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The NGO Forum on Cambodia

គ្រឹះស្ថានមួយគ្នាដើម្បីការពង្រឹងវិបល្លាស
Working Together for Positive Change

A Brief Guide to Information on Extractive Industry Revenue Management in Cambodia



Phnom Penh, Cambodia
December 2011

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Mining exploration in Preah Vihear (EISEI Network)

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List of Acronyms

CAMEC	Cambodian Association of Mining and Exploration Companies
CNPA	Cambodian National Petroleum Authority
CRRT	Cambodians for Resource Revenue Transparency Coalition
CSOs	Civil Society Organizations
EI	Extractive Industry
EISEI	Extractive Industry Social and Environmental Impact Network
EITI	Extractive Industry Transparency Initiative
MEF	Ministry of Economy and Finance
MIME	Ministry of Industry, Mines and Energy
MoE	Ministry of Environment
NGOs	Non-Governmental Organizations
PFMRP	Public Financial Management Reform Program
RGC	Royal Government of Cambodia
TOFE	Table of Government Financial Operations
TWG-FPM	Technical Working Group on Public Financial Management

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Summary

Cambodia's natural resource including oil, gas, and mining has been being exploited by private companies with minimal information on their operation available to the public in the last few years. While the exploitation has the potential of bringing more revenues for the Government to improve social services for the benefit of the people and generate economic growth, it could also become a curse if it is not subject to a good EI governance system. Transparency and more participation from the public and civil society is one key part in that governance system.

Currently, while Extractive Industry (EI) is expanding itself, very minimal information has been made publicly available to Cambodian citizens. The current legal framework and administration system has simply not been able to produce and share sufficient amount and kind of information needed to ensure transparency in EI. In addition, there has been not only limited understanding but also limited participation from the public in the management of this emerging industry. This demand-side weakness has left a heavy burden on a small but expanding group of civil society organizations who themselves are still struggling to improve their understanding about the complexity of the EI governance system. A summary of the information availability at key stages of EI value chain along with relevant institutions of the Royal Government of Cambodia (RGC) in Cambodia could be found in Annex 3.

Based on the current stage of Cambodia's EI and the limited availability of information, this report argues that the RGC should translate its genuine commitment to adopting Extractive Industry Transparency Initiative (EITI) principles as outlined as an action point in the Public Financial Management Reform Program (PFMRP) into practice. At the same time, more comprehensive and updated information on the EI operation and financial data should be published and made widely available in the public domains by relevant government institutions, including the Ministry of Economy and Finance (MEF), the Ministry of Industry, Mine and Energy (MIME) and the Cambodian National Petroleum Authority (CNPA). In addition, public consultations on key draft laws and regulations governing EI should be held to ensure that there are provisions on transparency in the laws. It is hoped that these steps taken by the RGC will reflect the RGC's efforts and commitment to transparency, accountability and participation in promoting the effectiveness and efficiency of the sector revenue

management and anti-corruption. In the same manner, the report finds it crucial that Development Partners be more harmonized in their position toward calling for the RGC's adoption of EITI principles.

Given all these challenges, it can also be argued that civil society groups in Cambodia are still at early stage in their attempt to play an active role in the EI. At this stage, there is a high need for the civil society organizations or groups to get seriously engaged with this sector. Firstly, civil society groups should keep on their following up with the latest development within the sector by collecting and analyzing the latest developments on legal frameworks, contract information, operations, and related fiscal transactions. Secondly, civil society groups should improve their capacity about the governance system of the sector and linking their activities with international organizations or networks, having experiences in monitoring the sector. Thirdly, civil society groups should work to promote public awareness and more demand from the public on the information related to EI with proper identification of potential constituencies and appropriate mechanism for sharing information.

1. Introduction

Extractive Industry (EI) has evolved itself significantly with a growing number of international and local companies licensed to explore oil, gas and mineral resources offshore and onshore of the Cambodian territory. Although most exploration is at an early stage, it is virtually certain that some of this exploration will turn into exploitation that brings substantial revenues into the Royal Government of Cambodia (RGC). However, the information on the EI operation and revenues is observed to be very closed and restricted to public disclosure. The limitation is reasoned by the absence of and public inaccessibility to information in the EI value chain, constraining the knowledge and capacity of the civil society to engage with the RGC and Development Partners in revenue mobilization and management.

To explicitly outline these constraints and call for possible actions, the NGO Forum on Cambodia commissioned an independent consultant to conduct a mapping study of information with a focus on revenue from EI that is produced and published by relevant line ministries and agencies of the RGC. In addition, the study aims to identify the types of EI information that should be made public following international good practice and mechanism of information public disclosure. The study covered all budgetary and non-budgetary documents that are related to the extractive industry with provision of possible sources of information where applicable. The review of existing literature and the final report have been confirmed and further substantiated by key informants including representatives of relevant NGOs and Development Partners. Unfortunately, the report failed to access to feedback and clarification from relevant government institutions despite several repeated requests to the Ministry of Economy and Finance (MEF), Ministry of Industry, Mines and Energy (MIME) and Cambodian National Petroleum Authority (CNPA).

The completed report of the study was finalized in November 2011 and the key contents and findings of the report were used to establish this 'Brief Guide to Information on Extractive Industry Revenue Management in Cambodia'. This Guide aims to provide a collective picture of the availability of the information on EI revenue management and therefore serve as a useful resource for further research and monitoring EI revenue by relevant stakeholders including government officials, members of parliament, NGO staff, media, university lecturers and students, entrepreneurs and all other Cambodian citizens. More importantly, this Guide also includes key recommendations of the study for policy and decision

makers, Development Partners and civil society organizations to work collectively toward ensuring a transparent, participatory and accountable management of revenue from EI and contributing to more equitable development and poverty reduction in Cambodia.

By using this Guide, it is hoped that the civil society and the public will be able to participate more effectively and constructively, for instance in monitoring budgetary revenue management from EI, and thus seek to ensure accountability for the use of these public resources. It is also believed that with huge influx of revenue from EI assured by its transparent and appropriate use, the government would be able to effectively implement its fiscal policy in the market especially for the benefits of the poor and vulnerable groups in Cambodia.

This Guide consists of a brief overview of the current situation of the extractive industry in Cambodia by highlighting important legal and regulatory frameworks, key actors, engagement of civil society groups and the current level of people knowledge and perception about EI in Cambodia. The next section reviews the stock of EI information which is available from relevant government institutions and that have been collected by the civil society organizations from public domains, while all information availability is summarized into a table in Annex 3. The final section concludes the Guide and provides recommendations to the RGC, Development Partners and civil society groups.

2. The Current Situation of Extractive Industry in Cambodia

In Cambodia, Extractive Industry (EI) is comprised of crude oil, natural gas and mining, which are non-renewable natural resources which have to be extracted from the ground or the sea. The country is rich with mining, ranging from metallic minerals (including gold and iron), gemstone, solid fuel minerals (e.g. coal), and construction materials (crushed stones, sand, gravel and clay). Crude oil received great attention for their potential to generate revenues for the country. Natural gas is extracted along with crude oil, which after being processed and produced is finalized into different products, such as petroleum (CRRT and EIC 2011).

EI in Cambodia is rapidly expanding with at least 90 companies licensed to explore for minerals, covering 15 Cambodian provinces. Those companies range from the big ones from developed countries to the medium and small companies from China, Malaysia, Vietnam and Thailand (CRRT 2010). But, probably, the

most popular topic regarding the EI in Cambodia nowadays is the oil and gas exploration. After the announcement of the availability of oil and gas in Block A, offshore, in 2005 by Chevron, this company to date is undertaking substantial operations in that block. However, the exact amount of oil and gas is yet to be known. Other oil and gas blocks have also been granted to other big companies in oil and gas extraction (Chhay 2010).

The offshore border area, overlapping claimed area, in the Gulf of Thailand, is believed to contain significant gas and oil reserves but due to the contention between Cambodia and Thailand, this area is yet to be resolved. Onshore, there is increasing petroleum exploration interest as the exploration licenses have been granted to some blocks in the Tonle Sap basin and around Tonle Sap Lake (<http://cnpa.gov.kh>). At the same time, establishment of a national oil company and a domestic oil refinery are being considered (ibid).

Foreseeing the significant revenue derived from its natural resources (oil, gas and other minerals), the Royal Government of Cambodia (RGC) who is in the process of drafting five legal frameworks to govern EI has been trying to establish and strengthen relevant legal and policy framework to attract investors on the one hand, and to prepare a clear plan for responsible mining which contributes to transparent, accountable and sustainable and also mitigate the harmful impacts to the environment on the other hand. Extractive Industry Transparency Initiative (EITI)¹ is also being considered by the government, and there is some prior indication that this initiative might be adopted, although a lot still needs to be seen (MIME and UNDP 2010).

2.1 Legal and Regulatory Frameworks

There are currently various laws and regulations which might be relevant to EI in Cambodia, five of which are briefly presented below (For more information, please see Annex 2).

¹ EITI is a coalition of companies, governments, investors and civil society organizations, which aims to strengthen governance by improving transparency and accountability in the extractive sector in resource-rich countries through the verification and full publication of company payments and government revenues from oil, gas and mining. A country that has fully and to the satisfaction of the EITI Board met the five sign-up requirements becomes a candidate country. Once a country has obtained the candidate status it has two and a half years to be validated as a compliant country. Currently there are 11 compliant countries and 22 candidate countries. Several other countries have signaled their intent to implement the EITI, including the United States of America and the Philippines. See details on EITI principles and criteria in Annex 1. For more information, please visit the EITI's homepage (<http://eiti.org>).

Law on the Management and Exploitation of Mineral Resources (Mining Law 2001). This Law regulates the management and exploitation of mineral resources in Cambodia. It stipulates about the procedures and application process relating to licenses. However, its provisions are still weak and unclear as it does not include provisions for security of tenure, transfer of rights and health and safety legislation (Thompson 2010). As mining sector is expanding, this mining law is being considered for amendments, while mineral policy is still under review (ibid). In parallel to that, some more sophisticated regulations are also being considered, including the regulation on health and safety in exploration and mining and quarrying activities and on matters relating to the regulation of pollution (MIME and JICA 2010).

Under this mining law, potential mining sites which have not yet granted with any license shall be identified through a public announcement by the minister in charge for bidding based on a formal negotiation and evaluation on an appropriate license and supplementary investment agreement (art. 13). However, the confidentiality of information related to the application form, reports, plans and notices shall be maintained and the disclosure of such information depends on the approval of license holder or until the termination of such license while the information related to environmental and social issues maybe released upon notice to the holder by Minister in charge of minerals. The statistics quoted from the holder's documents and information may also be published when it relates to national mineral sector analysis (art. 19 and 20).

Law on Environmental Protection and Natural Resource Management (Environmental Law 1996). This Law provides management principles for environmental and natural resource management which include the environmental impact assessment for every investment project and related activities. Complementing the Environmental Law, the Sub-Decree on the Environmental Impact Assessment (EIA) process was also adopted in 1999 to oblige the Ministry of Environment (MoE) to scrutinize EIA and for investors to submit report with description of environmental impacts caused by their project activities and the actions to minimize the impacts (MIME and JICA 2010).

This law also includes one chapter about public participation and access to information asking the MoE to provide information, following the proposal of the public, on its activities and to encourage participation of the public in the environmental protection and natural resource management (art.16). The procedure for participation of the public and access to information shall be determined by

a Sub-decree following a proposal of the MoE (art.17) and the information shall be mutually disseminated between the Ministry of Environment and other ministries (art.18).

Petroleum Regulations (1991). This set of regulations applies to the upstream oil and gas industry in Cambodia and was amended in 1998 and again in 1999. The Petroleum Regulations prescribe a process for the award of concessions in the form of petroleum agreements² which is entered into by the Cambodian National Petroleum Authority (CNPA), petroleum companies and their partners. A Petroleum Agreement must be signed in accordance with the Petroleum Regulations and subject to any additions or deletions as may be approved by the Government³.

Under article 54 of this regulation, the confidentiality is restricted to all information, documents, data and materials acquired by a contractor during petroleum operation within the provision of the petroleum agreement, but the issues relating to invitation for bids to undertake petroleum operations, signing of petroleum agreement, relinquishment of area by contractor and issue of production permit to contractor can be published in the Cambodian Gazette (art. 58).

Inter-ministerial parkas on various registration, licensing and royalty fees for companies engaged in mining activities (2009). This Prakas set out the specific fees for registration, license, renewal (of license), transfers of mineral resources license, annual land rental of the concession areas, and royalty on the value of mineral resources. The parkas focuses on various forms of mining activities, including artisan mining, pits and quarries, sand, gem-stone, coal, copper, tin, zincs, lead, platinum, silver, titanium, clay, etc. It is noted that focus on oil and gas is almost non-existent in this Prakas, indicating that a new set of regulations need to be in place to reflect the upcoming significance of oil and gas exploration in Cambodia. The prakas is public document made available through the regular royal gazette.

Key draft laws and regulations. To reflect the growing importance and activities within EI, and to attract and build investor confidence, the Government is preparing new legal frameworks. A proposal for a Petroleum Law is currently being drafted

² Based on petroleum regulation in 1991, petroleum agreement means a Production Sharing Contract (PSC).

³ For more information, please see http://www.web-cambodia.com/en/article/Petroleum_resources_in_Cambodia-36046.html

by the legal working group of the CNPA in order to improve the law to international standards. Draft law on taxation on oil operation was submitted to the Council of Ministers, while draft law on taxation on mines operation, and economic models for shared revenue forecasting are also being drafted (MEF 2011). The government has also expressed intention to develop law on EIA and EI sectoral guideline, one for oil and gas, one for mining⁴. The drafts, however, have not been made publicly available.

2.2 Key Actors

There are different groups of actors who are involved in different capacity and to different extent in the EI in Cambodia. These include primarily government institutions, private companies, international NGOs, local NGOs, and agencies who have been assisting the development of EI in this county. The following are listing of these actors, together with a brief description of their roles (CRRT 2010).

Government institutions

Ministry of Industry, Mines and Energy (MIME) who is responsible for the development, implementation and management of Government policy and strategy with regard to the industry, mining and energy sector, including the EI. (<http://www.mime.gov.kh> and <http://www.gdmr.gov.kh>)

Ministry of Environment (MoE) who is in charge of administering and regulating environmental related issues, including those that might arise from EI. MoE is responsible for preparing Environmental Impact Assessment (EIA) reports (Art. 20 of the Mineral Law 2001), in which information about EI companies can be obtained⁵. (<http://www.moe.gov.kh>)

Ministry of Economy and Finance (MEF) who is mandated to administer and regulate the economic and financial sectors in Cambodia including revenue collection and management, either from general sources, and expectedly from EI. The MEF's senior government officials, Minister of Economy and Finance and Secretary of State, play very important roles as honorary president and chair person accordingly in senior council management of the *Supreme National Economic Council (SNEC)* whose role is more relevant at the macro level of economic development policies.

⁴ Interview with Oxfam America (June 30, 2011)

⁵ Key informant interviews indicated that the EIA department of the MoE has been working closely with the CNPA, but not so with the MIME (June 30, 2011)

(<http://www.mef.gov.kh> and <http://snec.gov.kh>)

The Cambodian National Petroleum Authority (CNPA) whose mandate including managing petroleum resources of Cambodia, supporting the development of a successful domestic oil and gas industry that will bring cheaper petroleum energy source for both industrial and domestic use, providing petroleum energy supply security, and contribute to sustaining economic growth. (<http://cnpa.gov.kh>)

Cambodian Development Councils (CDC) who manages all investments worth over \$100 million and bilateral deals with other nations. Expectedly, investments in EI also need to go through CDC. (<http://www.caminfoservices.com/cdc/>)

The Inter-ministerial Technical Working Group who is responsible for the development of action plan and monitoring of the implementation of mobilization and management of revenue from oil, gas and other mining resources⁶. *Prakas on the establishment of working group on oil and gas revenue mobilization*⁷ were issued on February 04, 2009 and the latter on September 29, 2010 (both are chaired by the Ministry of Economy and Finance) to develop and monitor revenue management and transparency plan.

Businesses

In Cambodia, there are six categories of extractive industry businesses, including the local artisanal miner, the local Cambodian business, the National Cambodian companies, National and Regional joint venture corporations, regional corporations and the multinational companies. There has been little to no information recorded on local extractive operations by local and national companies.

In January 2010, the Cambodian Association of Mining and Exploration Companies (CAMEC) was registered as a business association with the Ministry of Commerce⁸. The association exists to improve the business environment for its

⁶ Available at

http://www.mef.gov.kh/documents/laws_regulation/The_Government_decision_to_establish_the_EI_TI_sub_committee.pdf

⁷ Available at http://www.mef.gov.kh/documents/laws_regulation/prakas-727.pdf

⁸ Informal dialogue on phone with a contact person of CAMEC, 25 May 2011.

member companies engaged in the mining industry (exploration and mining) and to foster and promote the mining industry in Cambodia.

The mission of CAMEC is “to assist with the development of an active exploration and mining sector, operating to international standards which recognises and respects all stakeholders. Its principal role is to present to government the concerns and issues facing the industry, to address these issues and to advocate for beneficial changes to both existing and proposed new legislation and policy that affect the mining sector.”

There are approximately 24 members of CAMEC. However, only 5 companies are directly involved in exploration activities, while the rest are service industry companies. Since the association is still small and relatively new, its functions and operations are less known to the general public but well known by the major donors. For more information, please visit CAMEC’s homepage (<http://www.camec-cambodia.com>).

Agencies Funding EI Activities

United Nations Development Program (UNDP) supports the government and partner to develop EI sector in a way that will bring economic and social benefits to the country. (<http://www.un.org/kh/undp/extractive-industries>)

Norwegian Agency for Development Cooperation has provided petroleum governance related assistance to Cambodia since 1995, initially via The Coordinating Committee for Geoscience Programmes in East and Southeast Asia (CCOP) and its prime cooperating institution is The Cambodian National Petroleum Authority (CNPA). However, no new activities are planned for 2011.⁹ (<http://www.norad.no/en/thematic-areas/energy/oil-for-development>)

Henrich Boll Foundation (HBF) currently supports and funds local NGOs on the development of EI sector in relation to sustainable development to ensure social, economic and environmental impacts are beneficial and equitable. (<http://www.boell-cambodia.org>)

Oxfam America – Oxfam’s regional mining program advocates for just government policies and corporate practices in the oil, gas, and mining industries, and

⁹ Norad (2011), *Oil for Development Initiative: Annual Report 2010*, retrieved <http://www.norad.no/en/thematic-areas/energy/oil-for-development>.

supports to the rights of communities to participate meaningfully in decisions about the use of natural resources.

(<http://www.oxfamamerica.org/issues/oil-gas-mining>)

Norwegian People's Aid (NPA) – NPA Cambodia focuses on two priority areas, one is to strengthen civil society as the key pillar for nation-building, democracy and development and to assist Cambodia to eliminate the threat of landmines, cluster munitions and other unexploded ordnance (UXO). (<http://www.npaid.org/en/countries/asia/cambodia>)

The Japanese International Corporation Agency (JICA) has currently contracted to develop the master plan for extractive industry potential in partnership with the government. (<http://www.jica.go.jp/cambodia/english>)

World Bank is a lead development partner facilitator in the Technical Working Group on Public Financial Management (TWG-PFM). The Bank has shown a strong position in and support for the government's adoption of EITI principles clearly outlined in the Public Financial Management Reform Program (PMFRP) action plan.¹⁰ However, other development partners supporting PMFRP has not endorsed or shown this same position as the World Bank and rather focus their support on specific areas of EITI principles in terms of the development of EI regulatory frameworks. (<http://www.worldbank.org/kh>)

International NGOs

World Wildlife Fund (WWF) – Cambodia Country Program is part of the WWF Greater Mekong Program working on environmental and conservation issues across Thailand, Cambodia, Lao PDR and Vietnam. Currently, WWF is working with local government partners to monitor EI activities in four provinces, Kratie, Monduliri, Ratanakiri and Stung Treng. (<http://cambodia.panda.org>)

Wildlife Conservation Society (WCS) is a government partner and who conducted analyses of the current situation relating to extractive industry activities in its focal areas, specifically oil exploration in the Tonle Sap Lake and potential mineral resource mining in Monduliri and Preah Vihear. (<http://www.wcscambodia.org>)

¹⁰ Interview with the World Bank representatives (5 August 2011)

East-West Management Institute (EWMI) – Program on Rights and Justice (PRAJ) whose aim is to build networks of communities that will work together to defend land and livelihoods and protect bio-diverse ecosystems. Currently, many of EWMI-PRAJ focal sites are under severe pressure from extractive industry concessions. (<http://www.ewmi.org/Cambodia.htm> and <http://www.ewmi-praj.org>)

Local NGOs

Development and Partnership in Action (DPA) – working toward social development to support the rural poor in their effort to meet their own needs and to support activities which promote peace, freedom, social justice and society. (<http://dpacam.org>)

The NGO forum on Cambodia, a membership organization which is made up of more than 80 local and international NGOs. It has an important role to highlight the impact of development processes and economic, social and political changes on Cambodians. (<http://www.ngoforum.org.kh>)

Youth Resource Development Program (YRDP), aiming at supporting the development of Cambodian civil society by addressing the lack of critical and analytical thinking skills among university students. YRDP has commenced training of youth on extractive industry issues in local universities. (<http://www.yrdp.org.kh>)

Advocacy and Policy Institute (API), aiming at serving the long-term democratic and social development needs of Cambodia through the provision of services in the areas of advocacy and policy development. One of the main areas of the API's advocacy work is to promote access to public information. (<http://apiinstitute.org>)

EI networks

Cambodians for Resource Revenue Transparency (CRRT) Coalition, currently consisting of four local NGO's including DPA, NGOF, YRDP and API who saw a need to address issues that will eventuate from the emerging resource sector focusing on the promotion of transparency and accountability on revenue gained from EI investment. (<http://www.crrt-cambodia.org>)

Extractive Industry Social and Environmental Impact (EISEI) Network, focusing on the social and environmental impacts of mining operations. (<http://www.dpacam.org>)

Eco-mineral yahoo group, bringing scholars and professionals together who are interested in innovative approaches to material management across the mineral development cycle.

The Cambodia Solution Exchange Community of Practice for Extractive Industry, which is an email based community linking Cambodian practitioners with timely international knowledge and experience and it also focuses on social, environmental and economic benefits and costs of EI. (<http://www.solex-un.net/cambodia/ei>)

The Extractive Industries Watch (EI Watch) is a web-portal designed to overview EI situation in Southeast Asia which includes country profiles and specific issues of extractive industries in the region. Its objective is to exchange knowledge between civil society, governments, business communities and others who have an interest in the governance of extractive industries and also served as a portal to exchange ideas and experience in dealing with extractive industries while at the same time, it tries to empower the public to understand the extractive industries and its related issues in Southeast Asia. (<http://eiwatch.net>)

2.3 Engagement of Civil Society Groups

The possibility of Cambodia receiving large revenue from its resources namely oil, gas and mineral resources has brought attention from media, International NGOs and local NGOs. These non-state actors have a role in pushing the government toward transparency and well management of revenue for the benefit of the whole society.

NGO and civil society sector have developed skills in advocacy, awareness raising, investigation and other lobbying/watchdog approaches to influence greater EI governance and accountability. For instance, the CRRT, seeking to access more information about EI corporation activities and the revenue that the government receives, established a user-friendly database of EI company activities in Cambodia. CRRT engagement in awareness raising includes its holding and participating in conferences about EI and distributing monthly newsletters. It also seeks to build partnership with the government partners on this issue.

It is learnt also that EISEI is working toward developing a database of various companies working on mining sector throughout the countries. What EISEI gets now is rather detailed information (i.e. their names, nationalities, duration of license, exploration cost, progress of exploration implementation, etc) of many mining companies, especially those operating in the North-east part of the country.

An initiative by UNOHCHR and Cambodia for Human Rights (CCHR) in collaboration with UN Business and Human Rights Office to initiate corporate research and focus on Corporate Social Responsibility (CSR)¹¹ is a useful training opportunity to promote better understanding among NGOs as well as government partners on how to engage corporations to advocate for greater CSR which includes revenue transparency and accountability (Thomas 2010).

In February 2011, a survey with small and medium enterprises (SMEs) on the perception of extractive industry in Cambodia was conducted with the objective to provide relevant insights into the awareness and perceptions of SME owners and representatives towards EI in Cambodia (CRRT and EIC 2011).

Despite the initiatives mentioned above, civil society groups encounter some challenges including their limited knowledge and experience about EI business operation and system of revenue management, the lack of publicly available information from government, and inadequate EI legislation.

2.4 People Knowledge and Perception about EI in Cambodia

The general perception among civil society and small and medium enterprises (SMEs) is that the revenues generated from oil and gas can either be a blessing or a curse. It is a blessing if the revenues could be used to increase the government's financial capacity to undertake development programs for the sustainable growth for Cambodia (CRRT and EIC 2011). It is a curse if the revenues are not well managed and thus lead to more corruption and misuse of public resources (Malloy 2007).

SMEs which play a greater role in Cambodia's economic diversification and growth, are not commonly familiar with the term "Extractive Industries". This non-familiarity is due mainly to inadequacy and misinformation from media or from word-of-mouth communication and insufficient information related to recent EI

¹¹ CSR is the commitment of business to contribute to sustainable economic development, working with employees, their families, the local community and society at large to improve their quality of life.

development. For instance, most of the surveyed SME owners said they heard the names of companies which have already received licenses but they have never heard any news relating to the process of bidding and selecting companies. It is also interesting to know that the surveyed SMEs seem not interested in the news except if the news from EI can potentially benefit or harm their own businesses (CRRT and EIC 2011).

The general public and the SMEs interviewed also tend to expect that the industry will create more jobs, lower the price of gasoline, increase public official salaries, increase public investment in health and education, as well as investment in other productive sectors such as infrastructure and agriculture. Meanwhile, they are also concerned about the non-disclosure of information from the government and possible corruption among elite politician. There seems to be confusion as to whom 'own' the extractive resources once they are found and exploited, and what benefits can the government get and people benefit when that happens. Social and environmental impacts also come out strong in the public's concern (CRRT and EIC 2011).

Despite the little knowledge about the EI, people seem to have high expectation of what good the recent oil and gas exploration can do for the country and their lives and businesses. Such high expectation can lead to disappointment, and when that happens, there will be risk of the public become disengaged. Despite the risk, however, the negative implications of the EI are not inevitable. Actually, there are ways to manage such risks, such as by providing accurate information related to the industry to the media, educating the public about the issues and increasing the awareness of the consequences of having high expectations, etc.

3. Information Availability about Extractive Industry in Cambodia

3.1 Available Information from Government Institutions

According to this review, there is no legal provision on the need to make information about revenue from EI public. However, there are some relevant provisions on this information disclosure in the Mining Law (2001) and Environmental Law (1996). Article 20 of the Mining Law, for instance, states that information related to environmental and social issues can be released to the public but only at the discretion of the Minister in charge of minerals (in this case the

Ministry of Industry, Mines and Energy (MIME)). Article 16 of the Environmental Law states similarly that the Ministry of Environment (MoE) shall, following proposals of the public, provide information on its activities, and shall encourage participation of the public in the environmental protection and natural resource management.

All the existing laws and regulations relating to EI are publicly available, including the Mining Law (2001), Environmental Law (1996) and the Petroleum regulations (1991), Licensing Prakas (2009) and annual Budget Law and the Table of Government Financial Operations (TOFE).¹² These legal documents, however, provide little information about ongoing EI activities and thus not particularly helpful for the promotion of transparency and accountability in the sector. All the key draft laws and regulations as mentioned in Section 2.1, on other hand, are not made public, preventing active debate and participation from civil society and the public.

Public announcement was not made on the basic information about the expected exploration areas and activities when there was a decision to extract mine and oil/gas. This has not been seen in existing regulatory framework such as Law on Mineral Resource Management and Exploitation and Law on Environmental Protection and Natural Resource Management as well as in practice. Environmental Impact Assessment (EIA) has been conducted by MoE on relevant projects. However, it is not sure whether the EIA was done for all or only major projects. MoE is said to be in good collaboration with civil society groups, sharing and seeking comments from some of the NGOs (e.g. the NGO Forum on Cambodia) on its EIA works. The EIA is supposed to be also available from MIME, but experience shows that MIME is not particularly willing to share the information. Another shortcoming is that, while environmental impacts have been studied, not much attention has been given to the broader social and economic impacts that EI activities might have on affected communities.

Transparency with bidding and licensing process is key to overall EI transparency initiative. In Cambodia, however, its bidding procedures have not been publicly known, and nor has actual bidding process for each case.¹³ The only publicly

¹² All the related laws mentioned here are available in the government official gazettes (some of which are also available online), while the TOFE can be obtained from the website of the Ministry of Economy and Finance (<http://www.mef.gov.kh/data.php>)

¹³ Key informant interviews with CRRT, Oxfam America and EISEI (June 29 and 30, 2011). The interview with Oxfam America indicates that there is expressed intention from some government officials for a more transparent and competitive bidding and licensing procedures. However, it is not sure how and when such intention gets translated into actions.

available piece of information on licensing is the Inter-ministerial Parkas on mining licensing fees (2009).¹⁴ However, from EISEI's experience, the information about approved licensees, at least in mineral sector, can be obtained from MIME's provincial departments.¹⁵ However, such sharing does not guarantee that the information is publicly available.

However, in the last year, relevant government institutions such as MIME and CNPA started to put more information about EI companies and others on their websites. On the homepage of the General Department on Mineral Resources of MIME (<http://www.gdmr.gov.kh>), there is a collection of existing policies and regulations governing the mining sector and a list of companies categorized by their exploring activities of various kinds of mineral resources. A new CNPA website (<http://cnpa.gov.kh>) has also been updated and improved which includes information about oil, gas and mining developments in Cambodia and also links to important information sources, including the CRRT website which is a good sign and a starting point between CRRT and CNPA to work together to ensure transparency and accountability for Cambodians.¹⁶

A number of limitations should be noted of these EI related websites. First of all, they are not yet fully reliable in terms of their comprehensiveness and updatedness. For instance, while major mining companies (mostly, international) are included, many local mining companies are not (CRRT 2010). In the case of MIME, on the other hand, its website is under construction and the information is not accessible at times. Secondly, the information posted is only a few lines about each company, and almost nothing on its contents of their licenses. As indicated earlier, these detailed pieces of information can be obtained from MIME's provincial level (for mineral sector), although they cannot be considered as publicly available either.

The amount of information on the revenues from EI sector is even less available. As a matter of rules, one can gain access to this kind of information by looking at the national budget and other budgetary documentations. This then would fall under the responsibility of the Ministry of Economy and Finance (MEF) whose mandate is to prepare the National Budget, showing all the revenues received by the government, including those from the EI. The MEF also publishes a monthly

¹⁴ Although it is expected that Law on Public Procurement is to be adopted soon (MEF 2010), it is not expected that the law, for its scope, will cover the EI transactions as well.

¹⁵ Interview with EISEI (June 30, 2011)

¹⁶ Key informant interviews with CRRT (June 29, 2011)

table of revenues and expenditure called the TOFE and Monthly Bulletins of Statistics which shows the revenues from extractive industries.

However, a look through the National Budget and the TOFE indicates that the information available is very aggregate and gets reported as a lump sum under ‘revenue from mineral concession’ (sub-chapter 7204) and ‘revenue from extractive industry’ respectively. In other part, revenue from EI might be possibly reported together with non-EI revenue. For instance, it is not sure how much revenue from EI is reported under the budget item ‘Revenue from domestic licensing’ (sub-chapter 7052). It is hoped that future Budget Law and the TOFE will include more details on the revenues generated by domestic and foreign investment in oil, gas, and mining industry (CRRT 2010). Please see Annex 3 for a summary of EI information available in Cambodia, as compared to good practice.

3.2 Information Collected by CSOs/NGOs

This review gains more knowledge about information accessibility from the **CRRT** website which provides good updates about latest development in the EI based on press release, newspaper articles, government policy and speeches, and international reports (such as the one released on February 28, 2011 by the Transparency International). The CRRT website (<http://www.crrt-cambodia.org/category/ei-database>) also contains the information about EI (mainly oil and gas) company database but such information is not complete as much of its contents is not available from official sources. Likewise, a database on various mining companies (with detailed information on their names, nationalities, duration of license, exploration cost, progress of exploration implementation, etc.) throughout Cambodia has been compiled by **EISEI** Secretariat and network members and will be made publicly accessible in the near future.

The limited publicly available information about EI companies especially exploration contracts and licensing fees and other EI information make it difficult for the civil society organizations including NGOs and the general public to monitor the revenue collected by the government and exploration and extraction (sites and affected areas) to be conducted by these companies. **Details relating to what information exists and what are available in the public domains and where to find them could be found in Annex 3 of the Summary Result of Assessing Information Availability at Key Stages of EI Value Chain.** These key findings of the brief seek to inform the Royal Government, Development Partners, Civil Society Organizations, media and general public on the need for the Royal

Government to work toward improving the transparency especially information disclosure in management of extractive industry in Cambodia. Based on these findings, two immediate calls to the government include adoption of Law on Access to Information and EITI principles and holding public consultation and engagement in the formulation and implementation of EI legal framework. This will bind the government commitment toward ensuring transparency and accountability in the sector.

UNDP Cambodia plays very important role in extractive industry as it provides a balanced platform for dialogue and debate on something challenging extractive industries policy issues and capacity building to help improve governance and transparency which will in part determine how Cambodia maximizes the benefit of EI and minimizes the risks. UNDP supports the government and partners to develop EI areas in a way that will bring economic and social benefits to the country, for example by organizing workshops, generating and disseminating knowledge including the publication of short policy briefs (available on its website) that may guide way for decision making.

With regards to the information available about the companies, **Transparency International** in February 2011 issued a report which questions the limited disclosure of information relating to payments made to host governments which is weak and must be improved in order to foster an environment of transparency.¹⁷ The report added that contractual agreements with governments as well as a lack of reporting capacity among companies could be a reason behind poor levels of disclosure. The report further indicates that during Chevron’s annual board meeting last May, just 7 percent of the US oil giant’s shareholders voted in favor of disclosing all payments made to host governments on the grounds that doing so could put them at a commercial disadvantage in contract negotiations. These reasons may contribute to the limited amount of resources available relating to EI in Cambodian context.

4. Conclusions and Recommendations

Cambodia’s natural resource has been exploited at a significant rate in the last few years. While the exploitation has the potential of bringing more economic

¹⁷ The Cambodia Daily, “Report questions companies’ payment disclosures”, dated 1 March 2011.

development and revenues for the Government to improve social services for the benefit of the people, it can also become a curse if it is not subject to a good EI governance system. Transparency and more participation from the public and civil society is one key part in that governance system.

Currently, while EI is expanding itself, very limited information has been made available to the public. The current legal framework and administration system has simply been insufficient to produce and share the amount and kind of information needed to ensure transparency in EI. In addition, there has been not only limited understanding but also limited demand from the public for more information about this emerging sector. This demand-side weakness has left a heavy burden on a small but expanding group of civil society organizations who themselves are still struggling to improve their understanding about the complexity of the EI governance system.

Based on the current stage of Cambodia's EI and the limited availability of information, this report argues that the Royal Government of Cambodia (RGC) should take the following actions in order to translate its commitment to transparent and accountable management of extractive resources into practices:

- **The RGC should translate its genuine commitment to adopting EITI principles as outlined as an action point in the Public Financial Management Reform Program (PFMRP) into practice.** EITI is an international voluntary mechanism in public disclosure of payments made by EI companies and received by the host government. Therefore, it is important that the RGC, especially the Ministry of Economy and Finance (MEF), update the progress of the initialization and implementation of EITI together with the progress of the action plan laid out by the inter-ministerial technical working group on mobilizing and managing revenue from oil, gas and other mining resources. The progress could be reported in the quarterly, bi-annual and annual progress reports of the PFMRP, which are presented at the regular PFM technical working group meeting and available on the program's and ministry's websites. By so doing, the civil society and the public could be made aware of the RGC's efforts and commitment to transparency and accountability in the management of natural resources and public money in particular and anti-corruption in general.
- **More comprehensive and updated information on the EI operation and financial data should be published and made widely available in the**

public domains. With existing information stock, relevant government institutions (including MIME and CNPA) should provide regular updates especially on both local and international extractive companies already posted on their functioning websites. More importantly, the aggregate figure of revenue from EI and mineral concession included in the monthly TOFE and the annual National Budget respectively should be published by its types of revenue streams and further broken down to specific revenue collecting agencies. In addition, information on bidding and licensing procedure/process, basic information on contractual agreements/licenses should be produced and made available in the public domains (i.e. websites, libraries, bulletins, etc.) or upon request. The production and publication of information, on one hand, contribute to managing unreasonably high or falsified expectation from the public on the actual stage and size of the sector and revenues. On the other hand, information speaks it all about the RGC's commitment and capacity in managing the sector transparently and accountably and thus building up investors' confidence. Finally, civil society organizations believe that with transparency in place Cambodia's risk of facing the resource curse would probably be impossible.

- **Public consultations on key draft laws and regulations governing EI should be held to ensure that there are provisions on transparency in the laws.** As an emerging and soon developed industry, EI needs a set of management legal frameworks as identified and committed by the RGC in its PFMRP with a number of regulatory frameworks being developed and finalized. Through the release of draft laws and regulations for public consultation, the RGC could elicit public opinions and involve civil society groups and relevant stakeholders in the process. In so-doing, the contents of these draft legal documents will reflect the notion of transparency, accountability and participation by the inclusion of the provisions on information disclosure, enabling the public and civil society to monitor the effectiveness and efficiency of the sector revenue management.

At the same time, the report finds it crucial that **Development Partners be more harmonized in their position regarding the RGC's adoption of EITI principles.** It should be noted that World Bank has already had a clear overall stance in calling for this adoption as a mechanism toward ensuring transparency, participation, and accountability in EI revenue management which is a part of the

PFMRP, while other Development Partners seem to focus on specific areas of assistance, particularly in terms of EI legal framework development in Cambodia.

Given all these challenges, it can be argued that civil society groups in Cambodia are still at early stage in their attempt to play an active role in the EI. At this stage, there is a high need for the civil society groups to get seriously engaged with this sector in the condition that there is public information availability in place.

- **Firstly, civil society groups should keep on their following up with the latest development within the sector.** This includes collecting and analyzing the latest developments on legal frameworks, contract information, operations, and related fiscal transactions. Good collaboration with key related institutions such as CNPA, MEF (and its TWG-PFM), MIME and MOE should be continued and strengthened. In doing this, the groups can base their request for related information on existing legal provisions such as Article 84 of the Public Finance Law (2008) which states that ‘...*All record taking on revenues and expenditures of national and sub-national administrations must comply with chart of accounts and budget contents and all accounting and financial reports must be transparent and publicly disclosed.*’ Another part to this effort which some civil society organizations have already started is to create and improve databases in order to disseminate the collected information to the public. This work, while still in its infancy, is a good way to systematically accumulate information needed for reliable analysis in the future.

- **Secondly, civil society groups should improve their capacity about the governance system of the sector.** One part of this task involve building capacity of a few selected people or institutions about EI governance so that they can serve as resource persons/institutes about EI governance, international practice and experiences from other countries and how best pieces of experience can be applied to Cambodia. Donor agencies working on EI should provide support to building capacity of such focal people or institutions. Another part is about linking local civil society groups with international organization or networks as listed above. This is important because it will not only build capacity but also confidence of local organizations by making them feel that they actually belong to a bigger support network.

- **Thirdly, civil society groups should work to promote awareness and more demand from the public on the information related to EI.** A number of tasks need to be done in this respect. First, there should be proper identification of potential constituencies. Urban people, youth, and small and medium enterprise owners are good examples of constituencies whose interests and knowledge can be effectively built and which can lead to effective engagement in the EI governance. Second, appropriate mechanism for sharing information should be considered. For instance, the use of bulletin with pictures can be effective mediums for disseminating information to the general public, while public speaking and lecturing can be best used to target youth groups.

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Annex 1: EITI Principles and Criteria¹⁸

Annex 1.1: EITI principles	Annex 1.2: EITI Criteria
<ol style="list-style-type: none"> 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 recognise that the benefits of resource extraction occur as revenue streams over many years and can be highly price dependent. 4. We recognise 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 recognise that achievement of greater transparency must be set in the context of respect for contracts and laws. 7. We recognise 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 	<ol style="list-style-type: none"> 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 towards 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.

¹⁸ <http://eiti.org/eiti/principles>

<p>accountability in public life, government operations and in business,</p> <p>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 to use.</p> <p>11. We believe that payments' disclosure in a given country should involve all extractive industry companies operating in that country.</p> <p>12. In seeking solutions, we believe that all stakeholders have important and relevant contributions to make – including governments and their agencies, extractive industry companies, service companies, multilateral organisations, financial organisations, investors, and non-governmental organizations.</p>	
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Annex 2: Laws and Regulations Relevant to EI in Cambodia

Law / Sub-decrees Relating to Mineral Resources		
1	Law on Mineral Resource Management and Exploitation (Mining Law 2001)	<p>All laws and regulations can be accessed via:</p> <ul style="list-style-type: none"> - The Government Official Gazettes which are available at the National Library in hard copies; - The Government Official Gazettes which are available at the General Department of Official Gazettes and Computer Services of the Office of Council of Ministers in both hard and soft copies; and - CD-ROM of the Bar Association of the Kingdom of Cambodia for all legal documents from 1993-2009.
2	Sub-decree on the Principles of Mineral Investment (2005)	
3	Sub-decree on the Amendment of Article 1 of the sub-decree in 2 above (2005)	
4	Decision on the Establishment of a Sand Management Committee (2006)	
5	Decision on the Establishment of an Inter-Ministerial Committee to resolve the soil excavating issues around Phnom Penh (2007)	
6	Decision on the Establishment of an Inter-Ministerial Inspectorate to verify the results of Mineral Exploration conducted by companies licensed by the MIME (2004)	
7	Government Order on the Prevention and Elimination of Forestry Cutting and Illegal Occupation of Forest Land (1999)	
8	Inter-Ministerial Prakas on Fees for Registration, Issuance, Renewal and Right Transfer of Mineral Licenses (2009)	
9	Prakas on Annual Land Rental for Concessions for Mineral Exploration (2007)	
10	Prakas on Royalties of Metallic and Non-Metallic Minerals, Gemstone, Ornamental Stone and Coal	
11	Prakas on Royalties for Construction Materials (2001)	
12	Prakas on Registration and Conditions for issuing & extending Mineral Licenses & transferring Mineral License rights (2004)	
13	Circular on the Prevention of Illegal Mining Activities in the Provinces of the Kingdom of Cambodia (2004)	
14	Circular on the Suspension and Revocation of Mineral Licenses (2005)	

Cambodia's Environmental Law/Sub-decrees¹⁹		
15	Law on Environmental Protection and Natural Resource Management (1996)	http://www.moe.gov.kh/pdf/law_03.pdf
16	Sub-decree on Control of Air Pollution and Noise Disturbance (2000)	http://www.moe.gov.kh/pdf/law_01.pdf
17	Sub-decree on Environmental Impact Assessment Process (1999)	http://www.moe.gov.kh/pdf/law_02.pdf
18	Sub-decree on Solid Waste Management (1999)	http://www.moe.gov.kh/pdf/law_07.pdf
19	Sub-decree on Water Pollution Control (1999)	http://www.moe.gov.kh/pdf/law_09.pdf

¹⁹ In addition to the above sources for the laws/sub-decrees relating to mineral resources, those related to environment can also be found online in the website of the Ministry of Environment (<http://www.moe.gov.kh>)

Annex 3: Information Availability at Key Stages of EI Value Chain²⁰

Stages in the value chain		EI information availability in Cambodia		
Information made publicly available according to good practice	Information known to exist	Publicly available?	Sources	
<p>Before decision to extract</p> <p>Key laws and regulations:</p> <ul style="list-style-type: none"> • Company, investment, mining and petroleum laws • Land and environmental laws • Taxation and anti-corruption laws • Budget laws 	<p>Laws already in place: Mining law (2001), Environmental law (1996), Petroleum regulations (1991)</p>	Yes	<p>All laws and regulations can be obtained from the Government Official Gazettes which are available at the National Library in hard copies; the General Department of Official Gazettes and Computer Services of the Office of Council of Ministers in both hard and soft copies; and CD-ROM of the Bar Association of the Kingdom of Cambodia for all legal documents from 1993-2009. In addition, some legal documents are available for download online.</p> <ul style="list-style-type: none"> - Environmental Law (1996): http://www.moe.gov.kh/pdf/law_03.pdf - Petroleum Regulations (1991): http://cnpa.gov.kh/index.php?option=com_content&view=article&id=66&Itemid=142 	
	<p>Draft laws and regulations: a new petroleum law, draft law on taxation on oil operation, draft law on taxation on mines,</p>	No		

²⁰ This table is produced based on the literature review presented in the report and comments from key informant interviews.

		<p>production sharing contract model, Law on EIA, and EI sectoral guideline (one for oil and gas, one for mining), Economic model for forecasting revenue distribution from oil and gas, parkas on the collection of tax from oil exploitation²¹</p>		
<p>Decision to extract</p>	<p>Basic information on:</p> <ul style="list-style-type: none"> • Open block for bidding or available for companies exploration areas and its activities • Expected extraction areas and • Expected extraction activities • SEIA of the expected extraction 	<ul style="list-style-type: none"> • Information on expected areas of exploration/ extraction • EIA from the MoE and MIME (social impact not done, however) 	<p>No</p> <p>No²²</p>	
<p>Bidding and contract awarding</p>	<ul style="list-style-type: none"> • Transparent and competitive bidding and licensing procedures • Basic information on bidding <ul style="list-style-type: none"> ○ Name of the companies awarded with the contract ○ Areas and types of 	<ul style="list-style-type: none"> • Bidding procedure for oil and mining • Licensing fees made through the inter-ministerial parkas on mining activities (2009) • Licensing fees on oil and gas operations 	<p>No</p> <p>Yes</p> <p>No</p>	<p>- MIME (http://www.gdmr.gov.kh)</p> <p>- See also above sources.</p>

²¹ The provisions of the Prakas might be adopted either separately from or as a part of the future law on Petroleum.

²² But it has been made available upon certain NGOs' requests.

<p>Exploration and production</p>	<p>resources awarded for exploration</p> <ul style="list-style-type: none"> • Basic information on the contractual arrangements <ul style="list-style-type: none"> ○ Types of contract (PSC, concession, technical service agreement) ○ Ownership over resources, ○ Responsibility on cost exploration, development, and production, and mine closure ○ Key government revenue streams • Names of companies making payments • Names of the government agencies receiving payments • All <i>material</i> payments paid by the companies and received by the government 	<ul style="list-style-type: none"> • Names of the companies on CNPA (for oil) and MIME (for mining) – international companies • Name of EI local companies • Basic information on the contractual arrangements, licensing, types of payment and mine closure 	<p>Yes</p> <p>No</p> <p>No²³</p>	<ul style="list-style-type: none"> - CNPA (http://cnpa.gov.kh) - MIME (http://www.gdmr.gov.kh) - CRRT (http://www.crtt-cambodia.org)
<p>Exploration and production</p>	<ul style="list-style-type: none"> • Aggregate information on EI revenue presented in TOFE (possibly, only revenue received from major companies included) and the annual National Budget • Information on EI revenue made by each company and names of the government agencies receiving them 	<ul style="list-style-type: none"> • Aggregate information on EI revenue presented in TOFE (possibly, only revenue received from major companies included) and the annual National Budget • Information on EI revenue made by each company and names of the government agencies receiving them 	<p>Yes</p> <p>No</p>	<ul style="list-style-type: none"> - MEF (http://www.mef.gov.kh/data.php) - Cambodian budget website of The NGO Forum on Cambodia (http://cambodianbudget.org)

²³ More information on licensing and company activities is easier to get from MIME's provincial department. However, that kind of information sharing cannot be interpreted to mean the information is meant to be publicly available.

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