ROLE OF NGOS IN POLICY ADVOCACY:
CASE STUDY OF THE CONSULTANCY ON
DEVELOPMENT INSTITUTE (CODE) AND THE
EXTRACTIVE INDUSTRY IN VIETNAM

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### ACRONYMS AND ABBREVIATION

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<th>Acronym</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>CSO:</td>
<td>Civil Society Organization</td>
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<tr>
<td>SEA:</td>
<td>Strategic Environmental Assessment</td>
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<tr>
<td>EIA:</td>
<td>Environmental Impact Assessment</td>
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<tr>
<td>EI:</td>
<td>Extractive Industry</td>
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<tr>
<td>EITI:</td>
<td>Extractive Industries Transparency Initiative</td>
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<tr>
<td>FDI:</td>
<td>Foreign Development Investment</td>
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<tr>
<td>ITBI:</td>
<td>Integrity and Transparency in Business Initiative</td>
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<tr>
<td>MOIT:</td>
<td>Ministry of Industry and Trade</td>
</tr>
<tr>
<td>MONRE:</td>
<td>Ministry of Natural Resources and Environment</td>
</tr>
<tr>
<td>MOF:</td>
<td>Ministry of Finance</td>
</tr>
<tr>
<td>MOIP:</td>
<td>Ministry of Investment and Planning</td>
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<tr>
<td>ND:</td>
<td>Decree</td>
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<tr>
<td>NGO:</td>
<td>Non-governmental Organization</td>
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<tr>
<td>OECD:</td>
<td>Organization for Economic Co-operation and Development</td>
</tr>
<tr>
<td>RWI:</td>
<td>Revenue Watch Institute</td>
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<tr>
<td>PVN:</td>
<td>Vietnam National Oil and Gas Group</td>
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<tr>
<td>TKV:</td>
<td>Vietnam Coal-Mineral Company</td>
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<tr>
<td>TT:</td>
<td>Circular</td>
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<tr>
<td>TTg:</td>
<td>Prime Minister</td>
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<tr>
<td>UBND:</td>
<td>Provincial People Committee</td>
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<tr>
<td>UN:</td>
<td>United Nations</td>
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<tr>
<td>UNCAC:</td>
<td>United Nations Convention Against Corruption</td>
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<tr>
<td>Vinachem:</td>
<td>Vietnam National Chemical Group</td>
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<tr>
<td>Vinacomin:</td>
<td>Vietnam National Coal and Mineral Group</td>
</tr>
<tr>
<td>WB:</td>
<td>World Bank</td>
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<td>WTO:</td>
<td>World Trade Organization</td>
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</table>
ACKNOWLEDGEMENTS

This case study could not have been possible but for the efforts of individuals and organizations. We would like to express our heartfelt thanks to Interchurch Organisation for Development Cooperation (ICCO), Revenue Watch Institute (RWI), Royal Netherlands Embassy in Vietnam, and Royal Norwegian Embassy in Vietnam for our activities last four years.

Especially, we also would like to thank International Union for Conservation of Nature (IUCN) and United Nation Democracy Fund (UNDEF) for providing financial and technical support to conduct this case study.

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INTRODUCTION

Non-governmental organizations (NGOs) have appeared in Vietnam since the 1970s, and rapidly developed after the 1990s. Previously, NGOs only operated in humanitarian relief and charity, especially before the 1990s. Recently, due to a greater openness in policy, NGOs have actively operated in other areas such as research, public service, community development, and policy advocacy.

In reality, the participation of NGOs in development sectors has continued to increase as shown by the recent rapid growth in the number of NGOs. In the years leading up to 2007, there were 1300-2000 NGOs operating in Vietnam, in comparison with the 70 NGOs operating before the 1990s (Irene Norlund, 2007). Despite the role of NGOs still being limited, it is undeniable that NGOs have been having certain influences on the decision-making process in almost all development sectors. There are a number of raised questions pertaining to this matter; how do NGOs influence the policy-making process and policy implementation? What are the appropriate and feasible approaches and methodologies for NGOs when conducting advocacy programs, in the circumstance of much existing limitation regarding legal basis and governmental authority awareness of NGOs? What are the opportunities of and challenges to NGOs in policy advocacy, as the situations that demand public debate are increasing?

To answer these urgent questions, this report presents a case study of policy advocacy of Consultancy on Development Institute (CODE) in extractive industry, a sound, sensitive area that is highly influenced by interest groups in Vietnam. The case study presents problems in the Extractive Industry (EI) sector, reasons for the need of the policy advocacy program, methodologies and approaches throughout the advocacy program, and results and lessons learned are presented in the following sections.

1. Problem statement and justification

Exploiting natural resources in general and minerals in particular for the purpose of boosting the country's economy, as well as assuring social welfare, is a normal practice that has been practiced for thousands of years throughout human history. In principle, since natural resources are common endowment, profit generated from natural resource exploitation must be used for developing the nation or the local community, such as in poverty alleviation, illiteracy eradication, disaster prevention and mitigation, reinvestment for education, new energy development, or reforestation.

In theory, natural resource-rich countries have greater advantages for achieving wealth than resource-poor countries. However many resource-rich countries like Nigeria and Venezuela are still underdeveloped. This apparent paradox is theorized and described as “the resource curse” or “the paradox of plenty”, in which countries that have abundant natural resources are more likely to suffer from a high rate of poverty, serious corruption and inflation, social conflict, and a weak economy (NDI et al., 2009; World Bank, 2005). The “resource curse” is comprised of three aspects: currency appreciation, fluctuation in commodity prices and disruptive effect, and negative effects on political climate.

There is no absolute “cure” to treat the problems derived from the “resource curse”, but there are some measures that can be taken to prevent or mitigate these effects by increasing transparency and accountability in the EI sector, such as with Publish What You Pay (PWYP) and Extractive Industries Transparency Initiative (EITI) (Palley, 2003). EITI is considered as one of the most effective tools and is being widely implemented in 35 countries around the world. EITI can bring a variety of benefits to countries such as ensuring a greater portion of revenues used to benefit people, strengthening budget monitoring and oversight, reinforcing anti-corruption and public governance, building citizen trust in public institutions, and reducing the hostilities between governments, companies, and communities. For instance in Nigeria, through EITI, a discrepancy of 230 million Nigerian Naira (US$1.5 million) between what companies reported to have paid and what the government reported to have received has been revealed; an explicit example of attained benefit from implementing EITI (NDI et al., 2009).

Vietnam has a diverse mineral resource of various types, in which some have large reserves and potential such as coal, titanium, bauxite, and rare earth. After the doi moi reforms in the mid-1980s, the mineral resource has been intensively exploited for a rapidly increasing domestic consumption and export. As a result, the contribution of mineral resources to the economy continues to increase accordingly. For over past 20 years, it seems that the EI sector has become a leading sector in economic development.

However, Vietnam has been facing many serious negative impacts resulting from mineral extraction, like environmental degradation, social tension, and revenue loss. Many mining activities have caused heavy damage to the ecosystem, such as titanium exploitation in the coastal areas of the Central Region, chrome exploitation in Thanh Hoa, zinc and lead mining in Bac Kan, and so forth. Coal mining activities in Quang Ninh annually release about 200 million tons of solid waste and 20-30 million m³ of wastewater containing a high concentration of acid and other hazardous chemicals into the environment.
Recently, a large controversy over US$15 billion bauxite extraction plan for the Central Highlands has been raised and paid much attention to by the public, due to its potential negative impacts on the ecosystem, society, and national security. Many scholars and high-ranking officers have called on the government to either postpone or readjust this ambitious plan to ensure that the bauxite be used wisely and its extraction cause less impact to the environment, human safety, and national security. The debate over the bauxite extraction case resulted in a higher and more intensive participation on the part of the public in the policy making process. The bauxite extraction plan will remain as a key subject for public debate in upcoming years.

In Vietnam, corruption is considered as the “national disaster” that is likely to pervade most corners of the institutional systems. So far, the government has committed noticeable effort in the struggle with corruption by adopting the Law on Anti-Corruption in 2005, frequently mentioned in the 10th and 11th Communist Party Congress, as well as issuing many directive regulations. The National Anti-Corruption Steering Committee and the Anti-Corruption Bureau were established in order to intensively and systematically combat corruption. However, so far, the anti-corruption combat in Vietnam has made little significant progress as indicated by the Corruption Perception Index (CPI) in the table below.

Table 1: The Corruption Perception Index of Vietnam from 2000-2010

<table>
<thead>
<tr>
<th>Year</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Score</td>
<td>2.5</td>
<td>2.6</td>
<td>2.4</td>
<td>2.4</td>
<td>2.6</td>
<td>2.6</td>
<td>2.6</td>
<td>2.6</td>
<td>2.7</td>
<td>2.7</td>
<td>2.7</td>
</tr>
<tr>
<td>Ranking</td>
<td>76</td>
<td>75</td>
<td>85</td>
<td>100</td>
<td>102</td>
<td>107</td>
<td>111</td>
<td>123</td>
<td>121</td>
<td>120</td>
<td>116</td>
</tr>
<tr>
<td>Total countries</td>
<td>90</td>
<td>91</td>
<td>102</td>
<td>123</td>
<td>146</td>
<td>159</td>
<td>163</td>
<td>180</td>
<td>180</td>
<td>180</td>
<td>178</td>
</tr>
</tbody>
</table>

1 The Corruption Perceptions Index from 2000-2010 is collected and summarized from http://www.transparency.org
In fact, corruption has been overwhelming in all almost sectors and the EI is not an exception. However, there is hardly any reliable data to show how much revenue has been lost and by whom. For example, it is estimated that 10 million tons of coal in Quang Ninh alone were illegally exported to China in 2007 and 2008, costing about VND4,500 billion (US$250 million) (Lao Dong, 2009; SGTT, 2009; Tuoi Tre, 2009).

There are still some additionally raised questions that need to be addressed shortly: what are the current statuses (in terms of economy, society, and environment) of the EI sector in Vietnam? To what extent is the transparency in the EI sector made? How can this endowment be used and managed wisely? What are the loopholes and inadequacies in the current legal framework causing ineffectiveness in mineral resource management? How can the EI sector move toward sustainable development, so that benefits derived from mineral extraction are balanced amongst the state, companies, and people? In order to answer these critical questions, a deep analysis of the current legal framework (Law on Minerals and relevant policies), a study on the current situation of mineral use and management, the EITI and implementation possibility, and the engagement of civil society as well as the public in the EI sector are utilized.

With all reasons above, CODE has decided to conduct an advocacy program on mineral resource and the EI, typically in advocating the amended Law on Minerals of 2010 and the implementation of EITI in Vietnam. This program aims to contribute to the sustainable development of the EI sector by revealing current problems and inadequacies on both the legal basis and in reality, and to then provide recommendations for practice that ensure natural resource endowment is used for the development of the nation.

2. Objectives of the advocacy program

Long-term objective: To contribute to refocusing the management of mineral resources toward sustainable development in Vietnam.

Short-term objectives

In the short-term, this program aims to promote greater responsibility, accountability, and transparency in the EI sector of Vietnam. It would set the groundwork for a longer-term project in which CODE and its partners work together to contribute to the sustainable development of the EI sector. Specifically, it will:

- Generate an overview of mineral resources and the mining sector of Vietnam.
- Encourage the engagement of civil society and the public in policy-making processes regarding mineral resource management.
- Promote transparency and accountability in the EI sector, aiming to recommend that Vietnam implement EITI.

3. Expected outcomes

- Publish a report on the status of mineral exploitation and management in Vietnam, comprised of both positive and negative aspects.
- Successfully organize a national workshop on mineral use, exploitation, and management in Vietnam involving governmental authorities, scientists, CSOs, and the media.
- Publish a report on EITI, the theory of the “resource curse”, and worldwide lessons learned regarding the use and management of mineral resources.
- Send a scientific based petition to the National Assembly and other related governmental bodies to advocate the incoming amended Law on Minerals of 2010 (focusing on reducing social and environmental impacts and revenue transparency).
- Publish a report on the scoping study of EITI and the perspective of its implementation in Vietnam.

4. Approach and Methodology

Approach

In general, this policy advocacy program aims to contribute to sustainable development in the EI sector by providing recommendations to reduce negative impacts on the community and the environment, and to promote transparency and accountability in revenues generated from mineral extraction in order to develop the nation. Primarily, this program intends to raise the awareness of the government, civil societies, and extractive companies regarding the current situation of EI sector; and essentiality transparency and accountability. The program also attempts to introduce the EITI concept to various stakeholders and encourage the government to seriously consider this initiative.

It is worth noting that this program continues some advocacy activities that CODE has implemented within the last two years, to set the foundation for a long-term (3-5 years) advocacy program of the EI sector in Vietnam.
Model of change

The prerequisite to prevent the occurrence of the “resource curse”, as well as to mitigate its adverse impacts like corruption and loss of revenue, is to reinforce transparency and accountability in the EI sector. In doing so and based on EITI’s principles, civil society plays the role of a key actor in monitoring and evaluating what the government has received and what extractive companies have paid in relation to the amount of revenues derived from mineral extraction activities.

The involvement of civil society in monitoring and evaluating the whole payment process would help both government and extractive companies to enhance their capacity on accountability, as well as strengthen their governance.

Participatory and flexible approaches would be used to engage all key stakeholders including governmental agencies, extractive companies, and CSOs, as illustrated in the Figure 1 below.

Partnership and cooperation

To achieve the objectives, CODE, together with various partners including People and Reconciliation (PanNature), Vietnam Chamber for Commerce and Industry (VCCI), Vietnam Union of Science and Technology Association (VUSTA), Vietnam Geological Associations, the Royal Norwegian Embassy in Vietnam, and the Swedish Embassy, raise the awareness of key stakeholders by organizing events, such as workshops, roundtables, etc. To spread information to the public, CODE highly cooperates with the media, including Foreign Investment Magazine, Vietnam Net and Tuoi Tre, Vietnam Television (VTV), Voice of Vietnam (VOV), etc.

Aside from its local partners, CODE is also in close cooperation with some international institutions like the Institute for Essential Services Reform (Indonesia), Revenue Watch Institute (USA), Publish What You Pay, and the EITI International Board, to foster the need of transparency and accountability in the EI sector; through recommending the implementation of EITI in Vietnam and in other ASEAN countries.

Methodology

To achieve objectives 1-2, different approaches were used:

• Literature review: Review the current legal framework on mineral resources; current status of mineral use and management.
• Field study: Conduct three field surveys in mining areas, including coal mining in Quang Ninh, titanium exploitation in the coastal areas (Ha Tinh, Binh Thuan, Binh Dinh, Thua Thien Hue, and Quang Nam), and the bauxite exploitation project in the Central Highland (Lam Dong and Dak Nong).
• Expert consultation: Invite experts from academic institutions to provide comments on the report.

To achieve objective 3, the following approaches are used:

• Literature review: Review the legal framework and regulations regarding revenues and payments in mineral extraction, including oil and gas; regulations on transparency and accountability.
• Interviews
  - Conduct an in-depth interview with the representatives of 21 companies and governmental agencies in five provinces including Hanoi, Quang Ninh, Binh Dinh, Ba Ria-Vung Tau, and HCMC, in order to gather their opinions on EITI implementation in Vietnam and revenue management in the EI sector.
  - Send a questionnaire to 17 mining companies to get details on payments and more opinions on EITI implementation.
• Stakeholder consultation: Organize a consultative roundtable.
• Expert consultation: Invite both international and national experts to contribute to the report.

5. Study results

5.1 Conduct studies to generate an overview of mineral resources and the extractive sector

A study on the mining industry in Vietnam began in 2009 and was completed in May 2010, comprised of an overview on mineral resources in Vietnam, the mining sector, legal framework, and international experience in managing and using mineral resources. The following is excerpted from the study, including findings and recommendations.

<table>
<thead>
<tr>
<th>Table 2. Number of extractive companies 2000-2008</th>
</tr>
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<tbody>
<tr>
<td>Coal</td>
</tr>
<tr>
<td>Oil and gas</td>
</tr>
<tr>
<td>Metal minerals</td>
</tr>
<tr>
<td>Stone and other minerals</td>
</tr>
<tr>
<td>Total</td>
</tr>
<tr>
<td>Source: GSO, 2009</td>
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</tbody>
</table>

Source: GSO, 2009
a) Overview of mineral resources and the extractive sector

Vietnam has a variety of mineral resources, with over 60 types of minerals located in 5000 ore deposits. Of these, some are large reserves or have high value potential at world and regional levels, such as bauxite (5.5 billion tons), coal (over 210 billion tons) and titanium (500 million tons) (Decision No.167/2007/ QD-TTg, 2009; VISTA, 2006; MOI, 1999; MONRE, 2009). However, with the current proven reserves, mineral resource is generally considered 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 very small reserves. Some have been exploited for a long time, such as oil and coal, and will soon be unable to satisfy domestic demand. Some of large mineral reserves such as titanium and bauxite are very common in the world, thus demand for these minerals is not high. Therefore, Vietnam should reorient its mineral development strategy, so that its mineral resources are 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.

Before the 1990s, the actors participating in the EI sector were mostly state-owned enterprises or collective economic entities. After the promulgation of the Law on Mineral of 1996, there were other actors participating in exploring, exploiting, and processing minerals. The number of mining companies has been sharply increased with an average growth of 21.7% per year; 427 companies in the year 2000 quintupled by 2008 (Table 2). In 1988-2008, the number of FDI projects was 126 with a registered capital of US$10,584 million.

Extractive companies in Vietnam comprise three main players including the state, private and foreign invested enterprise. These players are not only different with each other in terms of business structure, but also in type of exploited minerals. Some crucial minerals, like coal, iron, and gold, which helped to stabilize the national economy are often given to state-run businesses, while other, less important minerals are opened to both private and foreign investment.

- State owned enterprises: this group can be divided into two sectors based on the scale: national and local. Most of the local state owned enterprise is small-scaled with a low capital investment and usually processes raw materials, whilst the national scale companies exploit various kinds of minerals with a high capital investment. These companies could be any of the following: the Vietnam National Chemical Group (Vinachem), Vietnam Cement Industry Corporation (Vinacem), Vietnam Oil and Gas Group (Petrovietnam), or the Vietnam National Coal-Mineral Industries Group (Vinacomin) that produces about 43 million tons of coal per year and has annual total sales of VND57,000 ² billion (US$2.98 billion) on average (Xa Luan, 2009).

- Private enterprises: this group includes the limited and joint venture companies that mainly operate in exploiting and processing building materials, and in recollecting metal minerals on a small scale. This group has a large number of companies involved, though their technological and financial capacity is rather limited. Recently, some companies have emerged, which are able to explore and exploit mines at a medium scale.

² US$1 is equal to VND19,100 (exchange rate in January 2010).
In fact, the existence of the monopoly mechanism in the EI sector is clear as most large and important mines are currently managed and exploited by state owned enterprises. For example, most coal mines are currently managed by Vinacomin, which produces 95% of coal production in Vietnam. The Vietnam National Oil and Gas Group (PVN) has been assigned the role of government representative to manage oil and gas resources for the whole country. Therefore, the participation of foreign invested enterprises in the EI is rather limited. Meanwhile, the domestic private sector often operates at a small and medium scale, facing much difficulty in human resources and capital, and often using backwards technology in exploiting and processing minerals; resulting in a waste of mineral resources. This situation of “avoid the difficult and do the easy” and unplanned exploitation tends to reduce productivity, though it remains quite popular in the EI. Derived from this high monopoly in the EI sector and overlapping function, large state owned enterprises, like Vinacomin and PVN, sometimes act as the management authority. For instance, PVN is able to issue a number of legal documents in the oil and gas sector and can be strongly involved in building the oil and gas development strategy and policy. Therefore, the competitiveness amongst the business entities is not enough to ensure a highly competitive and transparent investment environment in the EI sector.

The EI 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 9.6-10.6% of the GDP from 2000 to date. In 2009, export of crude oil reached US$8.5 billion, accounting for about 25% of state budget. The contribution of the EI sector to the country GDP continues to increase as a result of the increase in extracting minerals. Furthermore, the mining sector creates a high number of employments, with 431,200 laborers involved, accounting for 0.96% of the total country’s workforce (GSO, 2008). The EI of Vietnam is enlarging its operation into other countries such as Cambodia, Laos, Russia, and Venezuela; particularly in oil and bauxite extraction. For example, in 2009, the Vietnamese government signed an MOU with the Cambodian government, concerning US$6 billion to invest in various projects. Of these projects, the bauxite exploitation in Modulkiri province is worth US$2 billion (Vietnam National Assembly, 2009). In fact, the total investment of the EI sector 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. Specifically, the total investment of the EI sector stood 6th and 5th out of the total 18 sectors in 2000 and 2008, respectively. The efficiency of contributing to the GDP’s growth of the EI sector stood 6th and 8th in the corresponding times. The efficiency of job creation was ranked as 11th out of the 18 sectors in the period of 2000-2008 (CODE, 2010).

So far, the mining sector has been neither managed nor developed well, exposing many problems and inadequacies that result in seriously adverse impacts to the environment and society. Accounting for these, Vietnam has focused specifically on economic development, in particular GDP growth, to satisfy current demand. In addition, mineral resources are poorly managed due to a lack of oversight from state management agencies and the local people. The involvement of local 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” mechanism in licensing, occurs frequently. Therefore the nation has not only lost huge revenues, but also critical resources for boosting the economy in the future; eventually these reserves will be exhausted, but the demand for minerals for economic development will remain high.

b) Positioning the mining industry in the coming period

Mineral resources are mostly non-renewable, thus they are considered as property or capital resources of the nation. Exploiting and using these reserve sources is regarded as spending the nation’s capital. Therefore, it is most appropriate to ensure that this natural capital is not wasted, lost, or inefficiently used.

Research results show that Vietnam has diverse mineral resources, yet their potential is limited. Almost all of the deposits have small reserves and difficult conditions for exploitation. Some high value minerals often have either a small reserve (such as gold and silver) or a nearly exhausted reserve (such as oil and coal). Contrarily, reserves of many minerals have not been fully evaluated (such as bauxite, titanium, and rare earth). However, these minerals are abundantly found in other parts of the world. Therefore the demand is not very high and the current reserves can continue to serve human needs for hundreds of years.

In coming time, the management of mineral resources should be changed from expanded to deeper development.

- Foreign invested enterprises: this group operates highly in the exploiting and processing of minerals for cement industry companies such as Nghi Son, Chinfon, and Lask Vietnam, in exploiting ashlars paving stone for companies Latina An Giang, Yabashi, and Carbonate Calcium YBB Joint Stock, and in extracting mineral water for the company Lavie (Le, 2008).

- Collective, individual and household enterprises: this group often operates in exploiting and processing normal building minerals such as stone, sand, etc., on a small scale that is just able to serve the local demand.
Strengthening refined processing technologies necessary to ensure the increase of value for mineral products and the ability to serve domestic consumption. If the development strategy depends on existing mineral resources, Vietnam could fall into the trap of the “resource curse” \(^4\), which many resource-rich countries in the world suffer from.

c) The state management of mining activities

At present, the state management on mining activities is assigned to the Ministry of Natural Resources and Environment (MONRE), Ministry of Industry and Trade (MOIT), and Ministry of Construction (MOC). This assignment does not achieve the goals of administrative reform and easily causes an evasion of responsibility among these agencies. According to the draft law, mineral management is assigned to MONRE, which represents the state management at the national scale. To effectively manage mineral resources, the responsibilities of relevant governmental authorities should be clarified as follows:

- MONRE manages mineral resources for the whole country and is responsible for geological survey activities, exploration of potential reserves, and determining national reserve areas (reserving and establishing restricted areas) and mines. MONRE also has the responsibility to hand over exploitable mines to MOIT for licensing via auction (or appointed auction in case of strategic minerals) based on prior planning or the demands of the economy.

- Considering the recent mineral management activities, temporary restriction of decentralization to the local authorities in mine licensing is reasonable because the capacity of the local authorities is still weak and the thinking “working term” . However, in the long term, the Provincial People’s Committee is responsible for territorial state management and represents the resource ownership of local people, and so they should have the right to determine the use of local resources. Therefore, it is necessary to have a route of legal adjustment and to enhance the capacity of local authorities, so that they are able to gradually perform decentralization in licensing and management of mineral extraction activities locally.

d) Mineral survey and exploration

Despite considerable efforts, facts show that the mineral surveys and exploration activities lag behind socio-economic requirements. In some cases the results of mineral exploration are of low reliability; the databases are not updated and systematized, etc. Detailed exploration in Vietnam is entrusted to mining companies. Thus, management agencies do not exactly know the reserves and how much has been exploited. Consequently, the ratio of resource to revenue loss is very high because the management authority relies solely on reported data from the companies.

To ensure efficiency, the state should facilitate detailed mineral exploration to determine the types of mineral and the amount of minerals present in a certain reserve. The government should invest the state budget in implementing this activity and consider it as an initial investment that can be repaid via the auction of mineral extraction rights.

e) National plan and strategy

Most of the national mineral plan and strategy was conducted and approved within 2006 to 2008. Due to belated conduction and a lack of market-based information and databases on reserves and locations, the national mineral plan and strategy does not meet realistic demands. Many newly issued plans and strategies have to be revised and supplemented, such as the national plans and strategies for coal, bauxite, and titanium. For example, in Binh Dinh, the production of titanium ore in 2009 was 930,000 tons, 15 times higher than the approved amount in the plan based on Decision No.104/2007/QD-Ttq issued by the Prime Minister.

Based on the Law on Minerals and Law on Petroleum, the state should build a national policy or strategy on the use and management of mineral resources, functioning as a basis to build a national plan and strategy for each type of mineral in accordance with each phase. The state should increase the budget for conducting research, planning, and strategizing, to ensure the full implementation of high-quality prior research and planning, appropriate for the realities.

f) Licensing activities

The decentralized management of the mineral industry within the amended Law on Minerals of 2005 has resulted in a serious loophole regarding licensing. This loophole has created favorable conditions for widespread licensing. Recent statistics show that within 12 years (1996-2008), MOIT and MONRE issued 928 licenses for mineral activities. Meanwhile, within only three years (October 2005 to August 2008), the Provincial People’s Committee issued 3,495 licenses of mineral exploitation. Licensing is overflow, fragment, and not based on a plan. In some cases, a mine is licensed to entities that have no mine design documents or are not qualified based on regulations.

In coming time, licensing at the provincial level should be temporarily restricted to reinforce the legal system and to reduce the “beg-give” mechanism and immoderate licensing.

g) Mineral exploitation and processing

In the recent past, mineral exploitation and processing have encountered inadequacies and limitations. A large quanti-
ty of outdated technology is applied to mineral extraction and processing, which is not suitable for exploiting minerals and thus results in a high loss of resources, low level of mineral recovery, and negative impacts on the ecosystem and local community life. Some investigations show that the loss of minerals is approximated at 40%-60% for pit coal mining, 26%-43% for apatite, 15%-30% for metal ores, 15%-20% for building materials, and 50%-60% for petroleum.

The state has a policy of encouraging and facilitating enterprise to conduct "refined processing". However, the concept of "refined processing" is unclear, and thus only a few enterprises truly invest in mineral processing technology. Hence, the mineral products are mostly in raw form, with low quality and value, and mainly exported as crude oil (almost 100% was crude oil before the operation of the Dung Quat oil refinery) and coal (currently making up over 50% of mineral exports). If the mineral ilmenite were refined, the product value would increase about 2.5 times as titanium slag, 10 times as pigment, and 80 times as titanium metal.

To solve this problem, the state should adopt the appropriate policies to enhance investment in "refined mineral processing". Moreover, "refined mineral processing" technology for each type of mineral should be specified, particularly for precious minerals. This will enforce the use of minerals effectively and economically. It is necessary to prohibit or restrict the exportation of crude ore that currently takes place. The vague word "limit" should be removed from the current law, because to “limit” means to “allow” in a sense. It is also necessary to consider building mineral reserve centrals. These centrals would be places to store minerals during their wait to undergo "refined processing". These centrals should be placed at localities near abundant mineral resources.

h) **The management of environmental and society issues in the mining activities**

Many plans for exploiting and processing bauxite, titanium, chromium, manganese, etc. do not have a Strategic Environmental Assessment (SEA) report. Almost all mining projects have an Environmental Impact Assessment (EIA). However, the quality of EIAs is relatively low. Many EIA reports formalize and rationalize plans, yet implementation is never conducted as proposed in the EIA report. Implementation not conforming to the EIA report includes:

(i) Failure to carry out environmental protection measures
(ii) Lack of responsibility in reducing dust, noise, waste water treatment, etc.
(iii) Lack of dumping plan and wastewater treatment facility
(iv) Failure to conduct environmental rehabilitation
(v) Failure to fully implement the periodical environmental monitoring and reporting, etc.

It shows that in many mining areas the EIA report has been established, yet management and supervision on environmental protection from governmental authorities have not been fully conducted in line with the requirements of the EIA report. In particular, the participation of social organizations and local communities in the monitoring and supervision of environmental protection is still weak.

In many localities, the deposit for environmental recovery and rehabilitation has not been implemented yet. Environmental recovery and rehabilitation have been infrequently conducted and mainly done so in pilot form. In fact, illegal mining activities without restoration have caused adverse impacts on local water and soil environments and agriculture activities.

The enterprises have maintained few social responsibilities, most of which are merely a type of charity. People living in mining areas do not directly benefit from mineral exploitation generated revenues for their economic development. Meanwhile, they suffer from negative environmental consequences and pressures derived from mineral extraction activities (infracstructure degradation, physical population growth, etc).

In response to this situation, the Law on Minerals needs to be clarified and supplemented. Specifically:

- It should have specific regulations on environmental protection issues, able to be implemented immediately without any further guidance from the government, since directive documents will slow down the of the law enforcement. The main content should be specified:

  (i) **Responsibility of each party**
  (ii) Procedures of making and implementing the SEA and EIA reports
  (iii) Environmental quality monitoring and overseeing
  (iv) Charging and using environmental protection fees (fees must comply with the Law on Environmental Protection)
  (v) Depositing and using the environmental recovery and rehabilitation fund
  (vi) Regulations on compensation when dealing with breaches of environmental incidents and environmental regulations, etc.

- It should be ensured that the collection and the use of the environmental protection fees are efficiently associated with the purpose of environmental protection. The environmental recovery and rehabilitation fund must be deposited at the locality in which the mineral is located in order to be convenient for the local authority in managing, monitoring, and
using this fund when needed, in case a company fails to recover and rehabilitate the environment.

- The rights of local people need to be specifically provisioned in the Law on Minerals. If necessary this issue could be categorized into one chapter to ensure the rights of the people, in the spirit of the concept “mineral resources belong to the people”. The main contents needed mentioning are:
  (i) Regulation on the responsibilities and rights of the local community.
  (ii) Regulation on the rights of the local community in consulting, supervising, and implementing environmental protection, and on the supportive program for the socioeconomic development of the locals.
  (iii) Regulation on the encouragement and obligation mechanism for the mining entities in supporting the infrastructure and socioeconomic development of the local community, etc.
  (iv) The social responsibility of the mining company should be formally legalized, instead of being accepted as the simple charity activities that currently occur.

i) Policy on economizing natural resource and financing

To ensure the efficiency of mineral extraction and to reduce the so-called “beg-give” mechanism, MONRE has issued a resolution on promoting market mechanisms in the natural resource and the environment sector. This is a beneficial policy, but the implementation process must be performed carefully at each specific step. It is necessary that this policy be piloted before expanding to the whole sector, especially concerning the auction of mineral extraction rights, because the current auction status has indicated inadequacies and situations of monopoly. If careless, this policy could foster additional intensive mineral extraction and mineral resources might fall into the hands of tycoons, as previously experienced in Russia.

Other financial policies:

- The method for calculating the environmental protection fee should consider factors affecting the environment such as exploitation and processing technology (open pits, refinery methods, etc.), natural characteristics, location, pollution level of each type of mineral, etc. The method for calculating the royalty should be properly adjusted based on exploitable reserve, exploitation condition, etc.

j) Recommendations on transparency in mineral activities

An “open and transparent policy” has been specifically provisioned in the Law on Anti-Corruption, Business Law, etc. Therefore, this issue should be also concretized in the Law on Minerals. Specifically, information on the environment should be published as regulated in Article 104 and 105 of the Law on Environmental Protection, and the revenues of minerals in accordance (the natural resource tax, land use tax, other fees, etc.). The extraction activities of mineral revenues and the use this extraction to support social and economic development for the locals should be publicized.

Also, EITI should be implemented. EITI is a global initiative introduced at the World Summit on Sustainable Development in Johannesburg in 2002 by the former British Prime Minister, Tony Blair. EITI is a coalition between the government, extractive companies, and CSOs, with the goal to manage and use natural resources effectively. With the significant role of the extractive industry in its economic development, Vietnam should seriously consider implementing this global initiative.

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**Box 1. Coal exploitation in Quang Ninh**

According to Vinacomin, Vietnam is considered a rich country in coal, with an estimated reserve of over 225 billion tons. Of these, anthracite accounts for 10.1 billion tons, distributed in the Northeast area and bituminous accounts for 210 billion tons, deposited in the Red River delta. Currently, over 90% of the national production is derived from Quang Ninh. In 2008, Vietnam produced about 44 million tons accounting for 0.69% of the world production, and ranked as 17th of the world coal producers (EIA, 2010).

Although coal has been exploited in Quang Ninh for over 170 years, coal was exploited at a small scale before the 1990s. The coal exploitation sector has developed since 1995 with an average production growth rate of 12%, particularly within the period of 2005-2007. Production has increased too fast and far, exceeding well over the approved plan of 2003. By 2005, 33.5 million tons were produced, exceeding two times over that of 2003 (planned production in 2003 was about 16-17 million tons) and even the planned production of the year 2020 (20-30 million tons). The production in 2009 was 43 million tons, exceeding 20 million tons compared the planning to year 2010.

By 2007, coal exploitation and processing companies under Vinacomin alone contributed VND25,950 billion to the country’s income, accounting for 2.3% of total GDP and 46.3% of province budget (Quang Ninh Statistics Department, 2007; GSO, 2008). Moreover, the coal extraction sector creates 120,000 jobs, and supplies energy to other key national industries.
Although, coal extraction in Quang Ninh critically and positively contributes to the provincial economy, it consequently causes much negative impact to society and environment. The situations of illegal exploitation, trading, and environmental pollution have seriously occurred on a wide scale, particularly within the period of 2007-2008.

In response to this serious situation, Quang Ninh authorities and other related agencies have directed functioning authorizations to oversee and to tackle violations in coal exploitation, processing, and trading activities. As a result, illegal activities in Quang Ninh were initially reduced, although they are still very complicated and environmental protection has not significantly progressed yet. Accounting for this situation, there are some main problems, as follows:

1. **Overlapping administration and inefficiency in coal exploitation**

Coal is managed mutually by local authorities, specifically the Provincial People Committee and other related local agencies representing the state administration. Vinacomin, described in the latter above, is assigned to manage most coalmines in the area. As a result, due to overlapping management and unclear jurisdiction of each party, emerged issues are hardly solved. Some persistent problems and inadequacies in coal exploitation and management in Quang Ninh include:

- Before 2008, most coal extraction companies in the area did not have an exploitation license.
- Many exploitation projects do not have an EIA report. According to Vinacomin, up to September 2009 there were 8 ongoing projects that had not yet done an EIA report.
- Some companies have not yet deposited in the environmental rehabilitation fund. According to Vinacomin, by the end of 2008 there were 10 companies in total that had deposited in the environmental rehabilitation fund. Quang Ninh DONRE claimed this number was only 6.
- Companies do not fully pay the environmental protection fee because the local authorities are not able to verify the actual production income, resulting in a considerable loss to the local budget. For example, in 2005 the environmental protection fee, if based on production, should have been VND200 billion. However, the local authority only received about VND100 million, accounting for 0.05% of the total payment. After issuing a license in 2009, the local budget received VND290 billion from this fee.

2. **Benefit sharing with the local community is not assured**

The policy of the Communist Party and the state on economic development is "ensuring the harmonious benefit amongst the state, business sector, and the people" (the 9th Communist Party Congress). And "based on the revenue from mineral extraction and processing, the state distributes an annual budget to develop the economy of the locality near the mineral deposits" (Clause 1, Article 7, Law on Minerals of 1996). In reality, profits generated from coal extraction in Quang Ninh are mainly given to the companies and to the state in general. The local community gets almost no profit from this activity, as specified:

- A portion of generated profit from mineral activities (based on Clause 1, Article 7, Law on Minerals) used to develop the local economy has not occurred yet. This amount is considered as the benefit of the local people. Because there has been no regulation on the portion of this profit that goes to the locals, it is difficult for the local authority to carry out and oversee this process. The locality near the mineral resource only receives a budget for general economic development and does not get any standard budget to ensure that they benefit from the mining area.

3. **Consequences from coal extraction on the socio-economic development of locals**

**Pressure on infrastructure:** coal production has increased too quickly, hindering the planning process of the coal industry sector. An increase in coal extraction leads to a downgraded situation of the current infrastructure system including roads, schools, hospitals, etc., because the system is not timely upgraded or built in order to satisfy a rapid and sudden growth of production and labors. This situation significantly pressures the management of the local authority.

Social unrest: about 40% of the total population’s livelihood depends on the coal extraction sector. Therefore, when coal extraction is reduced or the coal resources are exhausted, it will highly impact job creation and conversion in the society. The restriction on coal export in 1999 is clear proof of this issue. Although social conflicts caused from coal dispute and conflicts of interest have reduced in recent time, they potentially flare up. The social evils such as drug addiction, theft, and HIV infection tends to increase.

Wastewater from Mong Duong coal mine
Box 2. Main findings of the scoping study on EITI implementation in Vietnam

The EI of Vietnam has been developing unsustainably due to a lack of transparency and weak governance. The situations of royalty evasion, illegal mineral extraction and trading, wasteful mineral use and exploitation, and environmental pollution frequently occur in many areas. Vietnam has developed a sufficient legal basis in terms of mineral resource management. However, large gaps remain in the regulations and law enforcement regarding financial liability and environmental protection. Some financial liabilities are not performed or not performed well, resulting in a high possibility of revenue loss to the state. In other aspects, in some local areas companies have to pay informal fees to the local authorities, resulting in profit loss and difficulty for the companies in making financial reports to taxation authorities.

Transparency, information disclosure, and accountability are all frequently mentioned and highly encouraged within various laws, regulations, policies of the state, and the Communist Party throughout the years. However, there is no specific legal document regulating how to enforce these issues in practice. While the Law on Information Disclosure is being developed, regulations on the rights and responsibilities of all parties in these matters remain unclear.

Transparency and information disclosure in the extractive sector are fairly limited. Only a few authorities are capable of accessing the payment/revenue data, although this data is not confidential. Therefore, the participation and engagement of the public in environmental protection and the monitoring and overseeing of mineral extraction activities, particularly in payment/revenue management, is very limited.

About 67% of respondents support the implementation of EITI. Of these, most of them are governmental agencies and big enterprises. The rest are either reluctant to give specific opinions or oppose EITI implementation. Some concerns regard national security in the oil and gas industry.

Due to some possible political and financial barriers, as well as human resource limitation in implementing EITI, the scope of the EITI program at its early stage should focus on some minerals that highly contribute to the state and local budget such as coal, titanium, oil, and gas. The EITI program could be extended to other important minerals in the next phase, once Vietnam is able to carry out an effective EITI program, and the awareness of transparency and EITI in the public has increased.
6. Advocacy process and results

6.1 Process and results of the advocacy program of the Law on Minerals

a) Cooperate with Vietnam Union of Science and Technology Associations

Studies on legal framework and law enforcement have clearly pointed out limitations of the mining sector in Vietnam that need to be presented to the public as well as to relevant authorities for debate. Therefore, CODE has decided to organize a national workshop on this issue, in order to advocate the upcoming amended Law on Minerals of 2010.

In the beginning, CODE proposed to co-organize the workshop with the Vietnam Union of Science and Technology Associations (VUSTA) and MOIT in order to receive greater attention from the public and government, as well as to establish a deeper cooperation between CODE and MOIT. However, the Deputy Minister withdrew MOIT. Hence, to replace the ministry, CODE invited the Vietnam National Geology Association to co-organize the workshop.

In the context that the amended Law on Minerals would be discussed during the May-June 2010 Parliament meeting session, CODE decided to co-organize the workshop with VUSTA and the Vietnam National Geology Association on May 14, 2010, a week prior to the Parliament meeting. CODE also intensively worked with the media (especially Vietnam Net, one of the most famous online newspapers in Vietnam) to make sure that information from the workshop would be shared with the public and policymakers.

Over 170 participants attended the workshop, including people from the National Assembly, ministries, and provinces (19 participants), extractive companies (9 participants), scientists/scholars (62 participants), NGOs/CSOs (16 participants), the media (62 participants), and international experts (5 participants). The main conclusions of the workshop are as follows:

- Vietnam is diverse in types of minerals, but the potential and value of Vietnamese minerals are limited. Some minerals such as bauxite, titanium, and rare-earth can be industrially exploited, however these minerals are also common elsewhere in the world and thus the current demand for these mineral is either low or stable. Therefore, it will be difficult for Vietnam to join the market of these mineral commodities.

- Recently, some high-ranking government officers (at the ministerial level) stated that Vietnam has very rich mineral resources and aimed to drive the country’s orientation towards the continuation of developing and depending on mineral extraction for socio-economic development. Many participants expressed alarm at the notion. If Vietnam continues to extract resources in the manner it has been over the few last decades, dependence on natural resources will slow the country’s development.

- Participants pointed out many cases of low economic efficiency in Vietnam’s mineral sector due to using backward technology and exporting raw material, causing serious social and environmental impacts in the mining area. They declared that the amended law must carefully address these issues.
To continue and strengthen previous activities, CODE and the People and Nature Reconciliation (PanNature) organized the workshop “Natural Resource Governance and Sustainable Development” in August 2010, which highly focused on wisely managing mineral resources. Some crucial findings from CODE’s study and the introduction of EITI were brought to the workshop. The workshop was paid much attention to by National Assembly members, representatives of extractive companies, and civil societies.

The Law on Minerals was ratified in November 2010 by the Parliament and scheduled to come into effect on July 1, 2011. There are several important points, similar to those in CODE’s study and activities, that have been explored and advocated; the problem of the licensing process, lack of transparency in mineral management, and low level of commitment in regard to environmental protection, social responsibility, etc.

b) Approach the National Assembly

Directly after these workshops, the petition and study reports were sent to some key governmental agencies and officials, including the Prime Minister Office, National Assembly Office, MONRE (which is assigned to revise the Law on Minerals), and to 14 parliamentarians who are highly interested in this issue. Some recipients, especially the National Assembly members, have positively acknowledged CODE’s contribution. The petition is also published on the Parliament’s website, publicly open for comments and debate on the draft laws and regulations.

Subsequently, many points derived from the petition and study report were used and cited when the National Assembly members discussed and debated the amended Law on Minerals. For example, environmental degradation in mining areas, uncontrolled exploitation of titanium along the Central coastal areas, etc., are critical points in indicating the real situation of the mining sector in Vietnam. As a result, at the live dialogue between the Parliament and the government on June 12, 2010, in the additional and explanatory report of the government to the Parliament (No 78/BC-CP dated June 11, 2010), Deputy Prime Minister ranked the issue of “management, protection, and extraction of mineral and environment” as the third out of six important issues that the government accepted from Parliament for further attention and better operation in the future.

c) Publish black book about the current status of the mining sector of Vietnam and international experiences on mineral resource management

A report on the current status of mineral resources and international experience in mineral resource management involving the “resource curse” theory and EITI was published by Science and Technique Publishing in 300 black books. Some of these were freely disseminated to the key stakeholders, typically to governmental authorities.

The book is 176 pages in length with four chapters comprised of:
• The mineral resources in Vietnam.
• The extractive activity in Vietnam.
• The legal framework of mineral extraction activity in Vietnam.
• The trend of management and extraction in the world.

This book is remarked as useful material, especially to decision makers, because it clearly provides an updated current status of the mineral resources and legal framework in Vietnam regarding minerals and the trend of mineral management in the world.

6.2 Process and results of the advocacy program of EITI implementation

a) Cooperate with Vietnam Chamber of Commerce and Industry to conduct the scoping study on EITI

To achieve good results, CODE has invited the Vietnam Chamber of Commerce and Industry (VCCI) to join the study because VCCI has its own advantage in working with the business sector and governmental authorities. Furthermore, VCCI has much experience with carrying out studies on transparency in the business environment.

To receive advisory recommendation for the scoping study, as well as the opportunity to introduce EITI to the stakehold-

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• Ms. Chandra, programme coordinator in Asia region of Revenue Watch Institute, was invited to give a presentation on the EITI.
ers, CODE and VCCI organized a roundtable discussion on November 9, 2010. The roundtable discussion \(^6\) attracted over 30 representative participants from different ministries, academic institutions, mining groups, and CSOs.

On April 14, 2011, CODE and VCCI co-organize a launching report. This workshop was open to ministerial level representatives, extractive companies (especially those were interviewed), independent experts, some key CSOs, and the media. This workshop aimed at: reporting the study results, and collecting some consultative remarks on the study to use for finalizing the report.

The workshop attracted over 70 participants, mainly from governmental agencies, extractive companies, and the media. Of these, there were representatives of some key stakeholders in the EI like MOIT, MONRE, the Ministry of Finance, the National Standing Committee on Anti-corruption, etc., and extractive companies such as Vietnam National Coal and Minerals Group, Vietnam National Oil and Gas Group, etc. After the workshop, abundant articles reported on the workshop and urged the EITI issue to be published by the press. Of these, two articles in English were also released by the most popular presses in Vietnam, such as Vietnam Net \(^7\) and Vietnam News \(^8\).

After finalization, 600 reports (400 in Vietnamese and 200 in English) were printed out and freely disseminated to relevant bodies, typically governmental authorities, extractive companies, NGOs, and some interested individuals. Some of the English reports were given to donors and international organizations, such as the World Bank, Towards Transparency, mining groups, etc. A soft-version in both Vietnamese and English are free to download on CODE’s website (www.codeinter.org).

The report was then sent to key bodies including governmental agencies (Ministry of Industry and Trade, MONRE, Ministry of Finance, the National Assembly, the National Standing Committee on Anti-corruption, etc.), the extractive companies (Vietnam Oil and Gas Group, Vietnam Coal and Mineral Groups, etc.), the CSOs (Towards Transparency, PanNature, Mining Association, etc.). It was chosen as the input of the Anti-Corruption Dialogue on the EI held by the Sweden Embassy and Government Inspectorate of Vietnam on May 25, 2011. More importantly, it was used in the Annual Consultative Group (CG) Meeting between the Vietnam government and international donors in June 2011. The report is highly complimented by various international institutions and organizations like the World Bank, Royal Norwegian Embassy, and Swedish Embassy, and it was highly recommended and referred to at both the Anti-Corruption Dialogue on the EI and the Consultative Meeting. As a result, many international institutions’ representatives have asked the Vietnamese government to seriously consider implementing EITI in coming time.

b) **Assist and participate in the workshop on the Anti-corruption Dialogue in the EI and the Consultative Meeting**

The workshop on Anti-corruption Dialogue between donors and the Vietnamese government is held annually. In 2011, anti-corruption in the EI was chosen as the dialogue topic and was organized by May 2010, prior to the Consultative Meeting. Recognizing the importance of the event, as well as its relevance to the advocacy program on EITI implementation, CODE actively participated in this event by providing technical support to the organizers and presenting on the scoping study at the dialogue. Moreover, the scoping study report was used as material input in both events as mentioned above.

The participation and support of CODE in both events has significantly contributed to the promotion of EITI, since EITI as well as the corruption issue in the EI are rarely considered and studied, especially by NGOs.

c) **Cooperate with the local and international organizations in promoting the EITI implementation**

Endorse the EITI implementation in the ASEAN countries:

With framework from the 6th ASEAN People Forum (APF), held in September 2010, in Hanoi, Vietnam, CODE, together with the ASEAN civil groups, organized a workshop on September 23, 2010, prior to the APF “Towards Building ASEAN Community on Environment”, aimed at establishing the Strategic Pillar on the Environment, such that EITI was one of the main points of discussion at the workshop. As a result, the implementation of EITI was highly recommended on a petition that was submitted to the ASEAN leaders during the ASEAN summit in Hanoi, in October 2010.

At the 7th APF held in May 2011 in Jakarta, CODE strongly engaged in promoting transparency and accountability in the EI sector by sharing its knowledge and experience of the EI sector in Vietnam with the regional CSOs. Afterwards, the ASEAN community highly endorsed the serious consideration of implementing EITI in ASEAN countries.

Establish a coalition/network on the EITI

In order to further encourage the engagement of CSOs in the EI, as well as promote the implementation of EITI in Vietnam, CODE, in cooperation with its local and international partners, organized a roundtable discussion aimed at establishing

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\(^7\) [http://vietnamnews.vnagency.com.vn/Pages/PrintView.aspx?ArticleID=210398](http://vietnamnews.vnagency.com.vn/Pages/PrintView.aspx?ArticleID=210398)
7. Impacts of the policy advocacy program

The advocacy program has been in action since 2009 and will continue in the coming years. It aims at promoting sustainable development in the EI, particularly in the mining sector, with two proposed main objectives: advocating the 2010 Law on Minerals and promoting implementation of EITI in Vietnam. To date, most objectives have been completed with recognizable outcomes and significant effects, as proposed in the beginning. The following are impacts of the policy advocacy program.

a. Points have been made

The following are some major noticeable changes in the new law that the policy advocacy program has pointed out (see 2.5.1 section above).

Advocacy program of the amended Law on Minerals

Mine pricing and auction of mineral extraction rights: one of the biggest and highlighted changes in the new law concerns provisions on mine pricing and the auction of mineral extraction rights. Since the so-called “beg-give” mechanism in licensing has occurred in the mining sector for a long time and resulted in many problems such as corruption, revenue loss, and resource waste, the new provision on mine pricing and the auction of mineral extraction rights allows better management, assuring that the state receive more revenue, fairer competition amongst the business entities, and higher transparency of environment in the mining sector. These new provisions are considered as effective tools to abolish the “beg-give” mechanism in licensing.

The production oversight mechanism: The evasion of royalty and the environmental protection fee due to a lack of a close production oversight mechanism, resulting in a great loss of revenue to the state as well as a waste of natural resource, has been emphasized in CODE’s study and petition that was sent to the responsible authorities. Various organizations, individuals, and even governmental agencies have also mentioned this issue. Aware of this issue, the new law includes provisions on the statistics and inventory mechanism of production and reserve (Article 63). It is a highlight of the new law. Law enforcement and the oversight mechanism of the state agencies are the decisive factors in ensuring whether production is rightly or wrongly claimed.

Mine transfer: in order to reduce the situation in which companies get a license and then sell it to another company for exploitation, the new law clearly presents specific requirements and procedures for mine transfers, so that only the entities with the capacity and competency for operating mineral extraction projects are eligible for licenses. Also the license of a mine is only allowed to be transferred once at least 50% of the estimated work of the exploration project is completed; the basic construction of the mine is completed and it has started operating, to prevent exploitation projects (Article 66).

Use of geological information: the previous Law on Minerals does not clearly specify regulation on the use and purchase of geological information fee, although there are some listed under law documents such as Circular No.186/2009/TTLT-BTC BTNMT issued by MONRE and MOF. However, the collection of this fee is very limited in reality. In response, the new law clearly regulates this fee in detail; “the organization or individual that uses geological information for exploration is subject to refund the cost on basic geological surveys and exploration’ (Article 7).

Higher commitment to environmental protection and more specifically to mineral extraction entity’s responsibility: mineral extraction entities are responsible for social responsibility, local infrastructure development, etc. Article 5 of the new law clearly states that mineral extraction entities should be “assisting with the costs of investment in upgrading, maintaining, and building technical infrastructure used for mining minerals and for building welfare works for the locality where minerals are mined in accordance with law”; “combining mineral mining with construction of technical infrastructure and protection and rehabilitation of the environment in accordance with the investment project for mineral mining, and if an entity causes loss or damage to technical infrastructure, building works, or assets then depending on the amount of such loss, it will be liable to carry out repairs, maintenance, or new construction or pay compensation in accordance with law; giving priority to local people when recruiting labor for mineral activities and hiring related services; ensuring, jointly with local authorities, conversion of trades or occupations for people whose land is recovered for mineral extraction”.

Promoting transparency and accountability in the EI sector by introducing EITI
• At present, EITI is better known amongst the public, CSOs, and governments compared to previous times, because EITI has been advertised widely in the media, workshops, roundtables, etc (see Index A: list of articles on EITI). It is worth noting that after launching the report, the Vietnam Economy⁹ has cited there search results mentioning unclear points regarding revenues such as the environmental protection fee in the oil and gas sector. In response, PVN sent correspondence to the Vietnam Economy claiming the correctness of the information and requesting the press to remove the online article. Moreover, PVN also sent correspondence to the Prime Minister to explain these points and request VCCI to revise the report. Right after this event, CODE and VCCI made sent an explanatory report to the Prime Minister and PVN, which clearly stated and explained all the points that PVN had requested a review of and that both organizations still supported their original argument. So far, both PVN and the Prime Minister have had no further response. Therefore the EITI issue has been brought to the highest level of the government.

• EITI is recognized by relevant governmental agencies like MOIT, MONRE, etc. Of those agencies, MOIT is going to establish a working group including the representatives of key relevant governmental agencies, business sectors, and civil societies on the EITI issue. This working group will carry out further consideration on EITI to answer the question of whether or not Vietnam should implement EITI. Then MOIT, representing the working group, will submit the consultative report on EITI to the Prime Minister.

• At the Anti-corruption Dialogue held by the Swedish Embassy and Government Inspectorate of Vietnam on May 25th 2011 and the Consultative Meeting held by the Ministry of Planning and Investment (MPI) (on behalf of the Vietnamese government) and World Bank on June 8th-10th 2011, both governmental representative agencies (Government Inspectorate and the MPI) promised to thoroughly consider the initiative and to fully report to the government on this matter.

b. Remaining points

In regard to the amended law:

Issue under law documents incomprehensively: CODE has called for the immediate implementation of the Law on Minerals once it comes into effect in the context that many legal provisions have been delayed while waiting for guiding documents (see section 2.5.1). This point was taken into consideration on February 25, 2011, when the Prime Minister signed Decision No. 299/QD-TTg, in which immediate effect promulgated the list of implementing legal instruments to be issued for laws passed in 2010, and the delegation of authority for drafting and submitting such legal instruments. MONRE has been assigned to draft the following legal instruments:

• Decree implementing the Law on Minerals for submission in May 2011.
• Decree regulating auctions of mineral extraction rights for submission in May 2011.
• Decision of the Prime Minister approving the mineral strategy until 2020 with the possibility of year 2030 for submission in May 2011.

However, as of August 31, 2011, none of these have been issued. Hence, the Law on Minerals has not been fully enforced in practice even though it has been in effect since July 1, 2011.

No provision on information disclosure and transparency: The new law does not have any provision on transparency or information disclosure in regard to revenue, production, reserve, and the environmental protection fee as recommended in the section 2.5.1, j. Therefore, transparency, information disclosure, and accountability in mineral management, as well as in the mining sector, will remain as a topic of interest for the amendment of this law in the future.

No provision on the participation of social organizations in overseeing mining activities: The participation of CSOs is crucial, which the advocacy program of CODE, as well as of other organizations, actively advocates for in order to raise more CSO voices in mineral management. Article 4 of the Law on Minerals of 1996 provisions that “the state agencies, enterprise entities, political and social organizations, the people armed units, and every citizen are responsible for implementing the Law on Minerals, and have rights and responsibility on detecting and denouncing such violations of legal regulations on minerals”. On the contrary, the new law does not provide further clarification of the participation of CSOs in mineral activity, but rather removed this issue from the law. This is a backward step in the new law, as compared with the previous versions, and is a point that the advocacy program did not achieve.

Some equivocal or missing points in the new law: There is a lack of definition for “advanced technology” and “refined processing”. Hence, the law encourages the extractor to apply advanced technology that is not specified.

In regard to EITI implementation

EITI is still being slowly considered by responsible governmental agencies. It will take a long time to implement EITI because EITI is a new concept in Vietnam and anti-corruption as well as transparency, particularly in the EI sector, are extreme-

⁹ Viet Nam Economy is a popular press focusing on economic and investment in Vietnam: http://vneconomy.vn/
ly complicated goals that need more time and effort in order to achieve significant progress.

8. Lessons learned

The advocacy program of the amended Law on Minerals and implementation of EITI has presented some profound lessons. Although there are some remaining points, overall the advocacy program achieved some recognizable successes. The following are some lessons learned from this policy advocacy program:

Scientific based evidence: To have persuasive arguments, the advocacy program must provide scientific based evidence/proof. Therefore, the advocacy program must obtain deep studies on legal framework, current law enforcement, etc., in order to conceive a full perspective of the EI sector. In the framework of the advocacy program for the amended Law on Minerals, in order to provide authentic and objective sound arguments, CODE conducted deep studies including the review and analysis of the legal regulations on mineral resources, in which key points are determined and need changing. In order to supplement and test the study’s results, CODE conducted field studies in three different areas as mentioned herein above. Furthermore, to attain deeper analyses, CODE strongly cooperated with various experts. Hence, with deep studies, CODE was able to provide evidence of high scientific-based quality to advocate for the Law on Minerals.

The participation of some key stakeholders: One organization is not able to possess enough resources as well as the position to advocate for a large and complicated issue like the Law on Minerals or the implementation of EITI. Therefore, it needs to cooperate with key partners (individuals or organizations) in order to have a credit worthy and good quality program. It is important to choose the right partner(s). For example, in the advocacy program of the Law on Minerals, CODE cooperated with VUSTA, which is the most reputable advocacy organization of the country and has a significant position in society. Furthermore, to have a better quality workshop, CODE also cooperated with the Vietnam Geological Association, which is comprised of top geologists and mining experts. Therefore, this practical cooperation helped increase the quality of the workshop and petition afterwards. In the advocacy program of the implementation of EITI, CODE strongly cooperated with VCCI, which represents the business sector and has credit and capacity in promoting transparency in the business environment.

Closely cooperate with the media: To spread the information of the policy advocacy program to decision makers and the public, the advocacy program has closely and intensively cooperated with the media, such as TV, radio, newspaper, etc., including:

- Invited key media to attend the workshops, roundtables, and seminars; provided necessary information and support to them when needed. For instance, 62 representatives of the media attended the workshop on mineral resources and sustainable development of Vietnam. As a result, there were 96 articles reporting on the workshop and mineral resource related information. Of these, many of them cited CODE’s study and the workshop’s papers/presentations.
- To disseminate the advocacy program’s message actively, CODE actively published a series of articles with the most well-known press, like Vietnam Net, Tia Sang, etc (see Annex).
Advocate in various dimensions: to achieve the objectives, besides direct influences to decision makers, the advocacy program should also consider indirect opportunities, since indirect influences sometimes have large effects. In regard to the recommendation of EITI implementation in Vietnam, CODE contacted those who are interested in the issue, like the Swedish Embassy, World Bank and Towards Transparency, in order to seek their support and influence. Then these organizations directly influenced the government through events such as the Dialogue on Anti-corruption in the EI, Consultative Meeting, etc. Hence, EITI has been presented to the most responsible governmental agencies.

Sufficient time budget: An advocacy program is usually conducted in sufficient time to achieve specific outcomes. For this program, CODE started in 2009, excluding advocacy activities of the bauxite extraction plan that have occurred since 2007.

Timing: Every policy advocacy activity must take place in the appropriate time to create bold points. For example, the events were organized two to three weeks prior to the meetings of the National Assembly. If the advocacy events were organized earlier, they would be either forgotten or would receive less attention. In case of that happening before the meeting of the National Assembly, it would be too late to give recommendations and to provide necessary documents to the National Assembly members and other decision makers.

Continuity: The advocacy program should be conducted continuously throughout the process and avoid interruption or long periods of weak operation as much as possible. Events in CODE's advocacy program that proved continuity are included, as follows:

- May 2010: Organized the workshop on mineral resources and sent the petition to governmental agencies (Prime Minister Office, MONRE, Government Office, etc.).
- June-August 2010: Published articles in newspapers; published the petition and study report on the website of the National Assembly.
- August 2010: Coordinated with PanNature to organize the workshop on Sustainable Governance on Mineral Resources prior to the last explanatory meeting on the amended Law on Minerals of the National Assembly.
- September 2010: Coordinated with local and regional partners to organize the workshop on Natural Resources, Water, and Energy, as well as some side-events in the framework of the People ASEAN Forum in Hanoi.
- October 2010: Organized a roundtable consultative discussion on the scoping study on the implementation of EITI in Vietnam.
- April 2011: Organized a launch workshop on the scoping study on the implementation of EITI in Vietnam.
- May 2011: Presented the scoping study in the roundtable discussion on Anti-corruption Dialogue and the Workshop on Anti-corruption in the EI; organized a roundtable discussion aiming to establish a CSO network on EITI.
- June 2011: Disseminated the scoping study in the Annual Consultative Meeting.

9. Conclusions and recommendations

Such changes in the Law on Minerals of 2010 and the progress on the implementation of EITI in Vietnam clearly indicate that the policy advocacy program conducted by CODE has had certain influences on the decision making process. Specifically, these are important changes in the Law on Minerals, such as those regarding mine auctions, clearer regulations on social responsibility of mining companies, better environmental protection mechanisms, and progress on the implementation of EITI in Vietnam. Objectively, these changes have not resulted entirely from the policy advocacy program that CODE conducted. Rather, they are derived from and impacted by other stakeholders in the EI sector, as well as by the internal movement of the policy makers. The policy advocacy program that CODE conducted only partly contributed to these positive changes.

Aside from these successes, there are still some points that the policy advocacy program has not yet achieved. Regardless of some objective limitations, the program has not been able to attain higher goals that could help to solve the persistent problems of the EI sector, particularly in the mining industry. In order to achieve it, perhaps CODE should have cooperated with other organizations, especially with academic institutions that supported the advocacy program on the Law on Mineral from beginning in order to strengthen the quality of research as well as echoing the influence of the advocacy activities. The progress made for EITI implementation in Vietnam was a perfect example of how useful cooperation in advocacy activity is; that in which both CODE and VCCI strongly committed to work together from the start of the program. Moreover, the direct interaction between CODE and the assigned drafting law authority, MONRE in the advocacy process was still limited. Therefore, influence from the advocacy program and research findings has not been maximized and respectively, not thought fully taken into account. Later advocacy programs conducted in the future should pay more attention on direct interaction to better deliver their messages to decision makers.

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Policy advocacy is rather new and difficult in the context of Vietnam, especially at a high level. However, through this
policy advocacy program, it can be seen that NGOs can participate and be involved in policy advocacy activities with recognizable efficiency, even in sensitive areas like anti-corruption, natural resource management, etc. The role and influence of NGOs in the society keep increasing. However, NGOs in Vietnam still face many challenges and limitations, especially in the policy advocacy area, including:

- A lack of legal framework (the Law on Social Associations has not been issued yet).
- Many state agencies have either a reserved attitude or little confidence when working and cooperating with NGOs.
- Capacity and the participation of NGOs is limited, particularly in the policy advocacy area.

Therefore, to achieve proposed objectives, the advocacy program must strategize and be well designed, flexible, feasible, and able to mobilize all sources in the society (especially the media) and utilize all opportunities that might be useful to the program.
REFERENCES

ANNEX

LIST OF NEWSPAPER ARTICLES BY CODE RESEARCHERS AND EXPERTS
