*, World Bank, July 2007.

land title (Article 23). Thus the sale of indigenous land outside the community since the promulgation of the *Land Law* is deemed illegal. NGOs have argued that mineral exploration licenses granted on indigenous lands are unlawful if they inhibit the community's ability to continue to manage the land according to their traditional customs, as protected by Article 23 of the *Land Law*.<sup>80</sup> After the issuance of communal titles the sale of individual and communal land is prohibited, although individuals are free to continue to occupy and use communal land in accordance to their previous practice, and in a way which is consistent with the traditional allocation of use rights on communal land to individuals and families.

Procedural issues to clarify the provisions contained in the *Land Law* for granting collective titles were to be addressed in a Sub-Decree. Despite the auspicious start, the process of drafting and adopting the *Sub-Decree on Procedures of Registration of Land of Indigenous Communities* stalled. In May 2005, an independent legal review announced that the framework for registering indigenous collective titles was largely complete. The review recommended that the Sub-Decree be drafted and adopted even in a simplified form to set out a process for the recognition of indigenous communities as legal entities.<sup>81</sup> But amid increasing rates of indigenous land alienation the government lacked the political will to pass the Sub-Decree and implement communal land titling.<sup>82</sup> A far from satisfactory version of the Sub-Decree was finally adopted on 9 June 2009.

### **Displacement and Compensation to Land Owners**

The *Mining Law* provides that before entering any privately owned land for exploration or mining, the license holder must obtain the written agreement of the private land owner and provide compensation for any inconvenience or damage to the land (Articles 7 and 25). These provisions are consistent with the *Constitution* (Article 44) and the 2001 *Land Law* (Article 5) both of which provide that no one should be deprived of ownership of their land unless it is in the public interest, after payment of fair and just compensation, and in accordance with procedures provided by law.<sup>83</sup> Privately owned land refers to titled plots entered in the land registry. This leaves land owners without legally registered titles, by far the vast majority, with little protection against damages or displacement arising from mining operations. NGOs argue that the rights of legal possessors who meet the conditions of legal possession as set out under the *Land Law* should also be respected.<sup>84</sup> Indigenous communities should be protected too because, as noted above, the *Land Law* recognizes their rights to use and manage traditional lands even before collective titles are granted (Article 23). The *Land Law* further provides that no authority outside the community may acquire any rights to immovable properties belonging to an indigenous community (Article 28). Similarly the *National Policy on the Development of Indigenous Peoples* states that lands of indigenous communities that are collective properties shall not be sold or transferred to any individual or group outside the communities (Article 5,

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<sup>80</sup> "Environmental and Social Impacts of Expansion of the Extractive Industries Sector," November 2008.

<sup>81</sup> Brown, Susie, Katrin Seidel and Todd Sigaty, *Legal Issues Related to Registration of Lands of Indigenous Communities in Cambodia*, GTZ, 2005.

<sup>82</sup> "Environmental and Social Impacts of Expansion of the Extractive Industries Sector," November 2008.

<sup>83</sup> Grimsditch, *Analysis of the Legal Framework Related to Mining in the Kingdom of Cambodia*.

<sup>84</sup> "Environmental and Social Impacts of Expansion of the Extractive Industries Sector," in *NGO Position Papers on Cambodia's Development in 2009-2010 to the 3<sup>rd</sup> Cambodia Development Cooperation Forum, 02-03 June 2010: Monitoring the Implementation of the National Strategic Development Plan and the 2008 CDCF Joint Monitoring Indicators*, Phnom Penh, May 2010. See also Grimsditch, *Analysis of the Legal Framework Related to Mining in the Kingdom of Cambodia*.

7). These provisions notwithstanding, mining companies in Mondulkiri normally act as if their licenses give them exclusive rights over indigenous territories.<sup>85</sup>

## **Engagement of Gati and Pou Rapeth Villagers with Mining Companies**

For centuries the territories surrounding Gati village in Keo Seima district and Pou Rapeth village in Pechreada village have belonged to the Bunong people, a hill tribe whose language and culture sets them apart from the Khmer majority. In 1863 when Cambodia signed the Protectorate Treaty with France, the Bunong in what is now Mondulkiri lived according to their own political and social systems, neither opposing nor obeying Cambodian rule, nor paying tribute to the king. According to Mathieu Guerin in his book entitled *Paysans de la Foret a L'Epoque Coloniale* the French policy was not so much to occupy the forested territories of the northeast, which at the time were considered to have little economic value, as to assert control over them for future development. This proved to be difficult. Sporadic warfare erupted in the early 1900s and lasted for more than two decades. Not until the end of 1935 did the French military and Cambodian militiamen gain control of the region.<sup>86</sup> As a national minority who were involuntarily incorporated into the larger state and who did not participate in the process of state formation the Bunong are considered an indigenous people.<sup>87</sup> This entitles the Bunong people in Gati and Pou Rapeth villages with the right to obtain free prior and informed consent over mining projects affecting their territories. Unfortunately, they have been unable to exercise this right. This section describes the engagement of Bunong people in the mining projects initiated in 2006 by the Cambodia Hai Lan Mineral Company in Gati village, Keo Seima district and by the Gold Metal Group Company in Pou Rapeth village, Pechreada district.

### **The Engagement of Bunong People with the Hai Lan Mining Operations in Gati Village**

In 2006 Chinese miners from the Hai Lan Company came to Gati village with unknown Cambodian officials. The visitors went straight to the existing mining site, dug a hole in the ground, took samples of gold ore, and drove away. Since the group did not meet with the elders or local authorities the villagers did not know for certain what specific company or government agency they represented or what their intentions were in the area. Over the next several months the Chinese miners returned to dig holes and take ore samples and the villagers learned from their Khmer interpreters that they represented a Chinese mining company. Since the miners were small in number and came to Gati village infrequently the Bunong did not engage with them in any direct way.

In 2007 the Chinese miners returned to Gati village with a truckload of workers and equipment to support their exploration activities. They were also accompanied by armed police and soldiers. This surprised and upset the Bunong villagers. A group of about 30 villagers including elders and authorities stopped the trucks from entering the area. They wanted to know why the company had not informed them of their activities and questioned their intentions in the village. One Bunong leader spoke the sentiments of all: "This is our village and this land belongs to us. But you come in and go out as if it belongs to you." The Chinese miners replied that they had a

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<sup>85</sup> See Kinetz and Yun, "Mining Companies, Villagers Vie for Gold in Mondulkiri Province."

<sup>86</sup> Vachon, Michelle, "The Past Rediscovered," *The Cambodia Daily*, 6-7 June 2009.

<sup>87</sup> Kymlicka, Will, *Contemporary Political Philosophy*, Oxford University Press, 2002 cited in Ehrentraut, "The Theory of Multiculturalism and Cultural Diversity in Cambodia."

license granted by the government to explore gold in the area. The armed escorts spoke in an intimidating manner to the villagers.

The Gati villagers then approached the commune, district and even provincial authorities requesting them to intervene and stop the activities of the Chinese mining company. But the villagers were told that the mining permit had been authorized at the national level and that there was little they could do to rescind it. Better, they were told, to soften their stance and negotiate with the company. Some NGOs working in Gati also favored this approach and encouraged the villagers to request company support for local development projects. Unable to generate outside support in their resistance to the mining company, the Bunong villagers experienced a sense of powerlessness over the control and use of their own natural resources.

In 2007 the Chinese miners rented a house in Gati village from a Khmer/Bunong family and built a makeshift longhouse in front to provide shelter for the Khmer laborers hired to work at the mine. The presence of the Khmer migrant laborers in the village was a source of discomfort to the Bunong residents. At night the Khmer miners drank rice wine and played Karaoke songs disturbing the peace of their neighbors. Disturbances often erupted among Khmer workers and Bunong youth, and parents were anxious about the security of their daughters. For several months the tension was palpable until the miners moved out of the village proper and took up residence at the mine site.

In 2008 the Chinese miners returned at the start of the dry season with Khmer workers and a contingent of armed police and soldiers. The company widened the access road to the mining area and brought in heavy equipment such as bulldozer, backhoe, rock crusher machine, and generator. Exploration efforts were now in full operation. Since the mine site was considered a spirit forest the villagers had never cut down trees in the area. The company's clearing of the forest with their bulldozer and backhoe again raised the concern among the Bunong villagers that mining activities would anger the spirits and adversely affect the well-being of the indigenous residents. Once again the Bunong elders approached the miners and asked them to sponsor a traditional ceremony to appease the spirits. It took several months for the company to agree but in early 2009 the miners provided the funds for the elders to conduct the traditional ritual. A water buffalo was slaughtered and offered to the spirits with rice wine. Many Bunong villagers participated in the event with the miners.

By early 2009 all of the miners had taken up residence in the shelters built at the mine site. This reduced tensions in the village proper but did not mitigate the Bunong's concerns about encroachment on their upland farms, destruction of their resin tress, or ultimate exclusion from forest areas. While the company assured the Gati villagers that they would have access to forest areas covering by the mining license, the Bunong people simply did not trust the word of the Chinese mining company.

### ***NGOs Facilitate Villager Engagement with the Hai Lan Company***

Several NGO programs are being implemented in Gati village. The Wildlife Conservation Society (WCS) works in partnership with the Forest Administration to protect the Seima Biodiversity Conservation Area which encompasses Gati village and the mine site. Development and Partnership in Action (DPA) implements an integrated community development (ICD) program in Srae Preah commune which includes Gati village. The Cambodian Rural Development Team (CRDT) supports agricultural improvement projects in

Gati village. These and other NGOs in the village have connections to district and provincial government authorities and to district and provincial officials in government departments. Their links to government and their presence in Gati village has helped to foster an information sharing process between the Hai Lan Company and the Bunong villagers.

WCS monitors the activities of the mining company closely and shares their information with the local community. WCS strongly opposes the company's plan to build a new road into the mine site on the grounds that it would accelerate the deforestation of the conservation area. DPA supports a resin cooperative in Gati village and encourages the Bunong to engage in talks with the mining company. DPA sponsored the trip of one Bunong villager to the Philippines to learn how local communities there have dealt with issues arising from mining operations. Both WCS and DPA raise awareness about indigenous peoples' rights and facilitate meetings between the company and Gati villagers.

In May 2009 DPA convened a half-day consultation in Keo Seima district with representatives of the Hai Lan mining company; the Provincial Department of Industry, Mines, and Energy; NGO staff from Phnom Penh and Monduliri; and Bunong representatives from Srae Preah commune including Gati village. Members of the ADI research team seized the opportunity to attend the meeting. During the question and answer sessions the villagers raised the issue of the open pits left unfilled by the company after the gold ore had been dug out. These open pits now covered by overgrowth posed a danger to both animals and humans in the mine area. The Bunong villagers asked the mining company to take action on this.

The villagers further explained that they had planted cash crops such as cashew and cassava on their upland farms and that they stood to lose income if these farms were destroyed. The villagers likewise raised concerns about the cutting of their resin trees in the mine area. The Chinese representatives of the mining company were keen to have the government officials respond to the questions. The villagers were assured that they would receive compensation for any losses sustained to their crops and resin trees although at this stage the exact amounts of compensation could not be determined. This response did not satisfy the villagers. One Bunong leader lamented: "We do not want compensation for our lands and resources. We want to keep our lands for the next generation." His plea went unheard. The company representatives and the government officials were not there to seek community consent. Rather they were intent on establishing the State's right to ownership of mineral resources under law and on assuring the Bunong villagers that they would receive adequate compensation for any damages incurred. The Bunong's right to obtain free prior and informed consent was never acknowledged.

### **The Engagement of Bunong People with the Gold Metal Mining Operations in Pou Rapeth Village**

In 2006 Gold Metal Group Company representatives entered the mining area at the O'Phlai stream reportedly with police escorts and informed the Khmer migrants and Bunong miners that they would have to leave the site as the company now had an exclusive license to explore minerals in the area. Given the official permit granted to the company and the presence of the armed police the independent miners withdrew from the area without incident. Nonetheless the forced displacement of the artisanal miners from the area upset many Bunong villagers. "Our ancestors discovered these minerals and kept them for the next generations. Now the company controls the area and forbids us from mining as before," complained one Bunong miner.

The Gold Metal Group Company, owned by Vietnamese interests, soon fenced off a one kilometer square area in the *prey meas* or forest of gold and built a mining camp inside it. The camp houses the company's workers and heavy equipment such as trucks and bulldozers. The company also widened the access road to the camp. While the road and camp were under construction the company made an offering to the spirit forests and invited the commune and village chiefs to attend. They did not invite the ordinary Bunong villagers to participate. Moreover the celebration was conducted in a Vietnamese way with offerings of roasted pigs, chicken and ducks and drinking beer. Understandably many of the Bunong villagers were angry that they were not invited to the gathering and that the spirit forests were not respected with the traditional Bunong offerings of water buffalo and rice wine. Subsequently the company made an attempt to appease the Pou Rapeth villagers by conducting a second ritual ceremony and offering water buffalo and rice wine. About 20 Bunong elders and people were invited to participate in this ceremony, although the initial offense remained for many.

Bunong engagement with the mining company suffered from a breakdown in indigenous solidarity which occurred some years earlier when land conflicts arose within the community over the establishment of a rubber plantation in Pou Rapeth village. Some Bunong villagers resisted the coming of the rubber plantation while several Bunong leaders collaborated with the company and benefited from their association with it. This undermined the people's trust in their indigenous leaders and elders and made it difficult for the Bunong to speak in one voice. Bunong resistance to, or support for, the mining company appeared to fall along the same lines as their stance towards the rubber plantation.

The Gold Metal Group Company started actual mining operations in 2007. All of the miners hired by the company are Vietnamese. Only the police and soldiers guarding the camp are Khmer. The Vietnamese workers live inside the camp site and have little contact with the Pou Rapeth villagers. Local food and beverage sellers are not allowed to enter the camp to do business. The company supplies the workers with food and water brought in from the provincial town of Sen Monorum about 50 kilometers away.

Interviews with the Bunong commune chief of Krang Tes and the Bunong village chief of Pou Rapeth revealed that they had little knowledge or information about the operations of the Gold Metal Group Company. The company had not informed the local authorities or the Bunong elders about the specifics of their exploration activities. With little access to Gold Metal officials the local authorities felt powerless to convene public consultation meetings between the company and the Bunong villagers about the mining operations. As one Bunong villager observed, "The company's pockets are big and they have a lot of money. They do not need to take us into consideration." An official at the Province Department of Industry, Mines and Energy indicated that the mining license was granted at the central levels of government. On its part the Gold Metal Group Company in a telephone interview maintained that it has involved Province Staff of the Department of Industry, Mines, and Energy and local authorities in visits to the mine site.

## **Livelihood Security of Gati and Pou Rapeth Villagers Undermined by Mineral Exploration and Exploitation**

Cambodia has ratified the nonbinding *United Nations Declaration on the Rights of Indigenous Peoples* which asserts that: “Indigenous Peoples have the right ... to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities” (Article 20). The Declaration further provides that: “Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources” (Article 29). Cambodia has also ratified the *United Nations International Covenant on Economic, Social and Cultural Rights* and the *United Nations International Covenant on Civil and Political Rights* which affirm that: “In no case may a people be deprived of its own means of subsistence” (Articles 1). Cambodia has likewise approved the *National Policy on the Development of Indigenous Peoples* which states that all indigenous people have to be free from extreme poverty and hunger. This section examines the livelihood security, guaranteed by these rights, of the Bunong People in Gati and Pou Rapeth villages and considers how it may be undermined by mineral exploration and exploitation.

### **Ranking of Livelihood Sources**

Bunong households in Gati and Pou Rapeth villages ranked the cultivation of crops and resin tapping with other forest pursuits as their most important livelihood sources in the past year. This underscores the importance of natural resources in household livelihoods and the potential threat posed by the proposed expansion of mining activities. In Gati village resin tapping with other forest pursuits was ranked as the most important livelihood source while in Pou Rapeth village the cultivation of crops was considered as the most important. By comparison, in Gati village the cultivation of crops was ranked a close second most important livelihood source while in Pou Rapeth resin tapping with other forest pursuits was ranked the second most important.<sup>88</sup> All sample households in Gati and Pou Rapeth villages were involved in forest enterprises (resin tapping, gathering food and products from the forest, and/or the hunting and trapping of wildlife). All but one of the sample households in the two villages were engaged in the cultivation of crops.

The raising of livestock and/or poultry was ranked as the third most important livelihood source in both villages. Water buffaloes were raised and sold for use in traditional rituals. Raising pigs and chickens provided important supplementary income. Fishing supplied needed protein but was not ranked high as a livelihood source in either village. Less than two-thirds of the households in both villages engaged in wage work and/or trade, although as a livelihood source it was ranked higher in Pou Rapeth village than Gati village (Table 1). Located about 25

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<sup>88</sup> A detailed 2002/2003 study on household income sources in Srae Praeh commune including Gati village revealed that forest products, hunting and trapping constituted a 49.5 per cent share of household income, while cultivating crops comprised a 24.0 per cent share of household income. See McAndrew et al, *Indigenous Adaptation to a Decline in Natural Resources*.

kilometers from the provincial town of Sen Monorum, Pou Rapeth afforded more opportunities for wage work and/or trade.

| <b>Table 1. Ranking of Importance of Livelihood Sources in Past Year<br/>by Indigenous Households, Gati and Pou Rapeth Villages,<br/>May 2009</b>  |                        |                   |
|--|------------------------|-------------------|
|  | <b>Gati</b>            | <b>Pou Rapeth</b> |
|  | <b>Average ranking</b> |                   |
| Resin tapping, gathering food and products from the forest, hunting and trapping   | 1.6<br>(n=32)          | 2.3<br>(n=39)     |
| Cultivating crops (rice, cashews, coffee, vegetables and fruits)   | 1.7<br>(n=32)          | 1.4<br>(n=38)     |
| Raising pigs, chickens, ducks, cows and buffaloes  | 3.0<br>(n=31)          | 3.0<br>(n=39)     |
| Fishing  | 4.0<br>(n=30)          | 4.1<br>(n=33)     |
| Wage work (including mining and agricultural labor), making and selling goods, buying and selling goods  | 4.4<br>(n=20)          | 3.4<br>(n=24)     |
| N=number of households engaged in the livelihood source. Total number of household cases in Gati was 32 and in Pou Rapeth 39. Respondents ranked their livelihood sources from 1 to 5 as to the order of the most important. |                        |                   |

## **Diversity of Livelihood Strategies**

Indigenous household livelihoods in Gati and Pou Rapeth villages were sustained by a diversity of productive pursuits (Table 2). All sample households in Gati and all but two sample households in Pou Rapeth were involved in upland or *chamcar* cultivation. Households cultivated upland rice, vegetables and fruits. Large numbers of indigenous households in Gati cultivated cashew, although far fewer in Pou Rapeth. Paddy rice was cultivated by less than one-half of the Pou Rapeth households and by less than one-fourth of the Gati households. Raising chickens and pigs were popular in both villages, and ducks more so in Pou Rapeth. Raising cows and/or buffaloes was undertaken by about one-half of the Gati households and two-thirds of the Pou Rapeth households. Almost all Gati households, and more than half of the Pou Rapeth households, were engaged in resin tapping. A large majority of households in both villages gathered forest vegetables, fruits and other products. Hunting and trapping wildlife was pursued by fewer households. All this revealed the prominence of forest resources in the livelihoods of the indigenous households. Fishing was also prevalent in the two villages. By contrast, neither the making and selling of goods nor the buying and selling of goods were taken up much in either village. Similarly, wage work was pursued by less than one-half of the sample households in each village.

## **Crop Cultivation**

In Gati village all 32 sample households cultivated upland farms in the past year on average of 1.7 hectares. Of these, 26 households cultivated upland rice with an average harvest of 378 kilograms. Similarly, 31 households cultivated cashew and harvested an average 353 kilograms. Gati households as well cultivated more than 20 kinds of vegetables and fruits on their upland farms in the past year such as pumpkin, corn, lemon grass, sponge gourd, chili, eggplant, papaya, banana, turmeric, cucumber, pineapple, bottle gourd, taro, and sugar cane.

Only 7 of the Gati 32 sample households cultivated paddy rice in the past year on average farms of one hectare and with average harvests of 484 kilograms.

| <b>Table 2. Livelihood Strategies in Past Year by Indigenous Households, Gati and Pou Rapeth Villages, May 2009</b> |             |                   |
|---|-------------|-------------------|
|   | <b>Gati</b> | <b>Pou Rapeth</b> |
| <b>Total number of household cases</b>  | <b>32</b>   | <b>39</b>         |
| Upland rice cultivation   | 26          | 34                |
| Cashew cultivation  | 31          | 7                 |
| Vegetable and fruit cultivation   | 30          | 37                |
| Wet land rice cultivation   | 7           | 18                |
| Chicken raising   | 30          | 37                |
| Pig raising   | 27          | 36                |
| Cow and/or buffalo raising  | 15          | 28                |
| Duck raising  | 3           | 19                |
| Resin tapping   | 31          | 24                |
| Gathering vegetables and fruit from the forest  | 30          | 36                |
| Gathering products (other than resin) from the forest   | 30          | 37                |
| Hunting or trapping wildlife  | 12          | 21                |
| Fishing   | 30          | 33                |
| Making and selling goods  | 9           | 10                |
| Buying and selling goods  | 2           | 3                 |
| Wage work   | 13          | 19                |

In Pou Rapeth village 37 of 39 sample households cultivated upland farms in the past year on average of one hectare. Of these, 34 households cultivated upland rice with an average harvest of 340 kilograms. Only 7 households cultivated cashew. Pou Rapeth households also cultivated more than 20 kinds of vegetables and fruits on their upland farms in the past year such as bottle gourd, corn, sponge gourd, chili, pumpkin, eggplant, cucumber, papaya, lemon grass, turmeric, banana, and sweet potato. A total 18 of the 39 sample households cultivated paddy rice in the past year on average farms of 1.5 hectares and with average harvests of 1,016 kilograms.

### **Gathering resin, vegetables, fruits and other forest products**

In Gati village 31 of the 32 sample households were engaged in resin tapping in the past year. Of these, 30 households reported a mean 65 resin tress tapped. Similarly, 30 of the 32 sample households gathered vegetables and fruits from the forest in the past year such as bamboo shoots, mushrooms, green leafy vegetables, *plai phnhiev*, wild mango, small mango like fruit, wild rambutan, Eugenia, *toal prey*, and wild banana. Moreover, 30 of the 32 sample households gathered forest products in the past year such as fuel wood, thatch/grass, rattan, poles, bamboo, vines, medicinal plants, timber, and honey.

In Pou Rapeth village 24 of the 39 sample households were involved in resin tapping in the past year. Of these, 23 households reported a mean 243 resin tress tapped. Meanwhile, 36 of the 39 sample households gathered vegetables and fruits from the forest in the past year such as bamboo shoots, mushrooms, wild mango, Eugenia, green leafy vegetable, *toal prey*, and small mango like fruit. In addition, 37 of the 39 sample households gathered forest products in the past year such as fuel wood, thatch/grass, rattan, bamboo, honey, vines, medicinal plants, poles, and timber.

## **Hunting and Trapping**

In Gati village 12 of the 32 sample households hunted and trapped wildlife in the past year, mostly frogs, small turtles, monitor lizards, jungle fowl, wild boar, and barking deer. By comparison, in Pou Rapeth village 21 of the 39 sample households hunted and trapped wildlife in the past year, primarily frogs, small turtles, monitor lizards, hare, wild boar, porcupine, jungle fowl, barking deer, civet cat, snakes, and mouse deer. The Bunong households in both villages usually hunted with dogs and traditional equipment.

## **Fishing**

In Gati village 30 of the 32 sample households fished in the past year, catching mostly *trei chanva*, catfish, chevron snakehead, tire track eel, *trei chalang*, *trei kagnchos*, and smith barb. By contrast, in Pou Rapeth village 33 of the 39 sample households fished in the past year, and caught mostly *trei chanva*, *trei chalang*, catfish, chevron snakehead, *trei kagnchos*, tire track eel, and smith barb.

## **Producing, Trading, and Wage Work**

In Gati village, only 9 of the 32 sample households earned in the past year from producing and selling goods such as winnows, rice wine, gourds, and baskets. Similarly, in Gati only 2 of the 32 sample households earned as traders, buying mostly goods in the market for sale to others in the village. In Gati 13 of the 32 sample households earned from wage work in the past year mostly as agricultural laborers, construction workers, or NGO workers. Little of this work required migrating out of the village for more than two weeks at a time.

In Pou Rapeth village, only 10 of the 39 sample households earned in the past year from making and selling goods such as rice wine, winnows and baskets. In Pou Rapeth only 3 of the 39 sample households earned as traders although they were involved in buying and selling diverse goods such as cows, buffaloes, pigs, fish, honey, wildlife, and market products. In Pou Rapeth village 19 of the 39 sample households had earned from wage work in the past year, by far the largest number as agricultural laborers. Others had earned as NGO and government workers. Again little of this work demanded leaving the village for more than two weeks at a time.

## **Livelihood Security at Subsistence Levels**

Overall the livelihood circumstances that emerge in Gati and Pou Rapeth villages are of indigenous people with food security albeit at subsistence levels. Food security in Gati village is largely dependent on upland farming with cash from cashew production and resin tapping. By contrast, food security in Pou Rapeth village is largely dependent on upland and wetland farming with cash from resin tapping and wage earnings. Data not shown reveals differences in both villages among households in hectares of upland and wetland farmed, in kilograms of upland rice, paddy rice and cashews produced, and in the number of resin trees tapped. This indicates some heterogeneity among village residents with varying income levels. While detailed income data was not gathered and computed for this study, research undertaken in Mondulkiri province reveals poverty levels at much higher rates than those of the national average for rural households.<sup>89</sup> While their diversity of livelihood strategies provides the

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<sup>89</sup> See McAndrew et al, *Indigenous Adaptation to a Decline in Natural Resources*.

indigenous villagers with a measure of food security, their reliance on land and forest resources makes them highly vulnerable to corporate incursions that take place in the natural environment.<sup>90</sup>

### **Impact of Mining Activities on Village Livelihoods**

To date, mining exploration in Gati and Pou Rapeth villages has not had serious impacts on the livelihood security of indigenous households. Villagers are still able to cultivate their upland and wetland farms, raise livestock and poultry, gather resin and other products from the forest, hunt and trap, fish, and engage in wage work. Given the present stage of mining development in the two villages this is not surprising. The paper presented by Roderick G. Eggert at the International Conference on Mining, and cited in the Introduction of this study, indicates that the effects of grassroots and advanced exploration are usually moderate compared to deposit and mine development and the start of mine operations.<sup>91</sup> Eggert explains that advance exploration may involve road building, drilling and trenching, and the presence of outside mine workers all of which have occurred in varying degrees at the mine sites in both villages.

Nevertheless, once mineral exploration at either or both sites proceeds to deposit and mine development and the start of mineral exploitation then more serious social and environmental impacts will inevitably occur. These may entail the displacement of the indigenous villagers from their communal lands and forest domains, an influx of Khmer workers, encroachment on residential areas, greater reliance on the monetized economy, and a legacy of environmental degradation. To date, no planning has taken place with either Gati or Pou Rapeth villagers to deal with these anticipated consequences of full mine development.

Meanwhile, even at the present stage of mineral exploration, the Gati and Pou Rapeth households surveyed report adverse impacts of mining activities on their livelihoods. The impacts most frequently cited were the reduction of wildlife in hunting and trapping, the reduction of fish catches, the reduction of forest products, vegetables and fruits gathered, and the destruction of resin trees (Table 3). The incidence of adverse impacts reported is higher in Gati than in Pou Rapeth because the mine site is closer to the village proper and the mine operations started earlier.

| <b>Table 3. Impact of Company Mining Activities on Village Livelihoods Since 2006, Gati and Pou Rapeth Villages, May 2009</b> |             |                   |
|---|-------------|-------------------|
|   | <b>Gati</b> | <b>Pou Rapeth</b> |
| <b>Total number of household cases</b>  | <b>32</b>   | <b>39</b>         |
| Hunting and trapping of wildlife reduced  | 20          | 13                |
| Catching fish reduced   | 18          | 10                |
| Gathering of forest products (other than resin) reduced   | 17          | 8                 |
| Gathering of forest vegetables and fruits reduced   | 13          | 8                 |
| Resin trees destroyed   | 12          | 7                 |
| Communal land encroached upon   | 9           | 10                |
| Upland or <i>chamcar</i> taken over   | 6           | 2                 |
| Cows/buffaloes injured or killed  | 5           | 6                 |

<sup>90</sup> For example, in Gati village residents lost 26 per cent of their resin trees mostly in 1998 and 1999 as a result of the operations of the Samling Logging Concession. See Evans, Tom D., Hout Piseth, Phet Phaktra and Hang Mary, *A Study of Resin-Tapping and Livelihoods in Southern Mondulhiri, Cambodia, with Implications for Conservation and Forest Management*, Phnom Penh, Wildlife Conservation Society, 2003.

<sup>91</sup> Eggert, "Mineral Exploration and Development: Risk and Reward."

## Mining as an Alternative Livelihood Source

Corporate miners, while acknowledging that mine development brings about a decline in traditional livelihood pursuits, contend that mining provides opportunities for alternative, more remunerative, work for local residents. This has yet to occur at either study site. In Gati village only 5 of the 32 sample households had worked directly for the Chinese Hai Lan company since operations started in 2006. At the time of the research none of the 5 still worked with the company and only one intended to resume their work again. Of the 27 sample households who had never worked for the mining company only 3 expressed an interest in doing so in the future.

Aside from direct work with the company, 4 of the 32 sample households in Gati village had worked indirectly since 2006 to support the activities of the company by selling food or goods to the miners or by doing other work for them. Three of these 4 households intended to be involved in such work again. Of the 28 sample households who had never been involved in indirect support work, 6 expressed an interest to do so in the future.

In Pou Rapeth village only one of the 39 sample households had worked directly for the Vietnamese Gold Metal company since activities began in 2006. At the time of the research this household no longer worked with the company, although it planned to resume work again. Of the 38 sample households who had never worked for the mining company, 11 households expressed an interest in doing so in the future.

Aside from direct work with the company, one of the 39 sample household in Pou Rapeth had worked indirectly since 2006 to support the activities of the company by selling food or goods to the miners or by doing other work for them. This household intended to be involved in such work again. Of the 38 sample households who had never been involved in indirect support work, 7 expressed an interest to do so in the future.

These data reveal that the Hai Lan and Gold Metal mining companies have not provided substantial alternative work opportunities to date for the indigenous households in the respective villages of Gati and Pou Rapeth. In both villages only a few of the indigenous people had been directly employed by the mining companies and all of them had stopped working by the time of the research. Similarly, few indigenous villagers were involved in indirect work to support the mining activities such as selling food and other goods to the miners. In Gati, most of the villagers did not want to work in mining activities because they found it too difficult. In Pou Rapeth, some indigenous villagers wanted to work with Vietnamese mining company but they were not allowed to do so.

In response to the initial findings of this study, the Director of the Department of Industry, Mines and Energy in Mondulkiri province insisted that the villagers will eventually benefit from the mining. "All of the companies are exploring for minerals, not in the stage of mining, so they do not need many laborers yet," he argued. "I believe that it will directly and indirectly benefit local residents when those companies begin mining."<sup>92</sup> Will full mine exploitation create an abundance of jobs for the local residents? Kuntala Lahiri-Dutt cautioned about making this assumption in her paper presented at the International Conference on Mining.

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<sup>92</sup> Nguon Sovan, "No boon from mines: survey," *The Phnom Penh Post*, 11 September 2009.

While recognizing that the expansion of mining creates jobs, she asserted: “It is important, however, to remember that modern, capital-intensive, mechanized mining offers fewer jobs per tonnage of production than before. In modern mining, productivity depends on the use of machines and big scale technology, consequently employment opportunities tend to decline.”<sup>93</sup> The debate about prospective jobs for local residents notwithstanding, Cambodia’s commitment to the subsistence rights of the indigenous people in Gati and Pou Rapeth villages demands that their livelihood security be protected and guaranteed at all stages of the mineral exploration and exploitation processes.

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<sup>93</sup> Lahiri-Dutt, “The People Dimension of Mining.”



## Conclusions

Cambodia has achieved a resource breakthrough in recent years according to the country's Deputy Prime Minister and the rapid growth of the mining industry supports his claim. Since 2006 the Ministry of Industry, Mines and Energy (MIME) had awarded more than 100 exploration licenses across large areas of the country. In Monduliri province, before the withdrawal of BHP Billiton and Mitsubishi Corporation in 2009, 15 mining companies held mining licenses to explore 4,473 square kilometers or 31 percent of province's 14,288 square kilometer area. While mining operations promise to generate substantial revenues for the government, the disruptive nature of mining expansion poses potential threats to the integrity of the environment and to the well-being of local communities, especially indigenous groups. This concern was posed as a question in the Introduction of the present study: Will the rapid growth of the mining industry in Cambodia contribute to the broad-based economic development of the country or will benefits be captured by foreign owners and local elites at the expense of biodiversity sanctuaries and the displacement of local inhabitants? The answer to this question is crucial to the cultural survival of indigenous groups like the Bunong people who reside in the study sites of Gati and Pou Rapeth villages in Monduliri's Keo Seima and Pechreada districts respectively. Although it is beyond the scope of this study to provide a definitive answer to this query the research seeks to contribute to the debate by raising awareness about issues related to the expansion of mining activities and indigenous people's rights in Monduliri province.

In May 2010 a landmark International Mining Conference supported by UNDP in Phnom Penh provided a forum on responsible mining for Cambodia government officials, corporate mining representatives, mining consultants, and academics. Collectively the presentations made at the Conference provided a comprehensive and detailed framework for the pursuit of responsible mining in Cambodia. Speeches made at the Conference by Cambodia's Prime Minister, H.E. Hun Sen, the Minister of MIME, H.E. Suy Sem, and the Director General of MIME's Department of Mineral Resources, H.E. Sok Leng demonstrated clearly their cogent understanding of the issues raised and their commitment as articulated by H.E. Suy Sem "to eliminate all inherent difficulties."

### **Deficiencies in the 2001 *Mining Law***

The government's promulgation of the 2001 *Mining Law* expedited investment in Cambodia's mining sector. However, the *Mining Law* as it exists suffers several deficiencies. The criteria for awarding mining concessions lack clarity and the legal framework for issuing mining licenses is still incomplete. Much like the confidentiality that surrounds the granting of mining concessions and licenses, fee payments made in connection with such agreements have similarly raised concerns about the lack of disclosure and transparency. These questions will persist until the government develops a system which makes full disclosure of all revenues from the mining industry. Ironically, lack of transparency and public accountability in the mining sector is built into the legal framework. The *Mining Law* ensures the confidentiality of all documents and information and this poses serious obstacles for independent monitoring of the industry. By contrast, the 1996 *Environment Law* which also covers mining activities promotes transparency and accountability.

## **Indigenous Peoples' Rights**

Cambodia, with 142 other member states, voted to adopt the *United Nations Declaration on the Rights of Indigenous Peoples* on 13 September 2007. Cambodia's vote in favor of this non-binding Declaration marked an important step forward in the country's recognition and commitment to the protection of indigenous peoples' rights. The Declaration recognizes indigenous peoples' rights to self-determination; to decide their own development priorities; to control their lands, territories, and resources; to have free, prior and informed consent over the development, use and exploitation of mineral resources; and to have redress for the misuse of these resources. The defining right enshrined in international law that governs responsible mining with indigenous groups is that their free, prior, and informed consent must be obtained as a requirement for the approval of projects affecting their lands and resources.

The 2001 *Land Law* provides a legal framework for recognizing the land rights of indigenous groups. The *Land Law* enables indigenous communities to gain collective title to their traditional land defined as residential land, agricultural land, and the land kept in reserve as part of traditional shifting cultivation. The *Land Law* furthermore protects the rights of indigenous communities to use and manage their traditional lands, even before their full ownership rights have been formalized through the issuance of a collective land title. Thus the sale of indigenous land outside the community since the promulgation of the *Land Law* is deemed illegal. NGOs have argued that mineral exploration licenses granted on indigenous lands are unlawful if they inhibit the community's ability to continue to manage the land according to their traditional customs. Procedural issues to clarify the provisions contained in the *Land Law* for granting collective titles were to be addressed in a Sub-Decree. Despite the auspicious start, the process of drafting and adopting the *Sub-Decree on Procedures of Registration of Land of Indigenous Communities* stalled. A far from satisfactory version of the Sub-Decree was finally adopted in June 2009.

### **Mining Expansion in Gati and Pou Rapeth Villages**

In the study villages of Gati and Pou Rapeth the Bunong people consider the gold deposit areas as sacred sites. Mining began when migrant Khmer miners came to Gati in the mid 1990s and to Pou Rapeth in the mid 1980s. The subsequent influx of Khmer miners including those with more advanced equipment and techniques led to the rapid exhaustion of surface gold deposits and by the early to mid 2000s the era of independent artisanal mining was in decline in both villages.

In 2006 the Chinese owned Hai Lan Company started exploration activities in Gati village. In 2007 when Chinese company staff came to the mine site with a truckload of workers and equipment, the Bunong villages stopped them from proceeding. The Chinese miners informed them that they had a license from the government to explore gold in the area. When the Bunong villagers challenged this with the local government authorities they learned that the authorization had come from the national level and that they had no choice but to accommodate the company's mining operations.

In 2006 the Vietnamese owned Gold Metal Group Company initiated mining operations in Pou Rapeth village. The company exercised exclusive rights over the gold deposit area and all the independent miners were forced to leave the site. The company then fenced off a one square

kilometer area and built a mining camp inside this property. The camp shelters the company's Vietnamese workers and heavy equipment. Company officials have little contact with the commune authorities in Krang Tes or with village leaders in Pou Rapeth and have never called a public meeting to inform the indigenous people about their activities.

Bunong people in Gati and Pou Rapeth did not give their free, prior and informed consent to mining operations in their villages. Some Gati villagers were informed about the mining activities of the Hai Lan Mineral Company but only after it came and started operations in the village. NGOs such as Wildlife Conservation Society (WCS) and Development and Partnership in Action (DPA) with programs in Gati have helped to raise awareness about indigenous people's rights and to facilitate meetings between the company and village residents. Generally Pou Rapeth villagers were not informed about the mining activities of the Gold Metal Company before or after it started operations in the village. Unlike in Gati village, Pou Rapeth authorities and villagers had no relationships with the company and could not access the mining area.

### **Mining and Livelihood Security in Gati and Pou Rapeth Villages**

Bunong households in Gati and Pou Rapeth villages ranked the cultivation of crops and resin tapping with other forest pursuits as their most important livelihood sources in the past year. This underscores the importance of natural resources in household livelihoods and the potential threat posed by the proposed expansion of mining activities. Overall the livelihood circumstances that emerge in Gati and Pou Rapeth villages are of indigenous people with food security albeit at subsistence levels. To date, mining exploration in Gati and Pou Rapeth villages has not had serious impacts on the livelihood security of indigenous households. Given the present stage of mining development in the two villages this is not surprising. However, as mineral exploration proceeds from grassroots and advanced stages to deposit and mine development stages and the start of mine operations, more serious social and environmental impacts will be inevitable.

Meanwhile, even at this stage of mineral exploration, the households surveyed in the two villages report adverse impacts of mining activities on their livelihoods such as the reduction of wildlife in hunting and trapping, the reduction of fish catches, the reduction of forest products, vegetables and fruits gathered, and the destruction of resin trees. At the same time mining has not provided opportunities for alternative, more remunerative, work for local residents. Cambodia's commitment to the subsistence rights of the indigenous people in Gati and Pou Rapeth villages demands that their livelihood security be protected and guaranteed at all stages of the mineral exploration and exploitation processes.

### **Challenges Facing the Promotion of Responsible Mining in Cambodia**

Our research results indicate clearly that the cornerstone of responsible mining in Cambodia is a rigorously implemented regulatory framework.<sup>94</sup> The western mining companies who make up the majority of the membership in Cambodian Association of Mining and Exploration Companies (CAMEC) endorse this principle although they currently represent only a small portion of all the corporate miners in Cambodia. At the same time, Chinese, Vietnamese, and Korean companies who are apparently less concerned about advocating for reform and obtaining a social license to operate will adhere to standards that are strictly enforced by the

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<sup>94</sup> This section draws on discussions that took place during a seminar on socially responsible mining convened by the Heinrich Boll Foundation on 21 October 2010 in Phnom Penh.

government. This in turn requires the government to exercise its political will. Recognition that a strong regulatory environment attracts investments may encourage the government to move more forcefully in this direction. Civil society can work to change practice through activism and protest and policy through advocacy and lobbying. Civil society networks such as Cambodians for Resource Revenue Transparency (CRRT) and the Extractive Industry Social and Environmental Network (EISEI) represent important constituencies although their membership needs to build critical mass for them to exert significant leverage on the development of the mining industry in Cambodia. A model that may have relevance for Cambodia is the multi-stakeholder Responsible Mining Initiative in Mongolia presented at the International Conference on Mining and described in the Introduction of this report. Here representatives from government, the mining industry, and civil society work in concert as part of a multi-stakeholder entity to promote and implement responsible mining.

At the local level our case study of Gati and Pou Rapeth villages in Mondulakiri province reveals the difficulties confronting indigenous communities in Mondulakiri province as they engage with corporate mining expansion in their ancestral homelands. Clearly the existing 2001 *Mining Law* does not provide an adequate legal framework for dealing responsibly with mining in indigenous areas. A comprehensive national legal framework must be developed and enforced before mining companies embark on full scale mineral exploration and exploitation in hill tribe areas. In Mondulakiri province no less than the cultural survival of the Bunong indigenous people is at stake. Recognition and protection of indigenous peoples' rights as a preeminent principle of responsible mining can no longer be deterred.

## Policy Recommendations

Based on the empirical research findings and on the imperative of Cambodia to protect and guarantee the rights of its indigenous citizens and to pursue and develop principles and policies of responsible mining, the researchers offer the following recommendations.

- The 2001 *Law on Mineral Resource Management and Exploitation* should be amended to incorporate the principle of free, prior, and informed consent of indigenous peoples.
- The legal framework guiding the mining industry in Cambodia should be fully revised based on international standards of responsible mining and the principles of the Extractive Industries Transparency Initiative (EITI).
- A moratorium on the granting of exploration and exploitation licenses should be enforced in indigenous areas of Monduliri Province until the legal framework is completed.
- Mining activities in Gati and Pou Rapeth villages should be suspended until communal land titling is completed.
- The Cambodian Association of Mining and Exploration Companies (CAMEC), Cambodians for Resource Revenue Transparency (CRRT), the Extractive Industry Social and Environmental Network (EISEI) and the Government should explore ways of establishing a multi-stakeholder Responsible Mining Initiative similar to the one launched in Mongolia.

## **Appendix 1. ADI Trainees and Team Researchers**

### **ADI Trainee Researchers**

|               |  |
|---------------|--|
| Keo Tai       | Community Economic Development (CED)                       |
| Keo Samnang   | Cambodian Rural Development Team (CRDT)                    |
| Seang Chhouk  | Sor Sor Troung (SST)                                       |
| Sam Sarin     | Cambodian Human Rights and Development Association (ADHOC) |
| Nhean Sopho   | My Village (MVI)   |
| Thy Try       | Development and Partnership in Action (DPA)                |
| Em Sopheak    | Community Legal Education Center (CLEC)                    |
| Pen Ratana    | Heinrich Boll Foundation (HBF)                             |
| Heng Soheanh  | World Vision Cambodia (WVC)                                |
| Than Bunly    | Fisheries Action Coalition Team (FACT)                     |
| Chhay Kimheak | Culture and Environment Preservation Association (CEPA)    |
| Chan Ramy     | Youth Resource Development Programme (YRDP)                |
| Phan Sinet    | Cambodia Community Foundation Network (CCFiN)              |
| Chun Chhean   | Non Timber Forest Projects (NTFP)                          |
| Lam Suot      | Non Timber Forest Projects (NTFP)                          |

### **ADI Team Researchers**

|                |  |
|----------------|--|
| Hak Sochanny   | Cooperation Committee for Cambodia/ADI Project |
| Chen Sochoeun  | Cooperation Committee for Cambodia/ADI Project |
| Houn Kalyan    | Cooperation Committee for Cambodia/ADI Project |
| So Dane        | Cooperation Committee for Cambodia/ADI Project |
| Khuon Chandore | Cooperation Committee for Cambodia/ADI Project |
| John McAndrew  | Cooperation Committee for Cambodia/ADI Project |

## ADI Research Studies

([www.ccc-cambodia.org](http://www.ccc-cambodia.org))

- Older-Age People Supporting HIV/AIDS Children and Household Relatives on Antiretroviral Treatment: Case Study of Six Communes of Banteay Meanchay Province, Cambodia, July 2010
- Access to Natural Resources: Case Studies of Cambodian Hill Tribes, *In Land and Cultural Survival: Communal Land Rights of Indigenous Peoples in Asia*, Asian Development Bank, 2009.
- Negotiating Tenure Conflict in Indigenous Villages of Ratanakiri Province, *In Emerging Trends, Challenges and Innovations*, CBNRM LI Volume II, 2009.
- Mobilizing Villagers to Stop Illegal Fishing along the Srepok River in Ratanakiri Province, *In Emerging Trends, Challenges and Innovations*, CBNRM LI Volume II, 2009.
- Selling to Survive: Market Vendors in Kampong Cham Town Making their Living in the Informal Economy, November 2008.
- Land Titling and Poverty Reduction: A Study of Two *Sangkat* in Prey Nup District, Sihanoukville Municipality, November 2007.
- Understanding Social Capital in Response to Floods and Droughts: A Study of Five Villages in Two Ecological Zones of Kompong Thom Province, August 2007
- Growing Old in the Former Khmer Rouge Stronghold of Pailin, November 2006
- The Challenge of Living with Disability in Rural Cambodia: A Study of Mobility Impaired People in the Social Setting of Prey Veng District, Prey Veng Province, March 2006
- Impact of the Garment Industry on Rural Livelihoods: Lessons from Prey Veng Garment Workers and Rural Households, October 2005
- Domestic Violence in a Rapidly Growing Border Settlement: A Study of Two Villages in Poipet Commune, Banteay Meanchey Province, May 2005
- Indigenous Response to Depletion in Natural Resources: A Study of Two Stieng Villages in Snoul District Kratie Province, September 2004
- Understanding Drug Use as a Social Issue: A View from Three Villages on the Outskirts of Battambang Town, April 2004

- Experiences of Commune Councils in Promoting Participatory Local Governance: Case Studies from Five Communes, March 2004
- Labour Migration to Thailand and the Thai-Cambodian Border: Recent Trends in Four Villages of Battambang Province, December 2003
- The Impact of the Tourism Industry in Siem Reap on the People Who live in Angkor Park, December 2002
- Small-Scale Land Distribution in Cambodia: Lessons from Three Case Studies, November 2001

## Vision:

A strong and capable civil society, cooperating and responsive to Cambodia's development challenges.

## Mission:

As a professional association of non-government organisations in Cambodia, the Cooperation Committee of Cambodia provides high quality services to civil society and influences Cambodia's development partners with our collective voice.

## Values:

-  Integrity
-  Cooperation
-  Responsiveness
-  Quality

