

Essay on the
Lack of Transparency in the Extractive Industry Sector in Cambodia
On the occasion of the Resource Summit in Berlin
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I. Introduction

Extractive Industries (EI) like oil, gas and mining resources are becoming a main topic of global discussions and concerns of people in the resource rich countries and international communities. People are curious to know and understand and want to be involved in this complicated sector. Due to poor governance in managing these resources effectively for the benefit of the current and the future generation, some countries in Latin America and Africa have experienced a phenomenon that economists refer to as the “Resource Curse”.

“Resource Curse” is the term that is used to describe the failure of resource rich countries to benefit from their natural resource wealth.¹ Many countries rich in natural resources are poorer and more miserable than countries that are less well endowed. A study of OPEC members from 1965-1998 showed that their gross national product per capita decreased by an average of 1.3 percent per year, whereas non oil developing countries as a whole grew by an average of 2.2 percent over the same period. Studies show that the greater the dependence on oil and mineral resources, the worse the growth performance. Countries dependent on oil export revenues not only have performed worse than their resource poor counterparts, they have performed far worse than they should have, given their revenue streams.² They mostly end up with corruption and civil wars.

Similarly, some Southeast Asian governments are not transparent and don't reveal to their people how much revenue they have received from natural resources and what impacts these projects have had on the community and indigenous people. In countries like Cambodia, Laos, Thailand and Myanmar, mining projects are usually closely linked to land issues or land grabbing through Economic Land Concession (ELC) where communities have suffered from the mining operation. As people were mostly not consulted about the project, they lost their rights to land, access to natural resources and other basic rights.

Learning from different countries' experiences, will the government of a resource rich country change its leadership in managing this sector better? The answer will be “No”. To maintain political power, many governments of the resource rich countries use revenue from EI to maintain their power. To achieve Resource Blessing, action has to start with political will of the government.

In order to escape from the Resource Curse and help resource rich countries manage their revenues well, different international and global standards have been established, for example, the Extractive Industries Transparency Initiative (EITI) and the Dodd-Frank Act that look at transparency of revenues and expenses of EI and Free Prior Informed Consent (FPIC) that focus on engaging

¹ Macartan Humphreys, Jeffrey D. Sachs & Joseph E. Stiglitz, “Escaping the Resource Curse” 2007

² Open Society Institute, “Covering Oil, A Reporter's Guide to Energy and Development” 2005

community people in decision making processes related to projects. The **Equator Principles** manage environmental and social risks in project finance transactions. However, some governments of resource rich countries do not support this standards or principles.

II. Overview of The Extractive Industry Sector in Cambodia

Oil and Gas Resources

In order to alleviate poverty and speed up economic growth in Cambodia, the Royal Government of Cambodia (RGC) **decided to extract oil, gas and mining resource** for development. Cambodian territory is divided into **six Offshore Blocks** (A to F) and **nineteen Onshore Blocks** (I to XIX). There are also **four areas in the “Overlapping Claims Area”** (OCA) between Cambodia and Thailand.

RGC granted licenses to **Chevron Overseas Petroleum (Cambodia) and Moeco Cambodia** in 2002 to explore oil and gas resources offshore in block A located in Preah Sihanouk province. **All offshore blocks are currently in the exploration stage except for Block A that is the most advanced.** There are also a number of blocks located in the overlapping claims area (OCA) and the resource estimated up to **11 trillion cubic feet of natural gas** and an **underdetermined quantity of oil**. Despite the uncertainty regarding the stock of resources, a number of companies have expressed an interest in exploration of the OCA. Negotiations between Cambodia and Thailand over the OCA have not been fruitful and no final deal has been made, apart from postponing for future negotiation.

Regarding **onshore blocks**, RGC has awarded **licenses for exploration of three blocks (12, 15 and 17)** to international oil companies; **Medco and JHL Petroleum, PetroVietnam and The Japanese Oil, Gas and Metals National Corporation (JOGMEC)**. Early 2012, a survey for exploration was conducted by Japanese companies, JOGMEC and MOECO, in the three provinces of **Kompong Thom, Preah Vihear and Siem Reap.**

Mining Resources

RGC has granted **209 mining concessions** to **foreign companies** who are mostly **Chinese and Vietnamese** to explore gold, bauxite, copper, titanium and iron. **Most of the mining concessions are in the exploration process.** So far, there is no realistic estimation available of each of this underground resource except an announcement made by **Australia’s Renaissance Minerals (Cambodia) Ltd.** in May 2013. The Australia’s Renaissance Minerals (Cambodia) Ltd. acquired **gold mining resource from Australian OZ Minerals Ltd.** last year and it estimated that **O’kvau area** in Cambodia’s Monduliri province has **gold deposits of up to 1.2 million ounces**, much higher than its 2011 estimate of 720,000 ounces.

The concessions **mostly cover the northeastern provinces** of **Monduliri, Ratakiri, Steung Streng and Kratie** where there is a lot of gold and bauxite but also where a lot indigenous people (IP) are living. Many IP communities were **severely impacted by mining companies** as their activities overlapped with their **agricultural land, sacred places and forests** where indigenous collect their non-timber forest products. As a result, IP lost their income because they are no longer allowed to

collect any of the non-timber forest products and to use their agricultural land. The mining companies often do not consult the IP community before commencing operation. Besides, some case studies of environmental impact of mining activities on IP community have been documented and a survey on the quality of water in some mining areas was conducted. This base line information will be useful to compare when companies start their exploitation.

Relevant Legal Frameworks on Extractive Industries

RGC is eager to receive revenues from EI resources while relevant laws and legal frameworks are not in place. Chevron has postponed extracting oil and gas to 2016 while many relevant legal frameworks on oil and gas are being drafted. The relevant legal frameworks that are being drafted, amended and consulted with the public are as follows:

No	Type of Legal Frameworks	Status	Responsible Institutions
1	Fiscal Regime Law for both petroleum and hard mineral	Drafted	Ministry of Economy and Finance (MEF)
2	Petroleum Taxation Law	Drafted	Ministry of Economy and Finance (MEF)
3	Environmental Impact Assessment Law	Drafted and relevant stakeholders consulted	Ministry of Environment (MoE)
4	Environmental, Social and Health Impact Assessment and Management Plan Guidelines for Oil and Gas Exploration and Development	Drafted and relevant stakeholders consulted	Ministry of Environment (MoE)
5	Environmental, Social and Health Impact Assessment and Management Plan Guidelines for Mining	Drafted and relevant stakeholders consulted	Ministry of Environment (MoE)
6	Sub-decree of Production Sharing Agreement	Drafted	Ministry of Economy and Finance (MEF)
7	Law on Mineral Resource Management and Exploration	Amended	Ministry of Industry, Mines and Energy (MIME)
8	Petroleum Guideline	Drafted and relevant stakeholders consulted	Cambodia National Petroleum Authority (CNPA)
9	Petroleum Law	Drafted	Cambodia National Petroleum Authority (CNPA)

The Extractive Industry sector is a sensitive issue in Cambodia. The oil and gas sector is under direct management of the Prime Minister and Deputy Prime Minister. Information related to progress, revenue collection, contracts, licenses, or relevant draft laws are not disclosed and there generally is no consultation of the public and civil society organizations (CSOs).

Without public consultation and transparency, CSOs have concerns about the government's capability to manage this sector in a transparent and accountable manner that benefits all Cambodians. The Cambodian people have the right to know and decide how the government will manage this sector.

III. Strategies to Ensure Good Governance in The Extractive Industry in Cambodia

Over the period 2010-2012, the level of budget transparency in Cambodia has stagnated, as reflected by its Open Budget Index score of 15 in 2012. This score indicates that the RGC provides the public with scant information on central government's budget and financial activities in the course of the budget year. This makes it difficult for citizens to hold their government accountable for its management of the public's monies, including the collection of revenues and the use of public funds, and to influence policies to improve the services they receive, thereby affecting the quality of their lives.³ It was suggested that opportunities for public participation in the budget process and Cambodia's legislature and supreme audit institution should be strengthened, while its neighbors, except for Myanmar, have moderate to strong legislatures, and strong supreme audit institutions.

The Corruption Perception Index (CPI) measures the perceived levels of public sector corruption in countries worldwide. Based on this result, Cambodia ranks 157 out of 174 countries which means that the public institutions need to be more transparent, and powerful officials more accountable.⁴

Reflecting on successful and failed case studies of resource rich countries and other studies, Cambodian people have concerns how revenues from natural resources could be managed for the benefit of the current and the next generation while the capability of the government institutions is weak. Through several years of awareness raising by different civil society organizations, we have seen some changes in government in terms of being more transparent in information sharing and constructive engagement in legal consultation workshops on the EI sector. However, more information on revenues and expenses, contracts and public consultation with communities is still critical. Through national and regional networks, Cambodian CSOs who are working on educational and advocacy work on EI have suggested the RGC to sign up to the global principles and strengthen existing mechanisms to ensure effective management of the EI sector.

Singing Up to Extractives Industries Transparency Initiative (EITI)

3.5 billion people live in resource-rich countries.⁵ Still, many are not seeing the benefits from the extraction of their natural resources. Too often poor governance leaves citizens suffering from conflict and corruption. EITI is established as a global standard that promotes transparency and better governance of natural resources in the resource rich countries.

³ NGO forum, Open Budget Survey 2012, http://www.ngoforum.org.kh/docs/publications/NBP_Open_Budget_Brief_Eng.pdf

⁴ Transparency International, Corruption Perceptions Index 2012, http://www.transparency.org/cpi2012/in_detail

⁵ EITI, <http://eiti.org/eiti>

Cambodian CSOs have been involved in the EITI conferences and other activities to learn and understand this principle of the EITI since 2006. Even though the EITI only focuses on revenue collection of EI resources, it somehow helps the public to access reports on how much the government receives from the oil, gas and mining sectors and it creates a multi-stakeholder opportunity where CSOs can sit and work to together with the government and EI companies.

Besides national advocacy, Cambodian CSOs also work with partners in other ASEAN countries to influence ASEAN leaders to sign up to the EITI after the Indonesian government took a leadership role in joining EITI which was followed by the Philippines. Both countries are now candidates of the EITI. There have been a lot of reforms in some of the ASEAN countries regarding higher transparency towards their people on the EI sector. We congratulate the governments of Myanmar that decided to join the EITI in June 2013 and Vietnam that conducted a survey on “EITI and Vietnam’s Ability to Participate in the Initiative” in March 2012 respectively.

Australia had begun to pilot the EITI implementation in some of its provinces and Colombia, Ukraine and the United States have started preparation for its implementation. In early June 2013, UK’s Prime Minister, David Cameron, and the President of France, François Hollande, announced that France and the United Kingdom will implement the EITI. Many mining and oil companies as well as developed and developing countries support the EITI. This indicates a new world trend that the government of each resource rich country needs to be transparent and accountable to all their people.

In 2007, RGC announced that Cambodia would not join the EITI but will study the principles of the EITI. Earlier 2013, the response of RGC was that Cambodia does not receive revenues from these resources yet, so if Cambodia will join the EITI, Cambodia will lose thousands of dollars for membership fees.

Whatever reasons given, CSOs still believe that the EITI could help the government’s accountability and CSOs have to work constructively to encourage the government to sign up to the EITI.

Adopting Principle of Free Prior Informed Consent (FPIC)

National resources belong to every Cambodian and each of us has the right to know how much the government receives, how much the government pays. The government needs to know our concerns and suggestions to effectively manage natural resources for the benefit of all.

Free Prior and Informed Consent (FPIC) is the principle that a community has the right to give or withhold its consent to proposed projects that may affect the lands they customarily own, occupy or otherwise use. It is now a key principle in international law and jurisprudence related to indigenous peoples.⁶

As many Cambodians and IP people have suffered from development projects, particularly mining projects, there is a need that the government of Cambodia consider this principle. We urge the RGC

⁶ Forest Peoples Programme, <http://www.forestpeoples.org/guiding-principles/free-prior-and-informed-consent-fpic>

to adopt the principle of FPIC that engages communities in the decision making of each project of the oil, gas or mining companies.

Enforcement of Publish Financial Management Reform Program (PFMRF)

The strategy to reform Cambodia's public financial management systems, developed by the MEF, was endorsed by the Prime Minister on June 30, 2004. The aim is to install much higher standards for management and accountability in regarding all government current and capital resources and effectiveness and efficiency in the use of resources for the RGC's National Poverty Reduction Strategy (NPRS) and National Strategic Development Plan (NSDP) and other priority programs. The government's statement of income and expenditures is supposed to be disclosed through The Table of Government Financial Operation, or Tableau d'Opération Financier D'État (TOFE) monthly, six-monthly and annual reports, among others, in the website of MoEF. This TOFE would help Cambodian people access data on the revenue from oil gas and mining. However, this TOFE report is not disclosed consistently and the revenue from EI is reported as aggregated figure which does not help people to see details of the different projects and types of revenue that Cambodia receives.

We have urged RGC to disclose the report consistently on the website and in a way that the public can easily find and the revenue needs to be reported as disaggregated figures.

To ensure that the oil, gas and mining sector is A BLESSING for all Cambodians, transparency is the KEY.

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