

KINGDOM OF CAMBODIA

Nation, Religion, King

ROYAL GOVERNMENT

Council of Ministers

No:

Phnom Penh,November 2012

Law on Environmental Impact Assessment

THE ROYAL GOVERNMENT OF CAMBODIA

- Having seen the Constitution of the Kingdom of Cambodia
- Having seen the Royal Decree No. NS /RKT/ 1198-72 dated 30 November 1998 on the Formation of the Royal Government, Kingdom of Cambodia:
- Having seen the Preah Reach Kram No. 02 / NS / 94 dated 20 July 1994 promulgating it on the Organization and Functioning of the Council of Ministers:
- Having seen the Preah Reach Kram No. NS/ RKM/ 0194/21 dated 24 January 1994 on the Establishment of the Ministry of Environment;
- Having seen the Preah Reach Kram No. NS/ RKM/ 1296/36 dated 24 December 1996; promulgating it on the Law on Environmental Protection and Natural Resources Management;
- Having seen the National Green Growth Roadmap December 2009, Minister of Environment;
- Having received an approval from the meeting of the Council of Ministers on 2012

Upon the proposition of the Prime Minister and the Minister of Environment:

Promulgate:

The Law on Environmental Impact Assessment, adopted by the National Assembly of the Kingdom of Cambodia on, during the . . . Xth session of the first legislature, the text of which appears below:

Draft Law
on
Environmental Impact Assessment

CHAPTER 1
GENERAL PROVISIONS

Article 1: The Objectives

This law has the purpose:

- To spell out provisions, principles, standards, procedures, and measures on environmental impact assessments of all investment projects that create impacts on and harmful consequences to the environment, society, economy, culture, and legality and democracy of the nation.
- To spell out the environmental impact assessment in Cambodia to promote public participation and to strictly enforce all the provisions of this law in order to ensure green growth, which is sustainable development.

Article 2: Scope of Application

The EIA Law is not in conflict with the existing laws of relevant ministries currently in force that grant permission in their respective fields such as investments or commercial, industrial, and production activities. However, all projects and activities, despite having permission from other ministries, shall abide by the EIA Law. This law completely and fully applies to all phenomena and project activities of natural persons, of owners of all types, of private legal entities, public legal entities, state units and institutions, and nations and nations, which are under the jurisdiction of the Cambodian laws in force and which have begun their operations, are in operations, or are about to start their operations that may cause impacts on environment and society.

- After this law comes into effect, all state institutions, ministries, departments, and state public units shall consider this law as the key implementing principle before granting approval, issuing licenses, and making decisions.
- All activities and development projects of natural persons, private legal entities, and public legal entities are obliged to comply with this law. The legal forms, implementation procedures and other technical standards which are not stipulated in this law are stipulated in sub-decrees, Prakas, and circulars, and directives to be issued by the government or ministry of environment .

- This law governs all investment projects and activities which have licenses, certificates, and decisions from various ministries and institutions that have failed to comply with the EIA.

Article 3: Exempted projects

This law does not apply to state projects which have been decided by the government or approved by the National Assembly and which are considered to be the emergency projects related to national security, national protection, and disaster.

Article 4: Definitions, Glossary and Acronym

Definitions, glossary, and acronym in Khmer are stipulated in the annex.

CHAPTER 2 PRINCIPLES AND AUTHORITY

Article 5: Provisions on Environmental Assessment

All development projects must prior conduct EIA, society, and culture correctly before being sent to government for approval and adopt. The type of development project required to have EIA shall be stipulated in sub degree. All development projects stipulated in annex of sub degree must not start their construction activities without the EIA approval certificate issued by MoE.

- Sector ministries and institutions, private sectors, civil society groups, and affected community people are entitled to provide comments to the EIA documents during the process of evaluation.

Article 6: Principles to be applied

- In order to achieve the objective of sustainable development the following principles are to be applied in the environmental impact assessment (EIA) process.
- In order to contribute to the protection of the right of every person in the Kingdom of Cambodia, both present and future, to participate in the EIA process, there shall be a right of access to information provided in the EIA process to relevant ministries/institutions government departments, civil society groups and the public.
- In order to enhance the quality of environmental decision-making and to promote the transparency of environmental decision-making every person in the Kingdom of Cambodia shall be entitled to participate in the EIA process and have access to justice in environmental matters.

- The Environmental Assessment process shall encourage and enable the public and civil society groups to participate in the protection of the environment in the EA process.
- The Environmental Assessment process shall recognise that public participation is an integral aspect of environmental assessment.
- The Environmental Assessment process shall adopt and apply the precautionary principle, namely that where there are threats of serious or irreversible environmental damage, lack of full scientific certainty shall not be used as a reason for postponing measure to prevent environmental degradation.
- The Environmental Assessment process shall adopt and apply the ‘polluter pays’ principle that those who generate pollution and waste or cause harm to the environment should bear the cost of damage, containment, avoidance, or abatement.
- The Environmental Assessment process shall take into account climate change and the potential impacts of climate change on projects in the Kingdom of Cambodia.

Article 7: General duty of environmental protection

- A natural person or a legal entity must not carry out any activity or project that causes, or is likely to cause, environmental harm unless the person takes all reasonable and practicable measures to prevent or minimise that harm.
- This duty is in addition to any obligations imposed by the Ministry of Environment (MOE) in the EIA Approval Certificate.

CHAPTER 3

RESPONSIBLE INSTITUTION

Article 8: Competent Authorities

- Ministry of Environment is the only institution solely in charge of all EIA.
- General EIA Department has the authority to check, assess, and issue permits on EIA related issues after the decision from Minister of Environment.
- General EIA Department has the authority to monitor, check, inspect, investigate, research, advise, and take actions itself or in cooperation with relevant stakeholders on all projects and activities in the Kingdom of Cambodia.
- For activities or projects with prior approval from the government or with licenses, decisions, and Deyka Samrach issued by state institutions, ministries, and units, and capital and provincial authorities, the project proponents are still obliged to follow the EIA process with Ministry of Environment in accordance with this law.

Article 9: General EIA Department

- General EIA Department is a direct assisting body of Ministry of Environment.
- General EIA Department has the functioning structure at both national and sub-national levels.
- The organization and functioning of General EIA Department will be stipulated in the sub decree proposed by Ministry of Environment.
- General EIA Department shall be established after the coming into force of this law.

Article 10: Roles of General EIA Department

- General EIA Department has the following roles:
 - Being in charge of implementing this law under the supervision of Ministry of Environment
 - Being in charge of screening the proposed projects, reviewing the scoping of project , the terms of reference, review EIA reports and all related, and ensure that public participation is conducted in accordance with the provision of the Law.
 - Investigating and monitoring all project activities as set in the EMP after the issuing of EIA Approval Certificate to ensure compliance to this law.

Article 11: Responsibilities of Ministry of Environment and Preparation of Guidelines

Ministry of Environment is the assisting body of the government and has the following roles:

- Establishing of the Internal Expert Commission
- Appoint Members of the Expert Review Committees
- Issuing of the EIA approval letter and certificate
- Adopting Guidelines on Screening criteria
- Determine Scoping criteria of the project and terms of reference
- Adopting Guidelines on EIA and/or EMP
- Using and implementing principles so far approved and implemented by the Ministry on EIA and/or EMP
 - Adopting Guidelines for Public Participation in EIA process
 - Issuing Prakas on Qualification and Registration of EIA Consultants
 - Adopting trans-boundary EIA Framework for its Guidelines on how to carry out a trans-boundary impact assessment

Article 12: Rights and Duties of Inspector of General EIA Department of the MOE

Inspectors of General EIA Department of ministry of environment has following roles:

- To inspect the implementation of regulations pertaining to environmental requirements, relevant laws and regulations;
- To inspect compliance with environmental requirements as defined in the laws and regulations, contracts, or applicable environmental standards and requirements;
- To examine environmental management records, documents, electronic data, and other records of development projects and operations;
- To require administrators, employees and agents of development projects and operations to provide all information and or records on any matter relating to their environmental management¹; and
- To enter any premises for any purpose of exercising inspection powers and duty where a violation of laws or regulations there under is suspected to have been committed and seize documents or other property connected with the suspected violation, including taking samples for environmental examination;²
- To meet with Boards of Directors and administrators of the development projects and operations at least once per year in order to assess the implementation of environmental law and other relevant regulations.

Article 13: Rights and Duties of Branches of the MOE

Branches of the MOE shall exercise rights and perform duties as assigned by the MOE, and as detailed in specific Guidelines.

CHAPTER 4

ENVIRONMENTAL ASSESSMENT PROCESS FOR PROJECTS³

Article 14: Environmental Screening of Projects

An Initial Environmental Examination (IEE) or EIA Report is required for all Projects that are contained in the separated Screening Sub Degree For all development projects, not listed in the above Screening sub degree for Development Projects, that in the opinion of the General EIA Department are likely to have a significant effect on the environment and/or society, the General

¹See MoE draft Articles 38 and 39.

² See MoE draft Articles 36 – 39.

³For this Chapter the Law outlines the broad process to be followed. The details are contained in the relevant Guidelines that should be adopted at the same time as this Law. In addition there are technical guidelines that the MOE will be able to adopt to assist with the assessment process of the IEE, the EIA and the EMP.

EIA Department may require to identify the impact or due to project sites located nearby environmental sensitive area, in order to determined the project requires an IEE or EIA..

For projects not required to do any environmental assessments, the Project Proponents may be required by MOE to enter into an environmental protection agreement or EMP in accordance with the screening list issued by the MoE.

Article 15: Initial Environmental Examination

IEE shall be required for:

Projects listed in the Screening in the annex of sub degree 2. Projects with environmental protection agreement or EMP and decided by MOE that they do IEE

When the proposed project is required to do IEE, the project proponent shall prepare the terms of reference in accordance with provisions and guidelines of MOE on EIA.

The MOE is responsible for issuing the final terms of reference for the IEE in accordance with guidelines issued by the Ministry.

The form and content of the IEE Report is contained in Prakas issued by the MOE.

Article 16: Consideration of IEE

The MOE shall process the IEE Report in accordance with the processes contained in Guidelines issued by the MoE within 60 days of receipt of IEE⁴.

The decision made by the MOE under this Article shall be that:

1. The project requires an IEE with an attachment of environmental protection agreement ;
2. The project requires an EIA with an attachment of environmental protection agreement
3. The project requires an environmental protection agreement and an Environmental Management Plan;
4. The project requires an environmental protection agreement

⁴ The question of the timeframes for making decisions by the MOE is very important. It is clear that the current time frames are too short. The PRC allows for 90 days for assessment of an EIA. However they have significant capacity for assessment. PRC Article 22 allows 60 days from receipt of written report on EIA. The suggested timetable would allow the Expert Review Committee 30 days to review the EIA and the MOE a further 30 days to review the Report of the Expert Committee and comments received from the public and other Ministries.

Article 17: Environmental Impact Assessment (EIA)

An Environmental Impact Assessment shall be required for:

1. Projects listed in an annex of the sub degree ;
2. Projects that have prepared an IEE⁵ and for which the decision of the MOE is that an EIA is required.

When the proposed project is required to undertake EIA, the Project Proponent shall draft the Terms of Reference in accordance with any provisions and Guidelines on EIA issued by the MOE.

The MOE is responsible for the approval of the final Terms of Reference for the EIA in accordance with the Guidelines issued by the MOE.

Content and general and section format for preparing EIA report is issued by the Prakas of the MoE .

Article 18: Persons eligible to undertake EIA report

Qualifications and criteria of nature persons or legal entities that are eligible to prepare EIA report shall be defined by Prakas of the MOE and be registered with the MoE prior to undertaking EIA

Article 19: General Content and Format of the EIA Report⁶

Following the finalization of the Terms of Reference the project proponent shall prepare an EIA Report in accordance with the Guidelines of MOE.

The EIA report shall also include a detailed Environmental Management and Monitoring Plan (EMP) based on the environmental and social impacts and mitigation measures of the project. If basic EIA data is separately approved, the project proponent has to send the data to MoE

Article 20: Establishment of an Expert Review Committee

The MOE shall be responsible for the establishment of an Expert Review Committee in accordance with the timetable and the processes set out in the EIA sub degree.

All development projects requiring an EIA must have an Expert Review Committee including officers of the Ministry of Environment and other relevant Ministries and involving persons, with appropriate qualifications and experience, to review the EIA report.

⁵These are projects that required an IEE and following review the MOE determines that the project requires an EIA.

⁶The form and content of the EIA Report and the general guidelines should be included in the Guidelines.

The MOE shall select and invite local and/or international experts to serve as members of an Expert Review Committee established especially to review the technical aspects of the EIA reports.

Members of an Expert Review Committee shall be selected on a project-by-project basis. The members shall be reimbursed for their services based on an agreement between the MOE and the member in accordance with the Guidelines of Environmental Fees and Charges. Such costs will be part of the fee charged to the Project Proponents for assessing the EIA report.

Article 21: Review and Consideration of EIA Report⁷

The MOE has the primary duty to review and consider the EIA report based on comments by sector agencies, public submissions and the Expert Review Committee.

The MOE must take into account the report of the Expert Review Committee prior to issuing an EIA Approval Certificate or recommending to the Government that a Development Approval be made.⁸

The MOE is responsible to ensure a fair hearing process to enable public involvement and shall invite relevant ministries or agencies and impacted persons to attend such hearings and to provide comments to the proposed project.

The MOE shall be the lead agency and coordinate with the concerned sector ministries or agencies, including all parties that have the potential to be directly or indirectly affected by the project to attend the scheduled hearings.

Based on the IEE or EIA report, formal presentation by the Project Proponent, written comments from the Expert Review Committee, comments from public participation meetings and concerned ministries or agencies, and submissions received, the MOE shall consider the IEE or EIA report within 60 days of working day and consider criteria, size and sites of development project and determine one of the following actions:

1. Issue an EIA Approval Certificate for the IEE or EIA report including the EMP; or
2. Reject the IEE or EIA report.

Where the MOE issues an EIA Approval Certificate it may attach conditions to the EIA Approval Certificate.

Where the MOE rejects the EIA Report it shall state its reasons for its decision.

⁷It is understood that the MOE does not approve projects. All projects are currently approved by the Government. The aim of the EIA Approval Certificate is to have a document that encompasses all the relevant conditions attached to the approval, including the Environmental Management Plan.

⁸ Only projects requiring an EIA will have an Expert Review Panel appointed. All projects requiring an IEE or EIA will either be refused or be granted an EIA Approval Certificate.

The MOE shall send its decision including any conditions or reasons as the case may be to the Project Proponent, the relevant ministries or agencies. The MOE shall also make a copy of its decision available to the public both on its website and by publication in a regional or national newspaper.

Article 22: Issuing of EIA Approval Certificate

Project Proponents who are required to conduct an Initial Environmental Examination or an Environmental Impact Assessment procedure shall obtain an EIA Approval Certificate prior to any pre-construction or construction works.

Any Project that does not have a valid EIA Approval Certificate shall be required to halt all operations until the EIA Approval Certificate has been issued by the MOE.

The MOE shall issue an official EIA Approval Certificate after review and approval of the appropriate Environmental Assessment documents on every project requiring a Concession Agreement from the Cambodia government (including central and provincial offices). The official EIA Approval Certificate shall be attached to the detailed EMP as evidence of government project approval and shall be legally binding for both parties;

The MOE may not issue an EIA Approval Certificate before written comments have been received from the majority of members of the Expert Review Committee. Comments and conditions set by the Expert Review Committee Members shall be included as Conditions in the EIA Approval Certificate issued by the MOE.

The EIA Approval Certificate shall be valid for a period of no more than five (5) years.⁹

The detailed Environmental Management Plan for the project shall be attached to the EIA Approval Certificate and shall be legally binding for both parties.

The MOE shall send the EIA Approval Certificate to the Project Proponent and send a copy to the Council for the Development of Cambodia and to the concerned ministries or agencies, that approve the project.

The Project Proponent must pay all fees and charges set by the MOE prior to the coming into effect of the EIA Approval Certificate.

The Ministry will notify the project Proponent in writing of its decision. A copy of the decision will be placed on the website of the MOE and a copy of the EIA Approval Certificate will also be placed on the MOE website together with the EMP.

⁹See Chinese PRC EIA Law Article 24. After 5 years there shall be an opportunity to renew the EIA Approval Certificate.

CHAPTER 5:

PUBLIC PARTICIPATION PROCESS

Article 23: Public Participation Process¹⁰

The main objective of the public participation process (public involvement) is to ensure that project-affected persons and concerned stakeholders are well informed about the project, and have the opportunity to be involved in discussion and the decision-making process related to the project, including the opportunity to participate in the project monitoring. The description of the planned consultation process, including the participants in the process, shall be included in the IEE and TOR of the EIA.

Project Proponents are required to include public involvement and consultant in the EIA process at project planning in order to:

- identify areas of cultural and social significance
- collect opinions of stakeholders and integrate such opinions into the decisions making process
- review the project proposal and explain social and environmental impacts
- consider a wider range of alternatives and mitigation measure

Project Proponents shall ensure that all project affects persons, local administrations, civil society groups and other interested persons have received information about the project and be given the opportunity to fully participate in public consultation meetings

Meetings shall be arranged by the Project Proponent, in consultation with the MOE and the concerned ministries or agencies during the EIA process.

All costs associated with public consultation will be borne by the Project Proponent.

The public participation process in stage of studying, reviewing, examining one the EIA report and project monitoring will be stipulated by Prakas of ministry of environment

Article 24: Report on public participation¹¹

¹⁰ See for example Cambodia Law on Environmental Protection, Article 1, Cambodia 1999 Sub-Decree on EIA Process, and PRC EIA Law 2003, Article 5. Also PRC SEPA Draft Measure for Public Participation, Regulation on Environmental Impact of Plans 2009.

¹¹ This reflects the provisions of Article 21 of the EIA Law of the PRC.

All the public participation shall be recorded and taken into consideration by the Project Proponent during the preparing plan stage and implementation of EIA.

The Project Proponent shall report the details of the public impact and whether those concerns are accepted or rejected

If the public concerns are rejected, the Project Proponent must provide the clear reasons why those concerns are rejected in the EIA Report.

Article 25: Free, prior and informed consent

The public participation process shall be used to identify measures to improve the livelihood and to assist project affected persons.

The public participation process shall ensure that project affected persons are involved in any resettlement planning to minimise the adverse effects of resettlement, to ensure that compensation for lost assets is full and fair and that the mitigation measures are appropriate and sustainable.

The public participation process shall ensure that project affected persons are able to give free, informed and prior consent to proposed mitigation measures.

Article 26: Access to information

The MoE shall ensure that IEE, the EIA and all related documents, including the EIA Approval Certificate and EMP, shall be made publically available.

Documents made publically available should also be available on a publically-accessible web-site of the MoE.

The cost of making documents publically available, including web-site access, shall be borne by the Project Proponent.

The MoE shall make further Guidelines for procedures for public participation and access to information.

CHAPTER 6

EIA ON PROJECTS IN OPERATION

Article 27: Projects in operation

The MOE in consultation with relevant Ministries shall prepare Guidelines for the types of Projects that have not conducted the EIA process to be required the project proponent to prepare IEE or EIA report or an EMP .

The Guidelines shall be published within three (3) months of the entry into force of the EIA Law.

The Guidelines shall be based on the Screening Guidelines for Projects.

Project Proponents shall be given a period of six (6) months to comply with the requirement to prepare IEE or EIA report and to complete an EMP and submit the document to the MOE for review, comments, and approval.

The required EMP must specify all mitigation measures proposed for minimizing environmental and social impacts, to ensure quality of environment and that environmental standards are met.

A detailed budget of estimated costs to be committed by the Project Proponents must be included in the EMP.

CHAPTER 7

ENVIRONMENTAL MANAGEMENT AND MONITORING

Article 28: Inspection Authority

EIA general department and provincial city department is the monitoring authority on Environmental Management Plan and following up Environmental Management Plan implementation of project proponent by cooperation with ministry of environment/relevant institutions, local authorities and involving persons.

Article 29: Environmental Management Plan

An Environmental Management Plan (EMP) shall be prepared by the Project Proponent.

The EMP shall include the protection, mitigation, monitoring and management requirements that were identified in the EIA.

Any Development Project that obtains an EIA Approval Certificate must comply with the terms and contents of the EMP and the conditions stated in the EIA Approval Certificate.

Article 30: Environmental Management and Monitoring by the Project Proponent¹²

¹²The details of the format for an Environmental Management Plan are in the Guidelines.

All development projects and project operators shall establish and maintain an internal Environmental Management System (EMS) that shall ensure self-monitoring procedures and methods as stipulated in their EMP.

In cases where the environmental impacts are greater than limited standard in the EIA report or EMP, then the MOE shall require immediate action to remedy the impact or an adjustment of the EMP.

The adjusted EMP and monitoring program shall be approved by the MOE and a time limit will be reset to make the necessary adjustments or improvements and agreed upon in writing by all parties.

All costs to adjust or improve the mitigation measures and project monitoring program will be borne by the Project Proponents.

Project Proponent shall prepare the environmental monitoring report in every 3 months and submitted to MOE for review and comments. General EIA department has the right to make site inspections and verify monitoring data of project proponent.

Article 31: Inspection by Project Affected Persons

The project-affected-persons shall have the rights to be informed about negative impacts on their lives, properties, their access to natural resources, and their livelihoods, and shall be informed about environmental conditions of the project and requirements under legislation, regulations, contract, and the EIA Approval Certificate.

Project-affected-persons shall have the right to report issues and grievances of environmental and social concerns to the Project Proponent and to petition government authorities and such issues will be addressed by an inter-ministerial commission and Lower National Commission established as part of the EMS.

Concerned competent authorities shall respond to the grievance or petition and deal with concerned environmental and social issues in an appropriate time limit and inform the concerned persons accordingly.

Article 32: Monitoring by External Bodies (External Environmental Auditor)¹³

Projects financed by International Financial Institutions and their operations shall be audited by an external environmental auditor as stipulated in the contract of the IFIs, who shall:

- assist in maintaining proper environmental records correctly and completely;

¹³The Equator Principles and Performance Standards of the IFIs require that an External Auditor be hired by the Project Proponent to serve as the Lender's Technical Assistance Team to audit the project on a regular basis and submit written reports to the bank.

- provide a professional audit opinion as to whether the environmental statements present a full and fair view of the environmental management of concerned project or its operations;
- review the adequacy of internal environmental management and monitoring practices and procedures and make recommendations for remediation;
- inform about any irregularity or deficiency in its internal environmental management.

A copy of the audit report(s) produced by the External Environmental Auditor shall be made available to the MOE.

Article 33: Publication and Disclosure

Each Development Project shall prepare an Environmental Monitoring Report of the project's environmental conditions and situation as follows:

- a quarterly report will be submitted to the General EIA Department covering all environmental management and monitoring results;
- Within three months after the financial year the project proponent shall be prepared annual environmental report, including the environmental auditor's opinions Provide copies of the Project's annual environmental report to the public on request without charge;
- Provide an electronic copy of the annual environmental report that will be placed on the publically accessible web-site of the MOE and by the Proponent on a publically accessible web-site.

Article 34: Reports to MOE

Each Development Project with an EIA Approval Certificate shall prepare monthly reports and submit a quarterly and semi-annual report to the General EIA Department concerning its environmental management and monitoring;

Project Proponent's have the obligation to promptly report a critical environmental problem to concerned government authorities and to the public to avoid negative impacts to the environment or the social;

Each provider of professional environmental services to Projects with an EIA Approval Certificate shall provide information to the MOE as the MOE may reasonably request concerning the Project's environmental management.

Article 35: Mediation of Environmental/Social Disputes (Public Grievance Procedures)

Project Proponents shall follow the Guidelines established by the MOE for receiving and dealing with complaints about environmental problems caused by the project.

Project Proponents shall consult with the MOE to assist in the mediation process.

In the settlement of environmental problems or disputes, all stakeholders have the right to settle their problems through consultations with the Project Proponents before taking the action to higher administrative body or court system.

The Project Proponent shall maintain a logbook to record public complaints from project-affected-persons.

Project-affected-persons shall be exempted from paying administrative and legal fees related to the settlement procedure. When the environmental problem is sent to the court, the legal costs shall be paid by the Project Proponent.

CHAPTER 8

SECTION 1. CLIMATE CHANGE IMPACTS

Article 36: Climate Change Considerations in Environmental Assessment

All EIA must analyze and assess the potential impacts and vulnerability of the Project by climate change and measures to mitigate the possible risks associated with climate change impacts.

All EIA must include climate risk assessment and vulnerability mapping, and analyze mitigation of environmental impact measure , emergency response planning and technology choice to account for climate change impacts.

A carbon footprint of the project is to be calculated utilizing analysis on low carbon emission, products usage and sustainability supplement and be included in the EIA .¹⁴

¹⁴ Climate change provides a changed framework for consideration of water and energy needs. The Project Proponent should seek low carbon energy options and the need to mitigate climate induced changes to water supply. Likewise, the possible contributions of the project to climate change, as measured by a carbon footprint analysis, shall be part of the environmental assessment. These are included in the Guidelines.

SECTION 2

CUMULATIVE IMPACT ASSESSMENT

Article 37: Principles and Methodology of Cumulative Impact Assessment

Environmental Impact Assessment must analyze and evaluate the cumulative impact causing by projects in the surroundings of the Project, which triggers significant environmental or social impacts.

the cumulative impacts assessment , the Project Proponent must evaluate the capacity of physical, biological and social economic resources re based on its own time and space parameters and project activities surrounding its sites.

The Project Proponents must consider alternative mitigation measures to meet minimize standard

SECTION 3:

HEALTH IMPACT ASSESSMENT

Article 38: Principles for Health Impact Assessment

The EIA must include a Health Impact Assessment (HIA) which includes :

- baseline data on health in the project areas and of the affected population
- description of potential project impacts due to construction, population influx and changes to the environment
- the mitigation measures to offset, reduce or even eliminate negative impacts of the project and measures that will be introduced by the Project Proponent to improve health of the local communities; and
- the issues related to monitoring health conditions and managing remaining impacts in the short and long-term for the project.

The Project Proponent must propose a safety and health management plan as part of the HIA for the working environment, analyzing relevant risks and specific classes of hazards in the proposed project areas, including physical, chemical, biological, and radiological hazards.

The Project Proponent has to identify and assess the risks to, and potential impacts on, the safety and health of affected communities during the design, construction, operation, and decommissioning of the project, and will establish preventive measures and management plans of the impact of these stages. .

SECTION 4

STRATEGIC ENVIRONMENTAL ASSESSMENT (SEA)

Article 39: Objectives of Strategic Environmental Assessment

Strategic Environmental Assessment (SEA) promotes green growth, which ensures to sustainable development by strengthening and integration policy, planning and programs of the government in processing making of its development projects.

The objectives of Strategic Environmental Assessment are to:

- Provide an opportunity actively guide development in a sustainable manner
- Promote consideration of a broad range of alternatives that projects EIA are often not feasible in assessment and analyzes
- Improve the analysis of large scale impacts including transboundary impacts that cover national, regional and global concerns.
- Serve to implement the National Environment Plan, national environmental action plans, promote biodiversity conservation and ecosystem management and build environmental assessment capacity.

Article 40: Scope of Application

the Ministry of the Environment and National Council on Green Growth, shall undertake sectoral Strategic Environmental Assessment of policies, programmes and plans of the Government.

Strategic Environmental Assessment focuses on of important development sectors such as power, transport, extraction industries (mining, water resources, forestry), tourism, agriculture, infrastructure and other relevant sectors.

The MOE and National Council on Green Growth shall be responsible for the review of the Strategic Environmental Assessment and shall provide comments to the relevant agencies by requiring to have public consultation

The Strategic Environmental Assessment shall promote green growth and environmentally and socially sustainable development by anticipating and mitigating adverse effects at the source, beginning project design, planning considering and identifying best practical environmental options, and ensuring that policies and plans are consistent with environmental and social development goals and safeguards.

A combination of SEA of strategic-level policy and EIA of project-level tools is required to address green growth particularly climate change as a planning challenge.¹⁵ MOE and National

¹⁵ These points are more relevant to the Guidelines.

Council on Green Growth will organize to utilize Strategic Environmental Assessment to evaluate the inter-linkages of environment, Economic, Social and culture of sectoral plans

SEA has a key role in setting the sustainable development related objectives on a specific sector, developing a vulnerability map assessing how proposed actions and proposed measures to determine and analyze precise measures.

SECTION 5

TRANS-BOUNDARY IMPACTS

Article 41: Screening Criteria and Framework for Transboundary Environmental Impact Assessment

A Project that has potentially significant trans-boundary environmental impacts is required to conduct a transboundary Environmental Impact Assessment (TbEIA).

The MOE shall establish Guidelines for screening criteria of environmental significance or thresholds for TbEIA, in accordance with current principles of TbEIA.

Article 42: Public Participation Provisions

Once a Project triggers the TbEIA provisions, the MOE shall forward to the potentially affected countries the Screening report informing them of the proposed development project. The MOE and other concerned sector Ministries shall also enter into discussions with that countries) on procedures and timetable for comments on the proposed project.

Cambodia shall provide opportunities to stakeholders and the public to participate in relevant TbEIA procedures regarding proposed activities and shall ensure that the opportunities provided to the public of the potentially affected country(ies) are equivalent to those provided to the public of Cambodia (the country of origin).

Where the MOE receives a Screening Report for a project originating in Cambodia which may have significant environmental impacts on another country(ies), the MOE shall notify the designated authority of the potentially affected country(ies) to solicit and collate responses from its relevant authorities/agencies, and within 30 days of receipt of the Announcement to submit an Official Response to the announcement to the MOE of Cambodia (the country of origin). If no Official Response is received within this time frame, Cambodia may presume that the potentially affected country(ies) does not wish to be further involved in the TbEIA process.

Where the MOE receives a Screening Report (or equivalent EIA Report) from another country for a project that may have significant environmental impacts on Cambodia, it shall

immediately enter into discussions with that country on procedures and timetable for comments on the proposed project.

The designated authority of the country of origin will permit Cambodia to solicit and collate responses from its relevant authorities/ agencies/ stakeholders/impacted parties, and within 60 days of receipt of Announcement, will submit an Official Response to the Announcement to the designated authority of the country of origin. If no Official Response is received from Cambodia within this time frame, the country of origin may presume that Cambodia does not wish to be further involved in the TbEIA process.

Any comments received from another country on the Screening Report of the EIA Report shall be taken into consideration by the MOE. Representatives of the other countries potentially affected by the Project shall have the right to be present at the official presentation and public hearing of the Project in Cambodia and will be given the opportunity to present their views before the general public.

Costs incurred by the Government of Cambodia for trans-boundary considerations will be borne by the Project Proponent.

Article 43: Project Mitigation Measures and EMP

The Project Proponent shall present proposed mitigation measures to eliminate, diminish or offset the projected project impacts.

These measures shall be reviewed and commented on by the public in Cambodia and in the potentially affected country(ies) according to the agreed upon procedures and time table.

The Project Proponent shall take into account the received comments from all potentially affected parties and develop an appropriate EMP to manage the protected transboundary impacts. The costs of the mitigation measures included in the EMP shall be considered part of the project costs and shall be borne by the Project Proponent as part of the project's development or operating costs.

In case of harm or damages to transboundary impacted persons, the Project Proponent will be responsible to pay the damages, both of the Cambodian people and the project-affected persons of neighboring countries. Cost of harm and damages are the responsibility of the Project Proponent.

Article 44: Project Monitoring

Involved countries shall mutually determine how best to conduct monitoring of any potentially significant transboundary environmental impacts during preparatory groundworks, construction, operation and decommissioning, as relevant to the proposed Project and its agreed upon EMP.

Monitoring reports shall be submitted annually by the Project Proponent of the country of origin and audited by the MOE. A copy of the monitoring reports to the designated authority of the potentially affected country(ies) by the MOE.

The monitoring efforts shall be aimed at ensuring compliance with any conditions set out in the authorization or approval of the project and its EMP, as well as the effectiveness of mitigation measures in Cambodia and in the potentially affected country(ies) .

Monitoring costs are to be paid for by the Project Proponent both in the country of origin and in the other country(ies) assessed to be impacted by the project.

CHAPTER 9

ENVIRONMENTAL FUNDS

Article 45: Obligatory Contribution of Funds for IEE and EIA

The Project Proponent is liable for all expenses incurred in preparation the Initial Environmental Examination (IEE) report or the Environmental Impact Assessment (EIA) report and expenses for examination of MoE , including the Expert Review Committee.

The Project Proponent is liable for the expenses of the Public Participation Process, the Environmental Management and Monitoring Plan (EMP), and costs to cover implementation and monitoring of measures on reduction of the impacts on environment and society.

The Project Proponent shall be required to contribute a minimum of 1% of the Project costs to the Environmental Funds and Social Funds of Ministry of Environment prior the commencement of the Project.

Article 46: Fees and Service Charges

The MOE when issuing the EIA Approval Certificate has the duty to collect fees and services charges, as provided in joint Prakas between the MOE and Ministry of Economic and Finance on Service Charges to review the EIA Approval Certificate.

50 % (fifty) of fees are to be paid to the national budget and 50 % (fifty) will be allocated to the MOE to cover on EIA process and preserving ecological resources and conserve the environment.

Article 47: Environmental Funds

The Environment Endowment Fund, established under Article 19 of the Law on Environmental Protection and Natural Resource Management shall include contribution from Project Proponents as required and in accordance with the Guidelines issued by the MOE.

An Environment and Social Development Fund shall be created by the Ministry of Environment to further promote and finance environmental and social development at the project sites.

Project Proponents shall be required to contribute to these funds in accordance with MOE Guidelines on compulsory contributions to Environmental Funds. Such funds shall be used and managed by the MOE to preserve ecological resources and conserve the environment.

Article 48: Awards

The MOE, and provincial, or city departments, districts, and responsible agencies and local administrations have the right to make proposals for awards or award certificates, or other appropriate forms of recognition for the achievement of the EA process in Cambodia to persons, entities, companies or any organization, that have made remarkable accomplishments in environmental assessment activities.

CHAPTER 10

JUDICIAL POLICE OFFICERS

Article 49: Appointment as Judicial Police Officers

Officers of MOE are authorized as Judicial Police Officers in investigating any offenses related to EIA and compiling complaints to file to the competent court and shall undertake the following:

- Researching, monitoring, preventing, and suppressing offenses for any companies which do not prepare EIA report, do not implement any measures written in Environmental Protection agreement, and other provisions concerning to EIA, are the authority of MoE.
- When starting researching, monitoring, preventing missions, and suppressing EIA offenses, EIA officers shall wear uniforms, identification card, rank, and hold a mission letter.

MOE officers shall make an oath in front of General Prosecutor at Appeal Court in order to enquire accreditation to serve as judicial police officers.

MOE officers accredited to serve as judicial police officers shall make and sign on records of EIA offenses.

Article 50: Judicial Police Officers of DEIA

The qualified judicial police officers of General EIA Department may hold in police custody, for not more than 48 hours, the offenders caught in the commission of a breach of the EIA Law in accordance with the Code of Criminal Procedure.

CHAPTER 11

BREACHES, ENFORCEMENT AND SANCTIONS

Article 51: Right of Reporting of Breaches¹⁶

Any natural person or legal entity shall be obligated to report to the MOE activities that breach this Law and the Guidelines and that have a significant adverse impact on the environment. After any report is made the MOE shall investigate and manage the case according to the Law and Guidelines.

Article 52¹⁷: Compilation of Environmental Complaints

The compilation of EIA complaints shall be in accordance with Code of Criminal Procedure.

Article 53:¹⁸ Infractions, Penalties and Remedial Measures

It is prohibited to start construction work prior to obtaining an EIA Approval Certificate as provided in this EIA Law; Any Project Proponent violating this requirement shall be subject to penalty by payment of a fine, immediate suspension of the project, and the potential loss of project approval by the government.

Issuing of an order to stop the operations or remove the operating license will also involve consideration by the Committee for Planning and Investment (or city and provincial offices) to remove the investment licence of the Project Proponents.

Where the project is prohibited from continuing the Project Proponent shall make good any damage caused to the environment.

¹⁶This Article is taken from Article 5 of the PRC EIA Regulation 2009

¹⁷See Draft MoE Article 42

¹⁸This section is too detailed and perhaps the MOE should be given power to deal with breaches in accordance with the procedure.

The remedial measures and penalties provided for infractions described in the Law on Environmental Protection and Natural Resources Management and other legislation shall be determined in each particular case by the MOE. The action shall be based upon the seriousness of the infraction, the stage at which it was detected, and what measures are appropriate to remedy or terminate the infraction.

The MOE must take one or more of the following actions or impose one or more of the following penalties with respect to a project or operation if it determines that the project or operation or any of its administrators or principal shareholders is guilty of an infraction consisting of the violation of: (i) a provision of the Law on Environmental Protection and Natural Resources Management; or (ii) any regulation or order of the MOE issued pursuant to the Law on Environmental Protection and Natural Resources Management:

- Issue written warnings;
- Conclude a written agreement with the Board of Directors providing for a program of remedial action;
- Issue written inspection orders to cease and desist from such infractions and to undertake remedial actions;
- Impose fines on the project or operation or on its administrators in an amount of from Riel [1,000,000] to Riel [10,000,000] per day for each day that the infraction continues; provided, however, that fines shall be of similar amount for entities of the same type and for a similar infraction;
- Suspend temporarily or dismiss environment officer or administrator who commits wrongdoing from his position in a project or operation;
- Impose environmental requirements and conditions on the development project or operation to improve its environmental management;
- Order the project to stop operations until it complies with the regulation or requirements and meets the appropriate effluent standards;
- Revoke the EIA Approval Certificate of a project or operation and order it to stop operation until it receives approval for a new EIA Approval Certificate;

The measures and penalties provided in this Article shall not preclude application of other civil penalties or criminal penalties as provided in other legislation in force.

Any money derived from determination of damage compensation or fines imposed in accordance with this Chapter or proceeds received in accordance with this article shall be allocated:

- First, to victims of the violation;
- Second, to defray the direct costs of the MOE for investigation, monitoring, and prosecution; and
- The balance shall be paid to the Ministry of Economics and Finance.

If the Project Proponents do not improve the mitigation measures to meet with the requirements of the EMP within the agreed upon time limit, the Project is to be temporarily halted until the conditions are met and the Project Proponents fined a penalty equal to all social and environmental damages and costs caused by the project and borne by the impacted stakeholders.

CHAPTER 12

PENALTY PROVISIONS

Article 54: Offenses and violations of the Law on Environmental Impact Assessment

The offenses in this law include all actions and various violations that cause impact on the environment, society, livelihood of the people, and atmosphere.

The perpetrators, including natural persons, private legal entities, public legal entities, state units and institutions, and states and states, are liable for administrative, civil, and criminal punishments in accordance with this EIA Law.

Article 55: Conditions for punishments

This law punishes all phenomena, actions, and projects required by the law to do EIA but fail to do so, and in the case where there is an EIA report but the conditions are only implemented in part or not at all.

Article 56: Conditions to impose criminal punishment and fine as well as sub-penalties.

The violation of this law will result in criminal punishment including principal penalties and sub-penalties.

Together with the criminal punishment, the perpetrator shall be ordered to pay for the restoration of any damage to the environment and a fine.

People to be responsible for the offenses include:

- Anyone with decision-making power and anyone in charge of construction activities, investments, and commercial operations of natural persons, private legal entities, and representatives of public legal entities
- The instigator and the accomplice of the offense, anyone who hides, anyone who intervenes to cause the commission of the offense, and anyone who receives benefits from the offenses.

- Anyone who performs their assignments in accordance with the order of the management and leadership, technicians, professionals, and laborers who are aware of the offense but still commit it to gain abnormal fee

Article 57: Types of offenses

Offenses in this law are actions that cause damage, harm, danger, and destruction to society, atmosphere, nature, environment, human beings, animals, and belongings at the present time and in the future. All forms of the offenses are considered to be administrative infractions and misdemeanors and felonies. In addition to imprisonment and administrative punishments, the wrong doers are ordered to pay compensation and a fine.

The types of offenses of this law include:

- Administrative offense
- Criminal offenses including:

1. Misdemeanor divided into categories: Misdemeanor of the first category is imprisoned from 1 (one) month to under 1 (one) year. Misdemeanor of the second category is imprisoned from 1 (one) year to under 3 (three) year. And misdemeanor of the third category is imprisoned from 3 (three) years to under 5 (five) years.

2. Felony for all offenses that cause serious and long term tragedy to the society, livelihood, human and animal life, and the nature.

Article 58: Statute of limitation

The statute of limitation of the offenses in this law is counted from the date on which the competent authorities or officials of the judicial system start the complaint or receive the complaint.

Statute of limitation of criminal complaints

- 15 (fifteen) years for felony
- 5 (five) years for misdemeanor

Statute of limitation for the administrative complaint is 1 (one) year.

Article 59: Statute of limitation of the punishment

The penalties pronounced for a felony are prescribed for 20 (twenty) years.

The penalties pronounced for a misdemeanour are prescribed for 5 (five) years.

The penalties pronounced for a petty crime are prescribed for 1 (one) year.

Article 60: Elements of the offense

The elements of the offenses in this law are as follows:

- Legality: It is any action that is stipulated as an offense in this law.
- Objectivity: It is any action that is against the law or any action that is allowed by the law but causes damage and harm to the society and environment.
- Subjectivity: Intentionally or unintentionally, or jointly commits the offense that causes damages to belongings, human and animal life, environment, and society.

Article 61: Offenses subject to warning

Offenses committed by natural persons, private legal entities, public legal entities, whose project activities, construction sites, buildings, or commercial operations sites operate without an EIA Approval Certificate or approval letter from the General EIA Department and have not caused any damage or harm to the environment but has been known by the judicial police of General EIA Department.

In this case, the owners of the sites and project proponents shall be warned by the officials of General EIA Department or shall enter into an agreement with General EIA Department to make changes/adjustments in accordance with the conditions.

This warning can only take place once. If the same project proponent commits the same mistake, there will be administrative punishments imposed on that project proponent.

Article 62: Administrative punishments

Administrative punishments include temporary suspension, stopping the project activities and successful revocation of licenses.

Article 63: Temporary suspension of activities or projects for three months

In the case of the constructions, construction sites, and all projects that are required to have permission to operate their activities but have not fulfilled the requirements, the competent authorities, the judicial police of General EIA department General EIA Department have the rights to check the sites, the investment projects or all violating activities, write up a report to temporarily suspend the project activities, and order leaders, responsible people and relevant persons to police station or General EIA Department office to be questioned and take actions accordingly.

Provincial and capital MoE General EIA Department have the rights to temporarily suspend violating activities from 1 (one) to 3 (three) months, write up a report, question the offenders and responsible persons, and file a case. In the case of suspension, the Administration shall indicate the offense, scope of damage, legal reasons and the law, areas for adjustments/modifications, and

duration for adjustments. The execution of the decision is the jurisdiction of the capital and provincial General EIA Department.

Article 64: Temporary suspension of activities or projects with permission but not meeting the imposed conditions

For all activities, projects, construction sites, general buildings, commercial investment constructions, and other kinds of construction that have EIA Approval Certificate but are found by the General EIA Department officials that they have not fully implemented the conditions or that they violated the law and principle of EIA, the competent authorities or the judicial police of General EIA Department may investigate the case, find out about the offense, and file a complaint to General EIA Department in accordance with the legal procedure so that the Administration will order the responsible persons to make a statement about the case. In case of clear evidence of the offense, General EIA Department has the rights to temporarily suspend construction activities, projects, and project sites, and imposes conditions for adjustments and implementation standards for the period from 1 (one) to 3 (three) months.

Article 65: Fine and compensation in administrative offense

In addition of the administrative punishment of the offense in this Chapter, General EIA Department may order the offender to pay a compensation from 5 (five) to 50 (fifty) million riels.

If the offense has caused harm to the environment, atmosphere, nature, society, human beings, animals, and economy, the offender shall be ordered to pay compensation in accordance with the actual and potential harm to the environment.

Article 66: Impacts and damages caused by activities, projects, and construction sites that do not have permission from General EIA Department

Buildings, construction sites, investment projects, and all construction activities that have been completed, whether or not they are in operation, but those buildings, projects, and activities have been completed without permission which is required by this law shall be subject to:

- Transitional punishments
- Misdemeanor of first category in which the prison punishment ranges from 1 (one) month to 6 (six) months and the offender may be liable for paying compensation to the damage to the environment and shall be fined from 10,000,000 (ten million) to 20,000,000 (twenty million) riels. The imprisonment may be suspended or substituted by a fine from 10,000,000 (ten million) to 20,000,000 (twenty million) riels.

Article 67: Income from the offenses

Buildings, construction sites, construction activities, projects, and other constructions that have permission but have caused damage and destruction to the environment, society, atmosphere, human health, animals, and nature are punished to misdemeanor of the first category. The leaders, the persons who order, and the responsible persons are imprisoned from 3 (three) months to 1 (one) year in addition to the compensation for the damage to livelihood and economy, to human beings, animals, and belongings, and to the environment, atmosphere, and society, and may be fined from 10,000,000 (ten million) to 20,000,000 (twenty million) riels.

Income from the fine shall

- be used to restore the environmental harm caused by the offence
- be included into the fund of Ministry of Environment
- pay for compensation to the victims in the case where Ministry of Environment is the plaintiff or one that starts the case.

Article 68: Offenses that cause danger, death of human beings and animals, social atmosphere, and belongings

All project activities, construction sites, general buildings, commercial buildings, investments, and all activities, whether or not they have permission from General EIA Department, that do not follow the principle of EIA, or violate the law, or commit any acts that have caused death to human beings, whether few or many, physical harm, and harm to human health, which results in long term disabilities, permanent injuries, and destruction to the nature, animals, and belongings are punished for a felony from 5 (five) to 10 (ten) years in prison.

Perpetrators and co-perpetrators shall be liable for compensation to the damage resulting from their offenses and shall be fined to EIA fund of Ministry of Environment from 40, 000,000 (forty million) to 100,000,000 (one hundred million) riels. In a serious case, it is required that the private legal entities that have the problems be closed, and the directors and other responsible people be held liable.

Article 69: Offenses related to the use of biological or radioactive substances

For the activities strictly prohibited by the law in which the perpetrators, co-perpetrators, and the accomplices secretly commit the offense, they shall be punished to a felony from 7 (seven) to 15 (fifteen) years in prison, be deprived of their commercial rights for the whole life, be ordered to pay a compensation from 400,000,000 (four hundred) to 1,000,000,000 (one thousand million) riels, and be fined for an amount of 500,000,000 (five hundred million) riels to EIA fund.

The place of offense shall be confiscated to the state property.

Article 70: Offenses related to poisonous, explosive, and chemical substances causing harm to human health and life

All activities, premises, projects, and commercial and industrial buildings with or without permission from General EIA Department that have used poisonous carbon and substances, explosives, or chemicals that are against the law or that have caused damage and/or harm to the environment and society shall be punished for a misdemeanor from 6 (six) months to 5 (five) years in prison, and be obliged to pay a compensation for the damage proportional to the damage caused to the environment, human beings, animals, belongings, and livelihood. In addition, the wrong doers shall be fined from 10,000,000 (ten million) to 100,000,000 (one hundred million) riels.

Article 71: Offenses committed by officials of Ministry of Environment

Offenses committed by the officials of General EIA Department and other officials of Ministry of Environment are as follows:

- Granting permission or licenses improperly, or in conflict with this law, or conspiring with the requesting persons or entities to falsify documents so as to grant them permission, or secretly granting permission to ineligible persons or entities.
- Getting involved directly or indirectly, fully or partly, in the offenses
- Conspiring with the requesting persons or entities or project proponents, whether or not for benefits, to falsely prepare the documents or reports to meet the requirements to obtain permission
- The officials of General EIA Department, including Judicial Police Officers investigating offences and other officials of Ministry of Environment who are aware of the EIA-related offenses but do not report or take any actions or hide the offenses in their jurisdictions.

The offenses stipulated above shall be punished from 6 (six) months to 3 (three) years in prison, be fined from 10,000,000 (ten million) to 50,000,000 riels, and be demoted or dismissed from office.

Article 72: Breaches by Judicial Police Officers

Under no circumstances can the judicial police officers keep the criminal complaints relevant to EIA cases unprocessed.

The officials who intentionally keep the minutes or objects, or hide their existence from the court, the officials shall be considered to have committed an offense punishable from 1 (one) to 5 (five) years in prison.

Article 73: Offenses committed by armed officials and other government officials

All government officials, armed officials, military officials, police officials, or any other mandatorily elected officials who ease, intervene, hide, or conspire with the perpetrators to commit any offense in all forms by abusing their own power or authorities shall be punished from 6 (six) months to 2 (two) years in prison, be ordered to pay a compensation proportion to the damage caused, and be fined from 10,000,000 (ten million) to 40,000,000 (forty million) riels.

Article 74: Offenses committed by EIA experts and EIA consulting firm

EIA consulting firm, natural persons, and experts who are directly responsible for doing EIA reports of the project shall abide by the provisions of this law as the guiding principle.

Article 75 : Implementation procedures

1. Offense against and breach of the said law shall be subject to application of the following procedures:

- A. Track and research;
- B. Examination and inspection;
- C. Treatment of flagrante delicto;
- D. Treatment of offense subject to investigation;
- E. Preliminary investigation;
- F. Forwarding the case to the prosecution;
- G. Defense as case /complainant owner during the investigative stage;
- H. Defense of case file as complainant during trial;
- I. Participation in execution of judgment, appealed judgment or final decision.

Article 76: Competence of preventing and suppressing environmental impact assessment offense

1. Any offense or breach affecting the Law on Environmental Impact Assessment shall fall within the competence of the General Department of Environmental Impact Assessment and the Judicial Police Officer of Environmental Impact Assessment;

2. Further, a local judicial police officer may cooperate or report the offense to the General Department of Environmental Impact Assessment to take legal measures.

Article 77 : Implementation of role as judicial police in the suppression of offenses

1. Any act to suppress an offense by a judicial police officer of environmental impact assessment shall comply with the principles of flagrante delicto and the offense shall be subject to investigation;

2. For a preliminary investigation, the establishment of case files and the collection and forwarding of evidence to the court shall comply with the provisions of the Code of Criminal Procedures;

3. In the performance of his or her duty, a judicial police officer of environmental impact assessment shall be entitled to track, search, investigate, conduct an inspection of the suspected site, inspect, question, make minutes of seizure, halt the act of offense, arrest, establish a case file and forward them to the court as defined by the laws and procedures specified in the Code of Criminal Procedures.

Article 78: Implementation of the role of judicial police officer in the stage of proceeding

1. In all stages of implementation of procedures for the prevention and suppression of an offense, a judicial police officer of environmental impact assessment plays a role as a complainant, and as the case owner on all offenses, cases and case files;

2. In the implementation of the role in the stage of judicial police, a judicial police officer of environmental impact assessment shall implement his/her role as defined in the Code of Criminal Procedures;

3. After sending a case file to the prosecutor, the responsible judicial police officer holding a letter of assignment shall act and defend the case file as the case owner and complainant with vigor and determination and may not conciliate, suspend or close a case file without any final court judgment;

4. At the investigative stage by the investigating judge, a judicial police officer in charge of a case owner shall appear to follow up, appear to defend a case file, enhance evidence and provide legal means on a case file as security to ensure attention and firm adherence to procedures and the case file;

5. At the stage of the hearing/trial:

In all case files of environmental impact assessment offense, the judicial police officer of environmental impact assessment in charge of a complainant or case owner, shall appear to provide a statement, make a report, defend evidence, facts, laws related to the offense complaint and provide suggestions and claims as authorized by the law;

6. Objection/appeal:

Regarding objections and administrative decisions, the dissatisfied party may complain to the central administration of environmental impact assessment. If the party is not satisfied, the party may file a complaint with the court according to the provisions of the Code of Criminal Procedures;

7. Judgment enforcement stage:

Regarding any execution of order, judgment, final appealed judgment, the court shall order obligatory participation from officials in charge of case files, complainants and judicial police, in order for the General Department of Environmental Impact Assessment to receive payment of indemnity and fines paid into the environmental impact assessment fund or into the national budget.

Article 79 : Indemnity and fine

1. Indemnity and fine for breach of the said law shall fall within the competence of the administration of environmental impact assessment;

2. As for indemnity and fines generated from environmental impact assessment offenses implemented according to the execution of judgment, and the final appealed judgment, the court shall assign duties to the administration of environmental impact assessment to claim and handle this, whereby 50 (fifty) percent of the funds shall be kept as the interest of the rehabilitation and development foundation for environmental impact assessment, whereas the other 50 (fifty) percent shall be transferred into the national budget.

CHARTER 13

TRANSITIONAL PROVISION

Article 80: Transitional provisions

1. This law, after its adoption by the National Assembly of the Kingdom of Cambodia, shall be subject to pending release nationwide for a period of 1 (one) year before taking effect.

CHAPTER 14

FINAL PROVISIONS

Article 81: Final provisions

1. Any provisions contrary to the said law shall be abrogated;
2. The entry into effect of the said law shall be applied in accordance with Article 80.

Signed and stamped

Annexure 1: Vocabulary

Definition of the Law on EIA

This law spells out the management of environmental impact assessment process in the Kingdom of Cambodia. All activities, movements, and actions of individual persons, of families, of site owners, and of owners—whether natural persons, or private legal entities, or public legal entities, or state units, ministries, and institutions, or states and states who conducted all their activities and caused the change to the original state of the environmental, economy, society, and culture—are obliged to respect this law with regards to their existing activities, activities in operation, or activities about to start.

Additional Benefits: Benefits for the area or region around the proposed development project that can be leveraged from the project.

Cumulative Impacts: Cumulative impacts are those that result from the incremental impact of the project when added to other past, present, and reasonably foreseeable future actions.

Development Approval: An approval or consent granted by the Government of Cambodia for a project or by any other agency including a Concession Agreement.

Directly Affected Stakeholder: Those stakeholders with substantial rights, risks and responsibilities in relation to the issue. These may be inside the project affected area (e.g. project affected communities) or outside the project-affected area (e.g. government regulators, finance institution representatives, or investment partners).

Economic Displacement: Loss of assets, access to assets, or income sources or means of livelihoods as a result of (i) acquisition of land, (ii) changes in land use or access to land, (iii) restriction on land use or access to natural resources including water resources, legally designated parks, protected areas or restricted access areas such as reservoir catchments and (iv) changes in environment leading to health concerns or impacts on livelihoods. Economic displacement applies whether such losses and restrictions are full or partial, and permanent or temporary.

Ethnic Minorities Development Plan: the Ethnic Minorities Development Plan has the meaning given to it by the sub-decree on Compensation and Resettlement of People Affected by Development Projects [to be drafted for consideration]

Environmental Assessment: The process under the Law of Environmental Impact Assessment and related legislation.

Environmental Impact Assessment (EIA): Is a detailed assessment of impact on environment and society. EIA is the process of study and prediction of positive and negative impact on environment and society together with determination of appropriate measures to protect and mitigate the impact on environment and society from projects and different development activities.

EIA Approval Certificate (EIA AC): This is a Certificate issued by the MOE following Environmental Assessment of a project which contains details of the Environmental Management Plan and any other conditions imposed on by the MOE.

Environmental Management Plan (EMP): means a plan stipulated in the EIA report on assessment of impacts on environment and society which defines environmental protection measures and impact mitigation; responsibility and schedule for implementation of environment management plan; monitoring plan and assessment of impacts on the environment from the project that must be done including sufficient budget planning for environmental activities required during the construction period, operating and project termination (closure)

Environmental Management System has the meaning given to it by the ISO 14001 Environmental Management System Standard of 2004.

Environmental Monitoring Report means a report presented to the MoE on the monitoring and evaluation of the development project on the environment as described in the Environment Management Plan. The monitoring program must be implemented in accordance with processes and defined environmental quality criteria as officially approved in the EMP.

Existing projects: Existing projects are projects which are in construction, operation or closure phase of the project cycle prior to the coming into force of the present EIA Law.

Independent Review: Expert review by someone not employed by the project and with no financial interest in profits made by the project.

Initial Environmental Evaluation: Initial assessment of impact on environment and society to predict impact on environment and society from projects and different development activities that are expected to have minor impact subject to any environmental mitigation measures.

Land Rehabilitation: The process of returning the land to some degree of its former state after disturbance or damage associated with project implementation.

Legacy Issues: Impacts of previous projects that are unmitigated or not compensated with a similar good or service, or longstanding issues with a present (existing) project, or pre-existing issues in the present location of a new project.

Management Plan: A management plan is a tool used as a reference for managing a particular project issue, and establishes the why, what, how, who, how much, and when for that issue.

Management System: The framework of processes and procedures used to ensure that an organisation can fulfill all tasks required to achieve its objectives.

Offset: Measurable conservation outcomes resulting from actions designed to compensate for significant adverse biodiversity impacts arising from project development and persisting after appropriate avoidance, minimization, and restoration measures have been taken. Generally, these are not within the project site.

Optimal: Best fit, once all considerations have been factored in, based on the outcomes of a consultative process.

Project Proponent: Project Proponent is meant to infer the project owner or project developer and means any person, juridical person or organization that has the permission (approval) to study,

explore, design, construct and implement a project. A Project Proponent may come from the private sector, government sector or be an organization responsible for a development project.

Public Participation: Public participation means public consultation and involvement in the EIA process of discussion, exchange and hearing of opinions, access to information on all parties of direct and indirect impact from project development, and settlement of grievance issues beginning from the period of planning formulation, implementation and environment maintenance and restoration prior to project termination.

Refurbishment: The state of being restored to its former good condition.

Replacement Cost: is the amount in cash or in kind needed to replace lands, houses, infrastructure or assets on the lands (crops, trees) and other assets (income) affected by the development projects.

Resettlement Action Plan: A document or set of documents specifically developed to identify the actions that will be taken to address resettlement [the plan will be defined in the Guideline on Compensation and Resettlement of People Affected by Development Projects [this needs to be drafted]. It would typically include identification of those being resettled; the socio-economic baseline for the resettlers; the measures to be implemented as part of the resettlement process including those relating to resettlement assistance and livelihood support; the legal and compensation frameworks; organisational roles and responsibilities; budgetal location and financial management; the timeframe, objectives and targets; grievance redress mechanisms; monitoring, reporting and review provisions; and understandings around consultation, participation and information exchange.

Screening: Screening means determination of proposed project types on whether it is necessary or not for them to proceed with initial assessment of impact on environment and society (IEE) or detailed assessment of impact on environment and society (EIA).

Social Impact Assessment (SIA): SIA is the process of study and prediction of positive and negative impacts on the socio-economic aspects of society from projects and different development activities together with determination of appropriate measures to protect, mitigate, and compensate project-impacted-persons for the impacts on their lives, livelihoods, welfare, and health.

Strategic Environmental Assessment: SEA refers to a range of analytical and participatory approaches that aim to integrate environmental considerations into policies, plans and programmes and evaluate the inter-linkages with economic and social considerations. The principle is to integrate environment, alongside economic and social concerns, into a holistic sustainability assessment.

Strategic Fit: The compatibility of the project with local, national and regional needs identified through the priorities and objectives put forth in options assessments and other relevant local, national and regional and multi-national policies and plans.

Transboundary Agreements: Agreements made among riparian states about how shared (water) resources will be utilized by the parties involved, and the processes that will be followed to sustain these understandings.