

Glossary of key terms

Resource curse – the phenomenon by which natural resource wealth often results in poor standards of human development, bad governance, increased corruption and sometimes conflict.

Extractive industries – for the purposes of this report, the extractive industries are defined as the oil, gas, and mining industries.

Kleptocracy – a style of governance characterised by high-level corruption and looting of state funds for the purpose of increasing the personal wealth and political power of the ruling class.

Shadow state¹ – a state where political power is wielded as a means to personal self-enrichment and state institutions are subverted to support those needs. Behind the laws and government institutions of such states is a parallel system of personal rule. Leaders of these states are typically able to exploit their country’s public assets, particularly natural resources, through the subversion of bureaucratic institutions and the monopoly on the use of violence. In this way, they can enrich themselves and pay for the means to stay in power.

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The Royal Government of Cambodia should:

Take immediate steps to implement and enforce a moratorium on the granting of further mineral or petroleum concessions until it has established a basic legal, environmental and social framework to adequately govern the oil, gas and mining sectors

- Assemble the best possible data on resource deposits, so as to provide all companies with the same information and to ensure fair competition between the companies.
- Finalise and publish the national legal frameworks for guiding the extraction of mineral and petroleum resources.
- Design and publish a long-term strategy for exploiting Cambodia's mineral base, including plans to mitigate any undesirable social or environmental side effects.
- Establish an independent public agency to award rights to these resources. The agency should possess appropriate technical expertise and legitimacy and be subject to public scrutiny and parliamentary oversight.
- Complete the indigenous communal land titling process.
- Complete the zoning process for Cambodia's protected areas.

Take immediate steps to review all existing concessions and cancel concession agreements if they do not meet the criteria set out below. Only companies which can provide the public and government with clear evidence of their capabilities should be allowed to start or to continue work in Cambodia. This evidence should include:

- The names of all people who hold any stake in the company and who will benefit from this business and that of any partners in their bid.
- Their sources of funds.
- A track record in the industry.
- A proven technical and financial ability to exploit any rights that are offered in legal compliance.
- An ability to protect against environmental or social costs, and satisfactory planning and funding to address any damage incurred.

Take immediate steps to ensure transparency in the allocation of oil, gas and mineral assets

- Require all government officials, parliamentarians and high-ranking military personnel to publish their business interests and those of their immediate families.
- Award oil, gas and mining rights in open and competitive bidding to ensure the best deal for Cambodia. The criteria for pre-qualification of bidders and for awarding concessions or licences should be available to the public.
- Publish all contracts for oil, gas or mining rights, and the full details of unsuccessful bids, within a reasonable time after the end of bidding and before the contract comes into force.

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Take immediate steps to increase transparency in the management of oil, gas and mineral assets

- Ensure full and continued disclosure of information concerning the management of public assets to include, but not be limited to, information on oil, gas and mineral deposits.
- Ensure that this information includes the following: the operator (and any partners) of each concession or licence, its size and location, and details of any commitments made in return for being awarded the rights.
- Require all companies operating in sectors of Cambodia’s natural resource economy to publish the same information.
- Prohibit ownership of companies engaging in Cambodia’s extractive sectors by members of government and the civil service and their family members, on the basis that it represents a conflict of interests.

Ensure transparent management of oil, gas and mineral revenues by adopting best international practice

- Publish information on signature bonuses and any other payments made by companies involved in the oil, gas or mineral sectors to the government of Cambodia.
- Implement the International Monetary Fund’s (IMF) *Guide to Resource Revenue Transparency*.
- Endorse and implement the Extractive Industries Transparency Initiative (EITI).
- All payments relating to the resource extraction should be made into a single government bank account which is independently audited on a regular basis, the results of which are made available to the public.

The National Assembly of Cambodia should:

Take a more active role in the governance of the country’s natural resources

- Debate and approve all aspects of the process for awarding oil and mining, land and forest rights, before any awards are made. Once the process is deliberated and approved, it should apply equally to all companies and not be adapted without further parliamentary approval.
- Oversee the creation of, and any amendments to, legislation governing the management of Cambodia’s natural resources.

Cambodia’s international donors, including China, should:

Recognise that there is a direct link between governance and development outcomes, and use aid as leverage to improve governance

- Take immediate steps to ensure that commitments of non-humanitarian aid follow, not lead, demonstrable progress in implementing the necessary measures to achieve better governance.

Take immediate steps to integrate and coordinate the donor aid agenda with the urgent need to reform and strengthen the governance of Cambodia’s emerging extractive sectors

- Make future assistance conditional on fulfilment of the recommendations outlined above.

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- Establish joint donor-government working groups and develop associated monitoring indicators on Cambodia’s extractive industries within the Cambodia Development Cooperation Forum (CDCF) process.
- With reference to the mining sector, highlight the deforestation and long-term damage that mining in protected areas and in the area surrounding Prey Long forest will entail, especially in an era of climate change. Instead, promote alternative land and resource use based on sustainable financing options and pro-poor economic development. These options could include community-based enterprise development, ecotourism, non-timber forest products, carbon sequestration and storage, payments for water quality, and other payments for ecological services (PES), including potentially under a Reduced Emissions from Deforestation and Forest Degredation (REDD).

Ensure that anti-corruption efforts are integrated within the core activities of all petroleum and mineral related aid programmes to Cambodia

- This should include both financial and political support to civil society, competent individuals within the institutions, parliamentarians, the media and any other players or processes.
- Further investment in understanding the political economy of Cambodia.

Support Cambodian civil society in its efforts to increase transparency and accountability in the management of Cambodia’s public assets

- Publicly adopt and implement a zero tolerance policy for state-sponsored violence or threats against civil society activists or organisations.
- Set up a system of response to support members of civil society whose lives are threatened or organisations that face threat of closure due to their work on government transparency and accountability.
- Provide support to civil society to document, monitor and scrutinise the management of natural resources.
- Provide support to help build the capacity of civil society to monitor and ensure transparent public sector spending.

Governments should:

- Follow the lead of the U.S., and impose travel ban measures on any individual and their immediate family members against whom there is credible evidence to believe are involved in corruption relating to the extraction of natural resources in their countries.ⁱ

ⁱ For the full legislation, see the U.S. Consolidated Appropriations Act http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:h2764enr.txt.pdf. The provisions relating to Cambodia in the Consolidated Appropriations Act can be found in the accompanying Division J report which provides additional information on the implementation of the Act. The Division J report endorses the language on Cambodia found within the 2008 State, Foreign Operations, and Related Programs Appropriations Bill. This contained the following text: “The Committee urges the administration to exercise Presidential Proclamation 7750 [the anti-Kleptocracy Initiative travel ban] to prohibit corrupt Cambodian officials identified in the June 2007 Global Witness report entitled ‘Cambodia’s Family Trees: Illegal Logging and the Stripping of Public Assets by Cambodia’s Elite’ from entering the United States. The Committee encourages other developed countries, particularly in Europe and Asia, to implement similar restrictions.”

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- Demand and support strong anti-corruption actions taken by individuals at a country level in this regard.
- Create a system of promotional incentives which are geared towards rewarding individuals who disburse money on the basis of governance considerations.

Companies operating in Cambodia should:

- Publish information on the size of any concessions and locations, and details of any commitments or payments made in return for being awarded the rights.
- Not make any payment to any member of the Royal Cambodian Armed Forces, unless that payment is required by law.
- Declare any payments made to any member of the Royal Cambodian Armed Forces in full. All payments should be independently audited.

Summaryⁱⁱ

Cambodia today is a country for sale. Having made their fortunes from logging much of the country’s forest resources, Cambodia’s elite have diversified their commercial interests to encompass other forms of state assets. These include land, fisheries, tropical islands and beaches, minerals and petroleum. The country is rapidly being parcelled up and sold off. Over the past 15 years, 45 per cent of the country’s land has been purchased by private interests. The economic wisdom of the sell-off has yet to be proven. The social and environmental consequences have already been devastating.

This report is based on investigations carried out by Global Witness in 2008 and looks at one part of this wider phenomenon – the emerging oil, gas and mineral sectors. It makes the case for greater efforts by the Cambodian government and the country’s international donors to strengthen the governance of these resources.

1. Cambodia is on the verge of a petroleum and minerals windfall.

If managed well, revenue from these new extractive industries could provide the Cambodian government with the best chance in a generation to rebuild state infrastructure and lift its people out of poverty. If mismanaged through corruption or ineptitude, the money generated runs the risk of widening the gap between rich and poor and weakening democracy still further by entrenching the positions of the ruling elite.

2. Cambodia’s extractive industries are exhibiting early warning signs of kleptocratic state capture.

Global Witness surveyed the emerging extractive industries through a combination of interviews with industry insiders and field work. The results were alarming. Patterns of corruption and patronage found in the forest sector, and documented by Global Witness over 13 years, are now being duplicated in the extractive industries. The same political elite who squandered the country’s timber resources are now responsible for managing its mineral and petroleum wealth. Like high-value timber, these resources are a one-off opportunity. Once they are gone, they are gone forever.²

The small numbers of elite powerbrokers who run the state have sold off potentially valuable concessions to companies in a manner that is non-transparent and highly dubious. On current trends, these powerbrokers stand to benefit from Cambodia’s extractive industries. The Cambodian people do not. They are aided in doing so by a total lack of transparency in both the petroleum and mineral sectors. The legitimacy and technical capabilities of some of the companies who have bought these concessions is uncertain. Meanwhile, the risks to the environment and the people who live on the land are enormous.

3. Payments from extractive companies totalling millions of dollars appear to have gone missing.

Financial bonuses paid to secure concessions – totalling millions of dollars – do not show up, as far as Global Witness can see, in the 2006 or 2007 revenue reports from the Ministry of Economy and Finance.

ⁱⁱ References for the points covered in this section can be found in the main body of the report.

In the case of the minerals sector:

4. Exploratory mining licences have been quietly allocated to members of the ruling elite or their relatives.

Of the mine sites investigated by Global Witness in 2008, every single one was owned or controlled by members of Cambodia’s political or military elite. The roll call includes:

- General Ouk Kosa,³ head of the Royal Cambodian Armed Forces (RCAF) military development zones;
- Cham Borey,⁴ brother of Cambodia’s Minister for Commerce, Cham Prasidh;⁵
- Dy Chouch,⁶ (also known as Hun Chouch), first cousin to Prime Minister Hun Sen;
- General Meas Sophea,⁷ Commander of the RCAF infantry forces;
- Senator Ly Yong Phat,⁸ Cambodia People’s Party (CPP) senator and wealthy tycoon;
- Om Yen Tieng,⁹ Hun Sen’s senior advisor and chairman of the Cambodian government’s Human Rights commission;
- Senator Lao Meng Khin,¹⁰ a Hun Sen confidante and director of Pheapimex, one of Cambodia’s most powerful companies;
- General Pol Saroeun,¹¹ Commander-in-Chief of the Royal Cambodian Army;
- Oknha Try Pheap,¹² pro-CPP tycoon.

5. There is obvious and extensive involvement of the Royal Cambodian Armed Forces in the emerging mining sector.

Global Witness investigators found RCAF forces employed to guard mine sites in Stung Treng, Preah Vihear and Pursat Provinces. On some sites, land has been taken from local people and cases of intimidation of residents are reported. There has been no free, prior and informed consent by the local population in any of these cases.

6. Cambodia’s protected or environmentally sensitive areas are of particular concern. On current trends, previously unexplored areas in the Cardamoms, Prey Long Forest and Phnom Krasop Wildlife Sanctuary will be permanently damaged or destroyed.

The Royal Government of Cambodia has made the decision to prioritise mining over environmental needs and protection. This has led to extensive exploratory mining activity. At least six out of Cambodia’s 23 protected areas now have some form of mining activity within their boundaries.

In the case of the oil and gas sector:

7. The institution in charge of Cambodia’s oil and gas industry – the Cambodian National Petroleum Authority (CNPA) – is a constitutionally dubious body under the direct control of Prime Minister Hun Sen and his deputy, Sok An.¹³

The CNPA was established by royal decree. In the opinion of legal experts consulted by Global Witness, the transfer of such significant powers to a new organisation by royal decree only, without primary legislation passed by the National Assembly, is out of keeping with normal practice and constitutionally dubious.

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Meanwhile, quiet amendments made to the 1991 Petroleum Legislation appear to have placed power and control of the institution directly into the hands of the prime minister and his deputy, Sok An.

8. The centralisation and politicisation of power within the CNPA has created a dysfunctional organisation over which the Cambodian parliament has no oversight, and other essential ministries have no say.

Control and management of the CNPA is highly politicised. Those wielding power are pro-Hun Sen CPP politicians. Exercise of this power sidelines and marginalises those who are supportive of the Senate President, Chea Sim.¹⁴ Director General of the CNPA, Te Duong Tara,¹⁵ maintains a vice-like grip on information by recruiting his own pool of loyal staff from other ministries, bypassing the trained staff within the CNPA, and by keeping documents in his own home, rather than the office.

There is no parliamentary oversight of the CNPA. Parliamentarians appear unaware and uninformed of the CNPA’s work. Likewise, the CNPA is not coordinating with other ministries: the finance ministry – which will be responsible for collecting revenue from the oil and gas supplies when they come online – has not been included by the CNPA in discussions on management of this resource and future revenue.

9. Allocation of concessions has taken place under a blanket of secrecy.

Oil company contracts and information on concession allocations are a closely guarded secret within the CNPA. It is known however that the CNPA has allocated all of Cambodia’s undisputed offshore blocks to private companies. Meanwhile it continues to allocate blocks onshore around the Tonle Sap Basin, and to re-licence offshore blocks in the Overlapping Claims Areas – areas which are contested between Cambodia and Thailand.

A mix of companies have been allocated concessions. Some are operators who bring legitimate expertise to the table. With other companies, it is less clear what experience they will bring or to whom they are connected.

The prime minister’s economic advisor, the tycoon Dr. Chen Lip Keong,¹⁶ is the owner of Resourceful Petroleum,¹⁷ a company which holds a 30 per cent share of offshore Block B. Dr. Chen Lip Keong’s lawyers told Global Witness that Resourceful Petroleum conducts other oil and gas business elsewhere in the world.¹⁸ Other companies such as China Zhen Rong Cambodia Company¹⁹ appear to have been specifically set up with a view to accessing Cambodia’s oil and gas resources.

10. Millions of dollars have been paid to the CNPA by extractive companies, but this money does not appear to have reached the national treasury.

Each company is required to pay a negotiable signature bonus to the CNPA. Indonesian firm PT Medco Energi Internasional has paid a total of US\$7.5 million to the CNPA so far. In addition, each company holding a production sharing contract for a concession block is also required to pay significant fees on an annual basis. In the first year, this would be just under US\$800,000 per concession. As far as Global Witness can see, none of this money has appeared on the non-tax revenue reports from the Ministry of Economy and Finance for 2006 or 2007.

11. The onshore area known as the Tonle Sap Basin is currently being explored.

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The basin covers part of the Tonle Sap Lake, a UNESCO Biosphere Reserve whose waters provide an estimated 230,000 tonnes of fish each year. These fish stocks supply 40-70 per cent of the country’s annual protein intake and afford an essential source of livelihoods for around two million Cambodians.

At the time of writing, seismic surveying of the Tonle Sap Basin was being carried out by a private company known as Petroleum Geo Services (PGS).²⁰ The results have not been made public, but Global Witness has been told that the data is ‘highly prospective’.

PT Medco Energi Internasional²¹ has been awarded one onshore block. Others also claim to have been allocated concessions. As of August 2008, there had been little consultation or awareness-raising with local people, despite the fact that Cambodian officials have already given PGS permission to extend their survey into the rice paddies after the harvest in late 2008.

12. Cambodia’s international donors are not using the influence that their development aid gives them to improve governance.

International donors provide aid equivalent to approximately half Cambodia’s national budget each year. Donors have not used the leverage that this aid gives them effectively. Specifically, they have refused to acknowledge the fact that the government is thoroughly corrupt and does not act in the best interests of the population. As a result, billions of dollars-worth of aid funded by western taxpayers, and now China, has done relatively little to improve the lives of ordinary Cambodians. Moreover, donor support has failed to produce reforms that would make the government more accountable to its citizens. Instead, the government is successfully exploiting international aid as a source of political legitimacy.

13. The government has already backtracked on basic transparency requirements for the extractive industries.

After initially agreeing to endorse the Extractive Industries Transparency Initiative, the Cambodian government has announced that it will not endorse it.

14. The damage done is not yet irreparable and there is a narrow window of opportunity to improve the governance of Cambodia’s extractive industries. This must start with an immediate moratorium on any new concessions, a review of existing concessions, and full transparency on the allocation and management of these critical public assets. Donors should link the disbursal of non-humanitarian aid to demonstrable progress in implementing these measures.

Chapter I: Cambodia's extractive industries – the stakes are high

"We're in the phase of what we call transition."

Mok Mareth,²² Cambodia's Minister for Environment, commenting on the emerging extractive industries.²³

Cambodia appears to be on the verge of an oil, gas and minerals windfall. High demand worldwide for these commodities has, until recently, led to high prices. As a result companies are beginning to search for economically viable reserves in previously untapped countries once thought to be too politically unstable to operate in. Cambodia is an example of this phenomenon in action.

Over the last two years, Cambodia's mining and oil sectors have developed rapidly, with new companies exploring the potential for mineral and petroleum wealth under the country's land and sea. The revenues generated are likely to be small compared to petroleum or mineral mega-producers such as Iraq or South Africa but, if properly managed, they could represent Cambodia's best chance in a generation to escape the poverty trap.

While Cambodia has experienced rapid economic growth in recent years much of the population remains poor and without access to the most basic facilities. The United Nations Development Programme's 2007 'Human Development Index' ranked Cambodia at 131 out of 177 nations, with 78 per cent of the population estimated to live on less than US\$2 a day.²⁴ Meanwhile, life expectancy is only 58 years, and one-third of children aged under five years old are classed as malnourished.²⁵ For the majority of Cambodians, life continues to be short and tough.

The IMF predicts that annual oil revenue will increase gradually from about US\$174 million in 2011 to a maximum of US\$1.7 billion in 2021, before dropping rapidly thereafter.²⁶ If this estimate is accurate, the oil revenues would radically alter the country's economic outlook.

Other sources are less optimistic. Industry experts with access to the latest data have expressed concern that the IMF, government and media have failed to adequately differentiate between how much oil and gas lies below the ground and how much it is possible to extract. They counsel that that the IMF estimates are inaccurate and need to be revised downwards. On their forecasts, the anticipated flood of revenue into the system may not materialise. Nevertheless, the potential income would still be significant by Cambodian standards.²⁷

Meanwhile, the mining sector is quietly developing in the background. Due to the lack of data on Cambodia's mineral reserves and the early stage of exploration of many of the mining sites, it is impossible to quantify how much revenue Cambodia's mining sector could produce, yet investment and interest is increasing rapidly. In the mid-1990s no major mining projects were initiated, but by 2006, a rush for mineral resources was clearly on: the government body in charge of encouraging foreign investment – the Council for the Development of Cambodia²⁸ – approved US\$403 million of investment in the mining sector in that year alone.²⁹ This raises the possibility that despite its quiet start, it could be Cambodia's mining sector – not oil – which has the greater potential to contribute to the national economy.

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In short, the national treasury could soon be earning hundreds of millions of dollars from its extractive industries, something which should be a cause for celebration for a country which still relies on the international donor community for aid equivalent to almost half of its annual budget.³⁰ However, the precedent set by the management of the state’s other assets – its land, fisheries, forests and heritage sites – suggests that the Cambodian government might squander this opportunity. Rather than using these millions to lift its people out of poverty, Cambodia’s government could instead continue to follow the example of neighbouring Burma, where an autocratic elite uses money generated from the country’s natural resource wealth to rule over an impoverished majority with little regard for their welfare or rights.

Decisions are being made now about how to manage these industries. The outcome will determine whether Cambodia’s ‘transition’ phase moves the country out of poverty or headlong into the resource curse.

Minerals – an introduction

Cambodia’s mineral wealth was being mapped as early as the latter half of the 19th century by French and Chinese geologists.³¹ Minerals identified include bauxite, carbonate rocks, gemstones, gold, manganese, phosphate, salt, silica and zircon.³² More recently, other important minerals such as chromium, copper, iron ore, limestone, nickel and tungsten have been discovered.³³ Despite the prospects, most of Cambodia’s mineral resources have remained underdeveloped up until now because of war, internal conflict and a lack of investment.

Today the mining sector is poised to shift from small-scale digging by local communities to full-scale extraction by large companies. Increasing numbers of companies are now making a significant commitment to the sector. Although information about the allocation of mining licenses in Cambodia is difficult to obtain, Global Witness research in 2008 has identified more than 100 mining licences allocated for mineral exploration purposes.³⁴ Meanwhile the Cambodian government has established mining as a ‘priority’ over the coming years and is proactively seeking further investment from foreign and Cambodian companies.³⁵

These mining concessions are at various stages of development. Some concessionaires are actively drilling test holes and analysing samples. For example, there are early indications of gold and iron deposits worth tens of millions of dollars in Preah Vihear Province.³⁶ Some concessions simply marked out land that was already being used for mining, such as marble quarries in remote corners of Pursat Province. Other concessions appear to be purely speculative, and have not yet been developed.

Oil and Gas – an introduction

“The oil is still in the ground. It is like the fish in the sea. We don’t know if it is the big fish or the small fish. Does it have scales? Before we can cook the fish we have to know what kind it is.”

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Te Duong Tara, Director General of the Cambodian National Petroleum Authority offers this analysis of oil and gas exploration in Cambodia at an international petroleum conference in Phnom Penh, 26-28 March 2008.³⁷

Like the mining industry, Cambodia’s petroleum sector is in its infancy. Unlike the mining industry however, it has attracted considerable media attention and speculation, and it is clear that the oil and gas industry in Cambodia is regarded as an emerging, major element in the economic future of the country. The prospect of oil riches has sparked off a ‘black gold’ rush involving American, Australian, Chinese, Indonesian, Japanese, and Korean companies, all battling for potentially lucrative rights.

All of Cambodia’s offshore blocks (labelled A-F) and at least one onshore block have already been allocated to domestic or foreign companies. Only the 27,000 km² area in the northern Gulf of Thailand known as the Overlapping Claims Area (OCA) remains undecided because of an ownership dispute between Thailand and Cambodia. Talks to settle the dispute between the Thai and Cambodian governments were restarted in April 2008. However, the recent political turmoil in Thailand, combined with a border dispute between the two countries, means that there is no immediate solution in sight.³⁸ Despite this impasse, as of September 2008 the CNPA had begun to reallocate oil concessions on any licences which had expired within the OCA blocks in order to help strengthen its claim on the resource.³⁹ The government is planning to develop a small domestic oil refinery, while the Cambodian National Petroleum Authority has begun talking about setting up a national oil company.⁴⁰ The U.S. oil company Chevron⁴¹ holds the rights to Block A – the most advanced in terms of exploration of Cambodia’s offshore blocks. Industry observers expect oil production in this block to start in 2011.⁴²

Cambodia today: From democracy experiment to one-party kleptocracy

“Human dignity, equity, meeting the basic needs of the people, participation and the development of people’s capacity and choice are among the principal values and objectives of human rights. Economic and political policies and practices in Cambodia do not accord any particular importance to these values.”

Quote from statement to the UN Human Rights Council by the Special Representative of the Secretary General in Cambodia for Human Rights, Yash Ghai, 12 June 2007.⁴³

After decades of war and one of the most horrific episodes in recent human history – the Khmer Rouge regime – Cambodia’s warring factions signed a peace agreement in 1991. This heralded the start of one of the biggest and most costly peacekeeping operations in history, and the beginning of international efforts to bring democracy and development to Cambodia. Expectations that the UN-organised elections in 1993 would bring major political change were not realised, however. The incumbent Cambodian People’s Party, whose leadership is drawn from former Khmer Rouge cadres, refused to accept that they had lost the vote and muscled their way into the government. They completed their reversal of Cambodia’s tentative progress towards democracy in July 1997, when they dislodged their coalition partners in a bloody coup d’état.⁴⁴

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It is now 17 years since the signing of the Paris Peace Accords, and the country once regarded as the international model for post-conflict nation-building has become Southeast Asia’s newest kleptocracy; its reputation marred by massive corruption, human rights abuses, impunity, repression and undemocratic governance. Contrary to the spirit of the 1991 Peace Accords, Cambodia’s political influence and wealth is concentrated in the hands of a small ruling elite. The misappropriation of the country’s rich natural resources – its forests, land and fisheries – has been central to this accumulation of wealth and consolidation of political power.

Government officials, senior military figures and their business associates use the police and armed forces as their own private armies, with little balance from a politically-controlled judiciary or a civil society slowly beaten down over the years by killings and threats. State officials and powerful interests around them are able to appropriate natural and economic resources as well as the property of others, harass any opponents and suppress their rights.⁴⁵

Cambodia’s natural resources could have provided the means with which to kick-start the post-conflict economy. Revenue generated from logging, plantations and fisheries should have gone towards poverty alleviation and rebuilding essential infrastructure. Instead, systematic and institutionalised corruption and economic mismanagement have deprived the entire population of the revenue that could have come from these public goods.

Box 1: Wasted wood – the lessons of illegal logging

In the 1990s Cambodia’s forests were described by the World Bank as the country’s ‘most developmentally important resource’.⁴⁶ Today they are largely degraded. Over the years, much of the valuable timber has been sold off by the political elite to private companies or individuals looking to make large profits quickly out of rapid unrestricted logging. Most of the vast wealth generated from this logging has not reached the national coffers; instead it appears to have gone straight into the private bank accounts of the loggers and their political patrons.⁴⁷

Global Witness first began exposing illegal logging in Cambodia and its links with conflict, corruption and human rights abuses in 1995. Early work revealed how, in the last years of Cambodia’s civil war, both the Khmer Rouge and the Phnom Penh government used logging to fund military campaigns and, conversely, used military campaigns as a pretext for further logging. Investigations revealed a cross-border timber trade with Thailand worth US\$10-20 million per month. Following publication of these findings, the Thai border was closed to Cambodian timber – cutting off a critical source of military funding for the civil war.

This did not spell the end of illegal logging in Cambodia’s forests however. In the mid-1990s, senior government ministers awarded between 30 and 40 logging concessions to Cambodian and foreign-owned companies. Over seven million hectares of forest – or 39 per cent of Cambodia’s land area – were signed away in these contracts on terms that greatly favoured the interests of the concessionaires.⁴⁸ All the concessionaires proceeded to break the law or the terms of their contracts, or both, in order to reap fast profits. By the end of the decade, they were responsible for most of the illegal logging in Cambodia.⁴⁹

During this time, company staff committed serious human rights abuses against people living inside or adjacent to forest concessions. These included denial of access to forest areas, intimidation, rape and, in at least one case, murder.

A concessionaire logging contract signed by Sok An, Cambodia’s deputy prime minister and current Chairman of the Cambodian National Petroleum Authority. In the mid-1990s, in his capacity as co-chair of the Council of Ministers, he signed contracts which awarded over seven million hectares of forest to private companies on terms which greatly favoured the interests of the concessionaires.⁵⁰

Eventually, pressure from international donors and NGOs led to the suspension of the ‘concessionaire’ logging system by the Cambodian government in 2002. However, despite public commitments to reform, Cambodia’s shadow state has continued to generate money from the timber sector. Officials charged with implementing reforms have instead subverted them; with the result that illegal logging has continued in a variety of forms and is still causing severe damage to Cambodia’s remaining forests.

The same political elite who squandered the country’s timber resources are now responsible for its mineral and petroleum wealth. Like high-value timber, these resources represent a one-off opportunity. Once they are exhausted, they are gone forever.⁵¹

Since the suspension of the country’s logging concessionaire system in 2002, focus has shifted to alternative sources of income generation through the exploitation of remaining state assets, including fisheries, land and mineral deposits. The rise of Cambodia’s mining and oil sectors represents just one part of the diversification of natural resource exploitation in Cambodia.

An examination of Cambodia’s business sector reveals that the country’s beaches, casinos, forests, hotels, islands, land, national buildings and ports are now predominantly controlled by a handful of government-affiliated tycoons, high-ranking police and military brass, or family members of senior political figures. Meanwhile, residents who have lived on the land are simply forced to leave, often with brutal evictions enforced by the police, military police and the armed forces.

Box 2: Cambodian land investment – it’s a steal!

“The recent evictions bear striking similarities. Riot police armed with guns, shock batons, tear gas and shields cordon off the eviction sites before dawn to bar human rights monitors, U.N. observers and journalists. In many cases, police use or threaten unnecessary or excessive force to remove residents and tear down their homes.”
Human Rights Watch commenting on forced evictions in Cambodia in 2006.⁵²

Cambodia is in the midst of a land grabbing epidemic. Between 1993 and 1999, the government granted economic land concessions for around one third of the country’s most productive lands for commercial development by private companies.⁵³ Since then, the government has continued to allocate concessions at a brisk pace. Hun Sen’s government has given out huge areas of countryside and valuable urban plots now amounting to 45 per cent of Cambodia’s land.⁵⁴ Investors are offered favourable rates

and a tax holiday. Those already living on the land are usually offered a less favourable deal, often involving a forced eviction from the land with no compensation. The result is that land grabbing is currently one of the main causes of human rights abuses and impoverishment in Cambodia, with thousands of people displaced each year.⁵⁵

Instead of protecting Cambodian citizens from the ugly side of commercial development, the authorities have themselves carried out the evictions at the behest of those who wield economic and political power.⁵⁶ The victims are evicted from their homes and land by those organs of state responsible for the use of force – the army, military police or police – usually with little or no advance notice, no access to adequate alternative housing and no real recourse to justice. The use of threats, intimidation, excessive force and arson has been widely reported.

On the morning of 20 April 2007, 150 members of the military police, police and Royal Cambodian Armed Forces, arrived at Village 6 in Sihanoukville’s Mitaheap District armed with guns, electric batons, shields and tear gas. They proceeded to evict 105 families from the village.⁵⁷

Process matters: Why the allocation of concessions in Cambodia is important

To date, much of the attention on the oil and mineral sectors has focused on what will become of the money once these revenues begin to be generated. Relatively little has been said about who the concessions have already been given to and the process by which they have been allocated. Yet, while corruption and illegal acts can be found at all stages of the natural resource extraction process in Cambodia and other resource-rich countries around the world, corruption has always started at the point of entry in the natural resource chain: with the allocation of concessions for the resource itself.

Where assets have been allocated corruptly, it distorts the market. Typically, this has resulted in sub-optimal use of these resources and poor development outcomes. Corrupt allocation of resources has also altered the political landscape. The revenue generated by their misappropriation has reinforced the position and impunity of elites, further strengthening their hold on the levers of power: government, the law, the judiciary, the armed forces and the bureaucracy. In other words, the equitable allocation of concessions is an essential component for the development of a state which functions in the interests of its citizens. When viewed in this context, the process behind the allocation of concessions in Cambodia’s oil and mineral industries becomes a core issue.

In this report Global Witness examines case studies from Cambodia’s emerging extractive industries sector with a view to assessing the conduct of the Cambodian government and partner companies, and to understanding the future prospects for oil and mining revenues.

Chapter II: Mining

To date, Cambodia’s mining industry has been developing off the radar. Yet mining has the potential for major economic, social and environmental impacts which have so far been largely ignored.

Global Witness has compiled a list of mining exploratory licences which have been awarded by the government. Based on information from primary and secondary sources, the Cambodian government has awarded mining exploration licences for over 100 different sites across the country, and the process seems to be accelerating. Global Witness knows of 21 mining licences allocated in 2008 alone.⁵⁸ Almost no information about these licence allocations has been made public by the relevant ministries or by the companies themselves.

Global Witness visited a number of mining sites in 2008 to see the development of the mines for ourselves. Our investigators found evidence that, as with the forest sector before it, ownership or control of these mining companies rests in the hands of elite regime figures. If the mines become fully operational, it is these individuals who stand to benefit financially.

There is also obvious and extensive militarisation of the mining sector, with members of the Royal Cambodian Armed Forces engaged in guarding five of the six mines surveyed by Global Witness investigators in Stung Treng, Preah Vihear and Pursat Provinces. In other cases, members of the RCAF are reported to be the beneficial owners of companies engaged in mining activities. On some sites, land has been taken from local people and cases of intimidation of residents have been reported. There has been no free, prior and informed consent by the local population in any of these cases.

The Cambodian government has made the decision to prioritise mining over environmental needs and protection. On current trends, previously unexplored areas in the Cardamoms, Prey Long Forest and Phnom Krasop Wildlife Sanctuary will be permanently damaged or destroyed. At least six out of Cambodia’s 23 protected areas now have some form of mining activity within their boundaries.ⁱⁱⁱ Once these mines become fully operational and roads are built to the sites, whole areas of previously untouched forest will be opened up to other threats, such as illegal logging and wildlife poaching.

The following section provides further information to support these findings.

Map of known mining activity in Cambodia^{iv}

The regulation of mining in Cambodia

“The state shall protect the environment and balance of abundant natural resources and establish a precise plan of management of land, water, air, wind, geology, ecological system, mines, energy, petrol and gas, rocks and sand, gems, forests and forestry products, wildlife, fish and aquatic resources.”

Article 59 of the Cambodian Constitution

ⁱⁱⁱ The protected areas in question are Virachey National Park, Samlout Multiple Use Area and the Phnom Aural, Phnom Prich, Phnom Samkos and Pream Krasop Wildlife Sanctuaries.

^{iv} Due to the opacity under which the mining sector is currently operating, Global Witness has not been able to confirm the legal or operational status of all of these concessions. This map therefore represents the best of Global Witness’ knowledge at the time of publication in early 2009.

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“Companies are just walking through the forest and drilling some land to test for minerals.”

Suy Sem, Minister for Industry, Mines and Energy, responding to NGO calls for stronger measures to govern the mining sector, as reported by *The Cambodia Daily*, 25 November 2008.⁵⁹

Under Cambodia’s Constitution all mineral resources are the property of the state and should be regulated by law.⁶⁰ The 2001 Law on the Management and Exploitation of Mineral Resources and the 1996 Law on Environmental Protection and Natural Resources Management form the policy framework around which all mineral exploration in Cambodia should be based. In Cambodia’s legal system, laws are elaborated by sub-decrees and *prakas*^v which give more specific details on procedures for obtaining and operating a mining concession.⁶¹ These are not currently available to the public, but Global Witness has obtained copies of some of the sub decrees and *prakas*. These can be downloaded from http://www.globalwitness.org/media_library_detail.php/691/en/cambodia_mining_legislation. Global Witness is concerned that the laws on mineral management are weak, contradictory, have significant gaps, and are poorly implemented.

Minister for Mines, Suy Sem (pictured),⁶² holds responsibility for the allocation of mining licenses in Cambodia. Global Witness has learned that his wife, Chea Kheng,⁶³ is the beneficial owner of at least one mining site in Pursat Province, Cambodia. She is reportedly a powerful figure and is known to be close to Prime Minister Hun Sen’s wife, Bun Rany.⁶⁴

Licensed to drill?

The 2001 Law on the Management and Exploitation of Mineral Resources places the management of these mineral resources and responsibility for allocating exploration or exploitation licences with ‘the competent institution’. At present, this institution is seen to be the Ministry of Industry, Mines and Energy (MIME).⁶⁵ However, a mining company wishing to operate in Cambodia also needs to apply to the Council for Development of Cambodia (CDC) for a mining concession. The legal framework for how these companies are awarded these concessions is not clear, but one MIME employee claimed that the decision was taken at a top-level meeting between MIME and CDC officials.⁶⁶ Beyond this ambiguity on how concessions are granted, it is also unclear how these concessions are used, who administers them, and how they relate to mining licences. Currently, concessions are being given during or before the exploration stage, before extraction agreements have been signed. A significant number are larger than the legal maximum size.⁶⁷

Who owns the land?

One of the most worrying gaps in mining legislation is the inadequate provision for those displaced by mining operations. The law states that before entering any

^v A sub-decree (anu-kret in Khmer) is adopted by the Council of Ministers and signed by the Prime Minister. A sub-decree must be in strict conformity with the Constitution and conform to the law to which it refers. A proclamation (more commonly known in Cambodia as a *Prakas*) is a ministerial or inter-ministerial decision signed by the relevant Minister(s). A proclamation must conform to the Constitution and to the law or sub-decree to which it refers. (http://cambodia.ohchr.org/klc_pages/klc_english.htm).

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privately owned land for exploration or mining, the concessionaire must compensate the ‘private land owner’ for any inconvenience and damage to the land.⁶⁸ Private land ownership refers to those with title on the land registry. Given the massive displacement of the Khmer Rouge period, the majority of Cambodian households do not have legal title to the land on which they live. They therefore have little protection against the activities of mining companies who wish to explore on the land they depend on for their livelihoods.⁶⁹ Theoretically, those without legal title and indigenous communal land title should still be protected because the Cambodian government has ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) which includes the obligation to respect citizens’ right to adequate housing and forbids the destruction of land necessary for subsistence. However, as seen on numerous occasions previously, the arms of state responsible for implementing these commitments have frequently ignored and subverted them (see [Boxes 1, 2, 5 and 6](#)).

Access to information

Legal requirements regarding access to information in Cambodia’s mining industry are conflicting. The 2001 Law on the Management and Exploitation of Mineral Resources specifically states that all applications, reports, plans and notices concerning exploration and exploitation are confidential.⁷⁰ This means that lack of transparency is actually built into the legal framework and raises the prospect that Cambodian citizens could lose the land on which they live to a company about whom they know nothing because the state holds that information confidential. By contrast, the Environment Law provides that, on request from the public, the Ministry of Environment (MoE) should provide information on a company’s ‘activities’ and encourage public participation in environmental protection and natural resource management.⁷¹

“Conservation areas are not inviolable”

“When we developed that [system of protected areas] we didn’t know all the potential of our natural resources, our richness...If I accept conservation of this area, a core zone, if we can find a billion dollars for the mining there, how can we exploit these millions of dollars in this area?”

Minister for Environment, Mok Mareth, quoted in *The Cambodia Daily* article ‘Conservation Areas Not Inviolable, Says Minister’.⁷²

“Comments by Your Excellency ... would seem to suggest that all the effort so far committed by the government and conservation organisations may have been in vain.”

Quote from joint NGO letter dated October 31. The letter was a request for a meeting in response to Minister Mok Mareth’s earlier comments (see above).⁷³

The laws on mining become even more ambiguous when applied to mining in areas of land classified as ‘protected’ under Cambodian law in recognition of their high conservation values and biodiversity.

Cambodia’s 23 protected areas were created in 1993 by royal decree. Combined, they cover 32,289 km².⁷⁴ Nominally, the Department of Nature Conservation and Protection under the MoE has responsibility for overseeing these areas.⁷⁵

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In August 2006, the 1994 Prakas on protected areas – under which mining in protected areas had previously been prohibited – was quietly annulled.⁷⁶ As mining in these zones is not explicitly banned under the 2001 Law on the Management and Exploitation of Mineral Resources, this left Cambodia’s protected areas in a legal vacuum.⁷⁷

The lack of legal protection against mining in protected areas was rapidly exploited, and between August 2006 and January 2008, Global Witness noted the start of mining operations in five of Cambodia’s protected areas.⁷⁸ The situation is particularly acute in Mondulkiri Province, a heavily forested area of northeast Cambodia, where a large number of mining concessions have already been allocated. 282,700 ha of these mining concessions are inside protected areas – the equivalent of 21 per cent of the Province’s total protected areas.⁷⁹

Confusion over the status of protected areas should have been cleared by the new Protected Area Law, which was drafted with technical assistance from the World Bank’s ‘Biodiversity and Protected Areas Management Project’ and passed in January 2008.⁸⁰ However, the new legislation appears only to have extended the period of legal ambiguity.

The new law provides for each protected area to be divided into four management zoning systems: a core zone, a conservation zone, a sustainable use zone and a community zone. Under the law, each protected area should first go through a process of zoning its territory; after which it can potentially allow mining activity to take place, but only in those areas classified as ‘sustainable use zones’.⁸¹ Following consultation with relevant ministries, authorities and communities, the Cambodian government may permit development and investment activities in the zone, but only in accordance with a request from the MoE.⁸²

- Discussion over the interpretation of legislation, however, appears to have been rendered academic by the actions of the government. Immediately following the passing of the law, the government granted exploration rights to several mining companies within the protected areas of the Cardamom Mountains and Virachey National Park – some in areas which had previously been classified as core zones of a protected area. In the majority of these cases, the MoE was not consulted, and was unaware of mining plans for the areas.⁸³

When the issue was raised at a meeting between industry, NGOs and the MoE in December 2007, concerned NGOs were told that a national development plan for mining will be produced first, and only after that will decisions be made over which areas should be classified as open to commercial activity.⁸⁴ In other words, the zoning of protected areas will be based on economic rather than ecological values, and the activity will determine the application of the law rather than vice-versa. The impact of this policy is already being felt in a number of crucial protected areas, including, but not limited to, Virachey National Park.

Box 3: Mining in Virachey National Park

Although severely depleted over the years by illegal logging, Cambodia’s protected areas still hold considerable environmental value. Several important flagship species^{vi} occur in significant numbers in Cambodia, as do more species of globally threatened mammals, birds and fish per unit area than in any other Southeast Asian country.⁸⁵

In recognition of this, the World Bank worked with the Cambodian government between 2000 and 2007 on a project geared towards managing these areas more effectively. Known as the Biodiversity and Protected Areas Management Project, or BPAMP, the initiative was supposed to ‘develop an effective national protected areas system that is based on a consistent and well articulated set of management, financial, and institutional procedures’. BPAMP was big in scale – costing nearly US\$5 million, of which the majority was paid for via a loan from the World Bank and a grant from the Global Environment Facility Trust.⁸⁶

The focus area for BPAMP was Virachey National Park, a 3,325 km² protected area which stretches across Ratanakiri and Stung Treng Provinces in north-eastern Cambodia. Virachey is home to a diverse array of both flora and fauna, containing many flagship species such as the Asian elephant and the sun bear, as well as providing the habitat for endangered species including the clouded leopard.⁸⁷ The mosaics of habitats, from upland savannah to fragile mountain ecosystems help create a landscape rich in biodiversity. The park also has important value as a watershed and catchment area. The water from the national park flows into the Sesan and Sekong Rivers, and together with the Srepok River system, accounts for approximately 20 per cent of the Mekong River’s flow.⁸⁸ Furthermore the area is home to a number of ethnic minority groups who depend upon Virachey’s resources for their own livelihoods.⁸⁹

BPAMP’s work there included the drafting of a five-year ecotourism strategy, agreement on the boundaries of four community protected areas and community protected area regulations.⁹⁰ All of this endeavour appears to have been completely undermined however when, in the second half of 2007, the government awarded exploratory rights for 1,800 km² – 54 per cent – of Virachey National Park to a little-known Australian mining company called Indochine Resources.⁹¹

Request from Indochine Resources to the Minister for Industry, Mines and Energy to establish three base camps for mineral exploration in Ratanakiri and Stung Treng Provinces, dated 25 September 2008.⁹²

Instead of expressing outrage that the government had ridden roughshod over the work of a five year, US\$5 million project, a World Bank representative responded with the following statement to the Cambodian media:

“We have raised the issue with the government and initiated a discussion with the Ministry of Environment in an effort to clarify the government’s intention.” The spokesman added, “It is our understanding that the licences issued to Indochine Resources Ltd authorise exploration for, but not exploitation of, mineral resources.”⁹³

^{vi} A flagship species is a species selected to act as an ambassador, icon or symbol for a defined habitat, issue, campaign or environmental cause. By focusing on, and achieving conservation of that species, the status of many other species which share its habitat – or are vulnerable to the same threats – may also be improved.

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As this report went to print, Indochine had begun to build helicopter pads within Virachey National Park to enable geologists to access the area and begin mapping for minerals.⁹⁴

Given the National Park’s identification as an area of great environmental value, and the ensuing US\$5 million investment in preserving that value, Global Witness finds it difficult to understand why the Cambodian government has chosen to open the area to mining exploration, and why the World Bank did not react more forcefully to the threat this presented to the integrity of BPAMP.

Rattanak Stone-Kenertec Mine

The Rattanak Stone mine in Preah Vihear Province is believed to be beneficially owned by General Pol Saroeun, Commander-in-Chief of the Royal Cambodian Army and Chief of Joint Staff. Media reports claim that Rattanak Stone formed a joint venture in 2005 with one of Cambodia’s most powerful companies, Pheapimex, and the Chinese state-owned company China National Machinery & Equipment Import & Export Corporation. In May 2008, Korean company Kenertec announced that it bought 85 per cent of the mine in a joint venture agreement with Rattanak Stone.

Members of the Royal Cambodian Armed Forces (RCAF) are employed to guard the site. Local people have reported early incidents of land grabbing, and fear more may be on their way.

Although there are no known Environmental or Social Impact Assessments for this project, the information available points to rapid transformation of the highly sensitive and environmentally critical Prey Long and Upper Mekong areas into an industrial zone.

The Rattanak Stone Cambodia Development Company Ltd⁹⁵ first came to the attention of Global Witness in 2005 when journalists began reporting on iron mining operations on the northern border of Prey Long Forest in Rovieng District, Preah Vihear Province. According to MIME, Rattanak Stone was granted permission to carry out exploratory iron ore mining in 2004 and 2005 at two sites within Rovieng District – Phnom Koh Keo and Phnom Thmor.⁹⁶ Despite this permission, the unannounced opening of a mine and the subsequent fencing off of a 32 km² area of land came as something of a surprise to the local communities who were living and farming there.⁹⁷

Early ownership

The arrival of the mine caught the attention of the Chinese media due to the involvement of one of China’s major state-owned companies, the China National Machinery & Equipment Import & Export Corporation.⁹⁸ On 20 March 2005, the

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Chinese news-wire Xinhua reported that the China National Machinery and Equipment Corp had decided to cooperate in exploiting an iron mine in Preah Vihear Province, Cambodia. The two Cambodian parties were cited as Cambodia’s Pheapimex Group (Pheapimex) and Rattanak Stone Cambodia Development Co Ltd.⁹⁹

The involvement of Pheapimex, one of Cambodia’s most powerful companies, marked a move away from its main business of logging. Prime Minister Hun Sen is reported to have given his full support to the project at the time.¹⁰⁰

When Global Witness visited the Rattanak Stone site in 2005 and 2008, mine workers, local officials and military personnel guarding the site all said that the Rattanak Stone mine is owned by General Pol Saroeun, Commander-in-Chief of the Royal Cambodian Army and Chief of Joint Staff.¹⁰¹ A worker at one of the mine sites described to Global Witness how General Pol Saroeun visited the site in early 2008. On this occasion the soldiers guarding the site stood to attention and saluted him.¹⁰² Global Witness has previously documented General Pol Saroeun’s involvement in the illegal logging trade in Cambodia.¹⁰³

Commander-in-Chief of the Cambodian Army, General Pol Saroeun, is believed to be the beneficial owner of the Rattanak Stone Company which has been operating an iron mine in Rovieng District, Preah Vihear Province since 2005. More recently, the Rattanak Stone Company has expanded its commercial interests. In August 2008, the company was granted 479 ha of forested land in Pithnou Commune, Snoul District, Kratie Province with a view to conversion into rubber plantation.¹⁰⁴ In September 2008, it was granted a mining concession of 25 km² from which to extract construction stone. This new mine site is situated at Sra Ngam, Kirivorn Commune, Phnom Sroch District, Kampong Speu Province.¹⁰⁵

In summary then, until May 2008, the iron mine in Preah Vihear appears to have been under the control of a Chinese state-owned company, one of Cambodia’s most powerful companies and a company controlled by the Commander-in-Chief of Royal Cambodian Army, General Pol Saroeun.

In May 2008 Kenertec Co Ltd,¹⁰⁶ a South Korean mining company, issued a press release claiming to have concluded a contract to take over 85 per cent of the Rovieng iron mine as a joint venture with Rattanak Stone.¹⁰⁷ It is unclear whether Pheapimex and China National Machinery & Equipment Import & Export Corporation retain shares or whether they pulled out of the venture at this stage. Global Witness has written to General Pol Saroeun, Pheapimex and the China National Machinery & Equipment Import & Export Corporation to ask them about their involvement in the mine. At the time of publication, Global Witness had not received any response.

A source close to the company claimed that it was necessary to pay a ‘bonus’ to start work, and that Kenertec had made an upfront payment of approximately US\$1 million to secure permission to begin work.¹⁰⁸ The legal status of this bonus payment is unclear. Cambodia’s Law on the Management and Exploitation of Mineral Resources makes no mention of bonus payments to secure concessions.¹⁰⁹

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Global Witness wrote to Cambodia’s Ministry of Finance in October 2008 to ask if the money had been received in the national budget, but has not received a response.

Box 4: How much do mining rights cost?

Whilst exploratory mining concessions are being allocated in Cambodia at a brisk pace, there is a lack of clear and transparent procedures for company payments to secure access to these mineral resources.

Under Cambodia’s Law on the Management and Exploitation of Mineral Resources, companies are required to pay the Cambodian state fees for registration, application for suspension, renewal, transfer rights and annual land rental, but the finer details of these payments are not known.¹¹⁰ Global Witness interviewed a Ministry of Industry, Mines and Energy employee in late 2008, and was told that, while standard rates were in place for things such as royalties and tax on companies, these had not yet been approved or finalised by Parliament.¹¹¹ Despite this opacity, income is clearly being generated from the sector. Based on monthly revenue reports provided by the Ministry of Economy and Finance, Global Witness has analysed the contribution Cambodia’s mining sector has made to the national economy over the past six years. According to these figures, between 2002 and 2008, the sector has contributed US\$3 million.

This account is at odds with information given to Global Witness however. On the basis of those few companies from whom information is available, the amount of money entering state coffers should be far higher. Given the lack of transparency surrounding these deals it is difficult to accurately estimate the totals, but based on evidence gathered from a variety of sources, Global Witness estimates the total should be closer to US\$7 million.

An industry analyst interviewed by Global Witness claimed that mining companies wishing to operate in Cambodia pay a standard rate of US\$50,000 for each mining licence.¹¹² Other companies seem to pay more than this. As well as the claim that Kenertec has made a bonus payment of approximately US\$1 million, Australian mining giant, BHP Billiton,¹¹³ has been cited by the Cambodian government as making significant payments in return for exploration rights to a 100,000 ha of Mondulhiri Province in which to explore for bauxite.¹¹⁴

According to an article published in *The Cambodia Daily* on 24 May 2007, Cambodia’s Minister for Water Resources, Lim Kean Hor,¹¹⁵ told the National Assembly that BHP Billiton had paid US\$2.5 million to the government to secure a bauxite mining concession. In the same article, Lim Kean Hor is reported to have described this payment as ‘tea money’, a customary term for an unofficial payment in Cambodia.¹¹⁶

Global Witness wrote to BHP in October 2008 to ask it to confirm whether or not the Minister’s comments were accurate. The company’s response confirmed it has set up a social development fund of US\$2.5 million for Cambodia, but stated: “BHP Billiton has never made a payment to a Cambodian Government official or representative and we reject any assertion that the payment under the minerals exploration agreement is,

or the amounts contributed to the Social Development Projects Fund are, ‘tea money;’”

According to the letter from BHP to Global Witness, the Social Development Programme is “designed to improve the general health, education, culture and welfare of the people of Cambodia ... this money can only be spent on community programmes that benefit the people of Cambodia. BHP as representative for the joint venture partners must authorise any payments and we intend to exercise power of veto in the event that we have any concerns about a potential project.” BHP also confirmed that it had made an additional payment to the Cambodian government to secure access to the minerals concession, stating: “In accordance with the terms of a minerals exploration agreement with the Cambodian government which granted BHP Billiton and Mitsubishi the right to explore for bauxite an amount of US\$1 million was formally paid to the Cambodian government in September 2006.”¹¹⁷

Global Witness has obtained a copy of the Ministry of Economy and Finance’s ‘Tableau des Opérations Financières de l’Etat’ (TOFE), which provides information on annual income to the Cambodian state. According to this document, non-tax revenue from mining concessions in 2006 was US\$443,866.¹¹⁸ If the money appears elsewhere in the TOFE, it is not clear where. This raises questions as to where BHP Billiton’s US\$1 million payment made in September 2006 has gone.

“I see money everywhere. In the trees, in the land, everywhere!”

Kenertec employee commenting on Cambodia’s potential as an investment opportunity in a Global Witness interview, 2008.¹¹⁹

Since the takeover, Kenertec has been enthusiastic about the mine’s prospects. A May 2008 press release stated:

“This mine lot is estimated to have about 200 million tons of iron ore...Kenertec has planned a 2 million ton production plan and expects its annual sales to be at 160 billion won (sold at \$80/ton) and profits to be over 40 billion won each year.”¹²⁰

In other words, they estimate their profits from iron ore at just short of US\$32 million a year.

Other minerals are also present on the site. When Global Witness visited in 2008, investigators observed drill samples taken at the Phnom Thmor site which they were told showed the presence of iron, copper and gold deposits. According to a Kenertec worker, the Phnom Thmor site could hold around two grams of gold per metric tonne. He estimated that gold deposits on this site alone would be worth US\$40 million.¹²¹

The two concessions in Preah Vihear are not the only ones licensed to Kenertec. A 2007 review stated that Kenertec was awarded exploration rights for eight sites in Cambodia, covering 1,520 km².¹²² A company representative told Global Witness the concessions included three in the northwest corner of Cambodia that were thought to contain gems, while the rest were thought to contain iron or gold, or both.¹²³

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Aside from the connection to General Pol Saroeun, there is obvious and extensive military involvement at the mine site. When Global Witness visited the site in 2008, 15 soldiers were employed by Kenertec to guard the mine site, under the leadership of an individual described as the district army chief and known as Mr. Chai.¹²⁴ Kenertec pays approximately US\$1000 directly to Mr. Chai each month, who in turn distributes this money amongst the soldiers.¹²⁵

Since 2005, the mine has developed its operations and a graded dirt access road has been built by Chinese workers.¹²⁶

As of August 2008, the company had begun to build a road to link the Koh Keo and Phnom Thmor sites. At the time of writing, the road reportedly ran up to the edge of rice paddies, but construction had halted for the rainy season to allow the locals to harvest their rice. Residents remained concerned however that the road building would continue after the rainy season ends and their land would be taken without compensation.¹²⁷ In May 2008, community representatives called a meeting with the Deputy District Governor Kieth Kim Toh¹²⁸ to raise their concerns over land grabbing. In the meeting they were told to wait for a solution from the government.¹²⁹ At the time of publication, this had not been forthcoming.

Hongfu-Try Pheap mine

The company responsible for the Hongfu-Try Pheap iron mine appears to be the (Cambodia) Hongfu Try Pheap Mining Development Construction Co. Ltd, which lists among its directors two leading members of Cambodia’s elite – Oknha Try Pheap and Senator Lao Meng Khin. Oknha Try Pheap is a prominent tycoon. Senator Lao Meng Khin is a well known CPP senator and director of the notorious Pheapimex Company.

Members of the Royal Cambodian Armed Forces play a heavy role in guarding the mine site. Local people living in the area surrounding the mine site fear eviction from their homes once company operations expand in the future.

The Hongfu-Try Pheap iron mine is situated in Anlong Phae Commune, Thalaborivat District, in the neighbouring province of Stung Treng. Here too the company’s security is picked from the ranks of RCAF. They exert a heavy presence in the area, with three base camps situated in villages surrounding the site: Anlong Chrea village, Mong village, and Chhveng village. Unlike the mine sites in Preah Vihear, which are in forest and rice paddies, the Try Pheap mine is situated in a populated area. According to NGO workers, people living around the mine area expect to be forcibly evicted from their homes once operations expand in the future; an impression which was only heightened when workers from the site placed cement poles on their land to mark off a site for building in March 2008.¹³⁰

Company registration documents for the Hongfu-Try Pheap Mining company show the company’s director to be Try Pheap: a powerful business tycoon who holds the

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honorary title of *oknha* and a business portfolio which encompasses casinos, island redevelopment and rubber plantations. He has previously been criticised by NGOs for his company’s role in forced evictions surrounding some of these projects.¹³¹

Also named as co-director on the company registration is Senator Lao Meng Khin – one half of the notorious couple which run Pheapimex and also a director of a company called Shukaku Ltd (see [Box 5](#) for further details).¹³²

Box 5: Pheapimex-ploitation

The activities of the Pheapimex Company have been a recurrent feature of Global Witness reports on illegal logging over the past 13 years. Pheapimex, one of Cambodia’s most powerful companies, is led by a married couple close to Prime Minister Hun Sen and his wife Bun Rany.¹³³ The company director, Lao Meng Khin, is a well known senator with the ruling Cambodia People’s Party. His wife, Choeng Sopheap¹³⁴ (better known as Yeay Phu) is a leading member of the Cambodian Red Cross and regularly appears publicly alongside the prime minister’s wife. Both Choeng Sopheap and Lao Meng Khin have previously accompanied Prime Minister Hun Sen on his diplomatic trips to China.¹³⁵

Pheapimex first came to prominence as a logging concessionaire in the 1990s (see [Box 1](#) for further details on the concession system). In a forest industry dominated by illegal logging and conflict with local people, Pheapimex held the dubious distinction of being notorious amongst the concessionaires for its ruthlessness and the level of destruction inflicted upon its concession areas. It has enjoyed a long relationship with the Cambodian armed forces, and has used members of the military to provide security and exert control over its forest concessions.¹³⁶

When donor and NGO pressure led Prime Minister Hun Sen to place a moratorium on concession logging in Cambodia in 2002, Pheapimex was unfazed. In every year between 2001 and 2004, Global Witness caught Pheapimex subcontractors and members of RCAF illegally felling and processing significant volumes of timber in its concession.¹³⁷ Global Witness published details of these activities in June 2004. As a company, Pheapimex has never publicly defended itself, and June 2004 was no exception. Instead, Hun Sen publicly attacked the report, telling journalists that “Global Witness has lied before and today they are lying again.”¹³⁸

In an attempt to obtain an explanation, Global Witness wrote to Hun Sen and his wife Bun Rany in October 2008 to ask for the second time whether they hold any shares or other beneficial relationship with the Pheapimex Company or any of its affiliates. At the time of publication, Global Witness had not received any response.

Since the mid-nineties, Pheapimex has diversified its business portfolio to encompass concessions for pharmaceutical imports, hotel construction and special economic zones.¹³⁹ Through its logging and economic land concessions, Pheapimex controls 7.4 per cent of Cambodia’s total land area.¹⁴⁰ More recently, Pheapimex has become involved in the proliferation of hydropower dams sweeping across Cambodia. Documents obtained by Global Witness name both Choeng Sopheap and Lao Meng Khin as directors of two new dam companies slated to build dams in Kampot Province – Petro Camchin and Sino Hydropower.¹⁴¹

This business empire is now being expanded to encompass mine sites across the country. As well as holding the title of director of Hongfu-Try Pheap mining company, Global Witness investigations show that Pheapimex owner Lao Meng Khin is also the named director on at least one further company engaged in mining; the Zhong Xin Industrial Investment (Cambodia) Co. Ltd. which has a mineral licence to explore in Sambo District, Kratie Province.¹⁴²

Pheapimex owner Lao Meng Khin also holds a directorship of a company called Shukaku Ltd, which is currently engaged in a controversial project to fill Boeung Kak Lake in central Phnom Penh.¹⁴³ The company has agreed a deal to acquire 90 per cent of the lake from the Phnom Penh Municipality on a 99-year lease. According to the Municipality¹⁴⁴ the development will provide “pleasant, trade, and service places for domestic and international tourists”.¹⁴⁵ This development will come at a cost: the homes and livelihoods of thousands of local residents. The UN Office of the High Commissioner for Human Rights in Cambodia claims that around 4,225 families face eviction when the lake is filled in.¹⁴⁶ Residents maintain that compensation offered is below the market value of the land, and that alternative housing from the company is inadequate and far from the city centre.¹⁴⁷ They also claim that they have not been adequately consulted on the deals.¹⁴⁸

According to Vietnamese media and government, the Try Pheap group signed a deal in July 2007 to operate the site jointly with Vietnam’s Coal and Mineral Industries Group (better known as Vinacomin)¹⁴⁹ and the Cambodian company Mom Good Luck Mining.¹⁵⁰ (Vinacomin will reappear in the following section of this report, on Southern Mining). Sources claim that Vinacomin is also planning to build a refinery in the district.¹⁵¹ Global Witness asked both companies to confirm whether or not this is the case. Vinacomin replied, stating the following:

“Vinacomin has only started its activities in mineral investigation and exploration in Cambodia with the permission and support from the Royal Government of Cambodia and its related ministries and agencies. Vinacomin is implementing its investigation and exploration activities while at the same time studying and researching in detail the regulations issued by the Royal Government of Cambodia concerning the mineral extraction industry.”

“All the issues raised by Global Witness are also those that draw our interest. We are in the process of studying and researching these issues, so we do not have adequate information to answer questions from Global Witness.”¹⁵²

Southern Mining

The Southern Mining Company holds a concession to explore for chromium in Phnom Samkos Wildlife Sanctuary. The area in question was previously designated

by the sanctuary’s management as a ‘core’ zone in recognition of its high conservation value. The Ministry for Industry, Mines and Energy has granted permission to explore the area for minerals regardless.

The mine site is heavily guarded by members of the Royal Cambodian Armed Forces (RCAF). A senior guard on site claimed to represent the interests of General Meas Sophea, the commander of the RCAF infantry forces. Guards told Global Witness staff that General Ouk Kosa – the head of Cambodia’s military development zones – is the CEO of the mine.

In 2008, Vinacomin purchased a 70 per cent share of the Southern Mining Company. The beneficial owners of the remaining 30 per cent are not currently known.

The existence of this mine is controversial and its legal status unclear. As such, it exemplifies the tension between protected areas and the emerging mining sector. It lies within the 334,000 ha Phnom Samkos Sanctuary in the western Cardamom Mountains, which stretches across the three provinces of Pursat, Battambang and Koh Kong. As a designated protected area, the sanctuary is nominally under the control of the Ministry of Environment (MoE). The arrival of Southern Mining¹⁵³ therefore caused something of a stir amongst the sanctuary’s management in 2006 when huge trucks carrying bulldozers and tractors began to arrive unannounced in the sanctuary. The heavy machinery was used to stake a 10,000 ha concession claim in Phnom Samkos’ core zone.¹⁵⁴

Rangers blocked

The uneasy co-existence of a mining company side by side with conservation efforts reached a climax on 3 June 2007 when, according to media reports, MoE rangers attempted to enter the mine site to investigate allegations that poaching and illegal logging were taking place on the site. They were barred from entering by RCAF soldiers armed with AK-47 assault rifles.¹⁵⁵ Legally, MoE rangers have a mandate to patrol all areas of the park, but on this occasion they were prevented from doing so by the soldiers, who pulled up in a luxury car, surrounded the rangers and told them to leave, claiming they did not have the correct papers to enter the site.¹⁵⁶

Global Witness wrote to the Southern Mining Company in October 2008 to ask for comment on the incident. At the time of publication, no response had been received.

On visits to the mining concession in 2008, Global Witness investigators were told by the mine’s guards that there are two exploration sites in the area, and that the company was two years into four years of exploration.¹⁵⁷ The guards also stated that geologists are searching for iron, chromium and antimony (a metal used as a hardening alloy for lead).¹⁵⁸ They were told that the site might also have gold or copper, but the main focus has remained on chromium, a mineral used to produce the chrome used in the automobile industry and elsewhere. According to the site guards, if sufficient quantities of chromium are found in the concession, a processing factory will be built on site.

Cambodian soldiers, Vietnamese owners?

Global Witness investigators attempted to visit the Southern Mining concession in mid-2008, but their access was blocked by guards, some of whom were wearing

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RCAF military uniform. The guards had radios which they said were capable of communicating with the head office in Phnom Penh. When asked why they needed to talk with Phnom Penh, the Global Witness team were told by the guards that the company bosses were furious that environmentalists were previously able to access the site and blamed them. Thereafter, the guards have been told to carry radios and to contact headquarters if anyone tried to access the site again.

The site is guarded by approximately 100 RCAF soldiers from Battalion 501. A senior guard on site claimed to represent the interests of General Meas Sophea, the commander of the RCAF infantry forces.¹⁵⁹

Workers at the mine also claimed that General Ouk Kosa – the head of Cambodia’s military development zones^{vii} – is the president and CEO of the mine.¹⁶⁰ Global Witness investigators were given his phone number to obtain permission to visit the site and that of his deputy, Colonel Aoch Chany.¹⁶¹ When Global Witness contacted General Ouk Kosa, he said that the mine had been sold to the Vietnamese, but would not give a name or contact number for the new owners.

According to the soldiers guarding the site, the Southern Mining concession had been previously owned by a Chinese company, and had only been taken over by the Vietnamese owners around April 2008. The guards were pleased with the new arrangements, claiming that the former owners had not paid their salaries on time, while the Vietnamese company regularly paid them US\$150 a month, including medical insurance.¹⁶²

On site visits Global Witness investigators noted that one of the mine employees was wearing a jacket with the Geosimco¹⁶³ logo and Vietnamese writing. Geosimco is a branch of Vietnam Coal and Mineral Industries Group, otherwise known as Vinacomin.¹⁶⁴

In August 2008, *The Cambodia Daily* reported that Vinacomin had bought a 70 per cent share of the Southern Mining Company.¹⁶⁵ The beneficial owners of the remaining 30 per cent are still unclear.

Box 6: The role of Cambodia’s armed forces in the theft of public assets

Among the many serious issues highlighted by these mining case studies is the role of the Royal Cambodian Armed Forces (RCAF) in the misappropriation of public assets. In five of the six mine sites surveyed, there is obvious and extensive involvement of RCAF – either in the provision of private security services to the mine site, or through beneficial ownership of the mine itself.¹⁶⁶

Since the end of Cambodia’s civil war, the government has continued to spend approximately 25 per cent of its limited budget on a bloated army of around 110,000.¹⁶⁷ Global Witness has documented over many years how, despite receiving this sizeable chunk of state funding, members of RCAF are engaged in alternative sources of illicit revenue generation. This applies in particular to those arms of the

^{vii} Cambodia’s military development zones consist of an undisclosed portfolio covering 700,000 ha or almost four percent of Cambodia’s land area.

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military which are loyal to the prime minister – including his own personal bodyguard unit.¹⁶⁸ Over the past ten years, Global Witness and other Cambodian NGOs have extensively documented how revenues from the illegal timber trade and other illicit activities underwrite the military arm of Cambodia’s shadow state. Those involved exploit their capacity to threaten and use armed force to maintain a dominant role in many of the shadier sides of Cambodia’s business world. The institution’s overall profile is that of a vast organised crime network.¹⁶⁹

RCAF’s involvement in the mining industry is unwelcome on a number of fronts. From a human rights perspective, it represents a subversion of organs of state to suit private interests against those of the wider population. The threat of armed force makes it much harder for local communities to assert their rights to the land and resources which may be situated within the mining concession. From a corporate perspective, there is the risk that soldiers guarding the mine will commit human rights abuses. In this case, any payments made by the company that operates the mine could make it complicit in those abuses. From a governance perspective, the armed forces acting as a gun for hire enterprise is also highly undesirable. Once a military force begins to generate its own revenue from private activities, and not from the national budget, these funds undermine the ability of the civilian government to be in command of the military via control of its budget.

Float Asia Friendly Mation

The Float Asia Friendly Mation Company is extracting marble from the protected areas of Phnom Aural Wildlife Sanctuary and the Central Cardamoms Protected Forest (CCPF).

Company registration documents show the mine to be owned by a man named Ching Kimngun. Those interviewed by Global Witness however have a different account. They identified two of Cambodia’s elite – Om Yen Tieng and Dy Chouch – as the mine’s backers. Om Yen Tieng is an advisor to Prime Minister Hun Sen and chairman of the government’s Human Rights Committee. Dy Chouch is the prime minister’s first cousin.

Guards drawn from RCAF ranks are using the threat of armed violence to maintain the company’s position in Phnom Aural and have, so far, fended off attempts by Ministry of Environment rangers to remove them.

“The uplands of Mount Aural sequester one of the most expansive and pristine forests of Indochina. They also sequester a natural ecosystem and ‘biodiversity hotspot’ that is still virtually unknown to science.”¹⁷⁰

Dr J. Andrew McDonald, Plant Resources Center, University of Texas at Austin, 2004.

“Cambodian sculptures draw the attention of tourists. Finely carved sculptures represent the artistic, cultures and spiritual artefacts of Cambodia.”

Quote taken from the Float Asia Friendly Mation company brochure.¹⁷¹

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The Float Asia Friendly Mation marble mining activities are located in Rokat and Santre Communes, Phnom Kravanh District, Pursat Province.¹⁷² According to documents obtained by Global Witness the company has three sites for marble extraction. Two are situated within Phnom Aural Wildlife Sanctuary. The third is within the Central Cardamom Protected Forest.¹⁷³ The company also has a marble processing business depot in Tasai village, Rokat Commune, Pursat Province and a marble depot in Phnom Kravanh town.¹⁷⁴

When Global Witness investigators visited the area in 2008, it was too dangerous to go to the quarry mining sites due to the poor quality of the road to the site and the risk of flash flooding during the rainy season. A company representative claimed Float Asia had brought in Chinese workers to construct a road to the mine site in 2006. The operation was run by an individual named Mr. Ta Tri,¹⁷⁵ who held the nickname of Ta Venta – or ‘grandpa specs’.¹⁷⁶ These workers had cleared the forest but failed to construct a decent road and it had quickly deteriorated. As a consequence of the lack of road infrastructure, even in the dry season, Float Asia is forced to use local labour and oxcarts rather than trucks.¹⁷⁷ Investigators noted that the depot itself still had considerable stock, mining equipment and a sales staff. Customers were observed buying rock and loading it onto trucks.¹⁷⁸

Float Asia’s own brochure is very precise about the legal basis of its operations, stating that it was granted a licence by MIME for an ‘open-pit mining and stone quarry No. 597’ in June 2006.¹⁷⁹

However, MoE staff operating in the area disagreed with the legal basis of the company’s operations, claiming it was operating illegally under the 1996 law on Environmental Protection and Natural Resource Management.¹⁸⁰

Global Witness has obtained a copy of an MoE submission to the prosecutor of the court of Pursat Province concerning Float Asia’s activities which vividly outlines the tensions between these two arms of state. According to the court submission, on 2 March 2008 an MoE ranger mission confiscated one big truck, one tractor and two air compressors from the Float Asia operations.¹⁸¹ As the team was heading back from the site, the Float Asia company representative Mr. Eang Soknai¹⁸² instructed a group of military personnel to stop the ranger team and threatened to open fire on them.¹⁸³ Despite the threats of violence against MoE staff, sources claim that the Pursat Court did not bring a legal case against Float Asia or pursue the allegations outlined in the MoE submission.¹⁸⁴

From interviews with company employees, MoE staff and local residents, it appears that the Float Asia company is controlled and backed by some powerful individuals.

When Global Witness investigators visited the company’s office in Phnom Penh in mid-2008, registration certificates on the wall identified an individual named Ching Kimngun as the company’s owner.¹⁸⁵ However, when asked, a staff member and another official familiar with the company’s operations, identified one of Hun Sen’s advisors and chairman of the government’s Human Rights Committee, Om Yen

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Tieng, as the mine’s major backer.¹⁸⁶ Global Witness wrote to Om Yen Tieng in October 2008 to ask what the nature of his relationship was with the company. At the time of publishing he had not responded. Another source close to the company also claimed an individual named Dy Chouch is a controlling force behind the Float Asia mine (see [Box 7](#) for further details).¹⁸⁷

Box 7: The return of Dy Chouch

In June 2007, Global Witness published *Cambodia’s Family Trees*, an in-depth exposé showing how a well-connected syndicate comprising relatives of the prime minister and other senior officials had run illegal logging operations with complete impunity over a number of years. Dy Chouch, first cousin to Prime Minister Hun Sen, was a key member of this group. As well as illegal logging, the syndicate was also implicated in more mafia-type activities, including kidnapping and attempted murder.¹⁸⁸

In the wake of the report, the patterns of impunity which allowed the members of the Seng Keang Company to carry out illegal logging have continued unabated and unchecked. Instead of investigating the report’s allegations, Cambodia’s authorities responded by banning it, confiscating copies and harassing journalists who reported on its findings. The prime minister’s brother is reported to have threatened that “if they [Global Witness staff] come to Cambodia, I will hit them until their heads are broken.” While a government spokesman promised an investigation at the time, to the best of Global Witness’ knowledge, there has not been any follow-up or prosecutions, nor has any government authority contacted Global Witness directly regarding the allegations.¹⁸⁹

Dy Chouch meanwhile appears to have undergone something of a re-branding exercise. In a *Cambodia Daily* article titled ‘Timber Company Owner Denies Illegal Logging’, Dy Chouch was described as a ‘marble tycoon’.¹⁹⁰

Global Witness has reason to believe that Dy Chouch is a major force behind the Float Asia Friendly Mation mine. A source close to the company’s operations has identified Dy Chouch as another owner or protector of the Float Asia Friendly Mation Company and workers on the site are reported to have seen Dy Chouch on the mine site after the company started operations.¹⁹¹ Global Witness wrote to Dy Chouch in October 2008 to ask whether he holds any relationship with the Float Asia mine. At the time of publication he had not responded.

Koh Kong sand

In 2008, a huge sand dredging operation began in Koh Kong Province. Global Witness estimates the activity to be worth at least US\$8.6 million per year in Cambodia, and US\$35 million per year in Singapore.

There are a number of different sand dredgers and buyers working in the area, but those interviewed claim that the overall operation is controlled by Ly Yong Phat – a well-known CPP Senator and tycoon. As such, the Koh Kong sand dredging business is another example of elite state capture in Cambodia’s mining industry.

The case also further illustrates the role played by regional actors in the exploitation of Cambodia’s natural resources. Evidence collected by Global Witness suggests that the Koh Kong sand is being shipped to Singapore for use in land reclamation and construction.

In early 2008, Global Witness received reports of large sand dredging operations in the estuarine systems of western Koh Kong and the open seas off the coast of southern Cambodia.¹⁹²

When Global Witness investigators visited the area, they found a complex situation with multiple sand suppliers and buyers. The common denominator, however, was that all those interviewed claimed that sand taken from the area was destined for Singapore.¹⁹³

Local people told Global Witness that the bulk of the sand is dredged from a site known as Lam Dam, which is situated approximately 15 km upriver from Koh Kong town in Koh Kong District.¹⁹⁴ Sand is also dredged from the Koh Pao river, at a site in Mondul Seima District around 10 km upriver from Koh Kong town. The companies involved in the dredging at Koh Pao include the Thai-owned Saroon Concrete Part Ltd.¹⁹⁵ and an unnamed Chinese company. Other companies are reported to be dredging in the areas known as Koh Kong Knong and Choy Pros.¹⁹⁶

Two sources in a position to know claimed that two Cambodian-owned companies were heavily involved in the supply of sand: Odom Cement Co. Ltd¹⁹⁷ and the Ly Yong Phat Co. Ltd.¹⁹⁸ It is unclear whether these companies are carrying out dredging themselves or control the operations of others in the town.

Sand is generally taken on 300 tonne barges from the dredging sites to sand depots, where the sand is cleaned and stored for export. Two of these depots lie across the river from Koh Kong town.¹⁹⁹

Global Witness investigators visited these depots in mid-2008. One of the companies visited was Saroon Concrete, the other was a Chinese-owned company which was stockpiling sand.²⁰⁰ Global Witness asked the name of this company, but was told it does not yet have a name.²⁰¹ Workers at Saroon Concrete claimed that sand was transferred from 300 tonne barges coming from upriver to 5000 tonne barges at their depot. In turn, the sand is transferred to 15,000 tonne ships anchored approximately 30 km offshore. From there, these ships export the sand to Singapore for use in land reclamation.²⁰²

Global Witness was unable to obtain a definitive answer on the amount of sand being shipped from Koh Kong. Nevertheless from our own observations and interviews with companies it is clear that the volume is significant, and no limits appeared to be placed on the amount of sand available for export. At one of the depots, workers claimed that they were spending US\$10,000 a month alone on water to clean sand for construction purposes. They also claimed that in three days – working around the clock – they could fill one of the 15,000 tonne ships for exports.

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One of the suppliers quoted the price for sand at US\$11 per metric tonne. At these rates, a 15,000 tonne ship would hold US\$165,000 worth of sand. Given the number of operators working in the area, Global Witness can conservatively estimate that at least one of these ships would be filled once a week. On the rates quoted, this would mean that the annual revenue for the sand industry in Koh Kong is US\$8.6 million.²⁰³ Once in Singapore, the value of sand quadruples; at 2007 Singapore rates, the value of one metric tonne of construction sand is US\$45.²⁰⁴ This would bring the retail value of Koh Kong’s annual sand exports to US\$35 million.

It was less clear who the exporters of sand are. Global Witness visited this offshore transport point and observed two of these Panamanian-registered, 15,000 tonne ships. One of the pair – the Ally II – was being loaded at the time with sand from a 5,000 tonne barge. Staff on board the larger vessel were observed wearing army-style fatigues without any kind of insignias or weapons. When spoken to they replied in Mandarin with a mainland Chinese accent. Global Witness asked permission to board the ship but was refused access. While local residents in Koh Kong town referred to the uniformed workers as ‘the Chinese soldiers’ Global Witness was unable to confirm whether or not they were from China’s military.²⁰⁵

According to reports from local residents and workers, the Chinese are not the only operators exporting to Singapore from Koh Kong. Malaysian and Korean companies were reported to be purchasing sand for shipping.²⁰⁶

Box 8: Singapore – the shifting sands of land reclamation

Singapore is growing fast. Since independence, extensive land reclamation has helped the borders of this small island to expand nearly 20 per cent, and it intends to gain a further 98 km² in the next five decades to accommodate its rising population.²⁰⁷ This is accomplished by land reclamation, which needs huge volumes of sand: much of the 3.8 million tonnes Singapore imports annually is used for this purpose.²⁰⁸ Having exhausted its own supplies of sand in the years following independence, Singapore has had to look elsewhere to meet its sand requirements.

Up until 2007, Indonesia was Singapore’s main supplier of sand. However, in January 2007, the Indonesian government imposed a blanket ban on all sand exports.²⁰⁹ This ban was partly motivated by the serious damage the sand industry has wrought in its coastal areas.²¹⁰ In the Riau Islands near Singapore, where as much as 250,000 to 300,000 tonnes of terrestrial sand a month was being exported, some islands have already disappeared and others have been severely degraded.²¹¹ Sand-mining has depleted fish stocks in Riau, a major problem in a country where fish forms an important element of people’s diets.²¹²

Global Witness wrote to the government of Singapore in October 2008 to ask about its role in sand extraction in Koh Kong Province and received the following response:

“Singapore uses land sand for construction purposes, and sea sand for land reclamation projects. Both types of sand are imported by contractors from other countries. The import of sand is a purely commercial activity and the Singapore Government is not involved. The Singapore Government does not impose restrictions

on where the sand contractors source for supplies, but we expect the contractors to abide by the laws of the source country governing the extraction, processing and transport of sand, as well as environmental regulations. Our trade records show that some of the imported sand used in construction and reclamation projects originate from Cambodia. Singapore ceased imports of land and sea sand from Indonesia since 2007 and 2003 respectively.”²¹³

The Phat of the sand

Thai businessman turned CPP Senator Ly Yong Phat^{viii} is known as the ‘King of Koh Kong’ due to his domination of business enterprise in the Province. His fortune appears to stem from his extensive ownership of casinos and hotels. More recently he has branched out into land ownership and sugar cane production.²¹⁴ This has brought him into the spotlight of human rights groups in Cambodia who have criticised the role played by his companies in the forced evictions of land intended for sugar cane production.²¹⁵

Unsurprisingly, the Koh Kong magnate has taken an interest in this burgeoning sand industry on his front doorstep and industry insiders claim he exerts complete control over the sand sector in Koh Kong. Up until the busy period leading up to the 2008 Cambodian national elections he is reported to have set the industry prices, and acted as the main intermediary for the sand buyers and sand dredgers.²¹⁶

Both the Thai and Chinese depots opposite Koh Kong town are located on land reportedly owned by Ly Yong Phat. He is also said to own a villa and a speedboat kept at the Thai depot.²¹⁷

Senator Ly Yong Phat was described by workers at the Saroon Cement company site as a ‘referee’ for all sand contracts and as the recipient of all payments from the off-shore buyers to the onshore dredgers. The workers claimed that whenever police or other local officials visited their site, they would direct them to the Koh Kong office of Ly Yong Phat.²¹⁸

Global Witness has also obtained documents which show Senator Ly Yong Phat to be the owner of the Ly Yong Phat or LYP Group Company, which two well-placed sources have claimed is involved in the supply of sand.²¹⁹

Global Witness wrote to Senator Ly Yong Phat in October 2008 to ask for comment on these claims. At the time of publication, he had not responded.

The Cham Borey connection

Global Witness also obtained information relating to the ownership of other mining companies beyond those we were able to visit in 2008. This revealed other cases of mining companies beneficially owned or controlled by members of Cambodia’s ruling elite.

^{viii} Ly Yong Phat is also known as Phat Suphapha on his Thai passport.

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Eight Star Mining,²²⁰ Angkor Wat Minerals²²¹, and Elray Resources²²² are examples of this. All three companies list among their directors or shareholders a Cambodian national named Cham Borey.²²³

Cham Borey is the brother of Cambodia’s Minister for Commerce, Cham Prasidh, and personal advisor to the President of Cambodia’s National Assembly, Heng Samrin. Global Witness wrote to Cham Borey and Cham Prasidh in October 2008 to ask for their comments. At the time of publication, neither had responded.

In May 2008, Angkor Wat Minerals was brought by a Nevada-registered company named Elray Resources Inc. Cham Borey however, maintained shares in the enterprise. Both Angkor Wat Minerals/Elray Resources have claimed to hold a portfolio of three prospective gold concessions in Preah Vihear and Kompong Thom Provinces.²²⁴

The Eight Star Mining website states that the company holds a portfolio of several highly prospective, heavily mineralised mining concessions in Cambodia and elsewhere, but does not provide details of where these are situated.²²⁵

Elray Resources and Angkor Minerals are under the directorship of two Australian Nationals named Barry Lucas and Michael Malbourne.²²⁶ Eight Star mining lists Michael Malbourne as a director.

Chapter III: Oil and gas

Whereas Cambodia’s elite primarily stand to gain from the mining industry through direct ownership or beneficial control of mining companies, Cambodia’s burgeoning oil and gas industry has been captured via different means. Here, control of the sector has sprung from constitutionally dubious amendments to national legislation which have had the effect of placing control of the Cambodian National Petroleum Authority – and hence access to the resource – directly in the hands of the prime minister and his deputy. The establishment of these amendments has effectively circumvented parliamentary and public oversight of the industry.

The end result is zero transparency in the process behind concession allocation in the oil industry. What little information there is available has leaked into the public domain, seemingly by accident rather than intent. Some of the companies that have been allocated all or part of oil concessions have little experience in the oil and gas sector, and unproven financial means to exploit the resource. In some cases, it is not publicly known who controls the company or benefits from its activities.

All this adds up to the development of an oil industry over which the Cambodian people – who collectively own this resource – have no say or control.

Legal framework and legislative process

Cambodia’s petroleum legislation is even less developed than that of the mining sector. Technically, the industry is still governed by the 1991 Petroleum Regulations which were passed under the State of Cambodia government, shortly before the United Nation’s Transitional Authority to Cambodia took over on 31 October 1991.^{ix} Under this legislation, the government body in charge of petroleum is the Ministry of Industry, which later became the Ministry of Industry, Mines and Energy (MIME).

Nominally at least, the 1991 Petroleum Regulations require some degree of government and public oversight and transparency in the allocation of state concessions to private companies. The Ministry of Industry is required by the Regulations to issue public notices of bidding rounds for oil concessions and the criteria by which these bids will be judged. These bids should be submitted to the Ministry of Industry which in turn should evaluate the bids on the basis of technical and financial competence. After this process, the bids should be forwarded, with recommendations, to the Cambodian government for approval.²²⁷ If the Cambodian government then decides to approve a bid, the Minister for Industry is authorised to sign the Petroleum Agreement on behalf of the government. The legislation also includes provisions for a Petroleum Advisory Board comprising of a wide cross-departmental government membership.²²⁸

In practice however, the terms of this legislation appear to have been overridden at a later date by the secretive passing of amendments via royal decree. These have the effect of transferring control over the oil resource or fundamentally altering transparency requirements within the original legislation.

Transfers of power

“The Cambodian National Petroleum Authority shall be the permanent institution governed directly by the prime minister.”

Extract from the royal decree on the formation of the Cambodian National Petroleum Authority, 22 January 1998.²²⁹

One example of this transfer of control can be found in the formation of the Cambodian National Petroleum Authority (CNPA) by royal decree on 22 January 1998.²³⁰ Under the terms of this royal decree, all phases of petroleum activities should be coordinated by the CNPA. Article 3 of the royal decree declares that the CNPA is a permanent institution, governed directly by the prime minister.²³¹ In this way, the royal decree transferred responsibility for the oil and gas sector away from the MIME to a new institution under the direct control of the prime minister.

Global Witness wrote to Hun Sen in October 2008 to enquire into the rationale behind this decision. At the time of publication we had not received a response. There has been no official explanation as to why, in 1998, Hun Sen made the decision to transfer

^{ix} There are those who argue that legal texts adopted prior to either the current constitution or UNTAC are invalid, but in practice all manner of legal texts adopted between the fall of the Khmer Rouge in 1979 and the adoption of the constitution in 1991 are followed.

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responsibility for the oil sector away from MIME to the CNPA and himself. Global Witness however, has concerns about the use of the royal decree as a legal tool which has circumvented public and parliamentary debate.

There are various different ways in which laws can be made and implemented in Cambodia. The Cambodian constitution states that legislative power sits with the National Assembly, and that legislative power is not transferable to any other organ or individual.²³²

In practice a number of other legal instruments are used to elaborate and provide implementing mechanisms for laws passed by the national assembly. These include sub decrees, (which go past the Council of Ministers, prime minister and King) and royal decrees (which only go past the King and prime minister).

Typically, when creating a state institution or body which has the authority to award state property or make a state decision that has financial value, Cambodia’s legislative arm – the National Assembly – would pass a law.²³³ The use of sub decrees or royal decrees tends to be reserved for the establishment of less powerful institutions. In this context, the use of a royal decree to establish the CNPA – a powerful state institution in charge of disbursing oil concessions of potentially significant value – is out of keeping with normal practice.²³⁴

In the opinion of legal experts consulted by Global Witness, the transfer of such significant powers to a new organisation by royal decree only, without primary legislation passed by the National Assembly, is not only out of keeping with normal practice but is also constitutionally dubious.²³⁵

Shortly after the establishment of the CNPA in January 1998, the first of two amendments to the 1991 legislation was passed.

This agreed to change the principles of procedures for the public announcement of bids, stating that “the Ministry of Industry may establish alternative procedures for the issue of bid invitation to companies.”²³⁶ In effect, this phrase removed the requirement for the CNPA to hold open bidding rounds for the allocation of the petroleum concessions and opened the door for private, bilateral negotiations.

Bizarrely, the amendment contains a number of inconsistencies. Firstly, it claims to have been signed by Cambodia’s two prime ministers of the time, Norodom Ranariddh²³⁷ and Hun Sen. Six months before the amendment was signed, Hun Sen had ousted Ranariddh in a brutal and violent coup. Global Witness wrote to Ranariddh to ask whether he had signed this legislation, but did not receive any response. Secondly, it refers to the Ministry of Industry as the controlling power, and ignores the newly established role of the CNPA. Regardless of these contradictions, the amendment has been applied to practice, and no open bidding rounds for Cambodia’s oil concessions have taken place since then.

One year later in 1999, a second amendment to the Petroleum Regulations appeared to place the power to decide upon the allocation of petroleum concessions solely in the hands of one individual – Cambodia’s deputy prime minister and chairman of the CNPA, Sok An.²³⁸

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“Following evaluation and examination of a proposal, the Chairman of the Cambodian National Petroleum Authority may execute such agreement, including, without limitation, an option to enter into a Petroleum Agreement, as is considered appropriate for the development of the petroleum resource industry within Cambodia ... Any agreement executed by the Chairman of the Cambodian National Petroleum Authority pursuant to this Article 5B shall be binding on the Cambodian Government in accordance with its terms.”

Extract from Article 5B on ‘Decision on the amendment of the petroleum Regulations 1991 of the Royal Government of Cambodia, No.25’, signed by Prime Minister Hun Sen on 19 March 1999.²³⁹

The combined impact of both is to remove any safeguards in the initial 1991 Petroleum Regulations for the transparent and equitable allocation of Cambodia’s petroleum concessions.

Box 9: Sok An

Sok An is the current deputy prime minister of Cambodia and chairman of the Cambodian National Petroleum Authority (CNPA). Like many of his peers in the Cambodian Peoples’ Party (CPP), Sok An began his career as a bureaucrat during Vietnam’s occupation in the early 1980s and rose to prominence alongside Prime Minister Hun Sen. An astute political operator, he remained by Hun Sen’s side throughout the CPP’s ruthless consolidation of power and is now one of the prime minister’s closest allies. Their relationship was recently strengthened through the arranged marriage of Sok An’s son Sok Puthyvuth to Hun Sen’s daughter Hun Mali.²⁴⁰

Global Witness has written about Sok An previously in his capacity as co-signatory on many of the original agreements for logging concessionaires in Cambodia.²⁴¹ These concession agreements formed the basis of the disastrous destruction of forests which followed, at great cost to Cambodia’s environment and little benefit to Cambodia’s economy.

As the regime’s second-in-command, Sok An holds a number of other important governmental positions, so many in fact that he has been likened to a many-armed Hindu god,²⁴² due to his tendency to have a hand in everything. It came as little surprise then that, when the CNPA was established in 1998, Sok An was elected as its Chairman. Since then he has presided over all contracts awarded to oil companies, acting as the point person for potential investors.²⁴³

One cartoonists view of the many-armed Sok An. He is currently the Permanent Vice Chairman of the Supreme Council for State Reform,²⁴⁴ Chairman of the Council for Administrative Reform,²⁴⁵ Chairman of the National Tourism Authority. He is also Vice Chairman of the Centralist Democratic Institute (CDI), Asia Pacific Institute,; Chief of Apasara Authority, Chief of National Land Dispute Authority, Chief of Cambodia Training Board, Chief of Royal Academy, Chief of Khmer Rouge Tribunal, a member of the Council of Royal Administration and Chief of state Investment Board on Rubber Enterprise.²⁴⁶

Deputy Prime Minister Sok An also finds time to Chair the Cambodian National Scout Association.²⁴⁷

Governing Cambodia’s oil and gas sector: A case of contract law?

Since it became apparent that the development of an oil industry was actually going ahead in Cambodia, donors have rushed to build the capacity of the CNPA and develop a new legislative structure on which to base the industry.²⁴⁸ Three previous donor efforts to draft a petroleum law have failed however, ostensibly due to a lack of ownership on the part of the CNPA.²⁴⁹ Following these attempts the Norwegian Agency for Development Cooperation (NORAD) has been helping the CNPA to develop a petroleum law and associated sub decree.²⁵⁰

When completed, the new petroleum law will need to go in front of the National Assembly for discussion. The accompanying sub decrees are scheduled to pass via the Council of Ministers.²⁵¹ Currently the work is at the stage of conciliation of contracts, laws, and sub decrees to ensure that there is no contradiction between them. According to industry insiders, there is no definite end date in sight for the completion and passing of the legislation into law.²⁵² In the meantime therefore, companies wishing to operate their oil blocks in Cambodia will continue to refer back to their private individual contracts – known as Production Sharing Contracts (PSCs) – as the legal basis for their operations. A ‘Petroleum Agreement’ defines the terms of these PSCs.²⁵³

While this is not uncommon in the oil industry, the lack of public legislation governing the conduct of oil companies does raise concerns in a country with a poor track record in transparency and corruption. In the words of one source close to the CNPA “whilst this is not disastrous, neither is it ideal. Private contracts provide no transparency and the terms between companies may differ.”²⁵⁴

Global Witness understands that fees charged by the Cambodian Government in the PSCs vary depending on the contracting company. In a draft model petroleum agreement^x the following charges were set out. Global Witness has not been able to confirm whether this form of contract was entered into by any of the PSC holders, but understands that the draft is likely to have been used as a model for the final contracts.

Chart 2: Fees requested in the Cambodian government’s draft Petroleum Agreement²⁵⁵

Fee	Amount	Destination of fees
Administration Fee	US\$272,000	CNPA
Education and Training of Cambodian Nationals	Minimum of US\$150,000	CNPA
For Exploration Area during Stage 1 of the Exploration Period	US\$10 per square kilometre of unrelinquished Exploration Area.	Government
For Exploration Area during Stage 2 and 3 of the	US\$20 per square kilometre of	Government

^x To view the full version of the draft Petroleum Agreement, go to http://www.globalwitness.org/media_library_detail.php/693/en/draft_oil_production_sharing_contract

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Exploration Period	unrelinquished Exploration Area.	
For Exploration Area during any additional extension of Exploration Period	US\$40 per square kilometre of unrelinquished Exploration Area.	Government
For a Production Area	US\$500 per square kilometre of unrelinquished Production Area.	Government
For each extension of the Exploration Period	US\$ 1,000	CNPA
For each Production Permit	US\$ 10,000	CNPA
For any adjustment to Production Permit	US\$ 1,000	CNPA
For each extension of Production Permit	US\$ 10,000	CNPA
For transfer of any rights for Petroleum Operations	US\$ 15,000	CNPA
CNPA assistance for survey work	at cost	CNPA
CNPA assistance with boundary location for Contract Area	at cost	CNPA
CNPA shall assign two representatives (or more than two upon Contractor request) on a permanent basis to assist Contractors.	US\$24,000	CNPA
Goodwill payment	US\$300,000	CNPA

On the basis of this petroleum agreement, the CNPA would expect a minimum of US\$746,000 from each Production Sharing Contract in the first year of the agreement. If one assumes that this is applied uniformly and without variation to all six offshore oil blocks, the CNPA and Cambodian government should have already received almost US\$4.5 million in fees from the PSC holders.

Structure of the CNPA: The rift within...

“Transparency is defined very differently by the Director General.”

Industry insider commenting on the lack of institutional transparency within Cambodia’s National Petroleum Authority.²⁵⁶

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Constitutional and legislative matters aside, Global Witness has learned from a variety of sources that there is a serious split at the top of the CNPA which raises serious questions about the way in which power is exercised within the organisation itself.

The CNPA’s Board of Management comprises of the chairman, Sok An; the vice chairman, Ho Vichett; the director general, Te Duong Tara and a legal team.²⁵⁷ The director of the Upstream Division is an individual named Men Den.²⁵⁸ The organisation itself has between 80 and 100 employees.²⁵⁹ Ultimately, employees of the CNPA report to the chairman, Deputy Prime Minister Sok An and he, in turn, reports directly to Prime Minister Hun Sen.

Senior roles are drawn from members of the leading Cambodian Peoples Party (CPP). Global Witness has learned however that a fission within the CPP between Hun Sen and the current Senate President, Chea Sim, is being duplicated within the CNPA. Those loyal to Hun Sen have control of the organisation, meaning that large chunks of the CNPA are cut out of the information flow and decision-making process, effectively leaving them paralysed and unable to fulfil their own roles.²⁶⁰

According to several sources Te Duong Tara, who is pro-Hun Sen, has drafted in administrative staff with few relevant qualifications from outside of the CNPA to assist him with his activities, rather than work with the trained staff that are under the leadership of Men Den, who is pro-Chea Sim.²⁶¹

While donors have been pouring funds into capacity training of upstream and downstream staff within the CNPA, observers claim that in practice, the office of the Director General fulfils all upstream duties, and that the qualified staff of the upstream departments are unable to contribute.²⁶²

Whether or not the division of power is due solely to political affiliations, or whether it stems more from a desire to control information flow – or both combined – the net effect is to marginalise those staff that have the core competencies which would allow the CNPA to function as an effective institution.

Chart 3: Structure of the Cambodian National Petroleum Authority

Where pro-Chea Sim Vice President of the CNPA, Ho Vichett,²⁶³ is given more political duties, such as the drafting of legislation, pro-Hun Sen Director General of the CNPA, Te Duong Tara, is in charge of the contracts and the more commercial side of the business.

A leaked internal ‘Training Needs Assessment’ of the CNPA carried out by the Norwegian consultancy firm, Bridge Group, describes the situation as follows:

“The organisation is not working towards a common goal, and there is distrust between the top leadership and some of the department management. This has led to a situation where the departments are not contributing to the overall objectives of the CNPA, but rather form their own isolated cells with their own limited agendas. In order to circumvent this problem, a secretariat reporting to the Director General staffed with trusted employees has been created, duplicating some of the department qualifications.”²⁶⁴

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Other, slightly less diplomatic industry insiders have described the end result to Global Witness as ‘dysfunctional’.²⁶⁵

Box 10: Pay day politics

Common to the vast majority of civil service jobs in Cambodia, the effectiveness of the CNPA is undermined by the low salary level for employees. Most CNPA employees do not earn a salary sufficient to cover their families’ costs of living. The typical salary for a CNPA employee is US\$45 each month: only 20-25 per cent of what is needed to cover the costs of living.²⁶⁶

For many trained staff within the CNPA, a combination of the politicisation of work responsibilities and these low level salaries mean that they hold second jobs. One observer claimed that some staff only show up in the office on pay day.²⁶⁷ The Bridge Group’s independent Training Needs Assessment again offers a more diplomatic explanation:

“On a typical day, some 30 employees come in the morning and only some 10-12 return after lunch.” “Many employed have received further training...However, they have not had the opportunity to apply the knowledge gained in their daily work, and it has not been developed but instead been continuously eroded. The training has therefore to a large extent been wasted, and this is the source of much frustration among the employees.”²⁶⁸

The lack of adequate funding of salaries for CNPA employees appears out of step with the funding for staff development which, according to the CNPA’s model petroleum agreement, is due to the CNPA each year. This contract states that each oil signatory is required to pay US\$150,000 each year for staff training and development. Given this, the CNPA should currently be the direct recipient of at least US\$900,000 each year for staff training and development.²⁶⁹

It is doubtful whether money paid by investing companies for staff training could be used for salary payments. However, when compared, the disparity between staff salaries and income to the CNPA does raise questions as to the wisdom or rationale of keeping staff wages so low, or what any payments are being used for.

Global Witness wrote to the Director General of the CNPA, Te Duong Tara, to ask what the staff training and development fund is used for. At the time of publication, Global Witness had not received a response.

Information flows?

“If your goal is to have a functioning government agency, you would want to share information.”²⁷⁰

“Information is power.”²⁷¹

Quotes taken from industry analysts when asked why information is not shared within the organisation.

Dysfunctional or not, control over information and power within the CNPA is certainly effective. The division within the organisation means that only a handful of

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individuals at the top of the Cambodian government have any knowledge, or involvement, in the negotiation of contracts signed with petroleum companies.²⁷²

Global Witness has asked the obvious question to a number of individuals acquainted with the CNPA: is this lack of internal communication an outcome of poor management or a deliberate strategy to withhold information? The response has been unanimous.

Those interviewed perceived this as part of a deliberate strategy to divide the institution and maintain a hold on power to allow for corruption. As one industry insider put it:

*“With this kind of set up, it’s easy to see how revenue will be lost.”*²⁷³

Bidding rounds and the allocation of production sharing contracts

In line with the requirements of the 1991 Petroleum Regulations an initial bidding round was announced in 1991. Successful bidders for the offshore blocks included Enterprise Oil, Campex and Premier Oil.²⁷⁴

This marked the last of the open bidding rounds for oil concessions in Cambodia however. Once exploratory licences for those concessions expired, the CNPA began a new round of resource allocation – this time behind closed doors and without any transparent bidding process.

In March 2002, the CNPA awarded offshore Block A to a subsidiary of U.S. oil company Chevron^{xi} and its partners.²⁷⁵ Since that point, the CNPA appears to have allocated all remaining oil blocks to other petroleum companies of varying degrees of experience. None of this information has come into the public domain directly from the CNPA. Instead it has leaked out in dribs and drabs via oil companies, the media and government power-point presentations that have been posted online by other organisations.²⁷⁶

“No question is more stupid than this question”

Deputy Prime Minister Sok An’s response to a query on the management of future petroleum money, reported in *The Cambodia Daily* on 13 November 2007.²⁷⁷

Neither has there been any parliamentary oversight of the allocation of exploration rights. Global Witness has interviewed a number of sources within the National Assembly and close to the CNPA who all claim that there has been no parliamentary oversight or coordination on these decisions whatsoever.²⁷⁸ One source claimed that the scope of discussions to date has only extended to two workshops for parliamentarians, organised and run by the United Nations Development Programme (UNDP) in Cambodia.²⁷⁹

Cambodia’s Ministry of Economy and Finance (MoEF) is the institution which will nominally be responsible for collecting and managing the distribution of potential petroleum revenues. As such, representatives of the MoEF have been attending conferences on petroleum related issues.²⁸⁰ Sources close to the CNPA claim that

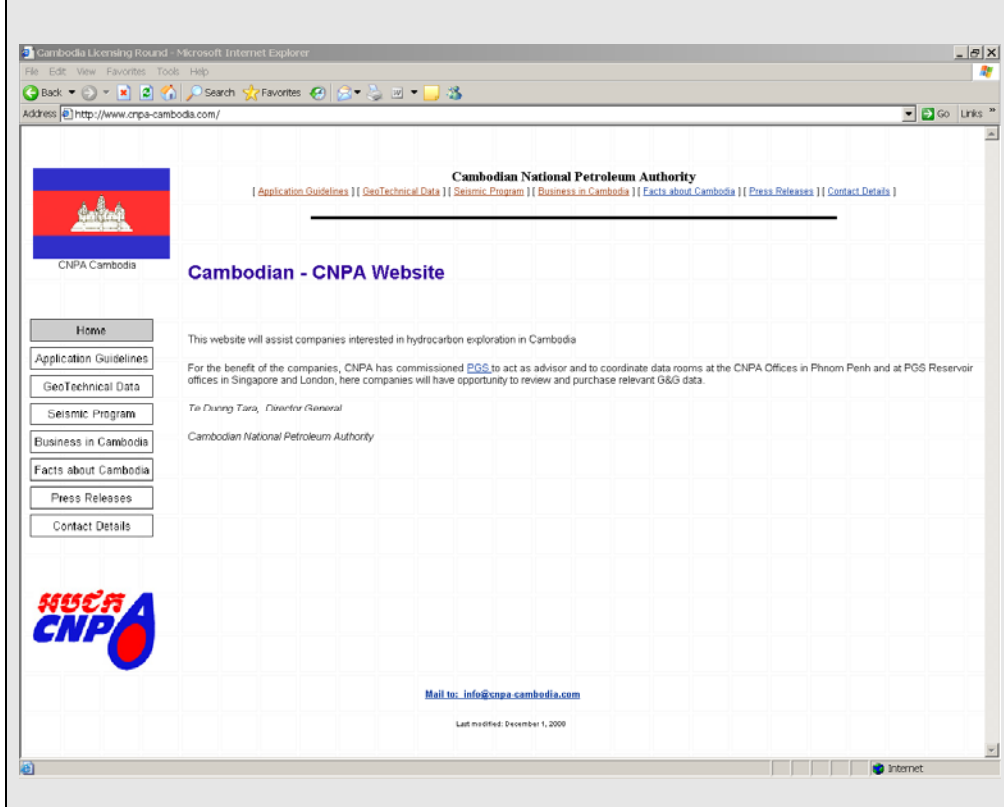
^{xi} Known as Chevron Overseas Petroleum (Cambodia) Ltd. or COPCL.

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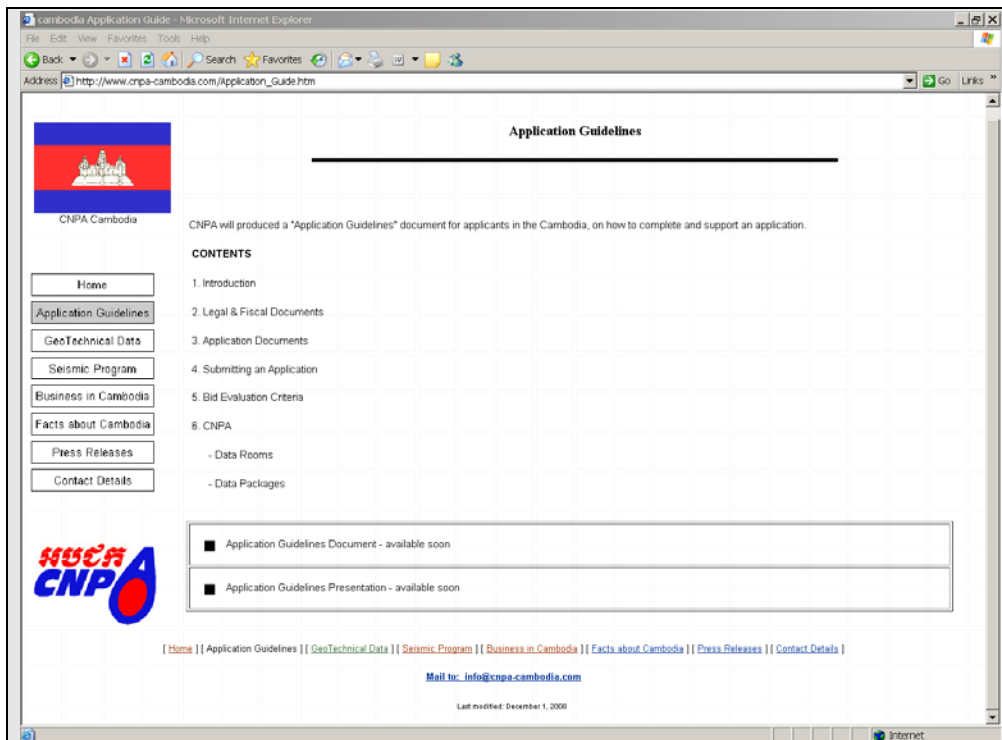
there has been some limited engagement of the CNPA by the MoEF about ensuring that Cambodia’s Tax Law and the petroleum contracts apply the same taxation rates. However, the same sources claim that, in practice, the Ministry is cut out of the CNPA communications loop about future revenue management.²⁸¹

Box 11: New kids on the block?

The CNPA gained a public website for the first time on 25 September 2007 at <http://www.cnpa-cambodia.com>. It is registered to a company called Petroleum Geo Services (PGS) – a company currently carrying out 2D seismic testing in Cambodia’s Tonle Sap region – and appears to be set up to encourage other companies to apply for petroleum concessions in Cambodia.



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As of October 2008 the site contained only the index for an application guidelines webpage: the documents providing information on how to make an application were not yet available. Given that all six (A-F) of Cambodia’s offshore blocks and a handful of onshore concessions appeared to have been allocated by May 2008, the arrival of a public website with this information seems rather late in the day.²⁸²

Global Witness has also learned that the CNPA is currently reallocating old exploration licences for the Thai-Cambodian Overlapping Claims Areas (OCAs).²⁸³ Given that geologists claim the most prospective areas for oil and gas are situated onshore and in the OCAs, allocation of these concessions should be considered a matter of crucial public interest. At the time of publication, no information on the allocation of these resources has been provided by the CNPA or the Cambodian government.

Who is behind the names? The allocation of oil and gas concessions in Cambodia

With the exception of Chevron, the government of Cambodia has not publicly announced the names of those companies to whom it has awarded oil and gas exploration rights. However, despite this reticence, information on who holds what has leaked into the public domain.²⁸⁴

Offshore, all six concession blocks appear to have been sold off to a varied cast of companies. Some are well known in the oil and gas business with track records in delivering oil and gas reserves to the market. Others are less well known, with no apparent track record in the industry. Global Witness has focused its research on these companies with a view to providing further information about them to the Cambodian

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public and to understanding what their involvement in the emerging sector may bring to Cambodia.

Block A

The Production Sharing Contract (PSC) to Block A was awarded to U.S. oil company Chevron in 2002. Chevron’s activities in Block A are the most advanced of all the oil companies currently operating in Cambodia. A five-well exploration and appraisal programme was completed in 2006. This was followed by the exploration and appraisal of four more wells in 2007. As of early 2008, the results were being evaluated. At the time of writing, the CNPA were waiting for a block development plan from Chevron.²⁸⁵

Since then two other companies have acquired a participating interest in the exploration and development project. Chevron now holds 55 per cent, Japanese company Mitsui Oil Exploration Co. Ltd (Moeco)²⁸⁶ holds 30 per cent and South Korean company GS Caltex Corporation²⁸⁷ holds 15 per cent.²⁸⁸ All three appear to be well-established and well-known oil companies with a successful track record in exploration and exploitation of oil reserves.

Box 12: Chevron – the challenge of transparency

International oil company Chevron is a leading member of the Extractive Industries Transparency Initiative (EITI), a coalition of governments, companies and civil society which supports improved governance in resource-rich countries through the verification and full publication of company payments and government revenues from oil, gas and mining. It is also the primary investor in Cambodia’s offshore Block A petroleum concession.²⁸⁹

Although the two commitments are not necessarily conflicting, Chevron’s behaviour to date raises questions as to whether or not its conduct is in keeping with the spirit of the EITI.

Industry insiders claim that Chevron has signed an agreement with the CNPA not to publicly disclose any information regarding its concession.²⁹⁰ Global Witness notes that under Article 27 of the model PSC any contractor is required to treat all data and other information relating to Petroleum Operations or the Contract Area as confidential.²⁹¹

They also claim that Chevron, along with all other companies investing in Cambodia’s petroleum sector, has made an upfront payment – also known as a signature bonus – to the CNPA in order to secure its concession. According to one well-placed source, the company is also paying ‘significant’ sums to the Cambodian government in the form of tax.²⁹²

Global Witness wrote to Chevron in October 2008 to ask for further information on its involvement in Cambodia. The letter also requested that Chevron disclose the amount it had paid to the government of Cambodia as a signature bonus and any other payments made to the Cambodian government. At the time of publication, no response had been received.

Neither the payment of any signature bonus nor the signing of any confidentiality agreement with the government of Cambodia are against the terms of Chevron’s EITI membership. However, they do raise questions as to how deeply committed Chevron is to supporting transparency and good governance in the countries in which it operates.

Block B

Exploration rights are currently held by Thailand’s PTTEP International²⁹³ in a joint venture with Singapore Petroleum Company (SPC)²⁹⁴ and Malaysia’s Resourceful Petroleum Ltd. Each holds a one-third stake. Australia’s Cooper Energy²⁹⁵ pulled out in October 2007, selling its share to its partners for US\$1 million.²⁹⁶

Both PTTEP International and SPC appear to be well-established regional oil and gas companies with operations in a number of countries outside of Cambodia.²⁹⁷ The third company in the triumvirate, Resourceful Petroleum Limited, is less well known. Global Witness investigations found that the company is owned by an individual named Dr. Chen Lip Keong, who is the personal economic advisor to Prime Minister Hun Sen.²⁹⁸ Global Witness wrote to Dr. Chen Lip Keong in October 2008 and received a response from his lawyers in Hong Kong, Richards Butler Reed Smith LLP. They wrote:

“Dr. Chen is aware of Global Witness’ positive work in highlighting natural resource-related conflicts, corruption, environmental and human rights abuses around the world. These are worthy goals that justify responsible investigation and reporting...Dr. Chen has asked us to inform you that he is the ultimate sole shareholder of Resourceful Petroleum Limited. It is public information that RPL is one of a number of members of a consortium formed to explore and extract oil and gas in Cambodia’s offshore ‘Block B’. We are further informed that this is not RPL’s only oil and gas interest...RPL conducts other oil and gas business elsewhere in the world. The Cambodia Block B consortium members are subject to confidentiality restrictions. That said, Dr. Chen informs us that RPL was invited to join the consortium as a financial investor, the operator of which is PTTEP International Limited of Thailand (PTTEP).”²⁹⁹

Dr. Chen Lip Keong is an important figure in Cambodia and across Southeast Asia. He has been awarded several honours for economic services to Malaysia, and is the CEO and largest shareholder in NagaCorp, the company which owns Phnom Penh’s only casino, NagaWorld. NagaWorld has an exclusive licence from the Cambodian government to operate casinos in Phnom Penh until 2035. The company’s 2007 annual report claims its profits rose by over 50 per cent to US\$51.9 million in that financial year.³⁰⁰

NagaCorp has been listed in Hong Kong since October 2006, but its journey to the stock exchange has not been without obstacles. The company tried to join the Singapore Stock Exchange in 2003, but its application was rejected by the Monetary Authority of Singapore which stated at the time: “We are of the opinion that it would not be in the public interest to register Nagacorp’s prospectus. MAS has reservations that Nagacorp’s operations are not subject to a fully developed and implemented legal and supervisory framework for the regulation of casinos and the prevention of money laundering, as recommended by the Financial Action Task Force. Nagacorp also does

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not possess an established track record of independent audits of the effectiveness of its internal controls for addressing money laundering risks.”³⁰¹ The company turned to the Stock Exchange of Hong Kong, where it listed in 2006.³⁰²

Dr. Chen is also the President of a Malaysian-listed property and tourism company called Karambunai Corp Berhad, of which he is the controlling shareholder.³⁰³ The company made a profit of 49.2 million Malaysian Ringgits in 2007 – about US\$14.4 million.³⁰⁴ The jewel in the company’s crown is the exclusive Nexus Resort Karambunai in Borneo, where a room can cost up to US\$350 per night.³⁰⁵ The resort is also home to an international championship 18-hole golf course, where keen golfer and Cambodian Prime Minister Hun Sen enjoyed a round in June 2000.³⁰⁶

It would appear then that one third of Cambodia’s offshore Block B is controlled by a company which is owned by an economic advisor to Hun Sen.

Block C

According to Cambodian government presentations seen by Global Witness, a company named Polytec holds 100 per cent of the rights to explore Block C.³⁰⁷ A press report in May 2008 said that the company intended to start drilling in the area soon.³⁰⁸

Documents obtained by Global Witness suggest that the Polytec company which holds the rights to Block C is the same company as Polytec Asset Holdings Limited, which is incorporated in the Caymans and headquartered in Hong Kong.³⁰⁹

The documents seen by Global Witness show that a Polytec Petroleum Corporation was registered in 2006 with Cambodia’s Ministry of Commerce for the purpose of oil exploration. The directors of this Cambodia-based oil exploration company are Mr. Tommy Lam Chi Chung and Mr. Or Wei Sheun.³¹⁰

According to the Polytec Asset Holdings website both Mr. Lam Chi Chung and Mr. Or Wei Sheun also hold senior management positions with the Hong Kong-based company. Mr. Lam Chi Chung is the Executive Director³¹¹ and Mr. Or Wei Sheun has held the position of Chairman of Polytec Asset Holdings since he acquired a controlling stake in the company in 2001. He now owns 59.5 per cent of the company’s shares.³¹²

Global Witness wrote to Polytec Asset Holdings Limited in October 2008 to ask about the nature of any involvement in Cambodia. At the time of publication, no response had been received.

According to the company’s own information, Polytec Asset Holdings Limited does not appear to have any expertise in the oil and gas business. Instead it says its main business areas are property, ice and frozen products, and finance and investment. The company currently has a number of property development and investment projects in the tiny but wealthy territory of Macau.³¹³ It also owns the Hong Kong Ice and Cold Storage Company.³¹⁴ There is no mention of Cambodia or oil exploration in any of the company’s last five annual reports.³¹⁵ It made a healthy profit in 2007 – HK\$222 million, or US\$29 million.³¹⁶

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Until 2004, Polytec Asset Holdings was known as Kin Don Holdings Limited, and was engaged in the garments industry. It had been in financial difficulties before being taken over by Mr. Or Wei Sheun.³¹⁷ Mr. Or himself is clearly a successful businessman. According to Forbes, he is the 22nd richest man in Hong Kong, with a personal fortune of US\$2.4 billion.³¹⁸ He is also a member of the Chinese People's Political Consultative Conference (CPPCC), an important political body which advises China on national policy.³¹⁹

To summarise, Cambodia’s offshore Block C seems to be held by a company with no obvious previous experience in physical oil and gas exploration and which does not publicly disclose investment in Cambodia in its annual reports. It is not clear to Global Witness why the company was granted the concession or what expertise it will bring.

Block D

Exploration rights to Cambodia’s Block D are perhaps the most opaque of all the concessions. It has been reported in government documents and the Cambodian media as 100 per cent owned by a Singapore-registered company named China Petrotech,³²⁰ a former software company which specialises in providing oil exploration software to clients including China’s major state run oil companies.³²¹ Yet when Global Witness examined the evidence available, it seemed that other companies are also involved. Rather than being the sole operator of Block D, it appears that China Petrotech has bought part of a company which holds the rights to operate the block. China Petrotech changed its name to Mirach Energy in 2008.

According to China Petrotech/Mirach Energy’s own website, the PSC for Cambodia’s Block D was granted to a Cambodian-registered company named China Zhen Rong Cambodia Energy (CZRCE)³²² in April 2006. Under the terms of the PSC, CZRCE has the sole exploration rights to Block D for seven years and production rights for 30 years.³²³ This means that, technically, the rights to explore Block D rest with CZRCE, not China Petrotech/Mirach Energy.

Also in April 2006, China Petrotech/Mirach Energy announced that it had secured an overseas oilfield service contract with CZRCE. Under the service contract, China Petrotech/Mirach Energy would provide technical advisory and project management services for the development and production operations of CZRCE’s offshore oil project in Cambodia.³²⁴ Three months later, on 26 July 2006, China Petrotech/Mirach Energy purchased 48 per cent of CZRCE, making it the largest shareholder in the company.³²⁵ It paid US\$5.8 million for this share. Under the terms of the agreement, once the purchase was complete, China Petrotech/Mirach Energy became the sole operator of Block D.³²⁶

The acquisition of CZRCE by China Petrotech/Mirach Energy raised questions with the Singapore Stock Exchange, which asked China Petrotech/Mirach Energy to clarify what CZRCE actually did and how much it was worth.³²⁷ The company responded that CZRCE “was incorporated in Cambodia to hold an offshore oil and gas field production sharing contract known as Block D PSC granted by the Cambodian National Petroleum Authority,” adding “The net asset value of CZRCE as of 30 June 2006 was US\$5,000.”³²⁸ In other words, the CNPA had signed a PSC with a company

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with no obvious previous track record in oil or gas exploration and – with net assets of only US\$5,000 – no clear financial capacity to explore or exploit any reserves.

Given that CZRCE is not well known, Global Witness attempted to find out more about the company and its owners. Company registration documents obtained by Global Witness show that CZRCE was registered with the Cambodian Ministry of Commerce on 7 April 2006 to a director named Mr. Xiong Shaohui.³²⁹

In late 2008, Global Witness investigators visited the address in Phnom Penh to which CZRCE was registered. No company of that name could be found at the address.

Global Witness has also looked into the ownership records of CZRCE. According to China Petrotech/Mirach Energy, in July 2006 it purchased its 48 per cent share of CZRCE from a Cambodian-registered company named Power Unicorn Investments Limited.³³⁰ This move reduced Power Unicorn’s equity stake of CZRCE to 27 per cent.³³¹ Enquiries by Global Witness did not yield further information on the activities of Power Unicorn Investments or its beneficial owners.

A press release from China Petrotech claims that, subsequent to China Petrotech’s purchase of 48 per cent of CZRCE in July 2006, a company named China Finance Fund³³² holds 5 per cent of CZRCE, while another company named Guangdong Zhen Rong Energy Company Limited holds 20 per cent.³³³ China Finance Fund is a Hong Kong-registered company under the directorship of an individual named Lut Tim Cheng which provides financial services to unknown Chinese customers.³³⁴ Guangdong Zhen Rong Energy is a subsidiary of the Zhuhai Zhen Rong Limited Company which is part of the Zhen Rong Group. The Zhen Rong Group is reportedly one of the five largest state-owned Chinese companies with a crude oil import licence.³³⁵

In April 2007, CZRCE changed its name to China Petrotech Holdings Limited (Cambodia) Co – or CPHL Cambodia.³³⁶

After exploratory drilling in 2007, China Petrotech announced that Block D could contain either 226.9 million barrels of recoverable oil or 496.2 billion cubic feet of gas.³³⁷ Despite these claims however, the company has had a bad few years. Three directors resigned between March 2007 and February 2008.³³⁸ The company’s shares have lost about 90 per cent of their value since September 2007.³³⁹ In April 2007, its auditors KPMG³⁴⁰ declared themselves unable to provide an opinion on the company’s accounts, on the grounds that they could not find evidence of some of the services and customers listed in its financial reports. Their statement claimed they were “not able to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion.”³⁴¹ KPMG pulled out in late 2007, to be replaced by LTC and Associates.³⁴²

Rights to Block D then, comprise one Singaporean oil software services firm and a mysterious Cambodian-registered company set up for the purpose of owning the

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concession, which in turn is part-owned by another unknown company, a Chinese investment company and a Chinese state-owned crude oil import company.

Global Witness wrote to all of these companies in October 2008 to ask them to comment, but at the time of publication had not received any responses.

Block E

In 2006, Indonesian oil company PT Medco Energi Internasional (Medco) was awarded a 90 per cent working interest in Block E, while JHL Petroleum³⁴³ was awarded the remaining ten per cent.³⁴⁴ In 2007 Medco sold 31 per cent of its share to a company named Kuwait Energy.³⁴⁵ Later that year, the Swedish company, Lundin Petroleum³⁴⁶ purchased a 34 per cent share in the Block from all three companies – Medco, JHL Petroleum and Kuwait Energy.

Today then, Cambodia’s Block E is allocated as follows:

Medco (PSC holder)	- 41.3 per cent
Kuwait Energy	- 20.6 per cent
JHL Petroleum	- 4.1 per cent
Lundin Petroleum	- 34 per cent

Global Witness wrote to all four in October 2008 to ask about the nature of their involvement in Block E. Only Lundin responded, pointing Global Witness towards its website for further information, and stating:

“As set out in our press release dated 29 October 2007, which can be found on our website, Lundin Petroleum acquired a 34 per cent non operated interest in Block E, offshore Cambodia from Medco International Petroleum Limited, Kuwait Energy Company, and JHL Petroleum.”

“Following completion of that acquisition, Lundin Petroleum became party to the Petroleum Agreement relating to Block E with Medco, KEC, JHL Petroleum and the Cambodian National Petroleum Authority. Medco is the ‘operator’ of the Block E concession...”

“Lundin Petroleum adopted at its creation a Code of Conduct and developed a Corporate Responsibility framework for ethical issues that may arise in the course of its activities.” It added “While Lundin Petroleum has not formally joined the Extractive Industries Transparency Initiative (EITI), it supports the transparency principle that EITI stands to promote.”³⁴⁷

Lundin did not however, answer Global Witness’ request to disclose the amount of any payments or signature bonuses made to the Cambodian government.

While Medco, Lundin and Kuwait Energy are all relatively well known petroleum operators, far less is known about JHL Petroleum. Further digging by Global Witness investigators found information submitted to the Jakarta Stock Exchange in October 2006 by Medco which stated:

“JHL Petroleum (JHL), a Bahamas company, is a private oil and gas company owned by a group of companies operating in Indonesia and has been participating in several

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international oil and gas tenders including for acquisition of Block L (Offshore and Onshore) and Block M (Onshore) of Brunei Darussalam.”³⁴⁸

Global Witness was also able to secure company registration documents which confirm JHL’s certificate of incorporation in the Bahamas on 22 January 2004. However, Global Witness was not able to find further details on who the group of companies behind JHL are.³⁴⁹

Like CZRCE in Block D, JHL does not appear to have any former track record in oil concession management. The rationale behind the allocation of a concession share to the company is therefore unclear.

Block F

Very little is known about the control of Cambodia’s offshore Block F. However, government documents and newspaper reports suggest that the Chinese state-run oil company, the Chinese National Offshore Oil Corp (CNOOC),³⁵⁰ holds these rights.³⁵¹ The Chinese news service Xinhua claims CNOOC successfully signed for Block F in May 2007 and expressed an interest in signing a second agreement for onshore Block XIII. This is unconfirmed, however.³⁵²

Global Witness wrote to CNOOC in October 2008 to ask it to confirm whether or not the information reported is correct. At the time of publication, CNOOC had not responded.

Block XII

The Indonesian company Medco is the main holder of exploration rights for Block XII. This block is currently being surveyed by a Norwegian-based company named PGS, which in turn is believed to be working as a subcontractor for Medco.³⁵³

The investors behind the exploration of Block XII are Medco with 52.5 per cent, the CNPA with 40 per cent and JHL Petroleum with the remaining 7.5 per cent.³⁵⁴ (For further details on JHL Petroleum see previous section on [Block E](#)). The three year deal – with possible extensions – was signed on 28 September 2007.³⁵⁵

Blocks X and XV

ATI Petroleum (ATIP)³⁵⁶ is a petroleum exploration company. According to its website, it is currently operating in Côte d’Ivoire, Vietnam and Tunisia.³⁵⁷ The company also claims to have reached an agreement in principle with the Cambodian Government to explore for oil onshore in Blocks X and XV, located respectively on the Cambodian coastline and in the north-eastern corner of Tonle Sap Lake. Its website states that the deal will “help build roads, hospitals, schools and enhance the living standard of Cambodians.”³⁵⁸

It is however, unclear at this point whether ATIP has officially been granted rights to explore these blocks for oil and gas. Either way, no information on the company and its potential activities has been provided to the Cambodian public.

Other blocks

Another company which appears to have laid claim to onshore resources in Cambodia is the Guangdong Chenguan Enterprise Investment Group – a private real estate

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developer from Guangdong Province, China. According to an industry news report Guandong Chenguan has signed a contract to explore four onshore blocks for oil and gas. Global Witness has not been able to confirm whether or not this is the case or, if so, where these blocks are situated. According to the news report, the company claims each block is worth US\$10 million and it will consider working with China’s state-run oil and gas companies to explore the blocks. The same report claims that the company’s chairman, Zhang Gouhui³⁵⁹, is also the chairman of the China-Cambodia Enterprise Investment Coordination Committee.³⁶⁰

Comment [g1]: Please check sentence structure and add footnote

Again, it is unclear what previous oil and gas exploration and exploitation experience a real estate property developer will bring to developing any onshore concessions.

Cambodian signature bonuses – Whoever signs the signature gets the bonus

“Whoever signs the signature gets the bonus”

Comment on the nature of Cambodian signature bonuses from a source close to the Cambodian National Petroleum Authority’s operations.³⁶¹

A signature bonus is a one off, upfront payment made by an oil company to a government in return for the rights to explore or exploit oil and has become standard industry practice in many parts of the world. Depending on the prospective buzz around a concession area, the amounts involved can be stunning. BP for example paid a signature bonus to the Angolan government of US\$111,689,000 to secure petroleum Block 31 in 1999.³⁶²

There is a general acknowledgement on the part of oil companies and government sources that signature bonuses have been paid to the CNPA.³⁶³ Government documents confirm that signature bonuses are expected and that they are ‘negotiable’.³⁶⁴ While the amounts involved are likely to be much smaller when compared to the likes of Angola, the sums will still be significant on a Cambodian scale. However, as with the allocation of concessions, information regarding the payment of any signature bonuses is scarce.

One company which has been transparent in its dealings with the CNPA is the Indonesian oil company PT Medco Energi Internasional (Medco) which currently holds 41.3 per cent of offshore Cambodian Block E and 52.5 per cent of Cambodian onshore Block XII.³⁶⁵

On 1 October 2006, Medco announced on its website it had secured rights to explore Block E off the Cambodian coast. In the same statement Medco stated that it had paid US\$4.5 million of ‘Social Development Project Funds’ to the Kingdom of Cambodia.³⁶⁶

On 28 September 2007, Medco once again announced that it had received a concession from the CNPA – Block XII, an onshore area adjacent to the Tonle Sap lake.³⁶⁷ According to Medco’s annual report, the signature bonus paid on this concession was US\$3 million.³⁶⁸

Global Witness has cross-checked this payment with the Ministry of Economy and Finance’s ‘Tableau des Opérations Financières de l’Etat’ (TOFE), which provides

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information on annual income to the Cambodian state.³⁶⁹ The results were worrying. In 2006, the Ministry claims to have received US\$19,300 in non-tax revenues from oil and gas. In 2007, it claims to have received US\$22,000. Over the same period, Medco claims to have paid US\$7.5 million in fees and bonuses to the Cambodian government.³⁷⁰ If the money appears elsewhere in the TOFE, it is not clear where. This raises questions as to where the Medco payments has gone. Global Witness wrote to Medco in October 2008 to ask the company to clarify who it had paid. At the time of publication, the company had not responded.

Other companies are reported to have been asked to make less legitimate payments to secure rights to explore a concession. In October 2005, Indocan Resources Inc. of Vancouver, Canada announced that it had filed applications with the Cambodian government for the exploration rights to coastal and offshore areas.³⁷¹ The company never completed the application to explore and, when interviewed in the *Bangkok Post* one year on, company president Jeffrey Bruhjell said Indocan had tried to obtain two permits, but was told that high-ranking officials in the Cambodian government were demanding “large sums of money as bribes.” He added that the company “was asked to pay huge sums of money for permits that never materialised.”³⁷²

Global Witness has written to all of the companies it believes have been allocated exploratory blocks in Cambodia to ask whether they have paid a signature bonus and if so, how much and to whom? At the time of publication, none had responded.

Thump if you love oil: Exploring onshore in Battambang and Pursat

Most of the attention given to Cambodia’s oil and gas exploration has focused on the offshore blocks, but onshore exploration has also begun around the Tonle Sap Basin – a vast area surrounding the Tonle Sap Lake which comprises parts of seven onshore Blocks numbered XI to XVII.³⁷³ Surveys done in 1996 by the Japanese National Oil Corporation show areas where oil or gas may be present to the south and the west of the Tonle Sap, but more tests are needed to determine exactly what lies below Cambodia’s Great Lake and rice paddies.³⁷⁴

The lake is one of the most important natural phenomena of Cambodia in terms of the ecological and livelihood services it provides. As well as being the largest freshwater lake in Southeast Asia the Tonle Sap is a designated UNESCO Biosphere Reserve³⁷⁵ and has been nominated for World Heritage status.³⁷⁶

Despite legal protection under the 2001 Royal Decree on the Establishment and Management of the Tonle Sap Biosphere Reserve,³⁷⁷ this fragile biodiversity hotspot is under threat from a variety of man-made factors. Overpopulation in the area is severe, with approximately 1.2 million people living in the floodplain alone³⁷⁸ and the highest rate of poverty in Cambodia, according to the Asian Development Bank.³⁷⁹ The deterioration of the Tonle Sap’s ecosystem is already beginning to show: soil and water quality have declined and there are fears that the Tonle Sap’s fish stocks are decreasing.³⁸⁰ The consequences of any reduction could extend to food security throughout the whole of Cambodia, as the estimated 230,000 tonnes of fish caught in the Tonle Sap every year amounts to 40-70 per cent of the country’s annual protein intake and is an essential source of food and livelihoods for around two million Cambodians.³⁸¹

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Despite concerns about its potential environmental impact, the Cambodian government has begun to allocate licences for oil exploration in the Tonle Sap Basin.

In the first half of 2008, the Norwegian company Petroleum Geo-Services (PGS) conducted two-dimensional seismic testing along roads in Battambang and Pursat Provinces. PGS was working as a subcontractor for the Indonesian company PT Medco Energi Internasional (Medco) which, as explained earlier, is the main holder of exploration rights for Block XII.

According to information obtained by Global Witness, the survey in Battambang and Pursat Provinces covered the districts of Banon, Sangkai, Mong Russei, Koh Kralor and two communes within Svay Doan Keo District.³⁸² However, seismic testing could extend further than this. Most of the surveying was conducted well away from the Tonle Sap Lake – which lies about 40 kms from Highway 5 – but one PGS company official commented that “the lake was also of interest.”³⁸³

The testing involved laying out a 5 km-long tangle of wires alongside stretches of Highway 5 and the smaller roads running off the highway. Small sensors were inserted into the ground at intervals of 10-20 meters. Once the cables and sensors were in place, a ‘thumper’ mounted on the back of a small truck drove slowly along, stopping at each sensor to slam down a heavy square block.³⁸⁴ This low-impact method provides data which will tell if there are petroleum reserves underground.

While no official results have been released, there is excitement amongst locals that a major oil discovery is, quite literally, just around the corner. A commune chief in Pursat Province who accompanied the international testing team, was told by a company representative to expect investment of US\$1 billion in the area, including new roads.³⁸⁵ Local officials who spoke to Global Witness welcomed the potential oil boom, thinking it would lower the price of petrol and provide jobs.

Despite the government’s involvement in facilitating the exploration at a national, provincial, district and commune level, there seems to have been little consultation with the community. Some residents were concerned about the possibility of future drilling causing an earthquake, and approached their commune chief. They were assured that any liquid removed from the earth would be replaced with water and that there would be no environmental damage.

The next stage of testing involves drilling and Cambodian officials have already given PGS permission to extend their survey into the rice paddies after the harvest in late 2008.³⁸⁶ As of mid-2008, there had been no community consultation about this development, but one commune chief thought public forums might happen some time in the future.

Given the instability of its ecosystem, the development of the extensive infrastructure needed to extract and transport fossil fuels could pose a serious hazard to the Tonle Sap Basin. However, despite concerns among environmental groups, the government has so far appeared reluctant to take its potential impact seriously.³⁸⁷ According to the official in charge of the management of the Tonle Sap’s oil reserves, the government “will make sure there is no pollution” during exploration.³⁸⁸

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Global Witness is concerned that the CNPA does not have the capacity or experience to ensure that future exploitation of oil or gas within the Tonle Sap Basin is safe or efficient. In other countries, such as Nigeria, the results of mismanagement have been environmentally disastrous. Given the weak governance structure of Cambodia’s oil industry to date, the question of environmental safeguards in an area so essential to Cambodia’s health must be urgently addressed.

In summary then, the marketing of Cambodia’s oil and gas concessions is now well underway, with all of the offshore and some of the onshore blocks allocated to companies. Global Witness’ concern is that, in a country notorious for corruption, not enough is known about the beneficial ownership of some of these businesses and, with several of them, it is unclear what skills and capabilities they will bring to allow for the development of Cambodia’s young oil and gas industry. As with the mining sector, the danger is that this void in even such basic information leaves the country’s important resources potentially open to capture by individuals for personal gain rather than national benefit.

Chapter IV: Cambodia’s donors – who do they work for?

“Good governance is essential for sustainable development. Sound economic policies, solid democratic institutions responsive to the needs of the people and improved infrastructure are the basis for sustained economic growth, poverty eradication and employment creation... Fighting corruption at all levels is a priority. Corruption is a serious barrier to effective resource mobilization and allocation, and diverts resources away from activities that are vital for poverty eradication and economic and sustainable development.”

Quote taken from the Monterrey Consensus, International Conference on Financing for Development, March 2002.³⁸⁹

“With aid-giving comes the responsibility to ensure that it helps the people... It is not sufficient to rely on technical assistance and capacity building, or emphasize adherence to human rights treaties and protocols (useful as these are). Nor are new laws or suddenly created institutions the panacea, for the Government has disregarded laws, or through abuse, turned them to its own partisan advantage.”

Quote taken from a 2006 statement to the UN’s Human Rights Council by Special Representative of the Secretary-General for Human Rights in Cambodia, Yash Ghai.³⁹⁰

The way in which international development aid is given and used is changing. There is now a consensus at the international level that good governance is essential for sustainable development and that fighting corruption at all levels is a priority to increase the effectiveness of aid. As the vast majority of government and multilateral aid agencies now profess to have the reduction of poverty and inequality at the heart of their mandates, one would therefore expect issues of governance and corruption to be central to their application and disbursement of development aid.³⁹¹

Yet the donor community in Cambodia appears ill-prepared or reluctant to apply this policy. Instead, there is a fundamental disconnect between commitments made at the international level and the action of Cambodia’s donors at a national level. Cambodia’s international donor community has consistently failed to bring the government to book for blatant violations of its commitments to protect the human rights of Cambodians, fight corruption, and ensure the protection of land and natural resources.

“In the context of the reconstruction effort, economic aid should benefit all areas of Cambodia, especially the more disadvantaged, and reach all levels of society.”

Point 4 of the United Nations Declaration on the Rehabilitation and Reconstruction of Cambodia, 23 October 1991.³⁹²

Having committed to bankroll Cambodia’s post-conflict rehabilitation, the country’s international donors have provided the equivalent of over 50 per cent of the government’s annual budget for more than a decade now. This peaked in 2008 with pledges to provide nearly US\$1 billion in aid.³⁹³ The money has undeniably done much to rebuild the country’s infrastructure and help provide essential services, yet its impact has been limited by poor governance and corruption.

“Reform is not just a shallow word.”

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Quote taken from Hun Sen’s speeches to the country’s international donors in 2004, 2005 and 2007.³⁹⁴

In the 1990s, turning a blind eye to poor governance and corruption was justified by the need to ensure ‘stability’. From stability would flow economic development, and in turn political pluralism would follow.³⁹⁵ The past sixteen years have revealed the impotence of such logic. With each successive failure of the donor community to ask tough questions and deal realistically with the regime’s failure to honour commitments to good governance, those responsible have increased their political power, wealth and impunity. The end result is that ordinary Cambodians find it harder and harder to call their government to account and the benefits of Cambodia’s development remain concentrated in the hands of a few.

Box 13: Missing in action – Cambodia’s anti-corruption law

One of the most striking examples of the donors’ inability to tackle government intransigence is the long-awaited anti-corruption law. Originally drafted in 1994 and tabled as an agreed donor-government target in 2002,³⁹⁶ the government has succeeded in failing to pass the law for 14 years, blaming slow progress on the lack of an updated penal code.³⁹⁷ Despite the year-on-year failure to move ahead with the law, Cambodia’s donors have continued to give money without making it a non-negotiable requirement for the disbursement of non-humanitarian funds.

In August 2008, government spokesman Khieu Kanharith announced that the long-awaited draft of the anti-corruption law was finalised and would be given to the National Assembly in the following months – but only after the penal code has been approved. This draft penal code is currently under review with the Council of Ministers. As of September 2008 however, only 40 of the 700 articles had been examined by the council.³⁹⁸ Despite the government’s pledges of the past fourteen years, the anti-corruption law is still a distant prospect.

To be or not to be? The Extractive Industries Transparency Initiative (EITI)^{xii}

The lack of a coordinated donor response to effectively deal with high-level corruption vis-à-vis donor giving can already be seen in the donors’ approach to governance of Cambodia’s extractive industries. In June 2007, Global Witness held a meeting with members of the donor community in which they were told that government endorsement of the EITI was to be made a non-negotiable benchmark of a direct budget support package.³⁹⁹ In November 2007, Global Witness attended a meeting at which the same donor admitted that the requirement to endorse the EITI had been watered down to an ‘agreement to consider endorsing the EITI’.⁴⁰⁰ In October 2008, it was announced that the government had decided not to join the initiative.⁴⁰¹ Global Witness has raised this with members of the donor community, to be told that the government is now working towards the broad financial principles of the initiative, but to use the term EITI is too politically sensitive and they fear

^{xii} The Extractive Industries Transparency Initiative (EITI) is a coalition made up of governments, companies, civil society groups, investors and international organisations. The initiative supports improved governance in resource-rich countries through the verification and full publication of company payments and government revenues from oil, gas and mining. Information on the Extractive Industries Transparency Initiative is available at: www.eitransparency.org

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pushing the government too hard on the issue will lead them to walk away from the table.⁴⁰²

Chart 4: How to give money and still not influence people

Year	Agreed reforms	Progress towards reform targets	Donor comments	NGO comments	Media comments	Cambodian government comments	Aid requested by the government	Aid given by the donors ⁴⁰³
2002	Set in 2001 ⁴⁰⁴ - Anti-corruption law adopted - Forest law adopted and completion of negotiations with concessionaires - Adoption of land law	- Anti-corruption law not passed. ⁴⁰⁵ - Continued impunity and high level corruption. ⁴⁰⁶ - Chaotic forest/natural resource management. ⁴⁰⁷	UK – “Overall disappointing progress against the action points agreed at the 2001 [meeting] [The] pattern of increased donor support should not be regarded as a given. We need to see that Government is doing its part [...] The passage of an anti-corruption law is still awaited.” ⁴⁰⁸	NGO Forum – “The progress in policy has not translated into progress in impact [...] Corruption and the culture of impunity remain rampant.” ⁴⁰⁹	- “[Analysts] warned [that] the slow pace of reforms, endemic corruption and a failure to try surviving Khmer Rouge leaders was testing donor patience, and could result in conditions being attached to aid for the first time.” ⁴¹⁰	Hun Sen – “The Royal Government is committed to finalise the draft of the anti-corruption law before end June 2003.” ⁴¹¹	US\$485 million	US\$530.9 million
2003	No meeting held							US\$539.5 million
2004	Set in 2002 ⁴¹² Anti-corruption - ‘Reported cases of corruption investigated and prosecuted appropriately within existing legal framework.’ Due immediately. - ‘Anti-corruption law submitted to National Assembly.’ Due 30 June 2003. Concessions	- Anti-corruption law not passed. ⁴¹³ - Very limited action on corruption. ⁴¹⁴ - Suspension of forest concessions, but continued	World Bank – “Corruption is endemic [...] The volume of bilateral and multilateral donor support needs to be conditioned on the adequacy of Cambodia’s	NGO Forum - “NGOs feel there are currently a proliferation of plans, policies, and strategies in circulation. The challenge at this point is to ensure that these plans	- “Despite the government failing to fulfil many previously set benchmarks, international donors pledged US\$504 million dollars in aid to Cambodia for	Sok An -- “ [The anti-corruption] law will be resubmitted to the National Assembly and the Senate as a matter of urgency.” ⁴²⁰	US\$500 million ⁴²²	US\$555.4 million

Country for sale – how Cambodia’s shadow state has captured the country’s extractive industries and other public assets

	<p>- ‘Public disclosure and opportunity for independent experts [to] comment on Sustainable Forest Management Policies and Environmental and Social Impact Assessments prior to finalisation of Government review.’</p> <p>Information disclosure</p> <p>- ‘Increased transparency of terms of Government contracts.’ Due immediately.</p>	<p>illegal logging.⁴¹⁵</p> <p>- Poor implementation of existing policies and laws.⁴¹⁶</p>	<p>reform effort.”⁴¹⁷</p>	<p>are being implemented [...] How confident are donors that funds are being used efficiently and have a positive impact on improving livelihoods, rather than being used to support unnecessary technical assistance, fuel corruption and widen social inequity?”⁴¹⁸</p>	<p>next year, but warned that future support will directly hinge on real changes in 2005 [...] ‘It’s a repackaging of the same old system that hasn’t seemed to work before,’ said one Phnom Penh based diplomat involved in the CG meeting.”⁴¹⁹</p>	<p>Hun Sen – “Reform is not just a shallow word”.⁴²¹</p>		
2005	No meeting held							US\$610 million
2006	<p>Set in 2004⁴²³</p> <p>Anti-corruption</p> <p>- ‘Reported cases of corruption shall be brought before the courts for investigation and hearing.’</p> <p>- ‘The existing draft law on anti-corruption shall be brought into compliance with international best practice.’</p> <p>Concessions</p> <p>- ‘Enforcement of Article 18 of Land Law, that private sales transactions on state lands are illegal.’</p> <p>- ‘Increase transparency of state management of natural resources</p>	<p>- Anti-corruption law not passed.⁴²⁴</p> <p>- Partial disclosure of information on concessions, but limited detail.⁴²⁵</p> <p>- Illegal logging and land grabbing continued.⁴²⁶</p>	<p>Germany – “The still unsolved problems of land grabbing and land speculation are of great concern [...] We hope the information provided on economic land concessions will be quickly followed up with more complete disclosure.”⁴²⁷</p>	<p>NGO letter to CG attendees – “there has been an increase in the misuse of natural resources and other public assets by elite families and crony companies.”⁴²⁸</p>	<p>- “The request was for US\$513 million, but the pledges amounted to US\$601 million,” said Finance Minister Keat Chhon.⁴²⁹ [...] “Donors have praised the achievements under Prime Minister Hun Sen.”⁴³⁰</p>	<p>Hun Sen – “A draft of the anti-corruption law [...] is in its final stages of consideration within the government before being sent to the National Assembly.”</p> <p>- “Reform is not just a shallow</p>	US\$513 million	US\$713.2 million

Country for sale – how Cambodia’s shadow state has captured the country’s extractive industries and other public assets

	<p>through immediate public disclosure of existing contracts and compliance status (royalties and other key provisions) of contracts governing economic land concessions, mining concessions, fishing lots and continued disclosure of status of review of forest concessions.’</p> <p>- ‘RGC [to] disclose the location and legal status and process for termination of mining concessions, military development zones, economic land concessions and other development arrangement situated on forest land or in protected areas and inconsistent with law governing management of these areas.’</p> <p>Information disclosure</p> <p>- ‘Public authorities must change current practice by displaying a preparedness to share information with the general public.’</p>					word.” ⁴³¹		
2007	<p>Set in 2006⁴³²</p> <p>Anti-corruption</p> <p>- ‘Finalise and approve anti-corruption law, based on best international practices.’ Due end June 2006.</p> <p>Concessions</p> <p>- ‘Periodically disseminate information on economic land concessions’. ‘[Disseminate] all relevant sector information on the activities of government agencies, including information on mining concessions and military development zones, as well as donors and NGOs by periodically</p>	<p>- Anti-corruption law not passed.⁴³³</p> <p>- Limited transparency on the awarding of ELC contracts.⁴³⁴</p> <p>- Poor management of natural resources.⁴³⁵</p>	<p>World Bank representative – “We are very concerned that provisions for transparent bidding on ELC contracts are being circumvented.”⁴³⁶</p>	<p>President of Cambodian Human Rights organisation Licadho – “The meeting has become a routine. We know that nothing will change. There will be promises from the government – the same promises as last</p>	<p>- “I worry that maybe the time for being firm with the government has passed”, said one source with extensive experience of donor-government meetings, who requested anonymity. “I worry that the</p>	<p>Hun Sen – “The Royal Government is committed without any hesitation to fighting corruption by undertaking many concrete actions to meet this objective including the drafting of the</p>	<p>US\$689 million⁴⁴⁰</p>	<p>US\$790.4 million</p>

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	<p>postings on the Technical Working Group-Forest and Environment website.’ Due 4th quarter 2006</p> <ul style="list-style-type: none"> - ‘Strengthening the enforcement of the Forestry Law, especially combating forest land clearing and encroachment’ <p>Information disclosure</p> <ul style="list-style-type: none"> - ‘Develop a clear policy framework on access to information’. Due December 2006 			<p>year – and after the meeting everything will remain the same.”⁴³⁷</p>	<p>donor community have missed their opportunity now [...] A year on and the anti-corruption law is still languishing in draft form, judicial reform is progressing at a glacial pace, and the government’s management of natural resources is being lambasted from all sides.”⁴³⁸</p>	<p>anti-corruption law itself.”</p> <ul style="list-style-type: none"> - “Reform is not just a shallow word”⁴³⁹ 		
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The complexities of partnership

Over the years, Cambodia’s donors have cited multiple justifications for not insisting that the government implement reforms which would be in the interests of the Cambodian people. Most recently they have argued that taking a stronger stance on governance will push Cambodia further into the pockets of its biggest donor – China. Yet the Western donors’ eagerness to accept and use this argument overlooks the fact that China, despite its generosity, cannot offer the Cambodian government the international respectability it seeks. In practice, the ‘China factor’ has become a convenient short-hand to be used to explain away a number of complicated geopolitical and bureaucratic factors which are prioritised over the need to improve governance.

The reality is that, as the initial horror of the Khmer Rouge regime has faded from power brokers’ memories, Cambodia has slid further and further down the international league table of current crises. Diplomats sent to Phnom Penh know they will not be thanked for rocking the diplomatic boat and calling on the time of their seniors back at headquarters. Practically too, Cambodia is not the biggest priority for many of those in the civil service who have the whole of Southeast Asia – an area which includes a number of needy states – within their remit. Cambodia, and the suffering of its people, are therefore often placed low on the ‘to do’ list, beneath the atrocities of the Burmese junta, and the latest natural disaster to hit the Indonesian archipelago.

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Conclusion

To date, much of the debate on Cambodia’s emerging extractive industries has centred on how much money will be generated for the state by this activity and how this money could help to lift a generation out of poverty. This is based however on the false assumption that revenue flows generated from mining, oil and gas will automatically be translated into cash for development. Global Witness’ experience of natural resource management in Cambodia and elsewhere paints a different picture. In many resource-rich countries where Global Witness works, resource exploitation has contributed to a deepening, not lessening, of poverty. In all of these cases, the way in which concessions are allocated and access to resources is given, sets the trend for the future management of that same resource.

Experience of Cambodia’s forest sector hardly sets an encouraging precedent. The country’s forests – previously termed by the World Bank as Cambodia’s “most developmentally important natural resource” – have been steadily degraded over the past decade. Very little of the revenue generated ever made it to the state’s coffers. Instead, it enriched a ruling elite who raided and logged the forests with impunity.

It does not take an expert in governance to appreciate that the first signs of how Cambodia will handle its mineral and oil resources are deeply worrying. The government lacks the proper mechanisms for regulating exploration and extraction, and in some cases has deliberately subverted those that were in place. The small number of elite powerbrokers who run the state have sold off large concessions in a manner that is non-transparent and highly dubious. The legitimacy and technical capabilities of some of the companies who have bought these concessions is uncertain. Meanwhile, the risks to the environment and the people who live on the land are enormous. Everything about the way in which access to these resources has been allocated and managed so far suggests an entrenchment of patterns of exploitation geared more towards the profits of individual officials and companies rather than poverty reduction.

All is not lost however. Extraction of these resources has not yet begun in earnest and, until it does, there is a narrow window of opportunity to get things right. As a first step, there needs to be a moratorium on any new concessions, a review of existing concessions, and full transparency on the allocation and management of these public assets. Yet technocratic fixes will only provide a partial solution. The real challenge comes in generating the political will from the country’s international donors to challenge some of the entrenched interests which are currently being served by the status quo: a political will that has been singularly lacking to date.

A consistent failure on the part of Cambodia’s donors to demand improvements in governance in exchange for the disbursement of funds has only served to legitimise and strengthen the process of state asset stripping. The resulting total lack of transparency in the ownership of companies with the responsibility to handle public assets and the destination of payments made to secure these concessions, serves only one purpose – to protect and entrench the interests of those who benefit from the continued functioning of Cambodia’s shadow state.

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It is not too late for the international donors to redefine their terms of engagement with Cambodia, but it will require a fundamental shift in mindset to go beyond the sanitised rhetoric of good governance. The core of this shift must be a recognition that stripping a country of its assets for personal gain represents a mass violation of the social and economic rights of the country’s people.

It is time to decide whether Cambodia’s people will be able to share in its natural resource wealth or whether a self-serving kleptocratic elite will once again keep the spoils of a country for sale.

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Abbreviations

ADB	-	Asia Development Bank
BPAMP	-	Biodiversity and Protected Areas Management Project
CDC	-	Council for the Development of Cambodia
CDCF	-	Cambodia Development Cooperation Forum
CG	-	Consultative Group
CNPA	-	Cambodian National Petroleum Authority
CPP	-	Cambodian People’s Party
EITI	-	Extractive Industries Transparency Initiative
ELC	-	economic land concession
ESIA	-	environmental and social impact assessment
FA	-	Forest Administration
ha	-	hectare
IMF	-	International Monetary Fund
km	-	kilometre
MAFF	-	Ministry of Agriculture, Forestry and Fisheries
MIME	-	Ministry of Industry, Mines and Energy
MoE	-	Ministry of Environment
MoEF	-	Ministry of Economy and Finance
MP	-	Military Police
NGO	-	non-governmental organisation
NORAD	-	The Norwegian Agency for Development Cooperation
PSC	-	Production Sharing Contract
RCAF	-	Royal Cambodian Armed Forces
RGC	-	Royal Government of Cambodia
SEZ	-	special economic zone
SRP	-	Sam Rainsy Party
UN	-	United Nations
UNDP	-	United Nations Development Programme
UNOHCHR	-	United Nations Office of the High Commissioner for Human Rights

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- ⁵ Global Witness wrote a letter to Cham Prasidh in October 2008 to ask for his comments on the main issues raised in this report as involve or relate to him. At the time of the report’s publication, Global Witness had not received a response.
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- ¹⁵ Global Witness wrote two letters to Te Duong Tara in October 2008 to ask for his comments on the main issues raised in this report as involve or relate to him. At the time of the report’s publication, Global Witness had not received a response.
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