



The Extractive Industries Transparency Initiative and the Implementation Perspective of Vietnam

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This study is conducted by Vietnam Chamber of Commerce and Industry (VCCI) and Consultancy on Development (CODE) with support of the Royal Norwegian Embassy and Revenue Watch Institute

5/2011



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Hanoi, May 2011

CONTENTS

CHAPTER I	14
OVERVIEW OF MINERAL RESOURCES AND THE CURRENT SITUATION OF THE EXTRACTIVE INDUSTRY IN VIETNAM	14
I.1 Overview of the mineral resources	14
I.2 Overview of the extractive industry in Vietnam	16
I.3 Stakeholders and their role in extractive industry	19
I.4 General comment	21
CHAPTER II	23
FINANCIAL LIABILITY OF THE COMPANY IN THE EXTRACTIVE INDUSTRY	23
II.1 Financial liability of the mining company	23
II.2 Financial liability of the oil and gas company	30
II.3 General comment	33
CHAPTER III	34
REAL SITUATION OF THE REVENUES – PAYMENTS MANAGEMENT, AUDITING, INFORMATION DISCLOSURE IN THE EXTRACTIVE INDUSTRY AND OPINION ABOUT THE EITI IMPLEMENTATION IN VIETNAM	34
III.1 Methodology and the scope of the study	34
III.2 Study results	35
III.3 General Comment	44
CHAPTER IV	45
TRANSPARENCY REGULATIONS IN VIETNAM	45
IV.1 Definition of transparency	45
IV.2 Transparency regulations in Vietnam	46
CHAPTER V	50
EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE	50
V.1 History and the development progress of the EITI	50
V.2 The EITI principles	52
V.3 The EITI criteria	53
V.4 Benefits of the EITI implementation	53
V.5 International experiences from implementing countries in the world	55
V.6 General comment	56
CHAPTER VI	57
OPINION OF THE STAKEHOLDERS ABOUT THE EITI, AND THE ROUTE MAP FOR IMPLEMENTING THE EITI IN VIETNAM	57
VI.1 Opinion of the stakeholders about the EITI implementation in Vietnam	57
VI.2 General comment	60
VI.3 Recommendation for the route map of EITI implementation in Vietnam	60
VI.4 Conclusion	64
REFERENCE	66
ANNEX A	68
ANNEX B	69
ANNEX C	69
ANNEX D	70
ANNEX E	71
ANNEX F	72

TABLES AND FIGURES

Table 1. Status of some surveyed and explored minerals in Vietnam H (dated to June 2010)	15
Table 2. Reserves and potential of oil and gas in Vietnam (million m ³ of oil equivalent)	15
Table 3. Import and Export of some mineral commodities in 2009	19
Table 4. Number of extractive company within 2000 – 2008	20
Table 5. Environmental protection fees for some minerals	25
Table 6. Schedule of tax rates applicable to some minerals	26
Table 7. Export tax rate applicable to some minerals	27
Table 8. Schedule of natural resources tax rates applicable to crude oil and natural gas	31
Table 9. Payments of PT.Vietmindo Energitama Company.	36
Table 10. Price level for calculating the royalty for coal in Quang Ninh	36
Figure 1. Financial liabilities of the mining company	29
Figure 2. Financial liabilities of the oil and gas company	32
Figure 3. State budget receipts from crude oil (including natural resources tax and corporate income tax) from 2000 to 2010	39
Figure 4. The mechanism of the EITI	50
Figure 5. The EITI implementing countries	51
Figure 6. Benefits of implementing EITI	54

ABBREVIATIONS & ACRONYMS

CoST:	Construction Sector Transparency Initiative
SEA:	Strategic Environmental Assessment
EIA:	Environmental Impact Assessment
EI:	Extractive Industry
EITI:	Extractive Industries Transparency Initiative
FDI:	Foreign Direct Investment
ITBI:	Integrity and Transparency in Business Initiative
MOIT:	Ministry of Industry and Trade
MONRE:	Ministry of Natural Resources and Environment
MOF:	Ministry of Finance
MOIP:	Ministry of Investment and Planning
ND:	Decree
OECD:	Organization for Economic Co-operation and Development
RWI:	Revenue Watch Institute
PVN:	Vietnam National Oil and Gas Group
TT:	Circular
TTg:	Prime Minister
UBND:	People's Committee
UN:	United Nations
UNCAC:	United Nations Convention Against Corruption
Vinachem:	Vietnam National Chemical Group
Vinacomin:	Vietnam National Coal and Mineral Group
WB:	World Bank
WTO:	World Trade Organization

ACKNOWLEDGEMENT

This study report is a joint effort of the research team from the Vietnam Chamber of Commercial and Industry (VCCI) and the Consultancy on Development (CODE).

This study could not have been completed without significant support from many individuals and organizations. Foremost, the research group would like to thank to Dr. Vu Tien Loc, President of VCCI, Prof. Le Van Khoa, Director of CODE, and Mr. Tran Huu Huynh, Director of Legal Department of VCCI for their crucial encouragement and support throughout the study. Without these supports, this study would not have been completed on time with adequate quality.

We would like to express our deep gratitude to the experts Dr. Lai Hong Thanh, Ministry of Natural Resources and Environment; Mr. Nguyen Hung Quang, NHQuang & Associates Law firm; Ms. Chandra Kinana, Program coordinator in the Asia region of the Revenue Watch Institute; Dr. Samuel R Barlett, Director in the Asia region of the EITI International Secretariat; Ms. Thea Ottman, First Secretary of the Royal Norwegian Embassy; Mr. Luu Hoang Ha, LDV & Associates Law firm; Mr. Jason Morris-Jung, PhD candidate of University of California – Berkeley; and Mr. Matthieu Salomon, International Senior Advisor of Towards Transparency for their meaningful contributions to this study.

We are grateful to relevant authorities including the ministries, sectors and the local authorities; independent scientists; representatives of nongovernmental organizations and extractive companies for sharing information, arranging for interviews and direct contributions to the report.

The authors thank the governmental agencies, extractive companies, scholars and civil society organizations for their comments on the study program and this report at the roundtable discussion “Expert consultation on the Scoping study on the EITI implementation in Vietnam” on the 5th of November, 2010, and at the workshop “The Extractive Industries Transparency Initiative (EITI) and the Participation Perspective of Vietnam” on 14th April, 2011.

Last but not least, we greatly appreciate the donors including Revenue Watch Institute, the Royal Norwegian Embassy and the Royal Netherland Embassy for your financial and technical supports to this study.

The research team

EXECUTIVE SUMMARY

Vietnam has a variety of mineral resource with over 60 types of minerals in 5000 ore deposits. Some are big reserves at the world and regional levels, such as bauxite, titanium, rare earth and limestone. Some are potential reserves, like coal with over 210 billion tons and iron with 3.5 billion tons. Some minerals have been exploited for a long time. For example, coal has been exploited for over 100 years. Oil, gas and titanium have just been exploited over the last couple of decades. In recent years, the extractive industry has grown sharply and significantly contributed to the state budget and socio-economic development. Its contribution accounts for 9-11% of total GDP since 2000.

The extractive industry of Vietnam rapidly grows in which the numbers of extractive companies increase on average by about 22 % per year. Demands on mineral resources for domestic consumption and export have been increasing in recent years and are looking to increase sharply in the coming years. The extractive industry has substantially contributed to the state budget (the oil and gas industry alone contributed about 1/3 of the state budget in recent years). The extractive industry does not only contribute to the national income, but also it brings substantial amount of foreign currency that is significant for stabilizing the national economy. By 2009, the extractive industry gained about 8.5 billion USD from export. Of these, crude oil was a major commodity generating 6.2 billion USD, as well as creating a high number of jobs, assuring national energy security, and providing raw materials for almost all other industrial sectors. The role of the extractive industry continues to grow in the “industrialization and modernization” strategy of the country. Nevertheless, the extractive industry is predicted to struggle with difficulties and challenges due to a rapid exhaustion of oil and coal in the coming time. Moreover, Vietnam has some big reserve minerals at the world level, such as bauxite, titanium and limestone, but these minerals are common throughout the world and current demand is not high. Meanwhile, Vietnam either has few precious minerals, such as gold, lead and zinc that are in high demand, or lacks them altogether, such as diamonds.

Throughout its development, the extractive industry has exposed many contradictions and has developed unsustainably. Illegal mineral extraction is common in many areas, resulting in a high loss of revenue for the state. Moreover, mining practices are wasteful, in which extractive companies often avoid fully exploiting or processing the minerals when they face difficulties. Therefore, the benefits of mineral resources are not maximized, resulting in a resource waste. The natural endowment is sometimes given to vested interests instead of the people due to poor monitoring and evaluation mechanisms. Mineral extraction also leaves many negative impacts to the natural environment and local communities.

To assure benefits of natural resources for the development of the nation, harmoniously shared amongst the State, the Extractive Company and the People, the transparency of revenue/payment in the extractive industry is very necessary. In addition to recent efforts such as amending the Law on Minerals, which has just been approved by the National Assembly, Vietnam also needs to consider participating in the global initiatives, such as the implementation of Extractive Industries Transparency Initiative (EITI).

The EITI is a volunteer coalition initiative amongst the government, companies, local civil society organizations and international organizations aiming to enhance transparency and accountability in the extractive industry. It provides a global standard for revenue transparency, comprising of two mechanisms: (i) extractive companies disclose payments made to the government and vice versa; and (ii) an independent administrative body is established to reconcile all received data, managed and operated by multiple-stakeholders. To date, there are 35 EITI implementing countries around the world. The EITI is also widely supported by extractive companies and the civil society organizations. So

far, there are 50 top international extractive companies and hundreds of the civil society organizations and mining associations, such as the Revenue Watch Institute, Oxfam, Open Society Institute, the American Petroleum Association, etc. The EU Commission, the Africa Commission, the World Bank, ADB and others have also actively participated in or supported the Initiative. The G8 and G20 Summits also highly supported implementation of this initiative.

The study on the “Extractive Industries Transparency Initiative (EITI) and the Implementation Perspective of Vietnam” is carried out by the Vietnam Chamber of Commerce and Industry (VCCI) and Consultancy on Development (CODE). It aims at exploring the current status of the extractive industry and the possibilities for Vietnam in implementing the EITI. In addition to reviewing secondary data (such as legal regulations and policies of the State and Communist Party) and expert consultation, the study interviewed representatives of 21 key organizations, including both governmental agencies and extractive companies. Moreover, the questionnaires were also sent to 16 extractive companies to gather further information and the perspectives of these companies towards the EITI.

The study found that Vietnam has significantly developed its legal basis on mineral extraction, including the regulation on exploration, exploitation, processing and revenue/payment management. However, the study also found that there are some gaps between regulations and law enforcement in terms of implementing some financial liabilities in the extractive industry sector. Some financial liabilities have not been performed based on the legal regulations. Royalty evasion and illegal trading occur commonly in many areas. The management of revenues generated from the extractive industry still lacks transparency and has many inadequacies. Consequently, the state has lost substantial revenues. The revenue/payment management and oversight are undisciplined and contradictory, bringing about a huge loss of revenue to the state. Moreover, information disclosure and accountability among relevant bodies in the extractive industry are limited. Consequently, most people are unable to oversee revenues generated from mineral extraction. Hence, the people have not fully seen much benefit from mineral exploitation and processing activities, resulting in conflicts and social tensions in some areas in recent times.

A literature review also indicates that Vietnam has developed an adequate legal basis on transparency and information disclosure by issuing laws, under law regulations, the policies of the state and the Communist party; adopting out some international commitments, such as the WTO or the United Nations Convention Against Corruption. Therefore, in principle, the implementation of EITI is not contradictory with the policies of Vietnam. Rather, EITI is a good tool in helping Vietnam to institutionalize its policies in reality.

Results from interviewing governmental agencies, extractive companies and civil society organizations indicate that almost all respondents claimed that the transparency and information disclosure of the extractive industry need more promotion. A high number of the respondents, particularly the most directly relevant governmental agencies such as the Ministry of Finance, the Ministry of Industry and Trade, State Audit, and some big companies like the Vietnam National Coal and Minerals Group and Vietnam National Chemical Group, all agreed that Vietnam should implement the EITI to create a more transparent environment in the extractive industry. Only one respondent did not support the EITI due to national security concern in the oil and gas industry, as Vietnam and some neighboring countries are disputing territory in Southeast Asia Sea.

Based on the current situation of the extractive industry in Vietnam and international experience from implementing the EITI in countries worldwide, this study recommends that Vietnam should implement

EITI because it would benefit as follows:

- Maximize the revenues generated from the extractive sector to the state;
- Build citizen trust in public institutions and reduce conflicts amongst stakeholders;
- Build investor trust and, therefore, attract more foreign investment capital in the extractive industry;
- Increase national credit in transparency;
- Fight more efficiently against corruption; and
- Create an equal environment for competition among all business entities.

The extractive companies would also benefit from implementing the EITI, including:

- Reduce informal payments and, hence, increase profits;
- Increase accountability of the company, especially in cooperating with international partners who require a high level of transparency;
- Increase credit and reputation of the company, particularly with the big companies who invest overseas; and
- Increase competitiveness amongst the business sectors, and reduce possible conflicts and tensions between local communities and companies.

The international experience, typically in the African resource rich countries, indicates that the EITI is an effective tool in preventing the resource curse as well as in mitigating the adverse effects caused by the resource curse to the resources dependent countries, especially in nonrenewable resources like oil and gas. In the coming time, the EITI principles could be broadened to other different processes in the value chain of the extractive industry, like licensing, contracting, bidding, budget management; as well as extended to other sectors, like energy, forestry and agriculture areas in which Vietnam is also facing with much difficulty.

In principle, once implementing the EITI, a multi-stakeholder group will be established. Most respondents claim that if Vietnam implements the Initiative, the representatives of the relevant governmental authorities including the Ministry of Finance, the Ministry of Natural Resources and Environment, the Ministry of Industry and Trade, the National Steering Committee on Anti-corruption, among others; and extractive companies, civil society organizations and independent scientists and experts should be involved in the Vietnam EITI Board. Of these, either the Ministry of Finance or the Ministry of Industry and Trade should lead and coordinate the EITI program.

Nevertheless, the implementation of EITI in Vietnam will face some barriers and challenges, including the gap between regulations and law enforcement, including compliance with EITI principles; the regulation on confidential information in the oil and gas sector; and initial difficulties in securing financing and human resources to implement the EITI. Therefore, in the initial period, the scope of the EITI program should focus on some big enterprises including the state, privately owned and foreign-invested enterprises in some important minerals, such as oil and gas, coal and titanium. All are appropriate for the EITI regulations because the threshold of the EITI program is determined by each country. The study also figured out that many of these enterprises are willing to participate the EITI. The scope of the EITI program can be extended to other types of minerals in the next step when Vietnam has sufficient experience and capacity to efficiently implement the EITI; the perception of the public about transparency is enhanced and the benefit from EITI implementation is proved.

Some governmental agencies wonder about the financial and human resource shortages if Vietnam implements this initiative, particularly in the context that Vietnam is going to cut off public expenses and streamline the governmental system. However, experiences from EITI implementing countries indicate that financial limitations and human resource shortage are not the main barriers because the EITI report is just conducted one time per year. Moreover, to deal with financial and human resource limitations in the early period, Vietnam might call for the financial support of the EITI Multi Donor Trust Fund, which is currently managed by the World Bank, and technical support from the EITI Board and other related organizations.

The EITI implementation process for Vietnam is proposed with four steps, including: (1) Preparation; (2) Stakeholder Mobilization; (3) Determination of the EITI scope and program; and (4) Develop the working plan of the EITI program. Hopefully, with the consensus of the government and the effort of the relevant bodies, EITI will be soon implemented in the coming time.



CHAPTER I. OVERVIEW OF MINERAL RESOURCES AND THE CURRENT SITUATION OF THE EXTRACTIVE INDUSTRY IN VIETNAM

I.1 - OVERVIEW OF MINERAL RESOURCES

According to the geological survey, Vietnam has discovered over 5000 deposits with over 60 different types of minerals. The mineral resource is one of the most important driving forces for economic development, typically in the pre-stage of so-called “industrialization and modernization” strategy which highly emphasizes on build up a developed industry. The mineral resources of Vietnam could be categorized into three groups as follows:

- Large reserve at the global level that could be exploited over a long time and satisfy both domestic consumption and export, including bauxite, titanium, rare earth, limestone, white sand, building stone;
- Medium-sized reserve that could be exhausted in a limited time, including coal, iron, chromites, manganese, copper, zinc, lead, gold, kaolin, barite, ashlar paving stone, etc.
- Detected but not yet discovered exploitable deposits, such as platinum and lithium.

According to the MONRE (2009), the status of some surveyed and explored minerals in Vietnam is illustrated in the Table 1 below.

Type of mineral	Unit	Potential	Proven reserve	Distribution
1. Large reserve minerals				
	Million ton	8,000	672.1	Central Highland
Rare earth	Million ton	9,467	1,1	Lai Chau, Yen Bai
Apatite	Million ton	2,5	0,778	Lao Cai
Titanium	Million ton	300-500	15,71	Central coastal areas (Ninh Thuan, Binh Thuan, Northern Ba Ria- Vung Tau)
White sand	Million ton	3,000	123	Central coastal area
Limestone	Million ton	Huge	10,692	Mainly in the Northern and North of the Middle
White marble	+ Million ton + Million m ³	2,000 300	1,170 188.5	Mainly in Yen Bai, Nghe An and Tuyen Quang
Coal	Million ton	40,930	3,520	Concentrated in Quang Ninh, Thai Nguyen, Quang Nam and the Red River Delta
Granite	Million m ³	1,000	15	Scattered in some areas
2. Medium-sized reserve minerals				
Iron	Million ton	960.6	760.6	Lao Cai, Cao Bang, Thai Nguyen, Ha Tinh
Chromites	Million ton		33.8	Concentrated in Thanh Hoa
Manganese	Million ton	40.34	12.31	Cao Bang, Tuyen Quang
Copper	Thousand ton	1,018	718	Lao Cai
Tin	Thousand ton	129	11	Tuyen Quang, Nghe An, Cao Bang
Lead- zinc	Thousand ton	3,466	466	Bac Kan, Tuyen Quang, Thai Nguyen
Gold	Ton	154	42.7	Of these, 34 tons is located in Sinh Quyen copper mine.

Source: MONRE, 2009

Forecasted calculations confirm that the potential of Vietnam's petroleum is mainly located on the continental shelf and natural gas reserves are more promising than oil reserves. The oil reserve is estimated at about 6 billion tons and gas reserve at about 4,000 billion m³ (PVN, 2008), distributed in sedimentary basins from north to south, such as in the Red River, Phu Khanh, Cuu Long, Nam Con Son, Malay-Tho Chu, Tu Chinh-Vung May, Hoang Sa and Truong Sa islands, etc.

The southern continental shelf is the most concentrated area of exploration activities in Vietnam, including three major sedimentary basins, namely Cuu Long, Nam Con Son and Malay - Tho Chu. To date, the southern part remains as a national center of oil and gas supply. In addition, Red River and Phu Khanh basins are also identified as gas supply areas, but possibly with a modest volume. Results of the exploration to date show that the total oil and gas reserve in the entire continental shelf is about 4.3 billion tons of oil equivalent. Of these, gas accounts for 55-60%. The proven reserve is approximately 1,208.9 million tons of oil equivalents, of which oil and gas reserves with commercial viability are around 814.7 million tons and account for 67% of reserves (Geology and Resources of Vietnam, 2009). Potentially discovered oil and gas is mainly concentrated in deep water and offshore areas (in Phu Khanh, Tu Chinh, and Vung May basin, and Hoang Sa and Truong Sa Island). The reserve of oil and gas is illustrated in the table 2 below.

Table 2. Reserves and potential of oil and gas in Vietnam (million m ³ of oil equivalent)					
Basin/Areas	Potential	Identified reserve	Exploited	Remaining reserve	Note
1. Red River	560-700	250-270	0,5	250-270	Mainly CO ₂ ; 60-90%
2. Phu Khanh	300-700				Deep water
3. Cuu Long	800-900	500	203	297	Mainly crude oil
4. South Con Son	600-800	180	5,5	174,5	
5. Malay-Tho Chu	300-400	170-180	5	165-175	
6. Tu Chinh – Vung May	750-900				Deep water, offshore
Total	3310-4400		214	3100-2180	

According to calculations, oil and gas reserves of Vietnam can only be available within next 30 years. Therefore, it is necessary that Vietnam should strengthen its exploration activities to increase the reserves for its long-term development.

I.2 - OVERVIEW OF THE EXTRACTIVE INDUSTRY IN VIETNAM

I.2.1 Introduction of the extractive industry

The organizational EI sector started rather long ago with opencast coal mining activities. According to Dai Nam record books by the Nguyen dynasty, the operation and exploitation of large-scale coal mining began in 1839. King Minh Mang approved the decision to open a coal mine in Dong Trieu district, Quang Ninh province. At that time, mining technology was very rough, based mainly on manpower. In the late 19th century, the Nguyen dynasty ceded some mining areas to French mining companies (in Hon Gai and Cam Pha districts). Until 1954, the French were conducting coal mining on an industrial scale. Mining technologies were imported from Europe with some equipment and motor vehicles. The following period from 1954 to 1975 marked the transformation of the EI with the management by the Democratic Republic of Vietnam. In 1955, after French withdrawal, the Vietnam government took over mining areas. The EI sector was soon reorganized. Many exploiting and processing mineral enterprises were established to serve the needs of national construction. At the same time, with the help of the socialist countries, especially the former Soviet Union, a large amount of survey activities, geological and mineral exploration, including oil and gas, had been completed. Several important mines such as Tinh Tuc tin and Trai Cau iron mine were discovered and operated.

After 1975, geological survey and exploration of deposits of minerals have been deployed in the whole territory of Vietnam. To date, geological and mineral maps have been created at 1/500.000 and 1/200.000 scales, covering the entire area of the territory. Nearly 70% of the territory is mapped at 1/50.000 scale. The survey has discovered many places of mineral potential. The mining technology has been gradually modernizing. Human resources in the mining sector have also been better trained. Products supply raw materials and fuel for the metallurgical industry, construction, and export.

In 1989, the State Assembly (now the Standing Steering Committee of the National Assembly) promulgated the Ordinance on Minerals. After that, the National Assembly adopted the Law on Minerals in 1996, which was then complemented and revised in 2005. The Law on Petroleum was firstly promulgated in 1993 and then amended in 2000 and 2008. At present, Vietnam has sufficient and detailed legal documents on mineral resources and petroleum.

I.2.2 Exploration, exploitation and process the mineral resources

Exploration activities

In regard to mining activities, according to the statistical results, in the period from September 1996 to the end of 2009, 640 exploration projects of over 20 different minerals were evaluated and licensed by the former Ministry of Industry and MONRE. Furthermore, after the amended Law on Minerals came into effect, from October 2005 to the end of 2009, 350 exploration projects of normal building minerals were licensed by the Provincial People's Committees. Some foreign invested enterprises also explored some minerals such as gold, wolfram ore, nickel, and titanium. To date, most of these explored mines are being operated.

Regarding oil and gas exploration activities, after defeating the French in 1954, with the assistance of the Soviet Union, the North carried out a large amount of works in surveying and exploring geology and minerals, including oil and gas. On the 27th of November in 1961, the Geological Federation No. 36 under the General Department of Geology was established to carry out oil and gas exploration in

Vietnam (Kitovani et al, 1961). On September 3rd 1975, right after the reunification of the North and the South, the Vietnam General Department of Petroleum and Natural Gas was founded by merging the Geological Federation No. 36 and a division of the General Department of Chemicals, marking a new stage of development for the petroleum industry. A year after its founding, the petroleum industry for the first time discovered natural gas at drill No. 61 in Dong Co communes - Tien Hai district - Thai Binh province. On 19th June 1981, the Vietnamese-Soviet Petroleum Joint Venture (Vietsopetro) was established.

Studies and surveys done in May of 1984 showed the possibility of commercial exploitation of oil in the White Tiger and Dragon sedimentary basins (Vietsopetro, 2008). On November 6th, 1984, the first base oil rig in Vietnam (MSP-1) was launched at the White Tiger rig. The date June 26th, 1986, went down in Vietnamese history when the Vietnam-Russia Oil and Gas Joint Enterprise exploited the first ton of oil from White Tiger MSP-1 rig. As a result, Vietnam was listed amongst the crude oil producers of the world.

Exploitation activities

To date, most of the economic components have participated in mineral extraction with over 2000 companies in which 90% are at a small scale. Based on the licenses that are issued by the Central authorities, there are 150 extractive companies operating in 37 provinces. Of these, the state owned enterprises accounts for 54.41%, FDI enterprises for 8.82%, and the rest belong to the privately owned Vietnamese enterprises. Due to limitations in capital and human resources, some mines are operating at a small scale. There are few big scale mines in Vietnam, accounting for over 10% of all operating mines. However, they have a bigger production compared to the rest of the mining sector and create an enormous amount of jobs. The coal extraction sector alone accounts for 60% of the value of the mining sector and creates over 100,000 jobs.

Mineral processing and use activities

Regarding the mining sector, some factories were constructed before 1996, like Thai Nguyen cast iron and steel and Tinh Tuc tin. In general, export of raw minerals is quite popular, though some refinery factories have started operating in recent times, such as Song Cong Steel company (in Thai Nguyen) and Bong Mieu Gold Refinery (in Quang Nam). Due to the low level of technologies applied in the mining sector, most of the extractive companies operate at a small scale. Therefore, minerals are wastefully exploited and processed. According to the report of Vinacomin, the loss ratio in coal extraction in Quang Ninh is around 7.3-7.7% and 28-31% with opencast and pit extraction, respectively. The recovery ratio of gold ore in processing is currently just 30-40%, resulting not only in a considerable loss but also causing serious pollution to the environment (CODE, 2010).

Concerning the oil and gas industry, to assure the energy security and economic development, Vietnam started building its first oil refinery factory in 2005, Dung Quat oil refinery factory in Quang Ngai province with a capital investment of over 2.5 billion USD and capacity of 6.5 million tons of crude oil per year. The factory started operating in February 2009, mainly producing propylene, liquefied petroleum gas (LPG) and diesel. In addition, Vietnam started building the second oil refinery, the Nghi Son oil refinery complex in Thanh Hoa province. The Nghi Son oil refinery complex started in May 2008 with the investment capital of 7 billion USD invested by PVN incorporation with the Kuwait Petroleum International (KPI), Idemitsu Kosan company and Mitsui Chemical company (MCI). The project is divided into two phases. Phase 1 has a capacity of 10 million tons of crude oil/year and it will use crude oil source from the Middle East with a capital investment of over 7 billion USD. The ratio contribution is KPI (35.1%), PVN (25.1%), MCI (4.7%). In the second phase, the capacity will be increased to 20 million tons of crude oil per year. The complex is planned to commercially operate by 2014 with the main products including 2.3 million tons of gas/year, 3.7 million tons of diesel/year,

etc. The Nghi Son oil refinery complex and the Dung Quat refinery plan would satisfy about 50% of domestic consumption (PVN, 2011).

Environmental protection activities

Mineral activities often cause negative impacts to the natural, social and built environment. Mining projects and mineral processing are required to produce an environmental impact assessment (EIA) or environmental commitments under the provisions of the Environmental Protection Law. Most current mining projects and mineral processing have an EIA report. However, the extended EIA is not carried out when the mining project expands its scale. Many minerals planning at both local and national scale issued by provincial and central authority (as planned exploration and processing bauxite, titanium, chromium, manganese, etc) have no reports of a Strategic Environmental Assessment. In general, environmental protection measures often do not reflect the content of the EIA report. Furthermore, the participation and engagement of civil society organizations and local communities in monitoring and overseeing in this process are still limited (CODE, 2010).

Environmental rehabilitation activities based on the Decision No. 71/2008/QĐ-TTg issued by the Prime Minister in 2008 have not yet been implemented in many localities. Although exploitation activities are completed, environmental rehabilitation in many mining areas is not properly carried out. In most mining projects, the environmental protection fee is not fully collected because the extractive company often reports a lower production level to the governmental agencies when compared to the reality to evade a part of this fee. Moreover, the environmental protection fee is mainly used to mitigate environmentally adverse impacts derived from mining activities rather than to prevent or limit such impacts based on government regulations. Moreover, this fund is not fairly distributed sometimes. In some highly affected areas, the environmental protection is not considered a priority. Consequently, the mining activities in some areas have caused serious negative impacts to the environment, agriculture and local community's life (CODE 2010).

1.2.3 The contribution and influence of the extractive industry

Contribution to social economic development

Generally speaking, the extractive industry has played a crucial role in the national economy throughout decades. Regardless of oil and gas, the mining and quarrying industry accounted for 4.81% of GDP by 1995 and increased to around 9.5%-10.59% from 2000 to 2008 (USGS, 2010; GSO, 2009). Remarkably, revenue generated from crude oil only contributed 24.37% to state budget revenue in 2008 (GSO, 2008). The extractive industry does not only contribute to the national income, but also brings in substantial foreign currency that helps to stabilize the national economy. By 2009, it brought in about 8.5 billion USD from export, of which crude oil was the major commodity with 6.2 billion USD. Furthermore, the mining sector creates a high number of jobs with 431,200 direct labors involved in it and accounting for 0.96% of the total country's workforce (GSO, 2008).

The initial contribution of the mining sector to national development is remarkable. However, the mining industry has also exposed some weak points:

The position of mining sector in the national economy

Economic efficiency is not commensurate with capital investment: the investment for mining sector is normally very high compared with total investment for the other sectors. However, the effective contribution to GDP growth (i.e., the ratio of the contribution of mining to GDP / total investment in mining) is not so high. For example, the total investment for the mining sector in the period of 2005-2008 is ranked at five of 18 sectors. Meanwhile, the contribution to the national economy is ranked at 8th compared to other economic sectors.

Although, the investment in the mining sector has created a number of jobs for society, compared with the number of jobs in other economic sectors, the number of employees working in the mining sector is also not commensurate with the investment (ranking at 11 of 18 from 2000 - 2008). Furthermore, of the mentioned number of employees working in the mining sector is actually, less than 50% are permanent. The remaining 50% is working as short term employees with unstable income.

Export and import

The mineral commodities after processing are often in a raw form with a low quality and value. For example, Vietnam exports 100% of crude oil and 50% of coal each year. Hence, the export value of raw products is not sufficient for importing refined mineral commodities to serve the economy (Table 3).

Table 3. Import and Export of some mineral commodities in 2009					
No	Products	Export		Import	
		Amount (mil tons)	Value (mil USD)	Amount (mil tons)	Value (mil USD)
1	Coal	25.139	1.326		
2	Crude oil	13.416	6.210		
3	Petroleum	1.688	841	12.512	6.159
4	Ore and other minerals	2.138	136		
5	Liquefied gas			753	420
6	Other petroleum products				532
7	Chemicals				1.598
8	Steel			9.632	5.282
9	Other metals			549	1.616
	Total		8.513,0		15.607
Source: 2010 statistics - Ministry of Industry and Trade					

1.3 - STAKEHOLDERS AND THEIR ROLE IN THE EXTRACTIVE INDUSTRY

The role of state agencies: (i) The Government is in charge of executive management and general operations for the activities in the EI sector; (ii) Ministry: the Ministry of Industry and Trade (MOIT), the Ministry of Natural Resources and Environment (MONRE), the Ministry of Planning and Investment (MPI), the Ministry of Finance (MOF), the Ministry of Construction (MOC), and ministerial level bodies manage revenues and mining activities at the nation level; (iii) The People's Committees at all levels have responsibilities to manage mining activities and revenues in the local area. The roles and responsibilities of these authorities are summarized as follows:

- *Ministry of Natural Resources and Environment:* In addition to the advisory responsibility to the government on natural resource management and environmental protection, MONRE also has responsibility to propose mechanisms and policies related to revenue generation from mineral extraction activities to the government and to other related ministries.
- *Ministry of Industry and Trade* performs the state management function in relation to industry and trade. MOIT is responsible for mechanics, metallurgy, electricity, new energy, renewable energy, petroleum, chemicals, industrial explosives, mining industry and mineral processing, import and export, market management, trade promotion, e-commerce, service trade, economic integration, international trade, and competition management.
- *Ministry of Planning and Investment:* functions as an advisory body for the government on strategy and development plans for the EI. MPI also has responsibilities in formulating development plans, mechanisms and policies for domestic and foreign investment.
- *Ministry of Finance* is the agency that directly collects all taxes, fees and charges derived from the EI.

MOF has the role to manage these revenues and implement their expenditure under supervision of the government. Departments of Finance at local levels have similar responsibilities. MOF has to propose the mechanisms and policies on financial management and exploitation to increase state revenues from mining activities. In addition, MOF together with other related ministries like MONRE and MOC have a role to advise the government about the use of state budget in extraction activities.

- *Ministry of Construction (MOC)* guides and supervises the implementation of planned exploration, mineral mining and processing of construction materials and raw materials for cement production under the supervision of government. MOC is responsible to guide and evaluate mining technology, mineral processing, construction materials, cement raw materials, building material production and substances for construction material products technology. MOC also has to evaluate investment projects in exploiting and processing construction materials and raw materials for cement production in the fields of industrial supplies construction materials as assigned by the Government. Furthermore, MOC has to implement technical regulations and safety and occupational health regulations for mining, mineral processing and construction and cement raw materials.
- *The Provincial People's Committees (PPC)* have the responsibility to manage on behalf of the state in mineral extraction activities as well as revenues in the localities. It is responsible for periodically reviewing and reporting to central agencies on use and expenditure of revenues at local levels. In addition, the PPC has the right to grant licenses to small mines, which are not included in national mineral planning.

The role of extractive company in the extractive industry

The number of mining company has been sharply increasing with an average growth of 21.7% per year. There were 427 extractive companies in 2000, which quintupled by 2008 (Table 4). Within the period of 1988-2008, the number of FDI projects was 126 with a registered capital investment of 10,583.6 million USD.

Table 4. Number of extractive company within 2000 – 2008									
No	Category	2000	2002	2003	2004	2005	2006	2007	2008
1	Coal	38	46	52	58	72	73	89	103
2	Gas-oil	2	2	2	6	6	9	11	15
3	Metal mineral	25	51	64	85	87	99	145	187
4	Stone and other minerals	362	780	911	1 044	1 112	1 188	1 447	1879
	Total	427	879	1 029	1 193	1 277	1 369	1 692	2184

Source: GSO, 2009

The extractive industry of Vietnam is growing in scale, not only inside its homeland but also in other countries such as Cambodia, Laos, Russia and Venezuela, particularly with oil and bauxite. For example, in 2009, the Vietnamese government signed a memorandum of understanding (MOU) with the Cambodian government with a worth 6 billion USD to invest in various projects, of these bauxite exploitation in Modulkiri province worth 2 billion USD (Vietnam National Assembly, 2009).

The extractive company in Vietnam comprises three main players including the state and privately Vietnamese and foreign invested enterprises. These players differ not only in business structure, but also in type of minerals exploited. While some crucial minerals that help to stabilize the national economy, like coal, oil, iron and gold are often given to the state-run business, others less important ones are opened to both private and foreign investment.

- *The state owned enterprise:* it could be possibly divided into two sectors based on the company scale, namely national and local. Most of the local state owned enterprise are small scale with low

capital investment and usually process raw materials, while the national scale companies exploit various kinds of minerals with a high capital investment. Examples of these latter companies are the Vietnam National Chemical Group (Vinachem); Vietnam Cement Industry Corporation (Vinacem); Vietnam Oil and Gas Group (Petrovietnam); and Vietnam National Coal - Mineral Industries Group (Vinacomin). Vinacomin produces about 43 million tons of coal per year and has an annual average total sale of 57,000 ¹ billion VND (2.98 billion USD) (Xa Luan, 2009).

- *The private owned enterprise*: this group includes the limited and joint venture companies that operate mainly in exploiting and processing building materials and in recollecting metal minerals on a small scale. This group has a high number of companies, though their technological and financial capacity is often limited. Recently, some private companies are able to explore and exploit some mines at a medium scale.
- *The foreign invested enterprises* mostly operate in the exploiting and processing minerals for the cement industry, such as Nghi Son, Chinfon, Lask Vietnam cement company; in exploiting ashlar paving stone, such as Latina An Giang, Yabashi, Carbonate Calcium YBB Joint Stock company; and in extracting mineral water, such as Lavie (Le, 2008).
- *Collective, individual and household enterprise*: this group often operates in exploiting and processing normal building minerals, such as stone and sand on a tiny scale and is usually only able to serve local demand.

The role of local communities

Mining activities cause huge negative impacts on the environment in mining areas. It is difficult to rehabilitate the environment. Obviously, the local people are daily impacted by and suffer from these mining activities. Natural resources with a variety of high trade value in the market inspire people and organizations inside and outside the mining area to exploit in all forms, both secretly and openly, both legal and illegal. A lot of pressure is placed on natural resources from many sides, especially local communities.

According to the law, the role of local communities is indispensable in mining activities. They are the people who live near the natural resources. They have the track conditions and indigenous knowledge. Benefits from natural resources are really sticking directly and regularly with local communities so that they will be often forces to protect, preserve and promote. Local communities are ears and eyes as well as the core force of government in all activities, as well as contribute to the development of sustainable resources.

The role of social organizations

Currently, the organizations led by the Fatherland Front (Farmers Association, Women Union, Youth Union, Veterans Association), civil society organizations, non-governmental organizations and some other organizations are playing an increasingly important role in the protection and development of natural resources. These organizations through consultation and support of the authorities have gradually shown their power in protecting natural resources. These organizations support law enforcement to people and reflect the aspirations of people to the authorities. In addition, these organizations have the role of social communication to raise awareness about environmental protection for people in and outside of the mining areas. These organizations also play a critical role in natural resource monitoring and evaluation through daily activities.

*1: 1US\$ is equal to 19,100 VND (exchange rate in January, 2010).

I.4 GENERAL COMMENT

Vietnam is diverse and it has potential for more mineral resource development with 60 types of minerals, especially as survey and exploration activities has just been carried out over half of the country. However, with the current proven reserves, mineral resources are quite limited. Almost all deposits are fragmented with a minimal reserve and in difficult conditions for exploitation. Some high value minerals such as gold, silver and nickel have tiny reserves. Some have been exploited for a long time, such as oil and coal, and will soon be unable to satisfy domestic demand. On one hand, some of Vietnam's large mineral reserves, such as titanium and bauxite, are very common throughout the world and, therefore, demand is not high. Therefore, Vietnam should reorient its mineral development strategy, in which mineral resource should be sustainably managed and developed. The benefits of mineral resources must be maximized, and revenue generated from the EI sector should be wisely used for the development of the nation.

Recently, the extractive industry has played a crucial role in the economy, increasing its contribution to the state budget and socio-economic development throughout the years. Its contribution accounts for 9.6-10.59% of the GDP from 2000 to date. In 2009, export of crude oil reached 8.5 billion USD, accounting for about 25% of state budget. In fact, the total investment of the extractive industry attains a high ratio compared to other economic sectors. However, its efficiency contributing to the GDP and job creation is not commensurate with the investment capital.

Generally speaking, most large scale and important mines are currently managed and exploited by the state owned enterprises. The participation of foreign invested enterprises in the extractive industry is still limited. Meanwhile, the private sector often operates at a small and medium scale. Hence, this group has been facing much difficulty about human resources and capital, so that it often uses backwards technology in exploiting and processing minerals, resulting in a waste of mineral resources. The situation of so called "avoid the difficult and do the easy" and unplanned exploitation tends to reduce productivity, though it remains quite popular in the extractive industry.

So far, the EI sector has not been well managed and developed and has exposed many problems and inadequacies resulting in seriously adverse impacts to the environment and the society. Accounting for these, Vietnam still highly focused on economic development, especially GDP growth, to satisfy its current demand. In addition, mineral resources are poorly managed due to the lack of oversight from state management agencies and the people. The role of the people, especially local communities, is weak in monitoring, evaluating and policy-making. Consequently, mineral resources have been publicly smuggled in many areas for years. Tax evasion, the so-called "*beg and give*"² mechanisms in licensing occurs commonly. Therefore, the nation has not only lost huge revenues, but also critical resources for boosting up the economy in the future when these resources are exhausted while demand on minerals for economic development is still high.

*2: "Beg and give" means that the institutional system still works collectively where company often get the license based on its relationship rather than the technological and financial ability.



CHAPTER II. FINANCIAL LIABILITY OF THE COMPANY IN THE EXTRACTIVE INDUSTRY

To know what kind of payments that the extractive company pays to the state as well as revenues that the state receives in the extractive industry, this section focuses on listing the financial obligations of the extractive company to the state by reviewing the current regulations. The main financial obligations of extractive companies include taxes and fees, which are summarized hereafter.

II.1 - FINANCIAL LIABILITY OF THE MINING COMPANY

II.1.1 Liability for fees and charges

According to the provisions of the Ordinance on charges and fees No. 38/2001/PL-UBTVQH10 dated 28/8/2001 issued by the National Assembly, charges mean the amount of money that the entity and individual are obliged to pay for the service rendered by another entity or individual. Fees mean an amount of money that an entity and individual are obliged to pay for state management by the state agencies or authorized institutions. Because charges and fees are used for making up expenses incurred by the state for supplying services to the enterprises, they are not of a considerable amount. Upon enjoying these services, works rendered by the state agencies or the institutions authorized by the state, the extractive company is required to perform following obligations.

1. Fees for the survey and mapping of the mining area

In carrying out the survey and exploration, the extractive company is required to pay to the state the fee for surveying and drawing up cadastral maps in the case that such locations do not have coordinates for a cadastral map yet. Normally, this fee shall not exceed VND 1,000/m² in accordance with provisions of the Circular No. 97/2006/TT-BTC issued by the Ministry of Finance (MOF).

2. Fee for the use of geological information

In mining activities, the state usually carries out the geological survey and exploration in regions. For that reason, when a company applies for an exploration license and has a demand for using that information, then it will be required to pay a fee for making up for the expenses incurred by the state

for collection and creation of information about mineral exploitation. Fee for the use of fundamental geological survey information is not a significant amount. Meanwhile, the expenses for carrying out exploration are a huge amount. In regards to the collection level, it will be provided in detail by the Ministry of Natural Resources and Environment (MONRE) for specific mines. The payment of such fees has been stipulated in the Circular No.186/2009/TTLT-BTC-BTN&MT dated 28/9/2009, co-issued by MOF and MONRE on guiding the measure of determining value, method, procedures of payment for the use of data, information about the mineral survey, and exploration result of the state.

3. Fee for issuance of mineral survey, exploration, exploitation, and processing licenses

Depending on the features of each mine, the fee for issuance of mineral survey, exploration and exploitation license is regulated in the Circular No. 155/2010/TT-BTC issued by the MOF. For exploration, depending on the exploitation area, the fee for issuing license ranges from VND 4-15 million. For processing licenses, the fee is VND 10 million for one license. For mineral exploitation inside mines, the fee is VND 60-80 million for one license. For over-exploitation, the fee is VND 5 million for one license. According to the revised Law on Minerals, which was passed in 2010 and is coming into effect on 1 July 2011, the fee for issuing processing licenses will be abolished.

4. Fee for mineral monopoly exploration

Only the company that is entitled to monopoly exploration under the nomination of the state is required to pay this fee. This fee is based on the area of monopoly exploration at the following rates:

- First year: VND 50,000/ha/year;
- Second year: VND 80,000/ha/year;
- Third and fourth year: VND 100,000/ha/year.

Additionally, the company is required to deposit an amount equal to 25% of the estimated expenses on exploration in the first year before issuing a mineral exploration license.

5. Fee for appraisalment, valuation of mineral reserve

When the company carries out mineral exploration activities and obtains results of the mineral reserve, the responsible state management agencies such as MONRE and Department of Natural Resources and Environment (DONRE) for mines, which are subjected to national master planning or under local management respectively, will establish a committee to value the mineral reserve. Under Decision No. 27/2005/QĐ-BTC issued by MOF, the fee for appraisalment, valuation of mineral reserves is based on the total expenses of the geological survey, ranging from VND 4-85 millions.

6. Fee for evaluating the environmental impact assessment report

Mineral exploitation requires an environmental impact assessment report. The extractive company must prepare an EIA report and submit it to the concerned state management agencies like MONRE or DONRE. Expense for the evaluation of the EIA report is as follows:

- a. The fee shall not exceed VND 5 million for one official report, and
- b. For supplemental EIA report, the fee shall not exceed 50% of the fee of the official EIA report (Circular No. 97/2006/TT-BTC).

7. Fee of environmental protection for mineral exploitation activities

Mineral exploitation activities usually have adverse impacts on the environment. For that reason, the mining company must pay an environmental protection fee in accordance with Decree No. 63/2008/ND-CP. The local authority collects 100% of the environmental protection fee, which is used for environmental protection activities at the local level.

The environmental protection fee is calculated on the basis of cubic meters (m³) or ton of raw mineral.

Different types of minerals have different fee levels, in which the lowest level is VND 1,000/m³ (for stones used as normal construction materials) and the highest is VND 180,000/ton (for tinstone, zinc and lead). Table 5 below lists levels of environmental protection applicable to some types of minerals, in accordance with Decree No.63/2008/ND-CP.

Table 5. Environmental protection fees for some minerals			
No	Type of minerals	Calculation unit	Maximum level (VND)
1	Ashlars paving stone, fine art stone (granite, gabbros, marble)	m ³	50,000
2	Stones used for normal construction materials	m ³	1,000
3	Other types of stones (stones used for producing cement and industrial minerals)	m ³	2,000
4	Glass sand	m ³	5,000
5	Coal	ton	6,000
6	Peat coal	ton	2,000
7	Titanium (ilmenit)	ton	50,000
8	Appetite ore	ton	3,000
9	Iron ore	ton	40,000
10	Lead ore	ton	180,000
11	Zinc ore	ton	180,000
12	Copper ore	ton	35,000
13	Bauxite ore	ton	30,000
14	Bronze ore	ton	180,000

8. Fee of environmental protection applicable to solid waste, wastewater and gas emission

In addition to the environmental protection fee, during the mineral exploitation and processing, if the company releases solid waste, wastewater and gas emission, it will be required to pay fees for discharge. The fee levels are determined as follows:

a. Solid waste

Article 5 of Decree No.174/2007/ND-CP states that the fee level for to solid wastes is (i) for normal solid wastes discharged from activities of offices, business and service premises, industrial protection premises and trade villages not in excess of VND 40,000/ton, and (ii) for harmful solid wastes is not in excess of VND 6 million/ton.

b. Wastewater

According to Decree No. 04/2007/ND-CP, supplement of Decree No. 67/2003/ND-CP, fee levels shall be based on the volume of pollutants in the waste water and harmful level of the pollutants. The fee ranges from VND 20-100 millions per kg.

c. Exhaust gasses

Recently, MOF has been preparing a draft Decree on fee levels applicable to the emission of exhaust gasses in the environment.

9. Other fees and charges

Apart from these fees, the mining company is also liable for paying fees and charges relating to the mineral survey, exploitation, and processing activities, depending on particular circumstances such as fees for sanitation, evaluation and issuance of licenses for using industrial explosives, appraisal of radiation safety, and evaluation of water surface exploration, exploitation and use.

II.1.2 Tax responsibilities

Tax is the main revenue of the state in mining activities. The following are some main taxes that the mining company is obliged to pay to the state.

1. Land, surface water taxes

Land is regulated as the common property of the people to for which the state is the representative of the owner. Therefore, in mining activities, the company is liable for paying the taxes on the use of land and surface water. Land and surface water tax in any particular location is provided for by the Provincial People's Committee based on the provisions of the Law on Land and land tax schedule issued by MOF.

2. Natural resources tax

The natural resources tax is the biggest tax revenue that the state receives from mining activities. According to the Law on Natural Resource Taxes issued in 2009, the mining company is subjected to tax rates ranging from 1- 40%. Table 5 below lists tax rates applicable to some minerals.

Table 6. Schedule of tax rates applicable to some minerals		
No	Group, type of natural resources	Tax rate (%)
I	Metallic minerals	
1	Iron, manganese	7-20
2	Titanium	7-20
3	Gold	9-25
4	Rare earth	12-25
II	Non-metallic minerals	
1	Land exploited for grading, work construction	3-10
2	Stone, excluding stone for calcinations and production of cement; pebble; sand, excluding sand for producing glass	5-15
3	Granite, fire resistant clay	7-20
4	Anthracite coal covered in mines	4-20
5	Open anthracite coal	6-20
6	Lignite, fat coal	6-20
7	Other coals	4-20
III	Crude oil	6-40

As the range of tax rates is rather wide, the MOF and Provincial People's Committee shall provide specific tax rates as well as tax prices of particular minerals applicable to specific mines based on the exploitation conditions and investment policies of each location.

3. Export and import tax

In exporting minerals, the extraction company is responsible for paying export taxes in accordance with provisions of the Law on Exports and Imports issued in 2005. The Standing Committee of the National Assembly issues resolutions on the group of taxable items and range of tax rates applicable to each group. According to Resolution No. 295/2007/NQ-UBTVQH12, the range of tax rates applicable to items of natural resources is from 0-40%. Depending on specific circumstances, MOF shall issue guiding documents to tax rates applicable to products in line with domestic legal documents and international commitments, especially to WTO, ASEAN, ASEAN - Japan, ASEAN - South Korea, ASEAN - China and other bilateral and multilateral commitments. The specific tax rate shall be implemented in accordance with provisions of Circular No. 216/2009/TT-BTC of MOF, dated 12 November 2009.

Table 7. Export tax rates applicable to some minerals		
Order	Name of minerals	Tax rate
1	Appetite ore	7
2	Copper ore	20
3	Nickel ore	20
4	Reductive ilmenite ore ($\text{TiO}_2 \geq 56\%$ and $\text{FeO} \leq 11\%$)	18
5	Titanic cinder ($\text{TiO}_2 \geq 83\%$)	20
6	Coal	10

4. Environmental protection tax

The Law on Environmental Protection Tax, approved in 2010 and coming into effect on 1 January 2012, stipulates that the mining company processing some minerals, such as anthracite, is responsible for paying environmental tax at the amount of VND 10,000 to 30,000 per ton. Other types of minerals are not subjected to the environmental protection tax.

5. Corporate income tax

According to the Law on Corporate Income Tax No. 14/2008/QH12, dated 3 June 2008, the tax rate of 25% is applicable to the company in general and the mineral exploiting company in particular. Some companies that engage in mineral exploitation in specific locations may enjoy tax exemptions or reductions in the first years. The exemption or reduction of corporate income tax shall be specified by the relevant Provincial People's Committee.

6. Value added tax (VAT)

Under the Law on Value Added Tax, mineral products are subjected to tax rates as follows:

- The tax rate of 0% is applied to export items that are raw materials;
- The tax rate of 5% is applied to ores for production of fertilizer; and
- The tax rate of 10% is applied to other items.

II.1.3 Other financial obligations

1. Land and water surface rental

If the mining activities negatively impact on the use of land and water surface, the mining company is required to pay the land or water surface rental. The price of land or water surface rental is specified by the Provincial People's Committee for each type of land, based on the land range and water surface prices established under the Decree No. 142/2005/ND-CP, dated 14 November 2005, Decree No. 188/2004/ND-CP dated 16 November 2004, and Decree No. 123/2007/ND-CP dated 27 July 2007, supplementing several articles of Decree No. 188/2004/ND-CP.

2. Deposits for mineral exploration

Although deposits of funds for mineral exploration or other purpose is not a kind of revenue for the state, they are worth noting since this financial obligation might not be carried out well. Article 30 of Decree No. 160/2005/ND-CP regulates the specific deposit levels applicable to mineral exploration activities as follows: the deposit level shall be at 25% of the estimated expenses for the exploration in the first year of exploration. Under the new Law on Minerals issued on 17 November 2010 and coming into effect on 1 July 2011, the mining companies are not required to deposit funds for exploration activity. Instead, the state shall collect an amount of money generally referred to as a "charge of mineral exploitation right".

3. Financial obligation if the mining company violates the regulations

During the conduction of mineral activities, if the company violates the regulation, it is subject to

finances. These contents are guided in details in the ordinance on dealing with administrative violations and guiding documents.

4. Deposits for environmental recovery and rehabilitation

According to the Law on Minerals, entities and individuals that are allowed to engage in mineral activities are required to perform their responsibilities for recovering and rehabilitating the environment once completed each exploitation phase or the entire mineral activities. They are also liable for any costs of environmental and land protection and rehabilitation. The expenses on protection and rehabilitation of the environment and land must be determined in the environmental impact assessment report and feasibility study report on the mineral exploitation, processing or mineral exploration project. The entities and individuals that are allowed to engage in mineral exploitation are required to deposit funds either at a Vietnamese or foreign bank that is authorized to operate in Vietnam as a guarantee for the environmental recovery and rehabilitation.

An enterprise is entitled to draw cash from the Environmental Fund for serving environmental recovery and rehabilitation under the approval of the provincial or central Environmental Fund, where the enterprise registers its deposit. The deposit for environmental recovery and rehabilitation mining activities is regulated by Decision No. 71/2008/QĐ-TTg dated 28 May 2008.

5. Social responsibility

The Law on Minerals (1996) and Decision No. 219/1999/QĐ-TTg about the policy on the rights for protection of the local people where the minerals are exploited and processed and the protection of under-exploited mineral resources mentions support to localities where mining activities occur. However, the social responsibility of the mining company is neither specified nor required. This responsibility is performed through one of two methods:

- (Local) competent state agencies determine requirements for responsibilities of the enterprises upon their application for mineral exploration and exploitation licenses. If obtaining licenses, enterprises must perform their responsibility in line with local requirements (such as labor training, contributing to the construction of public works or local culture); and
- In the application file for licenses, enterprises must commit to performing their responsibility to the locality upon obtaining permission to realize mineral exploitation projects.

Financial liabilities of company in mining activities are illustrated in Figure 1 below:

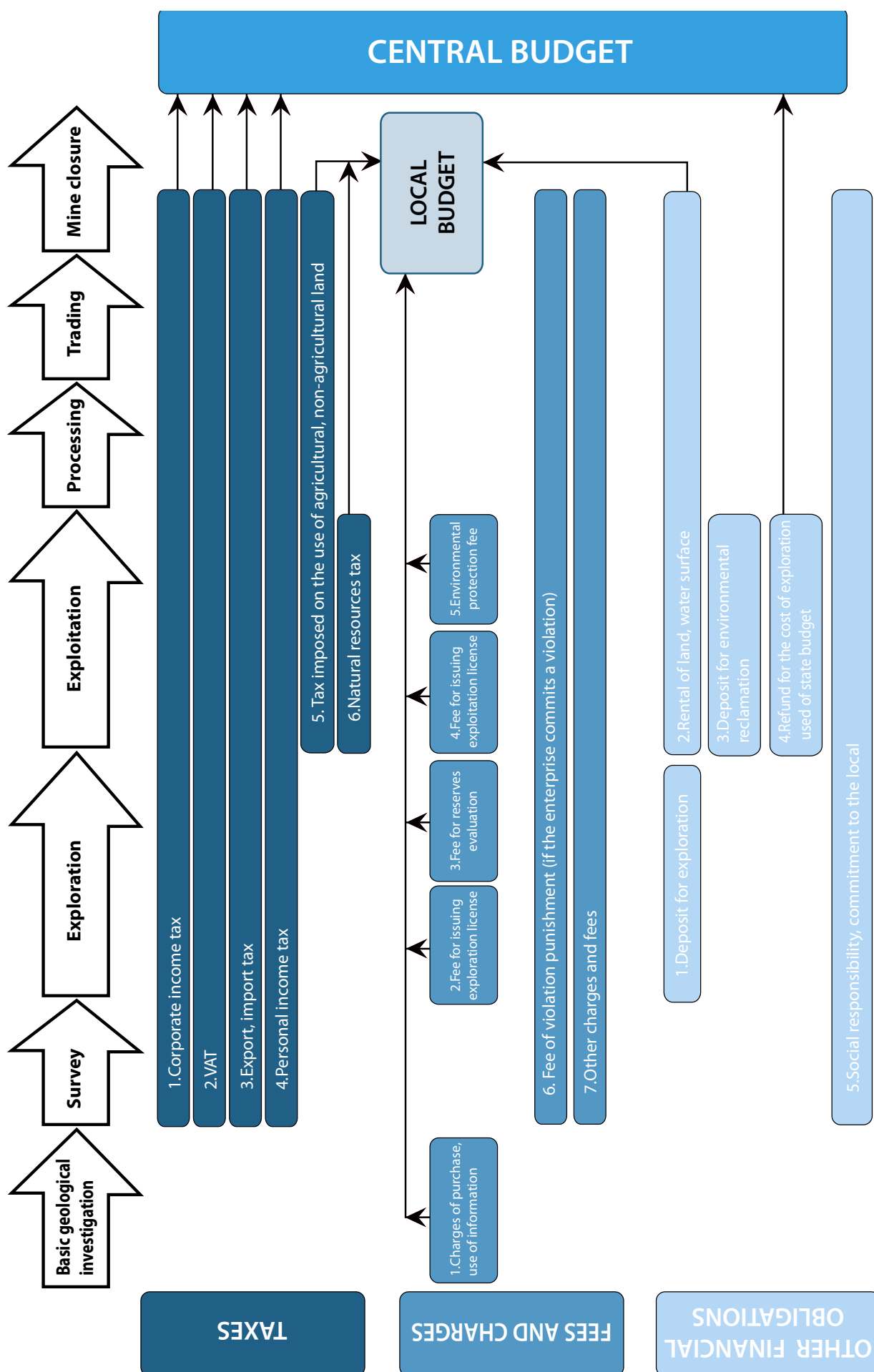


Figure 1. Financial liabilities of the mining company

II.2 - FINANCIAL LIABILITY OF THE OIL AND GAS COMPANY

Oil and gas activities are regulated in the Law on Petroleum in 1993 and its revised and supplemented versions in 2000 and 2008. Apart from the obligations provided for by those laws and similar obligations for taxes, charges and fees applicable to mining activities, the enterprises are also required to pay other taxes and fees.

II.2.1 Fees

Fee for the purchase and use of petroleum information

As provided for in the Petroleum Law, petroleum exploring and exploiting enterprises are obliged to pay a fee to the state for the use of information about petroleum. This fee will be negotiated in the petroleum exploration and exploitation contract and PVN shall negotiate and collect this fee on behalf of the host country.

Types of bonuses

As petroleum exploitation is a relatively special activity and petroleum activities in Vietnam are almost all carried out offshore, closely connecting it to the economic, politic and security of sovereignty situation of the nation. The Vietnam Oil and Gas Group (PVN) is assigned by the State to represent and perform activities of exploration, exploitation and related business activities. Business activities in the petroleum area are conducted under the production sharing contracts (PSC), bidding, etc.

There are three main types of bonuses to be paid to the state budget, including:

- Signature bonus;
- Commercial finding bonus; and
- Production bonus.

Norm and form for collecting these bonuses are directly mentioned in the petroleum exploitation contracts.

Environmental protection fee applicable to crude oil and natural gas

The Decree No. 82/2009/ND-CP of the Government providing for environmental protection fee applicable to mineral exploitation provides that the fee applicable to *"crude oil shall be VND 100,000/ton and for natural and coal gas VND 50/m³. For natural gas collected during the exploitation of crude oil (associated gas) in particular, the fee shall be VND 35/m³."* Unlike minerals, 100% of the environmental protection fees in petroleum activities are paid directly to the central budget.

II.2.2 Profit sharing

Foreign enterprises shall be responsible for distributing a part of their profits called petroleum interest to the host country. Rate and form of profit distribution shall be stipulated in the relevant contracts, depending on the specific lot and cooperation project. PVN shall be the authorized unit to directly collect these amounts from petroleum exploitation contracts.

II.2.3 Taxes

Natural resources tax

Specific tax rate applicable to crude oil and natural gas are determined progressively for each part by the output of crude oil, natural gas and coal gas, which is produced in an average day. Specifically, Circular No. 32/2009/TT-BTC of MOF provides for the natural resources tax rate applicable to crude oil and natural gas as follows:

Table 8. Schedule of natural resources tax rates applicable to crude oil and natural gas		
Exploitation output	Investment incentive projects	Project
Crude oil		
Up to 20,000 barrels/day		
More than 20,000 barrels to 50,000 barrels/day	8%	10%
More than 50,000 barrels to 75,000 barrels/day	10%	12%
More than 75,000 barrels to 100,000 barrels/day	12%	17%
More than 100,000 barrels to 150,000 barrels/day	17%	22%
More than 150,000 barrels/day	22%	27%
Natural gas		
Up to 5 million m ³ /day	0%	0%
More than 5 million m ³ to 10 million m ³ /day	3%	5%
More than 10 million m ³ /day	6%	10%

Corporate income tax

For petroleum exploiting enterprises, the applicable tax rate shall be 50% of the petroleum exploitation project and 32% of the petroleum exploitation project, which is subject to an investment incentive in accordance with Article 48 of the Decree No. 48/2000/ND-CP and Circular No. 32/2009/TT-BTC guiding the implementation of provisions on taxes applicable to entities and individuals carrying out petroleum search, exploration and exploitation.

II.2.4 Other financial obligations

Mine clearance fund

Article 13 of the Petroleum Law No. 10/2008/QH12 stipulates that *“During the performance of petroleum activities, after finishing each step or each phase or upon terminating a petroleum contract, the relevant entities and individuals carrying out the petroleum activities shall clear fixed construction works, equipment and means of serving the petroleum activity, which are no longer used and recover the environment in accordance with provisions of applicable laws”*. The deposit to mine clearance fund shall be implemented in accordance to the provisions of the Decree No. 40/2007/QD-TTg of the Prime Minister. Based on the Decree, the enterprises shall be obliged to deduct an amount of money on an annual basis and based on the reserves and exploited output to the fund under PVN’s management for serving the petroleum clearance activity upon finishing the exploitation under the following formula:

$$\text{Annual payment} = \frac{\text{Annual production} \times (\text{Total expense on clearance} - \text{Ending deducted balance})}{\text{Remaining recoverable reserves}}$$

Financial liabilities of the oil and gas company are presented in Figure 2 below.

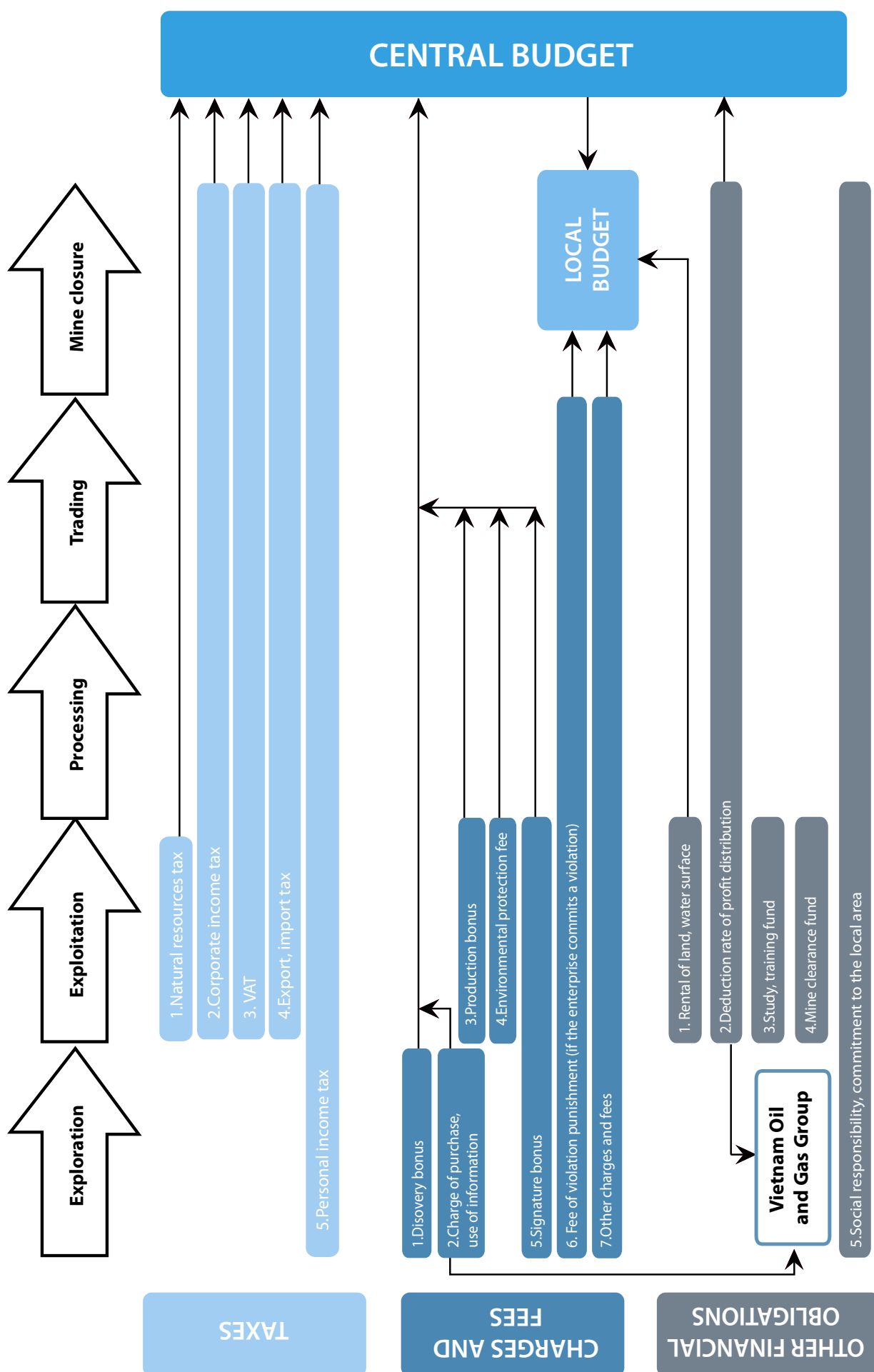


Figure 2. Financial liabilities of the oil and gas company

II.3 - GENERAL COMMENT

As analyzed above, the financial obligations of the mining, oil or gas company in Vietnam are relatively diversified with various types and levels. Generally, during the operation process, the extractive company engaging in mineral responsibility is responsible for paying about seven types of charges and fees, six types of tax and some other compulsory obligations or social responsibilities. The number of charges and fees that the enterprises are obliged to pay to the state depends on the specific type of mineral, exploitation, processing technology.

In general, the local authorities of the areas where mineral activities take place are entitled to receipts from all types of related charges and fees and social responsibilities of the enterprises (except for the environmental protection fee in the oil and gas extraction). For the receipts from taxes, the locality is only entitled to the natural resources tax (except for petroleum sector). Receipts from the remaining taxes, such as corporate income tax, export – import tax, and personal income tax are paid to the central budget and allocated in accordance with provisions of the state.



CHAPTER III. REAL SITUATION OF THE REVENUES – PAYMENTS MANAGEMENT, AUDITING, INFORMATION DISCLOSURE IN THE EX TRACTIVE INDUSTRY AND OPINION ABOUT THE EITI IMPLEMENTATION IN VIETNAM

Financial liabilities of enterprises to the state are checked in accordance with provisions as stated in Chapter II. However, there is still a big gap between the provisions of law and its enforcement in Vietnam. That is the reason why the study group interviewed relevant subjects to examine the gap between the laws and the reality. Furthermore, interviewing key stakeholders clarified the model of revenues/payment management, auditing activity, information disclosure, transparency and opinion of these stakeholders about the implementation of the Extractive Industries Transparency Initiative (EITI) in Vietnam.

III.1 - METHODOLOGY AND THE SCOPE OF THE STUDY

This study uses three methods for collecting and analyzing data including interviewing the key stakeholders, secondary data collection and expert consultation.

In regard to the interview method, the representatives of the two sectors to be interviewed included (1) governmental agencies: Ministry of Industry and Trade, Ministry of Natural Resources and Environment, Ministry of Finance, State Audit, and local authorities; (2) extractive companies, including state-owned enterprises (Vietnam National Coal-Mineral Industries Holding Corporation Limited, Vietnam National Chemical Group, Vietnam Oil and Gas Group); foreign invested enterprises (Niken Ban Phuc company, Vietnam – Russia – Japan Petroleum Company); and private enterprises. A list of interviewees are provided in **Annex A**. In total, 24 representatives of the governmental authorities and extractive companies were interviewed.

A semi-structured questionnaire was used for the purpose of collecting information about the role of governmental agencies in the extractive industry (**Annex B**) and payments that the enterprises are obliged to pay to the state.

In addition, the extractive companies were asked about the auditing activities and information

disclosure on their revenues and payments (**Annex C**).

Regarding the EITI implementation of Vietnam, before interviewing, the above stakeholders were provided with introductory documents about the EITI. Both stakeholders mentioned above were asked about the opportunities and challenges in strengthening transparency and accountability in the extractive industry. Then they were asked whether Vietnam should implement the EITI or not (**Annex D**). The semi-structured questionnaire focused on the following issues:

(i) Transparency and accountability in the extractive industry

The interviewees were asked about their awareness/opinion about the transparency level of the extractive industry in Vietnam. Key matters such as the promulgation of related information about licensing, budget receipts and expenses, the participation of the civil organizations and local community people were discussed. Furthermore, to enhance transparency and accountability in the extractive industry, the interviewees were requested to assess opportunities and challenges in the context of Vietnam.

(ii) Opinion about the EITI implementation in Vietnam

The interviewees were asked about whether Vietnam should implement the EITI or not and, if yes, what would be the challenges and barriers that Vietnam will face. If Vietnam signed up to the EITI, which entities should be engaged in this program and who would be the coordinator of the EITI program. Moreover, which companies should be required to be involved in the EITI (based on the amount of their payment to the state and on the type of minerals).

Furthermore, to have more opinions on the extractive companies, a questionnaire was sent to 17 extractive companies across the country (**Annex E**). The questionnaire focused on the following issues (**Annex F**):

- Payments of the company (taxes, fees, commitments to the local area, social responsibilities);
- Difficulties and challenges in the performance of financial obligations;
- Information disclosure of the company;
- Auditing activity; and
- Opinions about EITI implementation in Vietnam

III.2 - STUDY RESULTS

III.2.1 The payment and allocation of revenues in mining

a. Payment to the budget

This study focuses on the main receipts from mining activities, such as fees for the purchase or use of information, money refunded for the fee of exploration using capital from state budget, and the natural resources tax and environmental protection fees. All of the interviewed representatives of the companies said they have fully performed financial obligations of the company to the state in compliance with the provisions of applicable laws. Almost none have faced any significant difficulty in carrying out related financial obligations. Fees, charges and taxes have been paid to the local treasuries by fund transfers. The following is an example about payments of PT.Vietmindu Energitama Company ³ (Table 9).

*3: Vietmindu Energitama is a 100% owned by Indonesia under the investment cooperation between the Governments of Vietnam and Indonesia.

Table 9. Payments of PT.Vietmindo Energitama Company								
Payments	Amount (USD)	Recipient	Payment time-line			Form of payment		
			Monthly	Quarterly	Yearly	Cash	Transfer	Production
Taxes								
1.Tax of land use right leasing	173,407.28	State Treasury			x		x	
2.Natural resources tax	6,354,574.75	As above	x				x	
3.Value added tax	620,957.07	As above	x				x	
4. Export, import tax	13,837,448.12	As above					x	
5.Corporate income tax	4,639,131.7	As above		x			x	
6.Personal income tax	75,208.92	As above	x				x	
Profit distribution								
Production sharing contract (PSC)	10%	As above	x					x
Fees and charges								
1.Fee for issuing mineral exploitation license	200	As above						
2.Fee for issuing processing license	200	As above						
3.Environmental protection fee	1.097.762	As above						
4.Fee for issuing permission to foreign laborers working in Vietnam	20/ person	As above						

However, by using a crosschecking method amongst various stakeholders and by secondary data study, this study found that the collection and management of some taxes, fees, charges and other financial obligations was relatively different from the provisions of laws and regulations. The following are some of these differences ⁴ :

• **Natural resources tax**

Currently, the natural resources tax is determined based on the production that is self-declared by the company to the taxation authorities. The taxation authorities apply formulas and tax rate schedules for each mineral product after having deducted some charges, such as transport costs of products. The method of determining the tax rate of natural resources is not specified by law and there are differences among localities. In some regions, the tax rate of natural resources is stipulated by the Provincial People's Committee based on the price unit issued by MOF and the tax calculation method was provided for by the Law on Natural Resources Tax. The following are examples of the coal tax rate in Quang Ninh province (Table 10).

Table 10. Price level for calculating the royalty for coal in Quang Ninh			
Order	Name of entities	Calculation unit	Price level for calculation of natural resources tax in 2009 applicable to one ton of coal
1	Nui Beo Coal Joint Stock Company	VND/ton	527,609
2	Northeast Company	VND/ton	454,098
3	Hon Gai Company Ltd.	VND/ton	541,806
4	Ha Tu Coal Joint Stock Company	VND/ton	540,639
5	Ha Lam Coal Joint Stock Company	VND/ton	515,163
6	Uong Bi Coal Company Ltd.	VND/ton	574,672
7	Coc Sau Coal Joint Stock Company	VND/ton	565,532
8	Cao Son Coal Joint Stock Company	VND/ton	581,997

(Source: Decision No. 1622/QĐ-UBND dated 01/06/2010 of Quang Ninh People's Committee)

Meanwhile, in some other regions, the price for calculating natural resources tax was determined by the price stated in the invoice at the time where the company sold minerals to its partner. Titanium in Binh Dinh province is an example. Some stakeholders from both company and governmental agency state that the method of determining price for calculating the natural resources tax was based on the outward invoice of the company. Consequently, in the situation that the company comes to an agreement with its partner to set a lower price on this invoice than market value to evade a part of natural resources tax commonly occurred. Some representatives of the mining companies said that the calculation method of natural resources tax was still complicated and unfair. They proposed the state to calculate natural resources tax based on the mine reserves instead of production. They also proposed the payment of tax to be made in one or several times. This issue is still being debated amongst the stakeholders with no specific outcome.

In fact, the governmental agencies just conduct their monitoring activities as if they would have signals of violation from the company itself. Hence, the situation in which the companies declare by themselves their monthly or quarterly production to the taxation authorities, with no or little production monitoring. This is a big gap in the extractive industry. Consequently, a huge amount of mineral resources has been lost throughout the years and the state also loses considerable revenues from this. As noted, the fact that the extractive companies do not declare their real production seems to occur commonly in many locations. The unreported product is then smuggled, leading to a big loss of revenues to the state. The situation of mineral smuggling as with coal, titanium, and iron that has been mentioned on the press and discussed in the government in recent years in Vietnam has been happening for years. This is despite state management agencies having strengthened their supervision and inspection tasks in recent times (CAND, 2010; Xa Luan, 2011).

• Fee for the purchase and use of information and money refunded for the exploration fee using the state budget

The state has issued provisions on the refund of survey and exploration fees, using capital from the state budget, such as the Inter-ministerial Circular No. 96-TT/LB issued in 1993; the Law on Minerals issued in 1996; Circular No. 46/TTLT-BTC-BCN dated 21/5/2002 replacing Circular No. 186//2009/TTLT-BTC-BTN&MT dated 28/9/2009. However, in almost all surveyed provinces, the state has not managed to collect these amounts or the received amount has been limited. For example, for the coal mines in Quang Ninh, the state has almost not collected the refund so far. The main reasons are an unclear division of responsibilities between MONRE and the local authorities about the collection mechanism, and a poor law enforcement⁵. Another reason is because of the decision to assign the management of all coal mines in Quang Ninh to the Vietnam Coal Corporation - TVN⁶ under the Decision No. 481/CN-QLTN dated 8/6/1995 of the Ministry of Industry, before the issuance of the Law on Minerals in 1996, leading to confusion over the state management function and economic operation function of TKV. When TKV started privatization, information about mines as well as previous expenses on exploration using capital from the state budget were not recorded to assets of companies. Therefore, this revenue was fallen into some individuals, resulting a huge loss to the state.

*4: This report only refers to the situation of legal cheating in the mining sector, but does not mean to refer to some specific enterprises or localities, especially for enterprises and localities in the interview list.

*5: In Quang Ninh so far, the state has not collected any fee refunded from the expense of exploration using capital from the state budget. Meanwhile, almost all coal mines in the local area of Quang Ninh were investigated and explored with the capital from the state budget.

*6: Vietnam Coal Corporation – TVN was established in 1994, under the direct management of the Ministry of Industry. In 2001, it was changed to Vietnam National Coal-Mineral Industries Holding Corporation Limited -Vinacomin.

• **Environmental protection fee**

The environmental protection fee is paid by the company on a monthly basis, based on the production in line with the guidance of the Circular No. 67/2008/TT-BTC issued by MOF. This is a big receipt that the local authorities (provinces and cities) are entitled for covering costs of environmental protection activities. For example, Quang Ninh receives about VND 290 billion per year from this fee. According to almost all state management agencies and mining companies interviewed, the current environmental protection fee is still low and unfair among different types of minerals. For instance, the environmental protection fee applicable to coal exploitation is just VND 6,000/ton. Meanwhile it is VND 50,000/ton for ashlar paving stone. This is the unfair element among types of minerals because coal exploitation is deemed to cause much more adverse impact on the environment than that of the exploitation of ashlar paving stone.

On the other hand, the use of funds from the environmental protection fee is not widely publicized, resulting in people usually blaming the mining company for pollution even though the mining company may have fully performed its financial obligations for environmental protection. According to the survey, the fund from the environmental protection fee is sometimes used for the wrong purposes, such as constructing infrastructures that are not related to environmental protection like cultural halls or roads. Furthermore, the allocation mechanism of this budget shows many unclear points. Specifically, the allocation is based on the proposal of each district and approval of the Provincial People's Committee, of which the representative is the Department of Planning and Investment. It is not totally based on the impact of the mining activities on the environment in certain locations. The unclearness in allocation of the fund for environmental protection activities among different areas combining with the lack of information disclosure related to that budget has caused bad effects in revenue management.

• **Other financial obligations**

In fact, some localities collect an amount of money from the mining companies so called "*contribution to the infrastructure*" for the purpose of improving infrastructure in areas affected by mining, although the applicable Ordinance on Charges and Fees as well as the Law on Minerals do not regulate them. For the Sinh Quyen copper mine in Lao Cai, for example, the local authority collects VND 300,000/ton of crude copper ore. In Binh Dinh province, the local authority collects the so-called infrastructure fee for titanium and building stone from the mining company, but the price for each type of minerals, place and exploitation license is different. Of these, with titanium exploitation, the level of contribution to the infrastructure construction is between VND 80-160 million/ha under the Decision No. 109/QĐ-UBND *about the level of contribution to the infrastructure construction in titanium exploitation activity in the local area* issued by Binh Dinh People's Committee, dated 4/3/2010. With building stones, the level of contribution to the construction of infrastructure is from VND 3000/m³ to VND 80,000/m³ for each type of stone under the Decision No. 2793/UBND-ND *about launching the collection of money contributed for the construction of infrastructure in exploiting building stone* issued by Binh Dinh People's Committee, dated 16/8/2010. The total amount paid by titanium exploiting enterprises in Phu My district only, Binh Dinh province, in 2 years (2010-2011) was VND 25.271 billion, of which the amount paid in 2010 was VND 4.647 billion. The money received from contribution of the extractive companies was passed to each district for maintaining and repairing the infrastructure affected by titanium exploitation.

Apart from these requirements, the mining company may make other payments for such activities as supporting vocational training, transport roads, and campaigning activities. Though these amounts are not significant in comparison with financial obligations that the enterprises are required to perform, they may make the mining company face difficulties in regularizing these payments because they have no invoice or voucher. Therefore, the company has to include these payments to its after tax profit.

• **Some other matters**

In addition to problems relating to formal and informal payments, there are also some problems relating

to receipt resources in mining activities, such as when the entity is granted with an exploitation license, but it does not engage in exploitation and instead resells the mine to another entity for exploitation. In fact, the Law on Minerals stipulates that only entities holding exploitation license have the right to perform mineral exploitation. This phenomenon occurs commonly in the mining industry in several areas, such as coal exploitation in Quang Ninh and titanium exploitation along the Central coastal areas (CODE, 2010).

Revenue distribution

All charges and fees from mining activities and some taxes, like tax on the lease of agricultural or non-agricultural land for mineral exploitation or natural resources tax, should be paid entirely to the local budget and used for local economic development. The environmental protection fee should only be used for the purpose of environmental protection in the affected localities. The environmental protection fee should be allocated at different rates upon specific area. In Quang Ninh for example, the district level is allocated 30% of the amount received from the local environmental protection fee. The remaining amount is used in the general environmental protection activities of the province. In other provinces, the Provincial People's Council decides and balances the distribution rate, as well as the use of environmental protection fee based on the proposal of districts in certain years.

Other taxes like VAT, corporate income tax, personal income tax, and export–import tax are sent to the central budget and generally allocated in the whole country. Of these, some taxes will be re-allocated to the local budget at a specified percentage rate, such as:

- VAT;
- Corporate income tax;
- Income tax for persons with high income.

The central budget will be decided by the National Assembly and re-allocated to the locality at a particular proportion and adjusted annually.

III.2.2 The collection and allocation of revenues from crude oil

Revenue collection from crude oil to the budget

Revenue from crude oil accounts for more than 21% of the total state budget in the past 10 years, from 2000 to 2010, noticeably, accounting for 29.82% in the year 2006 ⁷ (Figure 3).

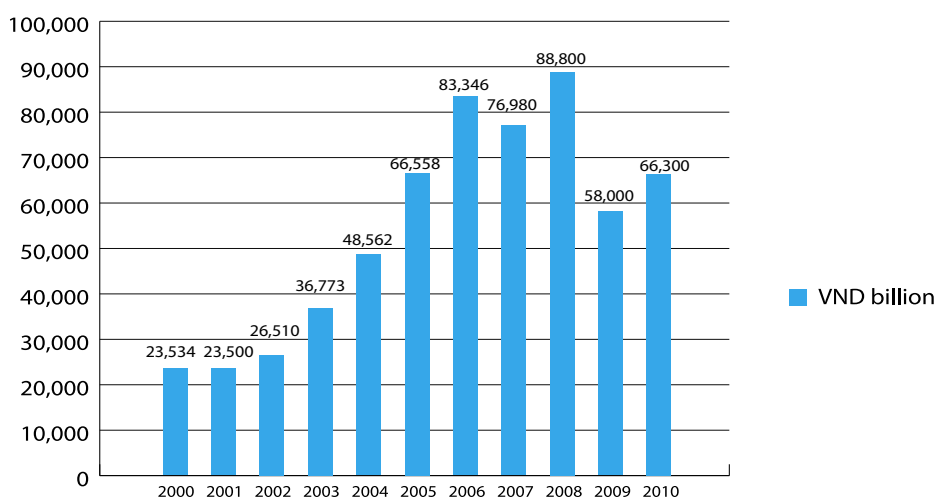


Figure 3. State budget receipts from crude oil (including natural resources tax and corporate income tax) from 2000 to 2010

*7: General Statistics Office, source: <http://www.gso.gov.vn/default.aspx?tabid=389&idmid=3&ItemID=9885>

This is the biggest source of revenue among all economic sectors in the country. However, the budget receipts from crude oil are much higher than those indicated on the statistic data of the General Statistics Office. This is because the statistic data only reflects the budget receipts from crude oil that include two main taxes, namely the natural resources tax and corporate income tax (in 2008, 2009 and 2020, for example). Some other receipts were not included, such as from personal income tax, export-import tax, environmental protection fee, bonus and especially, the profits in the production sharing contracts. For instance, the amount of VND 58,000 billion contributed to the state budget by crude oil in 2009 was only received from corporate income tax (VND 43,483 billions) and natural resources tax (VND 14,517 billion) ⁸.

According to the assessment of the parties, the collection and payment to state budget from petroleum is fairly transparent thanks to the tight supervision mechanism in the petroleum sector, as well as to the off-shore exploitation feature itself. Nevertheless, there still exist unclear points in some revenues in the oil and gas industry. The following are some findings related to the actual financial obligations of the oil and gas industry:

• ***Fee for purchase and use of petroleum information***

According to provisions of the Law on Petroleum, PVN is responsible for providing and collecting a fee for the purchase and use of information about petroleum from exploring and exploiting enterprises. Previously, in some petroleum exploration contracts, this fee was included at a price of about US\$ 200,000/lot. At present, some enterprises are not required to pay this amount. The decision on the sale of information about the petroleum lot is made during the negotiation and mentioned in the petroleum contract. As a normal case, PVN only collects this fee for lots that cost PVN a large amount. Meanwhile, the lots that cost less or are subject to investment incentives are exempted from this fee. So far, however, there have not been any documents or public promulgations stipulating which lot or project is obliged to pay this fee.

• ***Bonuses***

Currently, in the petroleum sector, three bonuses are still applicable, namely for signature, commercial discovery and production. The signature bonus is paid by the company immediately after signing the petroleum exploration and exploitation contract. The commercial discovery bonus is charged when the exploring company finds a commercial petroleum mine. The production bonus is charged when the enterprise's exploitation reaches a certain output level, normally about 50,000 barrels/day. Generally, there is no specific regulation on the limit to the price of these bonuses. These fees are proposed by the contractor in the bidding to the host country. A lot of petroleum lots, however, are not put out to auction, resulting that the stipulation and collection of these bonuses are unclear. Regarding the bonus levels, the signature bonus normally hovers around USD 5 million, commercial discovery bonus about USD 10 million, and the production bonus about USD 10 million.

• ***Environmental protection fee***

In line with Decree No. 63/2008 /ND-CP, the enterprises engaging in petroleum exploitation sector are required to pay an environmental protection fee at the rate of VND 100,000/barrel. However, many petroleum exploitation projects are exempted from this fee, even though they are not subject to investment incentives. The regulations that the projects are not required to pay environmental protection fee are reflected in internal documents issued by PVN and MOF. This point is unobvious and unfair because such documents are not publicly or widely disseminated. Theoretically, the

*8: Ministry of Finance: http://www.mof.gov.vn/portal/page/portal/mof_en/State_Budget/dosb/es?p_folder_id=19235472&p_recurrent_news_id=19236098

environmental protection fee applicable to petroleum exploitation in 2009 reached VND 1600 billion (about USD 80 million), equal to the production of 16 million tons of crude oil⁹, which was multiplied with the price of VND 100,000/ton in line with the price unit provided for in Decree No. 63/2008/ND-CP. However, statistical data about the receipts, as well as the use of this revenue, is not reflected in the statistical state budget.

• **Petroleum clearance fund:**

According to Decision No. 40/2007/QĐ-TTg dated 21/3/2007, oil and gas companies are required to deposit an amount of money for the clearance of petroleum after the exploitation. As provided for in the Decision, the deposited amount is calculated based on annual production. PVN is responsible for depositing this amount at a profitable credit institution in Vietnam. The interest amount arising every year will accrue to this fund.

The 2009 financial report of the Petro Vietnam Finance Corporation (PVFC)¹⁰, who is responsible for managing the petroleum clearance fund, indicates that the balance on 31st December, 2009, was VND 1.313.894.850.376 (equal to 76.5 million USD¹¹) (PVFC, 2009). According to contract No.1507/HĐKT-DKVN between PVFC and PVN, the interest rate of the Oil clearance fund in USD for 12 months was the announced interest rate of the Joint Stock Commercial Bank for Foreign Trade of Vietnam (Vietcombank) plus 0.75%/year. There are some unclear points in managing and using this fund. (i) First, the fund is trusted to PVFC. Therefore, because PVFC is a company member of PVN, it is likely not to appropriate it based on the spirit of Decision No.40/2007/TTg, regulating that the fund should be trusted by a third party. (ii) Secondly, PVFC just calculates the deposit rate for 12 months, while the oil clearance is carried out over many years. Therefore, the longer is the deposit period, the higher is the deposit rate. (iii) Thirdly, the interest rate that PVN applies for the Clearance Fund is not disclosed. Therefore, it is hard to know whether the interest rate that PVFC pays to PVN would be directly applied to the Clearance Fund. (iv) Lastly, PVFC pays 0.75%/year higher interest rate compared to the standard. Hence, what is the reason accounting for this higher rate? The question is whether this deposit fund is used for other purposes or not.

MOF and MOIT were assigned to draft the guidance of the Decision No.40/2007/ QĐ-TTg since 2007. However, to date the guidance has not been issued yet. Therefore, the use and management of this fund lacks transparency.

• **Other financial liabilities:**

At present, the oil and gas company is almost not required to gain support from local authorities. Before 2008, however, Vietsopetro Joint Venture Company voluntarily contributed about USD 1-1.5 million/annum to Ba Ria-Vung Tau province, aimed at the construction of local infrastructure.

Petroleum exploration and exploitation activities are usually performed in a vast area and take place over a long period, causing substantial impacts on the daily life of the fishers. For that reason, some oil and gas companies give financial support to local fishers through the Provincial People's Committee. For example, Vietnam-Russia-Japan Petroleum Company has supported USD 12,000 to the local fishers so that they would not violate the area where the company was exploring. So far, the state has not issued any specific regulation on the support to the daily life of the fishers affected by petroleum

*9: PVN, Source: http://www.pvn.vn/?portal=news&page=detail&category_id=74&id=1080

*10: PVFC was established in 2000 functioned as a financial institution of the Vietnam National Oil and Gas Group (PVN) (Source: <http://www.pvfc.vn/Desktop.aspx/Gioi-thieu/Lich-su/Lich-su-phat-trien/>).

*11: Exchange rate by 12/2009, 1 USD equals 17.171 VND

activities. The support to fishers is only a voluntary act of the company.

Revenue allocation

As petroleum is a typical industry, almost all taxes, fees, and charges are paid to the central budget and PVN Group, including the environmental protection fee and natural resources tax. Petroleum exploiting entities are required to pay directly taxes as VAT, personal income tax, export-import tax, corporate income tax and natural resources tax to the central budget, which is allocated in accordance with provisions on the allocation of state budget.

Some revenues such as petroleum interest are fee for the use of data are distributed under the mechanism that a part of which will be handed over to PVN for management. The remaining amount will be paid to the state budget. The flow of cash distribution in petroleum exploitation is illustrated in Figure 2 above.

Holding companies, exploiting entities or Vietnamese contractors shall be authorized to perform the declaration, direct payment to the state budget upon really arising following items:

- a) 50% of the petroleum interest of the host country is distributed from Vietsopetro Joint stock company;*
- b) 50% of the oil and gas interest of the host country is distributed from Product distribution contracts after having deducted 1.5% of which for the Holding company to cover expenses of management, supervision over petroleum contracts;*
- c) Entire receipts from petroleum commissions of all types (signature commission, finding commission, production commission);*
- d) 30% of the receipts from the fee for the reading and use of petroleum materials*

(Decree No. 142/2007/ND-CP)

In regard to the distribution of profits of PVN, after having excluded retained amounts, invested to the limited liability company with one member (if any) of which, the Holding company is the owner, after tax profit is distributed as follows:

- Deducting 10% to the financial reserve fund, where the balance of the fund is 25% of the charter capital and the deduction will be terminated;
- Deducting 10% for setting up the Fund for petroleum seeking and exploration, where the balance of the fund is at 10% of the charter capital and the deduction will be terminated;
- Deducting at least 35% to the development investment fund; and
- Deducting to the Fund for reward to the Holding Company's Executive Committee and the deducted level shall not exceed VND 1,000 million a year.

The remaining profit shall be allocated to the fund for reward and welfare under the current financial regime. The balance, if any, shall be paid to the development investment fund.

III.2.3 Auditing and promulgation of information

Auditing

Currently, in accordance with provisions of laws of Vietnam, the auditing mechanism consists of three forms:

- State audit: applicable to enterprises of which more than 51% of the owner's capital is subject to the Law on State Audit No. 37/2005. However, some enterprises of which less than 51% of the capital is owned by the state may be audited by the state upon request of the Government Inspectorate or decision of the Prime Minister.
- Independent audit: applicable to companies of which less than 51% of the capital is owned by the state, foreign invested companies and private companies in line with the Decree No.105/2004/ND-CP. Recently, the Law on Independent Audit is in the preparation and as planned, this Law shall obtain the opinion of the National Assembly in 2011.
- Internal audit: applicable to state-owned enterprises in accordance with Decision No. 832/TC-QD-CDKT dated 28/10/1997 of the Ministry of Finance.

Regarding the statement of the auditing activities in the extractive industry, the respondents all inform that they conduct a regular audit once per year (for organizations to use budgets, property of the state) and the regulations on independent audit (for non-state enterprises and enterprises with foreign investment). A number of large state owned enterprises conduct an independent audit, internal audit and state audit, such as Vinachem, Vinacomin and PVN.

A number of companies listed on the stock market, such as the Ha Lam Coal Joint Stock Company and Binh Dinh Minerals Joint Stock Company (Bimico), should comply with audit regulations under the Securities Exchange Act. Some companies also conduct inspections and regular reviews. For example, Vinacomin evaluates and tests affiliated companies randomly and periodically every 6 months. PVN checks the activities of the affiliated companies every month, quarter or year.

The audit results are reported to the relevant management agencies such as the local tax department (for the private sector, FDI in the local area). Corporations of the state report to the General Department of Tax, Ministry of Finance, and ministerial management agencies such as Ministry of Industry. A number of important corporations of the State such as PVN report directly to the Prime Minister.

Information disclosure

Currently, on the side of the extractive company, only the ones listed on the stock market often publish information on revenue-payment in the business operation. The information disclosure is conducted under the provisions of the Securities Exchange Act. Those businesses which are not listed on stock market hard publicize revenues and expenditures. Instead, those companies must submit financial reports and information on revenues and expenditures to state management agencies, such as the tax department on a basis of once a year. For example, for one member limited company, it must submit the report financial statements to the State management agencies every 6 months and once per year under the guidance of Circular No. 117/2010/TT-BTC. In addition, under the provisions of Decision No. 77/2010, the state-owned enterprises and FDI are obliged to declare and submit their financial report to the State management agencies such as the General Department of Tax and the State management department of foreign investment on a monthly, quarterly and yearly basis. Of these, the annual reports include taxes, charges and fees that businesses have had to pay to the state. However, information disclosure activities remain insufficient:

- According to financial disclosure rules, the annual financial statements of the enterprises are the basis for financial disclosure. However, at present, there is no provision for verifying the enterprises' data for comparison with published data and so the accuracy of the published information cannot be ascertained.
- The inspection, supervision and handling of violations, for violations of financial regulations of the enterprises, especially SOEs, are not well conducted.

In general, information disclosure on the revenues and payments of the extractive companies is rather limited. Only some state management agencies are able to access this data. When asked to provide information related to revenues and payments, among the interviewed companies, only a few of them were willing to do so.

As for the state management agencies, especially the tax administration agencies as the General Department of Tax and Tax Agencies, the management units who directly manage the revenues from mineral exploiting operations, the source of information on revenues and payments in the extractive sector have been announced. However, the data is often very general and revenue data from the mining, oil and gas industries are not clearly shown. For example, the revenues generated from the oil and gas industry on the website of MOF only some information about the enterprise income tax and VAT are published. A number of other taxes and fees associated with such oil and gas as VAT, land

tax, personal income tax, are not shown. Other information, such as oil and gas exploitation company name, batch number, exploitation productivity, and revenue are clearly provided in the legislation and on the website of the involved agencies. However, such information about the contract, reserve and development strategy of the oil and gas is considered as a state secret and cannot be disclosed publicly. On the contrary, the information regarding reserves, location, company name, and revenue of almost mining companies (excluding oil) are widely publicized.

The disclosure of budget information is implemented in accordance with the regulation of financial disclosure for the state budget in accordance with Decision No. 192/2004/QĐ-TTg and the instruction in Circular No. 03/2005/TT-BTC. The information includes estimated balance, local budget approved by the Provincial People's Council, the revenue-expenditure district, county, town, cities, and the percentage split of revenues between the budget of each district, town and city in the province.

The information promulgated in two forms: (i) in writing, to be sent to the State management agencies at district, town or city, and (ii) published on the website of the province. The disclosed information is of a general nature only and is not categorized by economic sector. Therefore, people are not able to know the specific contribution of the extractive company in the area.

In terms of publicizing the activities of the state audit, annually the State Audit holds press conferences to announce the list of companies to conduct a state audit and the audit results of the previous enterprises must be announced in at the end of year. The level of detail of audit results is determined by the State Auditor and is published in the Journal of the State Audit.

III.3 - GENERAL COMMENT

In general, the legal regulations and law enforcement in the extractive industry in Vietnam remain a big gap. Apart from the provisions prescribed by law, the enterprises must also carry out some financial obligations to local authority that are not regulated by the state. On the other hand, due to lack of strict monitoring and management tools, the State has been losing a significant amount of revenues.

Information on revenue and payment remains a lack of transparency and consistency due to an absence of an adequate legal system regulating responsibility on information disclosure. Only few companies listed on the stock market are likely to disclose all related information and capable of accounting for, while the remaining enterprises and State management agencies almost do not widely disclose data on revenues and payments. Therefore, the ability of accessing information on revenues and payments of the people in general and of local communities in particular is limited.



CHAPTER IV TRANSPARENCY REGULATIONS IN VIETNAM

IV.1 - DEFINITION OF TRANSPARENCY

Transparency is considered as the principle and goal of governance. The most obvious and robust effects of transparency can be seen on the economy, governance and politics (Oliver, 2004). Some studies suggest that transparency is a Western concept. However, this concept has a longer history and broader application that does is not limited to a single race, faith or nation. At the present, transparency can also generate a competitive economic advantage for a country or business.

Characteristic of governments, companies, organisations and individuals of being open in the clear disclosure of information, rules, plans, processes and actions. As a principle, public officials, civil servants, the managers and directors of companies and organisations, and board trustees have a duty to act visibly, predictably and understandably to promote participation and accountability.

(Transparency International, 2009)

Transparency in international organizations refers to the ability to access accurate information by the public. For example, the WTO claims that international trade agreements must ensure three elements to be transparent: information on laws, regulations or policies are widely publicized; all changes in laws, regulations or policy are publicly announced; laws and regulations are consistently and equally implemented through appropriate methods. According to the Multilateral Investment Agreement (MIA), to ensure transparency, each country must publicize its' legal regulations, related procedures or administrative regulations that may effect on an agreement. OECD (2002) describes a transparent business environment as an environment where economic agents have necessary information and there is no asymmetric or hidden information. Transparency is considered as the result of two-way exchanges of information between government and partners.

Many recent studies show that transparency not only mentions the quantity of information, but also the content, scope, accuracy and timeliness of information that economic agents (people, business or government) can access (Vishwanath & Kaufmann, 1999; Kaufmann & Kraay, 2002; Islam, 2003).

Smith (2004) claims that transparency is a quality of expression based on clarity and publicity. It allows interested people to have a clear look and be able to monitor and evaluate easily.

According to the UNPAN (1999), Campo & Sundaram (2000), in term of government's management, transparency is understood as the ability to access information and the favorable conditions for people to understand the process of decision – making. For example, people are able to freely access information and monitor government debates on television, audit reports of the government, and public recruitment for public officials.

In the financial sector, transparency in monetary policy according to IMF refers to an environment in which the objectives of policy; its legal institutional system and economic framework; policy decisions and their rationale; data and information related to monetary and financial policies; and the terms of agencies' accountability are publicized on an understandable, accessible, and timely basis. Geraats (2001) claims that transparency is a general definition related to policy, economic, culture, process or procedure, policy-making and policy implementation. According to VCCI (2009), transparency in Vietnam's Provincial Competitiveness Index (PCI) is understood as: *"the enterprise's capacity to access provincial plans and necessary legal documents for business; the availability of these documents; whether or not they are consulted by enterprises before enforcing them; the predictability in the implementation process of those documents and the convenience of a province's website for business"*.

Transparency associates closely with the concept of accountability. The purpose of transparency is to allow the economy's subjects (people, business, and government) easily to explain their policies and activities. Transparency is also considered as evaluation tool for public agencies which provide necessary information for agents' activities of the economy. Also, based on that, the public can easily inspect the information provided and use it to maintain the accountability of organizations. In this sense, transparency could be an interaction between people inside and outside an organization, which people outside an organization (such as people or shareholders) can monitor, supervise and evaluate activities of people inside an organization (such as government officials or company managers).

IV.2 - TRANSPARENCY REGULATIONS IN VIETNAM

IV.2.1 Transparency in current legal regulations

Right to be informed is one of the fundamental rights of Vietnamese citizens by the national Constitution. The 1992 Constitution, article 69 affirms that *"Citizens are entitled to freedom of speech and freedom of the press; they have the right to receive information and the right of assembly, association and demonstration in accordance with the law"*.

In Vietnam's legal system, the Law on Anticorruption No 55/2005/QH11 of 2005 also provides many rules and regulations relating to public liability and transparency. Article 11 regulates principles on and content of publicity and transparency in the activities of agencies, organizations and units. Paragraph 2 reads *"Agencies, organizations and units must publicize their activities, except for contents classified as state secrets and other contents prescribed by the Government."* Article 15 says about financial and state publicity and transparency that:

"1. Budgets of all levels and budget-estimating units must publicize in detail the estimate and settlement figures, which have been decided and ratified by competent state bodies, including supplemented budget amounts.

2. Budget-estimating units with revenue sources from and expenditures covered by constructions of organizations and/or individuals according to the provisions of law must publicize the mobilization

purposes, mobilization results and the efficiency of the use of mobilized sources.

3. Organizations provided with state budget supports must publicize the following contents;

a) Estimate and settlement figures;

b) Contributions of organizations, individuals (if any);

c) Bases for determination of support levels and state budget support amounts.

...

5. Funds originating from the state budget must be publicized with the following contents:

a) Operation regulations and financial mechanisms of the funds;

b) Annual financial plans detailing revenues and expenditures related to

State budget, according to the regulations of competent authorities;

c) Results of the funds' operation; and

d) Annual settlement already approved by competent authorities.

6. The allocation and use of state budget and property for projects and target programs already approved by competent state bodies must be made public to concerned agencies, organizations and/or units and people of localities directly benefiting there from."

In regard to the publicity and transparency in management of state enterprises, Article 18 of the Law on Anticorruption regulates that *"State enterprises shall have the responsibility to publicize the State's capital and properties invested in the enterprises, preferential loan capital, financial statements and auditing results, the appropriation, setting up and use of their funds, the labor recruitment, the appointment of leading and managerial officials of enterprises and other contents as provided for by law".*

About forms of publicity, Article 12 of the Law on Anticorruption states *"1. Publicity forms shall include: a) Announcement at meetings of agencies, organizations, units; b) Posting up at working offices of agencies, organizations, units; c) Written notification to concerned agencies, organizations, units or individuals; d) Distribution of publications; e) Notification on the mass media; f) Load-up on websites; g) Supply of information at the request of agencies, organizations or individuals. 2. Besides the cases where the publicity form provided for by law, heads of agencies, organizations or units shall have to select one or a number of publicity forms specified in Clause 1 of this Article..."*.

The Law on State Budget of 2002, article 3 regulates *"The State budget is placed under the unified management on the principle of democratic centralism, publicity, transparency, management assignment and decentralization, association of powers with responsibilities. The National Assembly shall decide the State budget estimates, allocate the central budget and ratify the State budget settlement..."*. Article 13 also stipulates about the principle of publicity: *"1. The estimation, settlement, the result of auditing of the State budget settlement, must be publicized by the budgets of all levels, the budget-estimating units, and organizations enjoying the State budget supports. 2. The order and procedures for collection, payment, exemption, reduction and reimbursement of budget revenues, allocation and settlement must be clearly posted up at transaction places..."*.

Law on Management and Use of the State Property regulates the publication of management and use of state property in Article 26: *"1. State management agencies for state property shall publicize the implementation of regulations on management and use of state property. 2. State agencies assigned to manage and use state property shall publicize the procurement, investment in the construction and use of state property under their management. The Government shall specify contents and forms of publication of the management and use of state property"*.

The Ordinance on Charges and Fees of 2001 regulates *"Charge- and fee - collecting organizations and individuals must publicly post up or publicize at the collection places the names of charges and fees, their rates, the collection methods as well as the collection-prescribing agencies"* (Article 16). *"Charge - and*

fee - collecting organizations and individuals must implement the reporting regime, periodically report on the final settlement of the collected, remitted and used charges and fees; implement the financial transparency regime according to law provisions.” (Article 22).

The Ordinance on Exercise of Democracy in Commune, Ward and Township of 2007 clearly lists the content to be publicized to people by Government agencies in Article 5, paragraph 4: *“The management and use of assorted funds, investments, financial aids under programs or projects for communal level; contributions mobilized from people”; and “Payers and collection levels of assorted charges and fees as well as other financial obligations directly collected by communal-level administrations”.*

The public disclosure of information about contribution and finance is the obligation of the enterprises without violating the Law on Competition. Business secrets according to this law means information that satisfies all of the following conditions: *“1. It is not common knowledge; 2. It is able to be applied in business and when used will create an advantage for the information holder over an entity which does not have or use such knowledge; (c) It is protected by its owner by necessary means in order that such information will not be disclosed and will be difficult to access” (Article 3, paragraph 10).*

Article 37, Decree No.115/2009 on amending and supplementing a number of articles of the Government’s Decree No.48/2000/ND-CP detailing the petroleum law and the regulation on bidding for petroleum survey, exploration and exploitation promulgated together with decree No 34/2001/ND-CP: *“Ensure the efficiency of investment projects, publicity and transparency in the implementation process of the bidding and contracting”.*

IV.2.2 Transparency in policies of the Communist Party and State

Publicity and transparency are also the important orientations expressed in the Party’s documents and State’s policies. For example, the document of the 9th National Party Congress (2001) stipulates: *“ensure the transparency in the use of State budget, public property, finance of the Party and mass organizations, State-owned enterprises, funds contributed by citizens or foreign donors. Publicize economic – social strategy, overall programming and development plan to create a basis for planning of each sector in all levels and business planning. Ensure the publicity, transparency, harmonize the benefits of the State, business sector and citizens; encouraging production development and social equity”.*

The document of the 10th National Party Congress 2006 affirms: *“To create favorable legal and policy environment to promote the social resources for development. The legal environment should be transparent and open for fair competition between business entities. To ensure publicity and transparency in public procurement and construction, management construction projects, finance and State budget; mobilize and use the contributions of citizens; manage and privatize state-owned enterprises; manage land using, public assets, personnel work. Implement the regulations on democracy at grassroots units, ensuring publicity and transparency in economic and financial activities in administrative agencies providing public service units and state-owned enterprises”.*

The 3rd Plenum of the 10th Central Party Committee strongly requires that *“The whole Party and political system have to commit strongly to fight against corruption and waste”.*

The political report in the National Party Congress 11th (2011) of the Communist Party continues to affirm that *“to enforce the transparency, public disclosure in economic, finance activities in the administrative, public services and state owned business. Transparency and public disclosure of governance mechanism, policy, project investment, construction, spending that is financed by the state budget and the civil contribution”*

The economic development strategy from 2011-2020 of the Vietnamese Communist Party continues

to assert the transparency of and people's participation in the state budget: *"...to ensure democracy, publicity and transparency; strengthen the supervision and create mechanisms for people to supervise the work relating to the State budget and property"*

The concept of transparency is very close to the concept of democracy at grassroots level in recent policies of the Party and State (for example: Directive No 30-CT/TW of the Politburo dated 18th December 1998 on the preparation and implementation of the regulation of democracy at grassroots level and Decree No 79/2003/ND-CP). The nature of grassroots democracy can be understood as the notion: *"people know, people discuss, people do and people supervise"* that Ho Chi Minh defined. Access to information connects closely with *"people know"*, while the right and opportunity to be involved in contribution, criticism and monitoring of policies is the *"people discuss, people supervise"*

IV.2.3 Transparency in the international commitments

Vietnam is now the member of the World Trade Organization and more deeply integrated into the regional and global economy. Publicity and transparency is the basis principles of WTO and other multilateral agreements. All members like Vietnam have liability to publish their law documents and regulations before enforcing them and consulting stakeholders. In addition, Vietnam must execute other obligations such as announcing about trade regulations to be promulgated or amended, setting up question and answer units to provide information for interested members in specific issues.

One of the great efforts of Vietnam in promoting transparency is to adopt the United Nations Convention Against Corruption (UNCAC) by the Decision No. 950/QĐ-CTN dated 30/6/2009 of the President that was then approved by the UN on 3/7/2009. In this decision, transparency in state governance is an important component. Article of the Convention requires each member country, on the basis of conformity with national law, to apply the necessary methods to enhance publicity and transparency in public administration, including the organization, implementation and decision-making processes. Along with the adoption of UNCAC, the Government has established the Convention assessment team according to the Decision No. 776/QĐ-TTg on 2/6/2010 by the Prime Minister as well as build the roadmap and specific purpose for the implementation of the Convention for the period from 2010 to 2020. Based on that foundation, the Government has promulgated several regulations on enhancing transparency. For example, Decision No 445/QĐ-TTg of the Prime Minister dated 7/4/2010 on approving the plan for implementing the United Nation Convention against corruption, which mentions *"To enhance the publicity and transparency in public administration, strengthen the implementation of the Government agencies' function and decision making process concerning the rights and obligations of citizens"*. The specific activities at national level have shown Vietnam's determination to combat corruption.

In addition, with the purpose to enhancing transparency, Vietnam has developed and implemented two initiatives related to transparency including the Construction Sector Transparency Initiative (CoST) and the Integrity and the Transparency in Business Initiative (ITBI) led by the Ministry of Construction and VCCI, respectively. The principle of these initiatives is to enhance transparency and participation of stakeholders in the policy making process.



CHAPTER V EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE

V.1 - HISTORY AND THE DEVELOPMENT PROGRESS OF EITI

The benefits of natural resource extraction should be shared among stakeholders. There are some global initiatives and approaches to sustainably manage natural resources, such as the civil society global network Publish What You Pay (PWYP) led by Global Witness and the International Council on Mining and Metals (ICMM). Another initiative that is widely supported by governments around the world is the Extractive Industries Transparency Initiative (EITI). Based on principles similar to PWYP, the EITI was first announced by former British Prime Minister Mr. Tony Blair at the World Summit on Sustainable Development in Johannesburg, South Africa in 2002 (RWI, 2008).

The EITI is a volunteer initiative among government, companies, local civil society organizations and international organizations to enhance transparency and accountability in the extractive industry. It provides a global standard for revenue transparency comprised of two main mechanisms: (i) extractive companies disclose payments made to government and vice versa; and (ii) an independent administrative body reconciles all received data, which is managed and operated by multiple-stakeholders (Fig.4)



Figure 4. The mechanism of the EITI

To date, there are 35 EITI implementing countries around the world. Of these, 24 are candidates and 11 are EITI compliant, including Azerbaijan, Mongolia, Liberia, Timor Leste, Norway, and Ghana (Figure 5). Furthermore, four countries, including Equatorial Guinea, Ukraine, Ethiopia, and Sao Tome and Principe, have announced their intention of implementing the EITI.

The EITI is also widely supported by extractive companies and civil society organizations. So far, there are 50 top international extractive companies participating, such as Alcoa and BHP Billiton; and hundreds of civil society organizations and mining associations, such as Revenue Watch Institute, Oxfam, Open Society Institute, and the American Petroleum Association. The EU Commission, the Africa Commission, the World Bank and the ADB have also actively participated or supported this Initiative (<http://eiti.org>).



Figure 5. The EITI implementing countries

At the 5th EITI Global Conference held in March 2011 in Paris, France, around 900 participants from 70 countries attended. Of these, there were six presidents, some ministers, a dozen of CEOs of extractive corporations and international financial institutions, and representatives of civil society organizations. In the framework of the conference, representatives of the governments of Great Britain, Belgium, the US and France; financial institutions (viz., World Bank and ADB); and extractive corporations (viz., Shell and BP) all strongly expressed their support for the EITI, as well as their commitment to promoting the EITI around the world.

Recently, China also showed some positive attitude towards the EITI by supporting the UN General Assembly Resolution to promote transparency among all Member States. Moreover, Chinese extractive companies in some countries like Mongolia, Nigeria, Gabon and Kazakhstan have been reported under the EITI's principles (Paris, 2009). Not only does China, but also the G20 nations expressed their encouragement to participate the EITI in Pittsburgh, USA, in 2009 (US. Government, 2009).

In Southeast Asia, after Timor-Leste, Indonesia is the second country to sign up to the EITI by the President's decision on April 2010. It was accepted as an EITI candidate in October 2010. Some other countries such as Cambodia and Malaysia have received technical support from the EITI supporting organizations, such as the Revenue Watch Institute and the EITI Secretariat.

This initiative has been brought to Vietnam since 2006 through various channels. Introducing the

EITI and lobbying Vietnam to implement the Initiative, the Royal Norwegian Embassy has been approaching the MOIT since the beginning of this period. Others have been interested in this issue, like the Revenue Watch Institute (RWI) who has given both financial and technical support to some local NGOs. By 12/2010, MOIT and the Royal Norwegian Embassy co-organized a workshop to introduce the EITI to various stakeholders in the extractive industry. A few domestic civil society organizations initially promoted the EITI in Vietnam, including Consultancy on Development (CODE) and People and Nature Reconciliation (Pan Nature) since 2008. However, all of these activities are just the very first steps and many more things need to be done in the coming time.

V.2 - THE EITI PRINCIPLES

At the Lancaster House Conference in June 2003, the EITI international secretariat agreed to provide 12 EITI principles, including:

1. We share a belief that the prudent use of natural resource wealth should be an important engine for sustainable economic growth that contributes to sustainable development and poverty reduction, but if not managed properly, can create negative economic and social impacts.
2. We affirm that management of natural resource wealth for the benefit of a country's citizens is in the domain of sovereign governments to be exercised in the interests of their national development.
3. We recognize that the benefits of resource extraction occur as revenue streams over many years and can be highly price dependent.
4. We recognize that a public understanding of government revenues and expenditure over time could help public debate and inform choice of appropriate and realistic options for sustainable development.
5. We underline the importance of transparency by governments and companies in the extractive industries and the need to enhance public financial management and accountability.
6. We recognize that achievement of greater transparency must be set in the context of respect for contracts and laws.
7. We recognize the enhanced environment for domestic and foreign direct investment that financial transparency may bring.
8. We believe in the principle and practice of accountability by government to all citizens for the stewardship of revenue streams and public expenditure.
9. We are committed to encouraging high standards of transparency and accountability in public life, government operations, and in business.
10. We believe that a broadly consistent and workable approach to the disclosure of payments and revenues is required, which is simple to undertake and use.
11. We believe that payments' disclosure in a given country should involve all extractive industry companies operating in that country.
12. In seeking solutions, we believe that all stakeholders have important and relevant contributions to make—including governments and agencies, extractive industry companies, service companies, multilateral organizations, financial organizations, investors, and nongovernmental organizations.

V.3 - THE EITI CRITERIA

The EITI is considered as a minimum global standard for disclosing revenue data, in which transparency and accountability are highly important. Moreover, the implementation of the EITI is very flexible so that each country can implement the EITI in its own way depending on its own conditions. Some countries require all the data of revenues, while others require the transparency of both contracts and revenue data throughout company operation. For example, while Azerbaijan discloses its EITI report in a comprehensive manner and Mongolia discloses its report with high detail, Ghana just focuses on some un-renewable resources and the EITI program of Liberia does not only involved the extractive industry but rather the forestry sector (RWI, 2008; EITI³, 2010).

At the EITI Conference held in London in 2005, the EITI implementing members proposed some criteria for implementing the EITI and also encouraged members to better carry out the minimum requirements. The following are some criteria (EITI², 2009):

1. Regular publication of all material oil, gas, and mining payments by companies to governments ("payments") and all material revenues received by governments from oil, gas and mining companies ("revenues") to a wide audience in a publicly accessible, comprehensive, and comprehensible manner.
2. Where such audits do not already exist, payments and revenues are the subject of a credible, independent audit, applying international auditing standards.
3. Payments and revenues are reconciled by a credible, independent administrator, applying international auditing standards and with publication of the administrator's opinion regarding that reconciliation, including discrepancies, should any be identified.
4. This approach is extended to all companies including state-owned enterprises.
5. Civil society is actively engaged as a participant in the design, monitoring, and evaluation of this process and contributes toward public debate.
6. A public, financially sustainable work plan for all the above is developed by the host government, with assistance from the international financial institutions where required, including measurable targets, a timetable for implementation, and an assessment of potential capacity constraints.

The results in the framework of the 5th EITI Global Conference held in Paris, France, in March 2011 indicate that the EITI criteria should be extended and improved in the next years, during which the EITI will not just focus on enhancing transparency but also on governance in the extractive industry. Moreover, the scope of the EITI program could be possibly extended to the whole value chain in the extractive industry, rather than just focusing on the revenue transparency as regulated at the current time.

V.4 - BENEFITS OF THE EITI IMPLEMENTATION

So why does the EITI attract many countries around the world? The EITI brings some fundamental benefits (EITI¹, 2009), such as:

1. *Ensure that a greater portion of revenues generated from oil and mineral resources are used to benefit the people in a nation.*
2. *Strengthen budget monitoring and oversight.* EITI reports can be powerful tools for citizens and legislators to understand how much money the government collects and where countries choose, how the funds are spent. In some cases, EITI has led to the government's recovery of unaccounted-for funds or company underpayments. For example, for the case of Nigeria, the

EITI report of Nigeria indicates a discrepancy between what the company claim to pay to the government and what the Central Bank of Nigeria announces to receive from the company, of 230 million naira. After undertaking further audit by comparing receipts and explanatory report, the discrepancy was reduced to 8.5 million naira (RWI, 2008). Therefore, the EITI report helps the government to recover substantial revenues.

3. *Reinforce broader anti-corruption and good governance agendas.* Effective EITI programs can make corrupt practices more difficult to hide. By promoting transparency in an area where secrecy is often the norm, EITI participation can help establish precedents for improving transparency in other areas of government.
4. *Build citizen trust in public institutions.* When elected officials use EITI to promote openness and public discussion about how the government receives and spends revenue, citizens may feel empowered and better connected to the policy process; more confident that their interests will be taken into consideration in government decision-making; and more likely to believe that they can play a role in holding their government accountable.
5. *Promote reduced hostilities between governments, companies and communities or citizens.* Extractive industries tend to be disruptive to the communities in which they operate. Since they involve physical upheaval of land and workers from outside the community (and sometimes outside the country), there tends to be hostility, in extreme cases leading to conflict. The government and the companies often blame each other. Transparency can build trust among these actors, and EITI can create a safe forum for dialogue, understanding and resolution.
6. *Improve the investment climate.* A country's implementation of EITI sends a signal to international investors and companies that the government is committed to strengthening transparency and accountability. The country may be perceived as a more attractive destination for investment, which may spur economic growth in other sectors. In the longer-term, access to cheaper capital may increase as the country's risk ratings improve. For instance, after deciding to implement the EITI in 4/2010, Moody's Investors Service upgraded the sovereign debt of Indonesia from Ba2 to Ba1, which resulted in Indonesia being just below the BRIC nations of India and Brazil. In 2/2011, Fitch Ratings upgraded Indonesia's sovereign rating outlook to BB+ positive from BB+ stable.

In order to assess the benefits of implementing EITI, RWI has carried out a survey on the opinion of the civil society in 24 EITI implementing countries. The findings indicate that the most visible benefits are the increase of the dialog between stakeholders accounting for 92% of the respondents' opinion and access information on government revenues (71%) (RWI, 2011). Other benefits derived from implementing EITI include greater political stability and improvement of the investment climate (Fig.6).

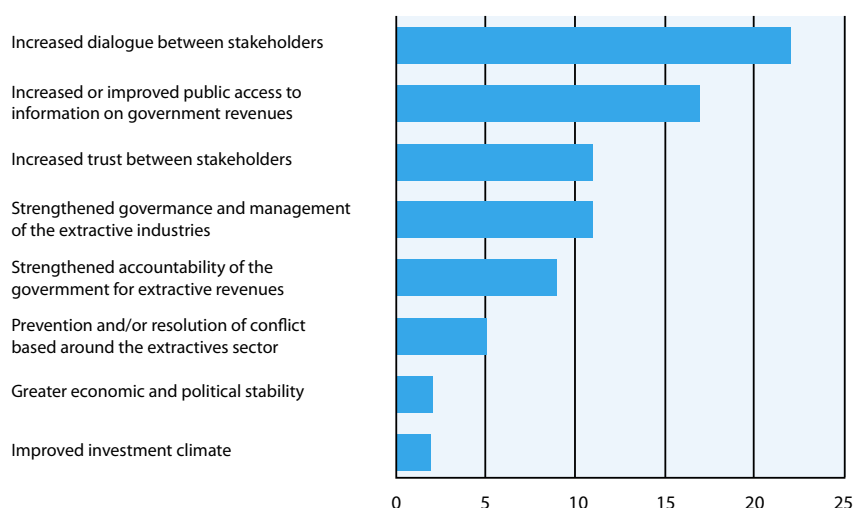


Figure 6. Benefits of implementing EITI

V.5 - INTERNATIONAL EXPERIENCES FROM IMPLEMENTING COUNTRIES IN THE WORLD

Lessons from Ghana

Ghana is a mineral resource rich country with a variety of minerals such as gold, diamond and bauxite. The extractive industry contributes largely to the state budget and the national GDP. For instance, profit from gold exports accounted for 34% of total export and 12% of GDP in 2003 and 2004, respectively (<http://eiti.org/Ghana>). However, Ghana is one of the countries earliest facing instability resulting from the extractive industry. Therefore, it signed up to the EITI in the early period (June, 2003) and was accepted to be an EITI candidate in August, 2007. With the cooperation of the Ministry of Finance and Ministry of Minerals, Ghana has established two organizations to carry out the EITI program, namely the EITI National Steering Committee (NSC) and the Ghana EITI. NSC helps all stakeholders to have a deeper understanding about the EITI and to closely engage with them. The GHEITI is responsible for implementing, overseeing and evaluating the program and supplementing the NSCs' decisions to be more effective. After seven years of implementing EITI, Ghana has achieved remarkable successes. For example, the transparency of revenues generated from the extractive industry has increased. This initiative brought a closer cooperation amongst the stakeholders and resulted in a higher credit rating for the government. The EITI in Ghana has provided some valuable lessons for other countries:

- The first experience when implementing the EITI is that the country should implement the initiative in the early stage. The foremost issue when implementing the EITI was to enhance the transparency of revenues to the local community. However, instead, Ghana designed a plan to carry out the EITI at the national scale from the beginning. This action proved to be big advantage.
- Second, the EITI program should be implemented in a timely manner. The EITI in Ghana was slowly implemented, especially in the starting years. Although the government decided on the EITI in 2003, the EITI Board and the first financial report were not established and released until 2005 and 2007, respectively.
- Third, the commitment of stakeholders is the key to assuring a successful program. In Ghana, the commitment of the government was expressed through the community's activities using internal resource and external support during the EITI implementation.
- The last but very important lesson is that the EITI implementation should be continuously managed. Experience from Ghana suggests that the EITI program should not concentrate too much on expanding the management infrastructure management, but rather on finding the simplest way to implement the initiative in a timely manner.

Lessons from Nigeria

Nigeria is a very rich country in mineral resources, particularly in oil with a potential reserve of 32 billion barrels. The oil and gas industry contributes over 95% of export revenues and 65% of state income (EIA, 2010). However, Nigeria is still one of the poorest countries in the world, in which 70% of the population are poor (based on a national standard) and 83.9% of the population earn under 2 dollars/day (UNDP, 2009; Rural Poverty Portal, n.d.). Furthermore, social conflicts and unstable politics related to oil profits often happen.

In response to a serious lack of transparency and a huge loss of oil revenues, the former Nigerian President, Mr. Olusegun Obasanjo decided to implement the EITI in 2003. The EITI committee was established in 2004. In May, 2007, the Act on EITI was adopted and Nigeria was accepted to be an EITI candidate in October 2007 (<http://eiti.org/Nigeria>).

The 2005 EITI audit report (just released in 2009) indicates a discrepancy of 800 millions USD (equal

to 16,000 billion VND ¹²). Of these, 560 million USD are determined as deficits from taxes and rents; 300 million USD are related to payment of bonuses, interest, dividend and debt. Hence, the EITI implementation plays a crucial role in enhancing capacity on accountability to all stakeholders including the governmental authorities and the extractive companies. Furthermore, the EITI report helps other bodies such as the National Audit Office, the parliament and civil society organizations to monitor and oversee revenues generated from the oil and gas industry (EITI³, 2010).

Although the Nigeria EITI report still has some limitations, the quality of the report has continuously increased and it partially helps against mitigating some negative impacts of the resource curse (Marie Müller, 2010). Important factors leading to this success are strong commitment by government to the EITI and against corruption and the active participation of civil society organizations and the international community.

Lessons from Norway

Norway is a rich country in oil and gas resources. It is ranked as the 3rd oil exporter and the 7th oil producer in the world. The proved oil and gas reserves are about 7.1 billion barrels and 2.05 trillion m³, accounting for 0.5% and 1.1% of the world reserve, respectively. In 2009, Norway produced about 2342 barrels of crude oil per day, making up 2.8% of world production (BP, 2010).

Norway was accepted as an EITI candidate in February 2009. In June 2009, the Norwegian government established a multiple stakeholder group and passed the Act on the EITI. The Act stipulates that all extractive companies operating in Norway and the relevant governmental bodies are required to report all taxes, licenses and royalties. After publicly tendering, Deloitte auditing company was chosen to monitor all revenues generated from the extractive industry.

The EITI program of Norway focuses only on petroleum. In January, 2010, Norway disclosed its first EITI report, in which the discrepancy of what companies paid to the government and what the government received in 2008 was 1,659,700 Norwegian Krone (equal to over 300,000 USD). After the reconciliation process, there were no-unresolved discrepancies.

V.6 - GENERAL COMMENT

The EITI is an open and flexible initiative that is being applied worldwide. It has proved its effectiveness in promoting transparency in the extractive industry. Although the EITI is rather new, it has rapidly developed and is considered as a global standard on transparency in the extractive industry. The EITI has been widely supported not only by governments but also by many international financial institutions, giant extractive companies and the civil society organizations.

Some governmental agencies and extractive companies such as MOIT and PVN of Vietnam have approached the initiative since the early period. However, so far, EITI remains as a new issue in Vietnam and the implementation of this initiative has not yet been considered seriously.

*12: Based on exchange rate in March 2011, one dollar is equal to 20,000 VND



CHAPTER VI. OPINION OF THE STAKEHOLDERS ABOUT THE EITI AND THE ROAD MAP FOR IMPLEMENTING THE EITI IN VIETNAM

VI.1 - OPINION OF THE STAKEHOLDERS ABOUT THE EITI IMPLEMENTATION IN VIETNAM

To explore the opinion of some key stakeholders about transparency and the EITI implementation in Vietnam, this study interviewed 24 key stakeholders, as mentioned in Chapter III.

a. Should Vietnam implement the EITI?

When asked whether Vietnam should implement the EITI or not, almost all respondents, typically the most direct relevant governmental agencies such as Ministry of Industry and Trade, Ministry of Finance, the State Audit and the provincial departments, supported Vietnam to implement the EITI. Some big extractive companies like Vietnam National Coal and Mineral Groups and Vietnam National Chemical Groups also supported this initiative. In general, most large and foreign invested enterprises have supported transparency in the extractive sector. On the contrary, the private owned enterprises operating at a small scale often have a discreet attitude when mentioning the transparency. Some interviewees either did not prepare for being interviewed or had insufficient information about the EITI, so they could not provide a clear opinion.

Only one respondent opposed transparency in the oil and gas industry due to national security concerns in the territorial disputes between Vietnam and neighboring countries in Southeast Asia Sea ¹³.

b. Benefits of the EITI implementation

The general opinion on the EITI was that Vietnam would gain some benefits as follows:

- A public disclosure of revenues/payments data would help the government to have more information when making decisions and developing the mineral resources planning and strategy.
- Furthermore, based on received information, the government could consolidate its management system and would be able to solve some persistent insufficiencies regarding revenue management, balancing the tax rate, and evaluating the law enforcement of the extractive companies regarding their financial duties.

*13: Vietnam calls this area Bien Dong

The extractive companies would benefit from:

- Fair competition in the investment environment;
- Increased reputation in the eyes of investors due to their commitment to transparency.
- Mitigation of informal payments, which might increase profits.
- Reduce possible conflicts and tensions with the local community.

The public would benefit from:

- Strengthened role of the public in monitoring and overseeing their own assets, as regulated by the Law on Mineral that “Mineral resources belong to the people”.
- Fully benefit from mineral extraction activities as regulated by the law.

c. The EITI multiple stakeholder group

When asked if Vietnam implements the EITI, what stakeholders should be involved in the EITI national committee, the representatives of companies and governmental authorities all claimed that the following organizations should be involved in the committee:

Governmental organizations

- Ministry of Finance;
- Ministry of Natural Resources and Environment;
- Ministry of Industry and Trade;
- Ministry of Planning and Investment ;
- Ministry of Defense;
- Ministry of Public Security; and
- National Anti-Corruption Steering Committee.

Companies

- All of extractive companies including state, private and foreign invested company; and
- The other representatives of the business sector, such as associations like the Vietnam Chamber of Commerce and Industry (VCCI) and the Titanium and Steel Association.

The civil society organizations and representative of the community

Some interviewees claimed that the extractive industry should be overseen by civil society organizations and the people.

- The participation of the local community's representatives is critical

Independent experts

- Experts in finance, law, etc.

Media

- Some representatives of the media should be involved in the EITI committee.

National Assembly

- The Committee on Finance and Budget of the National Assembly

Most of interviewees claim that the Ministry of Finance should be the leading and coordinating organization of the EITI committee when Vietnam implements the initiative because the Ministry of Finance has sufficient information and tools to oversee all the payments of the company made to the state budget. Some claim that the National Assembly is the most powerful body and it has sufficient tools to implement the EITI program. Therefore, the revenues generated from the extractive industry should be overseen by the National Assembly. The National Assembly could assign the Committee on

Finance and Budget of the National Assembly in cooperation with other related parties to carry out the EITI program. Besides, there is one opinion that claims that the EITI implementation is considered as a tool against corruption in the extractive sector, so that the National Anti-Corruption Steering Committee is a suitable body to lead the EITI committee.

d. Possible barriers when Vietnam implements the EITI

Institutional and law enforcement barriers

Some respondents claimed that a big gap exists between regulations and law enforcement in Vietnam. The regulations on transparency, information disclosure and anti-corruption have been stated in many legal documents. However, law enforcement is rather low. Many regulations when implemented at the local level have a low efficiency because of weak oversight mechanisms and sanctions. Often the extractive company incorrectly informs about its payments to government, which together with a lack of oversight discipline of the institutional system is a considerable challenge. Particularly, the so-called “beg-give” mechanism in licensing occurs widely, so it is hard to achieve transparency in the extractive sector. Furthermore, a low privatization in the extractive industry in which the state companies currently own almost all crucial minerals have resulted in state monopoly in the business environment. Therefore, it could be difficult to promote transparency in those companies due to conflicts of interest.

Political barrier

Some respondents argued that while Vietnam and neighboring countries dispute territories in the Southeast Asia Sea, transparency in the petroleum industry is almost impossible. Moreover, “transparency” in Vietnam is a sensitive issue, even though it is much referred to in national laws and policies. Implementation of the EITI would certainly affect some interest groups. Meanwhile corruption in Vietnam widely occurs in most sectors. Therefore, the EITI would be hard to implement without strong political commitments.

Financial barrier

Some interviewees claim that while the government aims at reducing its governance system and public expenses, the establishment of a new organization will lead to an increased public expense and human resources.

Human resource barrier

Companies and governmental authorities all claimed that Vietnam lacks human resources to undertake the EITI implementation.

e. Solutions to overcome the barriers and challenges

When asked to provide a solution to cope with the barriers and challenges in promoting transparency in the extractive industry, as well as when implementing the EITI, the respondents opinions can be summarized, as follows:

- The central governmental authorities should develop specific guidelines for public disclosure of revenues and payments so that the local governmental authorities could implement them easily. Moreover, the government should have clear criteria for companies in terms of disclosing payment information. The payment data of the company should be available on one website managed by the government, which the companies can access and often update their data. These activities could help reduce illegal trading of minerals.
- About the disclosure of financial information of the company, the government should have regulations for examining the accuracy between what data the company discloses and what the government receives. Moreover, the government needs to complement its regulations on

punishment once discovering the discrepancies, if any, and the accountability of the company about these discrepancies.

- Further enhancing the oversight and monitoring activity about the financial disclosure of the company and considering enforcement as a criterion to evaluate the efficiency of the company.
- Closely overseeing mineral extraction to reduce illegal exploitation and trading on mineral resources causing to a loss of resources and state revenue.

VI.2 - GENERAL COMMENT

Most respondents agreed to increase transparency in the extractive industry to maximize the benefits from mineral extraction to the state, enhance the investment climate, and fight against corruption. The EITI is deemed to be a good choice. However, EITI implementation would confront some considerable challenges and barriers, particularly institutional and political barrier because they would affect some interest groups. Beside this, some respondents flinched when mentioning transparency and have no clear opinion about the EITI implementation in Vietnam. This could be a significant challenge in promoting the EITI in Vietnam.

VI.3 - RECOMMENDATION FOR THE ROAD MAP OF EITI IMPLEMENTATION IN VIETNAM

Promoting information disclosure and transparency in the extractive industry of Vietnam is essential. However, in the current context with many institutional challenges and Vietnam's level of development, the EITI program should be strategized in a long term perspective and by a systematic approach. This study shows that in the first phase, the scope of the EITI programs should focus only on some types of large reserves minerals, which contribute significantly to state revenues and inadequacies in the work management of petroleum, coal and titanium. Moreover, the distribution of minerals is only concentrated in a certain number of provinces, such as over 90% of the country's coal production is concentrated in Quang Ninh province, so the implementation of EITI would have many advantages.

In the first phase, the EITI program should not involve all the extractive enterprises in Vietnam because the number of mining companies in Vietnam is large. Instead, it should focus on large state owed and foreign invested enterprises. Through this investigation, many of these companies said they would be willing to participate in the EITI implementation.

The EITI is an open initiative, in which each country can build the program scope and schedule for their participation in line with the context of each country. Here are some basic steps for Vietnam to join the EITI based on the current context of Vietnam and guidance on the EITI implementation of the World Bank (World Bank, 2008):

Step 1: Preparation for EITI participation

- To decide on the participation in EITI, the Government of Vietnam needs to consult the parties who are directly affected by participation in EITI, including state management agencies, extractive companies and other social organizations. The forms of consultation may be held via conference programs introducing EITI as well as in the context of Vietnam's industrial sector to build consensus on EITI participation between the parties.
- Offer an official notice to the public of its intent to participate in EITI through the mass media. This official notification was sent to relevant institutions such as the World Bank, the International Committee of EITI, the World Monetary Fund and regional development banks. In most countries that implement EITI, the government announced the intention to join EITI through the organization of a start up workshop with the goal of transmitting messages of the government to the public and began to build consensus among stakeholders.

- Governments should assign the responsibility of conducting research and approach EITI to a central government agency level. At the same time, it should appoint the person in charge of implementing the EITI to build the program and the overall plan. Normally, the person to be appointed must be senior officials of government at the ministerial level, who have experience in revenue management and influence in coordinating activities between departments of government. Almost all of the respondents claimed that either the **Ministry of Finance** or the **Ministry of Industry and Trade** should be the agency responsible for implementing EITI in Vietnam. In addition, the Ministry of Natural Resources and Environment and the National Standing Committee on Anti-corruption should be highly involved.
- Build and announce the implementation plan: the plan must specify measurable targets and specific actions to achieve the target and responsibilities of stakeholders and time frame, the cost and resources for implementing EITI program.

During this period, individuals and agencies who are appointed by the Government can access the World Bank and some sponsors to call for both financial and technical support through the Multi-donor Trust Fund under the World Bank's management and coordination.

Step 2: Mobilizing parties to participate in EITI

Implementation principles of EITI are the approach with the participation of different stakeholder groups. This means that stakeholders, especially civil social organizations and extractive companies, are involved not only by comments but also directly involved in the construction and management activities in the implementation process.

Depending on the context in each country, the number and level of stakeholders to participate in the EITI program is different. Identifying the specific components involved in the EITI Committee is rather complicated. Here are some considerations related to national EITI committee and the way to manage this committee:

- The legal foundation for the establishment of the National EITI Committee: In some countries, the group of stakeholders was established through a number of legal documents such as decisions by the heads of government. In the context of Vietnam, the decision of the Prime Minister would be suitable.
- Determine the number and nature of committee members: According to the regulation of the EITI, the member participating in the EITI Committee must have both representatives from state agencies, enterprises and civil society. In fact, the number of committee members as well as the percentage of each object depends on the specific conditions of each country. Usually the EITI Committee in each country consists of 10-20 members. It should be noted that the presence of enterprises and organizations of civil society in the EITI committee is essential to ensure the representation and tolerance in the EITI Commission's decision.
- Assign and review committee members: Committee members of the EITI board are generally from 1-2 years. The selection of new members may be by: (i) appointed by the government, (ii) holding a meeting to choose members, (iii) by the different target groups involved or (iv) publish widely the requested credentials of the candidate.
- The role of the EITI Chairman: Most of the EITI National Committee has commissioned an individual to be responsible for coordinating and managing the meetings and who are often appointed by the government.
- Voting and making other decisions: When the EITI Committee was established, the members of the committee agreed to the terms and procedures that the Committee will operate. The terms and procedures, including voting, and the numbers of delegates are necessary for decision making.

To clarify the way of operation of the EITI Committee, most countries have established a Memorandum to the Committee of EITI activities. Each member of the Committee shall sign into the memorandum to indicate their commitment to the EITI, including:

- Commitment on rules and criteria of EITI;
- Way of operation and management of EITI program;
- Rights and obligation of each unit when signing the Memorandum;
- The description of way to create the EITI report;
- The way to administrator or commission an independent auditor.

Step 3: Determining the scope of the EITI program

Depending on the context of each country, the scope of the EITI programs in the countries are different. Therefore, each country must determine the scope of its programs from an early stage. Here are six issues that the country must consider in determining the scope of the EITI program:

- The process of comparison (in terms of documents from the revenue resource) or the audit process: a basic decision on the scope of EITI program, that is, report of the EITI will be the comparison between the payment and income source or decide to go deeper into the details and allows the data on income and expenditure audited by international auditing standards (by an appropriate audit firm).
- The companies' report: It is the determination of what type of companies that will participate in EITI report. As shown above, in Vietnam, we present the state-owned enterprises and enterprises with foreign investment in oil and gas and mining coal, titanium, copper and iron are the first enterprises to be involved.
- The limit on what expenditures and revenues must be disclosed: Each country decides for themselves the limits on expenditures of the enterprise (corresponding to revenues of the state) that should be reported in the EITI report.
- The degree of detail of published data in the EITI report. This is a requirement for specificity of revenues and expenditures that should be presented in the report. While some countries only reported total expenditures and revenues, a number of other national reporting requirements give more detail about the account (e.g. source, line) revenue and expenditure.
- The report includes expenses and revenues at the central level or at the local level: Some countries choose to report not only on the expenses that the company paid in the central state level, but also requires the companies to report that the company paid at the local level.
- The report includes other industries: A handful of countries in the world decide the scope of EITI programs not only in the field of minerals, but also in other sectors such as forest resources. Some countries also expanded the EITI program with the chain of revenues from mining to manufacturing.

Step 4: Develop the working schedule for EITI

Along with the establishment of the EITI programs Committee, countries should develop a clear implementation plan for EITI. This plan requires political commitment and budget as in the box below.

Box 1. Basic content of a working schedule

1. **Convene the relevant parties:** The plan should indicate the method of determining the mechanisms as well as relevant parties involved to work together.
2. **Remove barriers in implementing EITI:** The plan should include activities which specifically refer to the following issues
 - How to identify the barriers in implementation?
 - How to ensure the participation of companies and state agencies in reporting / publicize the audit data according to the law?
3. **Capacity building for government:** The plan must include the actions set out the following issues:
 - How will government support and undertake the implementation of EITI process?
 - How will secretariat or implementation group be established and be empowered?
 - The experience learning and information sharing activities with other countries in the region who are implementing EITI.
4. **Capacity building for companies and civil society:** The plan must include the actions set out the following issues:
 - How will the companies participate in the EITI program?
 - What will companies have to do to be able to complete the report based on audited data-on the amount they paid to government?
 - How do civil society organizations participate in the process? How to raise a good understanding of extractive industry and the various expenditure and revenue for the organizations of civil society?
 - Which companies or civil society organizations in the region are participating in the EITI program from which the local civil groups may learn?
5. **Creating EITI report:** The plan must include the actions set out the following issues:
 - Which consultation processes will be conducted to determine the scope of EITI program?
 - Which comparison or audit methods shall be selected to create the EITI program?
 - How will the report form to be submitted to the government agencies and companies be designed?
 - Method of management and finance for audit agency;
 - Method of reviewing and popularizing the EITI report.
6. **Mass media for EITI program:** The plan must include the actions set out the following issues:
 - Methods of gathering relevant parties to EITI program;
 - Which mass media means shall be used to interpret the EITI?
 - The method in which EITI report shall be popularized.
7. **Check and assess the EITI program:** The plan must include the actions set out the following issues:
 - How the program will be tested and the success criteria of the program;
 - At what point does the program should be reviewed to determine program is working well, if not, what changes should be made;
 - How and when will the program be amended? And the time of the modification report?
8. **Development and finance for the plan:** The plan must include the actions set out the following issues:
 - How will the plan be developed and reviewed?
 - Who will be in charge of making decision on necessary change for the plan?
 - How will the finance and work force be determined and distributed to support all the activities of the plan?

VI.4 - CONCLUSION

In recent years, mineral resources, especially oil and gas, have greatly contributed to the economy (accounting for 11% of GDP) and created more employment for society. The extractive industry not only provides essential inputs for other industries but also stimulates many ancillary industries and ensures national energy security. Contribution of the extractive industry continues to increase with the high growth rate of the national economy and an increasing globalization.

Vietnam has been discovering many large mineral reserves, which are not only positive for the development of the extractive industry but also the national economy. However, along with this development, mineral extraction activities cause significant negative impacts to the environment, culture and society, especially in mining areas. Moreover, the State has suffered significant revenue losses because the management of mineral resource and as well as of the extractive industry has been poor throughout the years. Illegal exploitation, mineral smuggling, and tax evasion also commonly occur in many areas. On the other hand, the management and use of revenues has many constraints and lacks transparency. To assure benefits from mineral resources (including oil and gas) contributing to national wealth, Vietnam should strengthen its supervision and management and be more transparent in the EI sector.

Vietnam has recognized the importance of transparency to the development of the country. The openness and transparency of information in Vietnam has been mentioned in many legal documents and policies of the Party and State, as well as in the international commitments of Vietnam, such as in the Law on Enterprises, Law on Prevention of Corruption and Anti-Corruption, Conventions of the United Nations and so on. However, corruption is still complicated and there is no trend in remission ¹⁴. To prevent corruption as well as minimize the influence of interest groups in the extractive industry, apart from state management tools, the extractive industry needs to apply new management tools, in which the participation of stakeholders, especially communities, needs to be strengthened. That “mineral resources belong to the people” has been recognized in the national Constitution and the Law on Minerals, so that people must be involved in the oversight and decision making to ensure the benefits from “nature’s gift” for the common development of the nation. One of the approaches being applied by 35 countries around the world, which has initially obtained positive results, is the Extractive Industries Transparency Initiative.

The implementation of EITI has brought many benefits to the implementing countries such as drawing a huge amount of money, reducing social tensions and conflict between relevant bodies through dialogue mechanisms, creating a fair competitive investment environment between the parties, and strengthening national credit ratings in the eyes of the international investors. The lessons about the benefits of implementing EITI are reflected quite clearly in some very different countries like Nigeria, Ghana and Norway. Commitment and support from many countries and organizations around the world has shown that EITI is one of the most effective and useful approaches in mineral resource management. Transparency is an urgent need for a *flat world* ¹⁵ where the globalization process is rapidly taking place and countries must follow the global rules of integration and development.

Vietnam has reached the threshold of a middle-income country whose average GDP growth is above 7% per year over the past decade. An increasing demand for minerals to serve domestic consumption

*14: According to the Transparency International, Vietnam was ranked as 116th in 178 countries/territories about Corruption Perception Index in 2010. Source: http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results

*15: The term Flat world is coined by Thomas L. Friedman in the book *The World is Flat: A Brief History of the Twenty-First Century* implying a rapid globalization in the modern world in which the countries around the world are getting more dependent on each other in the global economy.

and exports is reflected by the rising number of companies and the growth rate of the extractive industry over recent years. Thus, in the coming years, Vietnam needs more raw materials from minerals to develop its economy. However, minerals are non-renewable resources, so that only the appropriate policies and strategies for development can help mineral resources fully contribute to the prosperity of the country. In the context that transparency is one of the urgent demands in the development process, the implementation of EITI is the right choice that both ensures the criteria of global integration and an effective solution against the *natural resource curse*¹⁶ as well as minimize the negative effects caused by the *resource curse*.

Vietnam has been participating in several initiatives such as the Construction Sector Transparency Initiative (CoST) or the Integrity and Transparency in Business Initiative (ITBI), etc. This shows a stronger commitment by Government in promoting transparency and preventing corruption. Such initial efforts also point out that achieving transparency in economic sectors is not so new and difficult to implement in Vietnam. Therefore, implementation of the extractive industry transparency institution (EITI) should be no exception. With the possible benefits of implementing the EITI, along with the support of international organizations, Vietnam would be able to implement the EITI effectively.

*16: The term resource curse is called by the theorists arguing that rich resource countries often face with a high level of poverty and corruption, and social conflict meanwhile poor natural resource countries are much more developed.

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ANNEX A List of interviewed stakeholders			
No	Stakeholder	Name	Place
1	Governmental Authorities	The Department of Economic Sector, Government Office	Ha Noi
2		General Department of Taxation, Ministry of Finance	
3		The Taxation Policy Department, Ministry of Finance	
4		Ministry of Industry and Trade	
5		Ministry of Natural Resources and Environment	
6		State Audit of Vietnam	
7		The Department of Finance, Quang Ninh province	Quang Ninh
8		The Department of Natural Resource and Environment	
9		The Department of Finance	Binh Dinh
10		The Department of Natural Resource and Environment	
11		The Department of Finance	Ba Ria-Vung Tau
12		The Department of Natural Resource and Environment	
13	State Owed Enterprise	Vietnam National Oil and Gas Group (PVN)	Ha Noi
14		Vietnam National Coal and Mineral Industries Group (Vinacomin)	
15		Vietnam National Chemical Group (Vinachem)	
16	Private Owned Enterprises	Binh Dinh Minerals Joint Stock Company (Bimico)	Binh Dinh
17		Halam-TKV Joint Stock Company	Quang Ninh
18		Phu Hiep Co.,Ltd.	Binh Dinh
19	Foreign Invested Enterprise	Nicken Ban Phuc Company	Hanoi
20		Vietnam-Russia-Japan Oil and Gas Company	Ba Ria-Vung Tau
21		PT.Vietmindo Energitama	Quang Ninh

ANNEX B The semi-structured questionnaire for the governmental authorities	
Role in the extractive industry	
1	What are the roles or relevancies of your sector in the extractive industry? Participate in what process (survey, exploration, extraction, processing, trade and post extraction), and in what level?
Payment-receipt activities	
2	In relation to the revenue from mineral exploitation, what is your participation and involvement?
Revenue management and distribution	
3	How does the revenue from mineral extraction to be managed and distributed?
4	What are the barriers in revenue management and distribution?

ANNEX C The semi-structured questionnaire for the extractive companies	
The payment activities	
1	Please describe your payment activities to the government (license, tax, environmental protection cost, benefit sharing...etc)
2	What are the governmental bodies receipted these payments? in which level, time and form (cash, production...etc).
The current auditing activities	
3	Does the company often check the payment amount to the government (e.g. Royalty, tax, etc)?
4	Please describe the enumeration mechanism (revenue-payment) in your company?
5	How does the auditing activity (internally, independently) occur? How often?
The information disclosure about the payment and revenue data to the government	
6	Please let us know about the current information disclosure about the payment and the revenue data that provided to the government (terms, time, form, etc)
7	What are the requirements, if any, to determine kind of information to be disclosed?
8	Is there any barrier/difficulty in disclosing information, auditing and reconciliation the revenue data?

ANNEX D
The semi-structured questionnaire table
The perception/ opinion of the stakeholders toward the transparency, accountability and EITI implementation in Vietnam

NO	Transparency in the EI sector in Vietnam
	Xin cho biết hoạt động chi trả của công ty cho các cơ quan nhà nước trong quá trình hoạt động (mua tài liệu khảo sát địa chất, xin giấy phép, đóng thuế, các chi phí xử lý, bảo vệ và phục hồi môi trường, phân chia lợi nhuận...).
1	What do you think about the level of information disclosure of the extractive company and the related governmental authorities about the mining activities such as licensing, exploration, bidding and exploration?
2	Can you please address the transparency level regarding the revenue that the government receipts from the company and the payment that the company pays to the government? (revenue information, use and management)
3	What would Vietnam benefit from promoting transparency and accountability in the extractive industry?
4	What are the opportunities for Vietnam to promote the transparency and accountability in the extractive sector?
5	What are the challenges for Vietnam to promote the transparency and accountability in the extractive sector? If any, what are the solutions to overcome these challenges?
	Opinion about the EITI implementation in Vietnam
6	Should Vietnam implement the EITI, please explain.
7	If the Vietnamese government wants to implement this Initiative in coming time, what are the challenges/barriers? And, if any, what are the solution(s) to deal with that?
8	If Vietnam announces to implement the EITI, what are the agencies/organizations should be involved in the EITI Program of Vietnam? And who should be the champion of the EITI board?
9	If Vietnam implements this initiative, what kind of company should be involved? and to which level?

ANNEX E List of additional companies			
No	Type	Anh Vy Joint Stock Company	Province
1	Private	Kim Huy Minerals Joint Stock Company	Binh Dinh
2	Private	Hoan Cau Joint Stock Company	Binh Dinh
3	Private	Binh Dinh- New Zealand Gold Ltd. Company	Binh Dinh
4	FDI	Hai Tinh international Joint Venture Company	Binh Dinh
5	FDI	Bang Huu Joint Stock company	Binh Thuan
6	Private	Tan Quang Cuong- Titanium Ltd. Company	Binh Thuan
7	Private	Minh Ha Joint Stock company	Binh Thuan
8	Private	Ha Tinh Minerals and Trading Corporation (Mitraco)	Binh Thuan
9	State	Chinfon Cement Corporation	Ha Tinh
10	FDI	Bong Mieu Gold Exploitation Ltd. company	Hai Phong
11	FDI	Thai Nguyen Iron and Steel Joint Stock Corporation	Quang Nam
12	State	Thai Nguyen Non-Ferrous Metals Joint Stock Company	Thai Nguyen
13	Private	Rural Development Ltd. company	Thai Nguyen
14	Private	Nghi Son Cement Corporation	Thai Nguyen
15	FDI	Holcim Vietnam	Thanh Hoa
16	FDI	Holcim Việt Nam	Ho Chi Minh city

ANNEX F Data collection table of financial duties and operation of the extractive company

Please fill out the form below. All information is used for the purpose of this research. We commit not to publicly disclose your opinion to other party in any circumstance.

Company name:.....; Type of extracted mineral:.....; Place:.....
Interviewee: Mr./Ms.....; Position:.....

I. Payments

Please tick off "X" in the category that your company has to perform, and "-" for not clear

Payments	Amount	Receiver		Time			Transaction				
		Bank	Other	1 time	Monthly	Quarterly	Yearly	In Cash	Transfer	Production	Other
Tax											
1.Royalty											
2.VAT											
3. Customs tax											
4.Corporate income tax											
5. Personal income tax											
6. Foreign Contractor Tax											
Benefit sharing											
1. Product Sharing Contract (PSC)											
2.Cooperation Contract											
3. Joint Venture Contract											
Fees											
Information fee											

II. Challenges/Barriers in enforcing financial duties

1. What are the barriers/difficulties when the company enforces its above financial duties to the related governmental authorities (payments, taxation...etc)?

.....
.....
.....

2. If any, please provide any solution harmonizing the benefit of company and the state

.....
.....
.....

III. Information disclosure

1. Are data of

Yes ☐ No ☐

2. If disclosed, so in what way?

Report to the governmental authorities (taxation, audit, etc) ☐

Publish on the company's website ☐

Other ☐

IV. Auditing activity

1. Is the company often audited?

Yes ☐ No ☐

2. If it is, so in what way?

Internal audit ☐ Time...../year

Independent audit ☐ Time...../year

State audit ☐ Time...../year

V. Extractive Industries Transparency Initiative

1. Should Vietnam implement the EITI? Please explain.

.....
.....

2. If Vietnam implements the initiative, what would be the difficulty?

.....
.....

3. If Vietnam implements the Initiative, which organization should be the champion of the EITI board? (e.g.: MOIT, MONRE, MOF, etc)

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This study is supported by

