

Submission Form

Recommendations from the STWGs to the Secretariat of the Project to Develop the Environmental Code of Cambodia

Email to: Lim Nalin at Vishnu Law Group: limn@vishnulawgroup.com

- For comments on the draft Code, please copy and paste selected text into this form

“Strategic Environmental Assessment means the evaluation of the likely environmental impacts, including health and social impacts. The steps of an SEA include the following: determination of the scope of an environmental report and its preparation, the carrying out of public participation and consultations, and the taking into account of the environmental report and the results of the public participation and consultations in a plan or programme.”

“Environmental Report as used in Book 2, Title 4, Strategic Environmental Assessment, means a report that identifies, describes and evaluates the likely significant environmental, including, health, social and ecosystem effects of implementing the plan or programme and its reasonable alternatives, taking into account...”

- Date of Submission: **June 28, 2016**

Submitted by: **Carlos Linares, External Reviewer**

1. Issue:

The definitions of SEA and Environmental Report in Article 4 of Chapter 1 of the Code need to be improved / corrected, and consistency in the use of the definitions of these tools needs to be ensured throughout the Code. The current definitions found in this article are as above.

:2. Reference to Code Book and Chapter Title (if applicable):

Article 4 of Chapter 1

3. Comparative Experience (if any):

(Please include any Cambodian and international examples and experience.)

4. Recommendation:

Note by reviewer: Please make sure that the fundamental difference between an Environmental Impact Assessment (EIA) Study (and report) and a SEA study (and report) is clear throughout the Code. Ensure it is clear that EIAs apply to individual investment projects, and that SEAs apply to policies, strategies, plans and/or programmes at the sectoral, regional or national level. As currently written, this difference is not clear in the Code. Lack of clarity could lead to confusion of when authorities would mandate the preparation of one or the other assessment tool.

5. Proposed Language to be Inserted into the Draft Code (if any):

Recommendation:

Strategic Environmental Assessment (SEA): SEA applies to policies, strategies, plans and programmes. SEA studies can provide advance guidance on environmental and social issues that are not efficiently addressed later by individual project EIA studies. SEA

supports decision-making at strategic levels – decisions that need to be made prior to making decisions and commitments at the project level (EIA).

SEA applies broadly for investments at the sectoral, regional or national level, e.g., land use, transport, energy, agriculture and irrigation, etc.), whilst EIA applies to specific projects. EIA: An environmental study (and report) in which the likely significant effects on the environment and the reasonable alternatives of the proposed project are identified.

Both SEA and EIA shall include the assessment of cumulative impacts, and social impact assessment considerations, public participation and consultations, involuntary resettlement, etc., as well as environmental and social management plans to prevent, mitigate and compensate for impacts.

Both SEA and EAI shall include consideration of transboundary impacts: Regarding plans and programmes which are likely to have significant effects on the environment in another State (transboundary impacts on a neighboring country), the State in whose territory the plan or programme is being prepared must consult the other State(s).

Involuntary Resettlement: a fundamental component of SIA (Chapter #, page 39)

All investment projects shall avoid or minimize involuntary resettlement and, where this is not feasible, to assist displaced persons in improving or at least restoring their livelihoods and standards of living in real terms relative to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher. The Social Impact Assessment study shall assess all viable alternative project designs to avoid, where feasible, or minimize involuntary resettlement.

6. Cambodian Laws to be Abrogated or Modified (if any):

(Please include the law title and the titles of specific articles and clauses.)

7. Drafting Team Analysis/Response (to be included in public database):

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- *Please submit all comments in Khmer and English when possible.*

Date of Submission: 10 July 2016

Submitted by Hanna Jaireth, IUCN World Commission on Environmental Law member E:
hanna.jaireth@me.com

1. Issue:

Statutory effect and enforceability of objectives and principles in the proposed Code.

2. Reference to Code Book and Chapter Title

Book 1, Title 1, General provisions

3. Comparative Experience:

Statutory examples:

- [s139\(2\)](#) of *Environment Protection and Biodiversity Conservation Act 1999* (Cth)
- [s 21\(2\)](#) *Natural Heritage Trust of Australia Act 1997* (Cth)
- [s 6\(3\)](#) *Nature Conservation Act 2014* (ACT)

An example of a successful court challenge where the Australian Minister did not take approved conservation advice into account is *Tarkine National Coalition Incorporated v Minister for Sustainability, Environment, Water, Population and Communities* [\[2013\] FCA 694](#)

4. Recommendation:

The Code should *require* that decision-makers take the purpose and principles of the Code into account when making decisions under it.

In Australia a current project of the [Australian Panel of Experts on Environmental Law](#) is developing a set of principles of the next generation of environmental laws in Australia. This should be available by August. It includes principles such as those included in the draft Cambodian Environmental Code v3 but other principles as well. Draft text currently under review provides:

Design principles

When designing future Australian environmental laws, law makers should design laws consistent with:

- ‘smart regulation’ principles (such as the *policy mix principle*, the *parsimony principle* and the *escalation principle*);
- the principles that polluters pay for their environmental impacts;
- principles that endorse particular tools or mechanisms for environmental management;
- principles related to environmental democracy such as access to environmental information, public participation and access to justice; and
- the principle of non-regression.

Directing principles

There are some directing or *rules-based* principles we think will be important to the next generation of environmental laws, namely:

- the precautionary and prevention principles,
- principles for environmentally sustainable innovation: a highest environmental quality principle, and a best available techniques principle; and
- a principle of environmental restoration.

1. Issue:

Overriding effect of treaty provisions if inconsistent with Code. In many jurisdictions international law has to be implemented in domestic law to have domestic enforceability. That is more democratic.

2. Reference to Code Book and Chapter Title

Book 1, Article 3 Applicable entities

3. Comparative Experience:

Human Right Act 2004 (ACT)

[30.](#) Interpretation of laws and [human rights](#)

[31.](#) Interpretation of [human rights](#)

4. Recommendation:

It would be better to say that the Code should be interpreted consistent with international law because treaty provisions provide the basic obligation which are interpreted by treaty bodies and elaborated in decisions of Conferences of the Parties.

The Code should also require that the Act be interpreted as far as possible consistent with human rights. A statutory example is ss [30](#) and [31](#) of the *Human Rights Act 2004 (ACT)*.

1. Issue:

Definitions

2. Reference to Code Book and Chapter Title

Draft Art 4 – definitions

3. Comparative Experience:

You may wish to consider definitions used in the [Planning and Development Act 2007](#) (ACT) for terms such as “development”, “use” and “sustainable development”.

As a small jurisdiction with more than 58% in protected area, environmental legislation in the ACT is regarded as progressive.

4. Recommendation:

Consider definitions used in the [Planning and Development Act 2007](#) (ACT)

1. Issue:

Co-operation amongst administrative agencies

2. Reference to Code Book and Chapter Title

Title 2 – **Organization of Jurisdictional Institutions/Jurisdictional Issues**

3. Comparative Experience:

In Australia [Administrative Arrangements Orders](#) explain which ministries administer which legislation. This avoids the need to amend legislation when portfolios are restructured or re-named. Legislation can refer to “minister(s)” and this has ongoing effect.

In the ACT, the Planning and Development Act specifies which portfolios need to be consulted on planning and development decisions as well as the generic “custodian” of the land. E.g. [s 60 Planning and Development Act 2007 \(ACT\)](#).

4. Recommendation:

Consider adopting administrative arrangements orders and more general definitions such as “custodian” in [s 333](#) of the *Planning and Development Act 2007 (ACT)*, which is “an administrative unit or other entity with administrative responsibility for land in the ACT that is unleased land, public land or both. *Note Entity* includes an unincorporated body and a person (including a person occupying a position) (see [Legislation Act](#))”. Custodians with “administrative responsibility are specified in the Administrative Arrangements Orders as amended from time to time.

1. Issue:

Consistency and simplicity of statutory model and need to reduce duplication by providing for planning provisions that apply to multiple land uses, zones, and types of protected areas

2. Reference to Code Book and Chapter Title

Book 2 — Environmental Planning – Making of National, Sub-National and Local Environmental and Natural Resources Plans

3. Comparative Experience:

The [*Planning and Development Act 2007*](#) (ACT) may be too complex to consider as a model for Cambodia. It provides for a statement of strategic directions, zone objectives, development tables, precinct codes and maps and overlay provisions for areas with special requirements, future urban areas, areas subject to interim planning variations, public land with various categories of protection and management objectives, urban open space zones, axial public transport routes and public utilities..

A simpler Act is the [*Australian Capital Territory \(Planning and Land Management\) Act 1988*](#) (Cth) but this Act has poor consultation and review provisions. Its provisions concerned with statutory urban plans are worth considering however. Canberra is a fully planned city and progressive policy commitments are in place concerned with active multi-modal transport.

Legislation in the Australian Capital Territory provides for separate statutory land use plans that include land use zones and permitted and prohibited uses within those zones. Statutory plans apply to central business districts (sustainable cities), residential areas, broadacre areas, river corridors, mountains and bushlands, hills ridges and buffer areas and rural areas.

This type of approach provides for a compact regulatory scheme that can avoid having separate Acts or parts of an Act for various types of land use. If followed it may not be necessary to have separate titles in the Cambodian Code for urban land use planning and Ramsar wetlands for example.

4. Recommendation:

Consider adopting a less complex model of the [*Planning and Development Act 2007*](#) (ACT) to simplify the structure of the draft Cambodian Environmental Code and to replace those chapters and titles that provide separate planning and management provisions for different categories of land and sea.

1. Issue

Principles of natural and cultural heritage management

2. Reference to Code Book and Chapter Title

Title 4 – Cultural and natural heritage management

3. Comparative Experience

Heritage sites could be the subject of land use zoning under the planning provisions of the Act, with management principles applying to permitted land uses for the relevant heritage zone and precinct. Currently the draft Code has separate titles for management plans for heritage areas.

The Australian Government's heritage management principles are accessible [here](#). Australian statutory principles specific to World Heritage sites under the EPBC Act are accessible [here](#). These could be expanded to include more of a focus on rights-based approaches, consistent with international developments in recent years.

The Hon Justice Elizabeth Evatt in an important but largely unimplemented [1996 report](#) on cultural heritage management in Australia suggested these principles should guide heritage protection (with “Cambodian” or “Khmer” substituted for “Aboriginal”):

- respect, protect and support for the living culture, traditions and beliefs of [Cambodian or Khmer] people and recognise their role and interest in the protection and control of their heritage
- apply national standards to protect heritage
- access should be provided to an effective process for the protection of areas and objects of significance
- provide a process which operates in a consistent manner, according to clear procedures and avoid unnecessary duplication, delays and costs
- ensure Cambodian or Khmer people participate in decisions about the protection of their significant sites and that their wishes are taken fully into account
- ensure that heritage protection laws benefit all the people of Cambodia, whether or not they live in traditional life style, whether they are urban, rural or remote.

4. Recommendation

The Code should include criteria for assessing heritage significance. Australian provisions could be adopted e.g. s [10](#), [10A](#) and [10B](#) of the *Heritage Act 2004* (ACT).

Provide for a registration process for heritage places and objects including provisional registration, public consultation and registration.

Consider including heritage *management* principles in Chapter 2 and elaborate them in a later title or subordinate instrument and incorporate heritage areas into the planning and development provisions rather than as separate titles and chapters so that planning principles apply to protect those heritage areas.

The Code should require the relevant Ministry with responsibility for heritage to provide advice about the effect of proposed development on places and objects of heritage significance. The Ministry with responsibility for approving development should be required to consider and

act consistent with heritage advice before making a decision to approve development that affects a registered heritage place or object. The Code should specify reasonable exceptions.

The Code should provide for heritage offences, including diminishing the heritage significance of a place or object.

The Code should include provisions for heritage directions and penalties for non-compliance.

Funding mechanisms could be adapted from publications such as:

- Francesca Romana Medda, Simone Caschili, Marta Modelewska, [*Innovative Financial Mechanisms for Urban Heritage Brownfields – Economics of Uniqueness: Cultural Heritage Assets and Historic Cities as Public Goods*](#), May 2-3, 2011, World Bank, Washington, DC
- National Incentives Taskforce, [*Making heritage happen - Incentives and Policy Tools for Conserving Our Historic Heritage*](#), Environment Protection and Heritage Council, April 2004
- Heritage Chairs and Officials of Australia and New Zealand, [*Incentives for Heritage Protection Handbook - A National Guide for Local Government and the Community*](#)
- Mary Knaggs, *Revolving Funds For Heritage*, [*Proceedings of Fabric: The Threads of Conservation, Australia ICOMOS Conference, 5-8 November 2015*](#)

Please let me know if you need input in relation to model provisions for the heritage section of the Code in relation to the following points 5 & 6.

5. Proposed Language to be Inserted into the Draft Code (optional) (Note: when proposing modifications to existing draft Code text, please extract the relevant text and insert here, in track changes if possible):

6. Cambodian Laws to be Abrogated or Modified (include specific articles and clauses):

7. Drafting Team Analysis/Response (to be included in public database):

1. Issue:

Environmental Impact Assessments

2. Reference to Code Book and Chapter Title

Chapter # - Preparation of EIA report & Chapter # - Preparation of environmental management plan

3. Comparative Experience

In Australia, EIAs are usually prepared by the project proponent. It would be a significant reform NOT to have EIAs prepared by the project proponent.

The draft Code is good to require EIAs to assess cumulative impacts.

4. Recommendation

EIA processes should be managed by an independent agency and project proponents should not be responsible for preparing draft EIAs.

EIA processes should commence when an 'adverse impact' is likely, rather than a 'significant impact' and decisions about this threshold trigger should be subject to merits review.

Assessments should operate flexibly in relation to particular needs, such as concurrent impacts on heritage sites of significance.

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Date of Submission:

11 July 2016

Submitted by (provide individual and STWG contact information):

NGOF, CCC, SCW, HBF, BCV, DPA, FACT, RUA, Forum Syd, Star Kampochea (SK), YRDP, Equitable Cambodia (EC), ADHOC, Oxfam.

(Required, including relevant STWG, if any.):

STWG5 (FACT), STWG 6 (DPA), STWG 7 (SK)

1. Issue:

(Please provide a brief description of the issue that is addressed by the recommendation included in number 4 [“4. Recommendation”] below.).

1. No preamble
2. The purpose is too short
3. Limited recognition of social accountability into the management of environment and natural resources
4. Exclude “companies”
5. Glossary lacks of definitions of terms such as participation,...
6. Lack of important principles that are the center of the code: sustainable development principles and equitable development.
7. The Principle of Public Participation: the sentences sound like people don’t want to protect the environment, when it is typically business that is reluctant to comply.
8. The Principle of Access to Information: not yet include main information to be accessed
9. The Principle of Access to Effective Remedies only mentioned “People” in general not yet specific to include “impacted communities”
10. Not yet including some important articles in this chapter
11. Not yet including UN related convention on human rights which Cambodia endorsed
12. Not yet include the local knowledge
13. The EIA report still weak description
14. Not yet include the language for community to understand
15. Not yet include FPIC
16. From 16-83 issues: Some sentences need to add, to omit, and to change as showing in *(4. Recommendation)*.

2. Reference to Code Book and Chapter Title (if applicable):

(Please provide the Book and Chapter titles and not just the number; the Book and Chapter numbers may change from one draft to the next if the Code is reordered.)

1. Book 1: GENERAL PROVISIONS¹: Chapter 1: Objective²
2. Book 1: Chapter 1: Article 1 – Purpose
3. Book 1: Chapter 1: Article 2 – Objective
4. Book 1: Chapter 1: Article 3 – Applicable entities
5. Book 1: Chapter 1: Article 4 – Definition/Glossary
6. Book 1: Chapter 2³: Principles
7. Book 1: Chapter 2: Article 1: The Principle of Public
8. Book 1: Chapter 2: Article 2: The Principle of Access to Information
9. Book 1: Chapter 2: Article 3: The Principle of Access to Effective Remedies
10. Book 1: Chapter 2: Article 10: Principle of Gender Equality for Natural Resources Decisions
11. Book 1: Chapter 3: General duty to avoid environmental harm: Article #
12. Book 1: Chapter #: Cambodian Environmental Mapping Center: Article 1. General Provision
13. Book 1: Chapter #: Public Consultation a fundamental requirement for environmental decisions: Article #:(The EIA Report shall)
14. Book 1: Chapter #: Public Consultation a fundamental requirement for environmental decisions: Article #:....(MoE shall ensure)
15. Book 1: in Chapter as following:
 - Chapter # - Duty to consult with potential affected persons
 - Chapter # - Duty to consider concerns raised by the community
 - Chapter # - Identification of project affected persons and other stakeholders
 - Chapter # - Minimum time allowed for public consultation in natural resources matters
 - Chapter # - Minimum time allowed for public consultation in EIA matters
 - Chapter # - Minimum time allowed for indigenous people to provide comments
 - Chapter # - Free, prior and informed consent for indigenous people in natural resources and environmental impact assessment matters
16. Book 1: Chapter: Free, prior and informed consent for indigenous people in natural resources and environmental impact assessment matters: Article#:
17. Book 1: Title 4: Access to environmental information: Chapter #: Information to be made available
18. Book 1: Title 4: Access to environmental information: Chapter #: Information to be made available: Article # Environmental information to be made publicly available
19. Book 1: Title 4: Access to environmental information: Chapter #: Information to be made available: Article # Procedures for requesting, receiving and appealing decisions to deny such information
20. Book 1: Title 4: Access to environmental information: Chapter #: Environmental Monitoring: Article #: Public Participation in environmental monitoring and gathering of information—development of shared or open-source systems.

¹ Will refer to the same title of Book 1 in this document

² Will refer to the same title of Chapter 1 in this document

³ Will refer to the same title of Chapter 2 in this document

21. Book 1: Title 4: Access to environmental information: Chapter #: Environmental Monitoring: Article: Review and Ensuring quality of information
22. Book 2: Environmental Planning: Title1: MAKING OF NATIONAL, SUB-NATIONAL AND LOCAL ENVIRONMENTAL AND NATURAL RESOURCES PLANS
23. Book 2: Title1: Chapter # - Adopting an ecosystems approach to planning including recognition of ecosystem services
24. Book 2: Title 2: Urban Land Use Planning
25. Book 2: Title 4: Strategic Environmental Assessment
26. Book 2: Title 4: Strategic Environmental Assessment: Chapter #: Aims
27. Book 2: Title 4: Strategic Environmental Assessment: Chapter #: implementation of SEA: Article: Screening
28. Book 2: Title 5: Environmental Impact Assessment
29. Book 2: Title 5: Chapter #: Scope of EIA in Cambodia
30. Book 2: Title 5: Chapter #: Application to Public and Private development Projects
31. Book 2: Title 5: Chapter #: Levels of assessment will include EIA, IEE or environmental protection agreement: Article#
32. Book 2: Title 5: Chapter #: Levels of assessment will include EIA, IEE or environmental protection agreement: Article#
33. Book 2: Title 5: Chapter #: Establishment of EIA Review Committee: Article#:
34. Book 2: Title 5: Chapter #: Preparation of environmental management plan: Article #
35. Book 2: Title 5: Chapter #: Consideration and assessment of EIA report: Article 25
36. Book 2: Title 5: Chapter# Revision of EIA report: Article #
37. Book 2: Title 5: Chapter# Matter for consideration: Article #:
38. Book 2: Title 5: Chapter#: Health impact Assessment
39. Book 2: Title 5: Chapter#: Health impact Assessment: Article:
40. Book 2: Title 5: Chapter#: Health impact Assessment: Article: ...in assessing the health impacts, Project Proponents must:
41. Book 2: Title 5: Chapter#: Transboundary Environmental Impact Assessment: Article#: A Project that has potentially significant trans-boundary environmental impacts is required to conduct a Trans-boundary Environmental Impact Assessment (TbEIA).
42. Book 2: Title 5: Chapter#: Transboundary Environmental Impact Assessment: Article#: Procedures for conducting TbEIA including government institution jurisdictions.
43. Book 2: Title 5: Chapter#: Transboundary Environmental Impact Assessment: Article#: Cumulative Impact Assessment
44. Book 2: Title 5: Chapter#: Reporting requirements: Article:
45. Book 2: Title 6: ENVIRONMENTAL AUDITS AND ENVIRONMENTAL MANAGEMENT REPORTING: Chapter: Establishment of self-reporting for environmental compliance
46. Book 2: Title 6: ENVIRONMENTAL AUDITS AND ENVIRONMENTAL MANAGEMENT REPORTING: Chapter#: Obligation to report breaches of Environmental Code
47. Book 2: Title 6: ENVIRONMENTAL AUDITS AND ENVIRONMENTAL MANAGEMENT REPORTING: Chapter#: Establishment of system of environmental compliance
48. Book 2: Title 6: ENVIRONMENTAL AUDITS AND ENVIRONMENTAL MANAGEMENT REPORTING: Chapter#: Environmental audits

49. Book 2: Title 6: ENVIRONMENTAL AUDITS AND ENVIRONMENTAL MANAGEMENT REPORTING: Chapter#: Appointment and qualifications of environmental auditors
50. Book 2: Title 6: ENVIRONMENTAL AUDITS AND ENVIRONMENTAL MANAGEMENT REPORTING: Chapter # - Monitoring reports to be required for specific project and activities
51. Book 2: Title 6: ENVIRONMENTAL AUDITS AND ENVIRONMENTAL MANAGEMENT REPORTING: Chapter # - Promoting Corporate Social Responsibility
52. Chapter#: Activities prohibited in the National Conservation Corridors
53. Book 2: Title 2: Biodiversity management and endangered species protection
54. Book 2: Title 2: Biodiversity management and endangered species protection: Chapter: Management and approvals for use of genetically modified organisms
55. Book 2: Title 3: Community Management
56. Book 2: Title 3: Community Management: Chapter #: Establishment of co-management as a multi-stakeholder conservation tool
57. Book 2: Title 4: Cultural and natural heritage management
58. Book 2: Title 5: Water Management: Chapter: Irrigation system and water supply for agricultural purposes
59. Book 2: Title 5: Water Management: Chapter: Erosion control (riparian vegetation management)
60. Book 2: Title 5: Water Management: Chapter: Ground Water Management
61. Book 2: Title 5: Water Management: Chapter: Ground Water Management: Article: Establishing requirements for monitoring wells, with triggers for conservation measures if such wells fall below a critical level
62. Book 2: Title 6: Coastal zone management: Chapter 1: General Provisions
63. Book 2: Title 6: Coastal zone management: Chapter 3: Coastal Zone Management Mandates
64. Book 2: Title 7: Solid and hazardous substances Control and contaminated land: Chapter#: Management of Chemical Substances General Provision
65. Book 2: Title 7: Solid and hazardous substances Control and contaminated land: Chapter7: Use and Disposal: Article 28:
66. Book 2: Title 7: Solid and hazardous substances Control and contaminated land: Chapter8: Chemical Industry
67. Book 2: Title 7: Solid and hazardous substances Control and contaminated land: Chapter8: Chemical Industry: Article 34
68. Book 3: Title 9: Energy
69. BOOK 3: TITLE 10: EXTRACTIVE INDUSTRIES
70. BOOK 3: TITLE 10:Chapter # - Extractive Industries Transparency Initiative (EITI) requirements and standards
71. BOOK 3: TITLE 10:Chapter # - Adoption of best practice in extractive industry
72. BOOK 3: TITLE 10:Chapter # - Financial and economic arrangements to ensure proper site management
73. BOOK 3: TITLE 10:Chapter # - Licensing and permitting system following EIA approval
74. BOOK 3: TITLE 10:Chapter # Artisanal and small scale mining (ASM)
75. BOOK 3: TITLE 10:Chapter # - Rehabilitation and closure plans: Cumulative impacts
76. BOOK 3: TITLE 10:Chapter # - Financing remediation and restoration for extractive industry
77. BOOK 3: TITLE 14: Chapter 1 - General Provisions

- 78. BOOK 3: TITLE 14: Chapter 2 - Marine Fisheries Mandates:
- 79. BOOK 3: TITLE 14: Chapter 3- Marine Fisheries Discretionary Authorities
- 80. BOOK 3: TITLE 16: Chapter # - Management of ELCs
- 81. BOOK 4: TITLE 1: Chapter # - Sources of revenue to the Environment, Conservation and Social Development Fund
- 82. BOOK 4: TITLE 3: Chapter # - Partnerships and exchange programmes with other countries' institutions
- 83. BOOK 4: TITLE 4 - INVESTIGATION, ENFORCEMENT AND ACCESS TO REMEDIES

3. Comparative Experience (if any):

(Please include any Cambodian and international examples and experience.)

4. Recommendation:

(Please include here the text of the recommendation to address the issue provided in number 1 [“1. Issue”] above. If needed, note “See Attachment” for corresponding documents.)

- 1. Book 1: GENERAL PROVISIONS⁴: Chapter 1: Objective⁵
History (Preamble) – why is this code being developed now and what issues does it intend to address or changes? How will this code influence existing laws?
- 2. Book 1: Chapter 1: Article 1 – Purpose
To provide a comprehensive and integrated legal framework and organizational system for management, restoration and conservation of environmental and biological resources to contribute to the achievement of sustainable development, equitable development, and poverty reduction in Cambodia
- 3. Book 1: Chapter 1: Article 2 – Objective
Suggestion to add:
 - a. Integrate key principles of social accountability approaches including transparency, accountability and participation into environmental planning and decision making.
 - b. Promote a rights based approach to sustainable development, in accordance with the UN Guiding Principles on Business and Human Rights
 - c. Guarantee the health.....of Cambodia and also to decrease the incident of toxins and poison in the air water and soil.
 - d. Promote a co-operative approach to the protection and management of the environment through meaningful stakeholder engagement involving government, the community, land-holders, indigenous peoples, women, youth and business;
- 4. Book 1: Chapter 1: Article 3 – Applicable entities
This code applies to Cambodia state bodies **companies**
- 5. Book 1: Chapter 1: Article 4 – Definition/Glossary
Suggestion to add:
 - a. more terms related to social and systemic management aspects such as environment, participation, transparency, and accountability
 - b. **Risk based due diligence** – to identify, prevent, mitigate and remedy actual and potential adverse impacts

⁴ Will refer to the same title of Book 1 in this document

⁵ Will refer to the same title of Chapter 1 in this document

- c. **Free Prior and Informed Consent (FPIC)** – is a right of indigenous peoples, enshrined in the UNDRIP⁶ and ILO Convention 169. It means all indigenous peoples and local communities must be adequately informed about projects that affect their lands in a timely manner, free of coercion and manipulation. For Indigenous peoples they have the right under international law to approve or reject a project, based on their standing as distinct, self-determining peoples with collective rights
 - d. **Meaningful stakeholder engagement** – provide meaningful opportunities for interested stakeholders to participate in planning and decision-making for projects or related activities that may impact communities, their livelihoods, land and the natural environment
 - e. **Remedy** – Remedy may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (s or guarantees of non-repetition injunction such as fines), as well as the prevention of harm through, for example,
6. Book 1: Chapter 2⁷: Principles
Suggest to add two more principles: consider as overarching principles for the code to governance the stated principles. They include: sustainable development principles and equitable development principles.
7. Book 1: Chapter 2: Article 1: The Principle of Public
Suggest to add:
- a. Objectives:
 - informing stakeholders about the project proposal and its livelihood affects in order to gain their views, concerns and values
 - taking into account of public inputs and decision making process obtaining local knowledge that maybe useful for decision making
 - Facilitating consideration of alternative of mitigation measures and trade-off
 - Ensure that important impacts are not overlooked, and maximize the benefit
 - increasing public confidence and support
 - improving transparency and accountability in decision-making
 - Reducing Conflict through the early identification of contagious issues
 - Provide an opportunity for the public to influence project design in positive manner (thereby creating a sense of ownership of the project proposal
 - b. Principles:
 - Provide the right information
 - allow sufficient time to review and respond
 - provide appropriate opportunities/means for stakeholder involvement
 - respond issues and concerns raised
 - feedback the results of public input
 - choose venues, languages and times of events to suit stakeholders
 - c. ...Participatory decision making.....to public and impacted communities....
8. Book 1: Chapter 2: Article 2: The Principle of Access to Information
Suggest to add: The principle of access to information, including (free prior and informed consent) that individuals, impacted communities, legal entities Public authorities and developers (including non-state actors), including social and

⁶ Cambodia is a signatory to this Declaration

⁷ Will refer to the same title of Chapter 2 in this document

environmental impact assessments and mitigation plans, resettlement plans,
opportunity for public participation in planning and decisions ...

9. Book 1: Chapter 2: Article 3: The Principle of Access to Effective Remedies
Suggest to add: The principle of access to effective remedies, that people, impacted communities, Judicial, non-judicial, legislative or other appropriate means to access appropriate ... resolution of environmental and related human rights disputes. Effective ...for environmental and related human rights harm.
Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome.

10. Book 1: Chapter 2: Article 10: Principle of Gender Equality for Natural Resources Decisions

Suggest to add:

- a. Article #11: involvement of youths in environment management (about 10 million youths are involved in environmental activities.)
- b. Article #12: Decentralization of decision making from the nation to the sub-national level (National is technical advisors, sub-national are implementers. Policies to come from the community level.)
- c. Article #13: Improve the access to environmental permits and requirements for projects and the general public
- d. Article #14: Increase the authority and rights of community resource protection groups
- e. Article #15: Decrease negative impact on community livelihoods and Promote community enterprises
- f. Article 16: Principle of Free, Prior and Informed Consent (FPIC)

FPIC is a specific right of Indigenous Peoples as recognized in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP⁸) and ILO Convention 169. . States shall consult and cooperate in good faith with indigenous peoples concerned through their own representative institutions in order to obtain Free, Prior and Informed Consent prior to approval of any project affecting their land or territories (UNDRIP, Article 32(2)). Community participation in projects that affect them, their land, and their livelihoods should be consistent with the principles underlying FPIC, including their full and effective participation in project negotiation and planning, free of intimidation, manipulation, coercion; prior to land allocation and in a timely manner; informed of all relevant information. Consent requires indigenous communities to say 'yes' or 'no' to a project. The right to give or withhold consent is an important distinction between the rights of indigenous peoples (as enshrined in international law) and other project affected communities.

11. Book 1: Chapter 3: General duty to avoid environmental harm: Article #
Suggest to add and change in the article: Recognizing the links between environmental harm and human rights, a person or business enterprise must not carry out any activity that causes, or is likely to cause, environmental harm. As stated in the UN Guiding Principles on Business and Human Rights, “business enterprises must “avoid causing or contributing to adverse human rights impacts through their own activities, and address

⁸ Cambodia is a signatory to this Declaration

such impacts when they occur”; and “seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations ,products or services by their business relationships, even if they have not contributed to those impacts” [Chapter 2, Article 13] (the general environmental duty).

12. Book 1: Chapter #: Cambodian Environmental Mapping Center: Article 1. General Provision

Suggest to add:

- a. the best evidence from local knowledge (not only the best scientific evidence)
- b. include industry locations in this map
- c. Question: How will “All geospatial data, mapping products, and metadata held by the CEMC shall be deemed property of the state, and available for public use.” Be made available?

13. Book 1: Chapter #: Public Consultation a fundamental requirement for environmental decisions: Article #:(The EIA Report shall)

Suggest to add:

- a. The EIA Book can be strengthened. Key additions include:
 - i. Broadening the EIA to an SEIA to include the links between environmental and social impacts.
 - ii. Specifically including reference to human rights impact assessment (e.g. access to clean water, health etc) and a gender impact assessment, recognizing projects such as mining / hydro are not gender neutral and loss of agricultural land / forests will impact on women who are often small scale farmers, fisher people, forest product gatherers. [See Oxfam in Australia publications on gender impact assessment in mining and hydro].
 - iii. Ensure SEIA’s for all projects; Ensure SEIAs are not ‘one off’ / static. Must be conducted for all phases of a project, e.g. in mining, for exploration, construction, operation, mine expansion, mine closure
 - iv. Ensure SEIA is in the public domain, accessible and in a format that can be understood
- b. Provide clear reasons why those concerns are rejected:
 - i. Shall be made public and easily accessible in a language that can be understood in order to ensure meaningful participation from the grassroots communities, including ethnic minorities.
 - ii. Distributed in a format that is accessible by remote non-khmer speaking communities

14. Book 1: Chapter #: Public Consultation a fundamental requirement for environmental decisions: Article #:(MoE shall ensure)

Suggest to add: MoE.....sufficient information, in a language and format they can understand.

15. Book 1: in Chapter as following:

- Chapter # - Duty to consult with potential affected persons
- Chapter # - Duty to consider concerns raised by the community
- Chapter # - Identification of project affected persons and other stakeholders
- Chapter # - Minimum time allowed for public consultation in natural resources matters
- Chapter # - Minimum time allowed for public consultation in EIA matters
- Chapter # - Minimum time allowed for indigenous people to provide comments

Chapter # - Free, prior and informed consent for indigenous people in natural resources and environmental impact assessment matters

Recommendation to consider article on FPIC for all of these chapters to ensure that FPIC is part of the SEIA process. This is vital.

16. Book 1: Chapter: Free, prior and informed consent for indigenous people in natural resources and environmental impact assessment matters: Article#: Suggest to add and change:
 - a. The public participation process (including proposed mitigation measures) shall ensure that the consent of the indigenous people's is gained and is based on the internationally recognized principle of free, prior, and informed consent (FPIC). Project-affected community participation in projects that affect them, their land, and their livelihoods should be consistent with the principles underlying FPIC, including their full and effective participation in project negotiation and planning, free of intimidation, manipulation, coercion; prior to land allocation and in a timely manner; informed of all relevant information.
 - b. "In cases where the project-affected community disagrees . . . , **the development project still continues**; however, the Project Proponent... affected community." Recommendation: This is at odds with the FPIC principle, which Cambodia has endorsed.
 - c. "The procedure . . . be determined by Sub-decree". Recommendation: This needs explanation and as a minimum should be consistent with **IFC** Performance Standard 5, Land Acquisition and Involuntary Resettlement
17. Book 1: Title 4: Access to environmental information: Chapter #: Information to be made available
Suggest to add: a language and format that is accessible and understood
18. Book 1: Title 4: Access to environmental information: Chapter #: Information to be made available: Article # Environmental information to be made publicly available
Suggest to add and change in the article as: **Environmental impact (EIA) information to be made publicly available**. And recommendation are:
 - a. Ensure that this action is done in cooperation with the draft law on access to information
 - b. Ensure clear language
 - c. Ease of access in one web location
 - d. Website and data management partially supported by funds from private sector.
19. Book 1: Title 4: Access to environmental information: Chapter #: Information to be made available: Article # Procedures for requesting, receiving and appealing decisions to deny such information
Suggest to delete Article#: **Procedure for requesting, receiving and appealing decisions to deny such information** because of contradicts principle of access to information, FPIC etc.
20. Book 1: Title 4: Access to environmental information: Chapter #: Environmental Monitoring: Article #: Public Participation in environmental monitoring and gathering of information—development of shared or open-source systems
Suggest to add and consider as following:

- a. Article # Public and project affected community Participation in... systems.
 - b. consider on Ensuring participation of women, youth, indigenous peoples
- 21. Book 1: Title 4: Access to environmental information: Chapter #: Environmental Monitoring: Article: Review and Ensuring quality of information
Suggest to consider in this article as following:
 - a. Grassroots monitoring data and information must be given stronger consideration than all other kinds of reporting.
 - b. Clearly define who has responsibility for the monitoring
 - c. Define how authorities and companies will work with communities to prepare monitoring reports
- 22. Book 2: Environmental Planning: Title1: MAKING OF NATIONAL, SUB-NATIONAL AND LOCAL ENVIRONMENTAL AND NATURAL RESOURCES PLANS
Suggest to consider this title on:
 - a. Link to principles of FPIC and not contradict principles of access to information, participation and EIA best practice.
 - b. Policies and strategic direction from the national level must represent the interests of local communities
- 23. Book 2: Title1: Chapter # - Adopting an ecosystems approach to planning including recognition of ecosystem services
Suggest to clarify the languages of “recognition of ecosystem services” as following:
 - a. Projects must not be implemented inside already designated conservation areas
 - b. Care must be taken for both biodiversity and ecosystems
 - c. Project will contribute funds to ecosystem services areas
- 24. Book 2: Title 2: Urban Land Use Planning
Suggest o consider on the spread of urban areas in the planning
- 25. Book 2: Title 4: Strategic Environmental Assessment
Recommendation on the Title 4: SEA
 - a. This Title and the content seem to contradict previous and following (EIA) chapters, articles. In this section, is appears that the SEA overrides other earlier stated provisions. Seek clarification
 - b. Should link to FPIC and resettlement
 - c. This SEA should be done at the national level and all ministries should share the same vision.
 - d. Link this to the NSDP and remove from this document
 - e. Individual ministries do not decide their own SEA
- 26. Book 2: Title 4: Strategic Environmental Assessment: Chapter #: Aims
Suggest to add:
 - a. Ensuring ... health and social (human rights, gender, resettlement etc.) impacts, ... programmes
- 27. Book 2: Title 4: Strategic Environmental Assessment: Chapter #: implementation of SEA: Article: Screening
Suggest to add: infrastructure(roads, rail, ports, energy grids)
- 28. Book 2: Title 5: Environmental Impact Assessment
Suggest to add and/or change:

- a. a general statement to link EIA and SEIA given the links
 - b. The aim of this title on EIA.....environment, indigenous peoples, communities, their land and livelihoods and society more broadly, to undertake
 - c. EIA will be required for all projects or activities
 - d. "IEE will be Society" should be "better to just say an EIA will be required for all projects. 'significant' and 'minor' impact is too subjective".
29. Book 2: Title 5: Chapter #: Scope of EIA in Cambodia
Suggest to add article "Roles of national and sub-national authorities"
- a. Article that defines sub-national responsibility to ensure EIA is approved before development begins
 - b. Define investment funds to distribute to sub-national authority for EIA administration.
 - c. Define the scope of the project to be approved by the national and sub-national level
30. Book 2: Title 5: Chapter #: Application to Public and Private development Projects
Recommendation: Ensuring EIAs are conducted for each phase of project (exploration, construction, operation, expansion, closure), given different impacts at different phases
31. Book 2: Title 5: Chapter #: Levels of assessment will include EIA, IEE or environmental protection agreement: Article#
Suggest to add:
- a. All development ... culture, consistent with the principles of FPIC, and with.... for decision.
 - b. Issuance of licenses ...with the principles of FPIC and ... considered null and void.
32. Book 2: Title 5: Chapter #: Levels of assessment will include EIA, IEE or environmental protection agreement: Article#
Recommendation on Article#: This law doesn't ...disaster management: This is a problematic clause. It effectively means that any project could be deemed as 'necessary' (e.g a hydro dam
Recommendation on Article#:.... An Environmental Impact Assessment shall be required for:
- a. Needs greater clarity
 - b. Too subjective on "Projects that have received an IEE and the result of the study demonstrate serious impacts on environment and society and the MoE requires the project to conduct an EIA."
33. Book 2: Title 5: Chapter #: Establishment of EIA Review Committee: Article#:
Suggest to add and recommendation:
- a. The composition of the Expert Review Committee includes officials from MoE and relevant ministries and institutions, representatives from impacted communities and civil society and independent experts ... EIA report.
 - b. Recommendation: Ministers and university professors have salaries and reviewing EIA is part of their jobs. They should not receive excess fees from Project Proponents for the service of approving EIA.

34. Book 2: Title 5: Chapter #: Preparation of environmental management plan:
Article #
Recommendation: "Project-affected persons and all stakeholders ... to the Project Proponent and to petition competent authorities" should be better linked to ensuring impacted communities, CBOs, CSOs on EIA Review C/M.
35. Book 2: Title 5: Chapter #: Consideration and assessment of EIA report: Article 25
Recommendation: The opinions of affected persons should carry more weight than the concerns of company.
36. Book 2: Title 5: Chapter# Revision of EIA report: Article #
Recommendation to Article#... Before the decision to grant.....take strong heed..... as following:
- a. Follow the guidelines of FPIC, Human Rights Standards, UNDRIP, and respect existing laws on conservation and safeguard principals.
 - b. Follow Cambodia's signatory status under international guidelines.
37. Book 2: Title 5: Chapter# Matter for consideration: Article #:
Suggest to add: Protecting the rights ofindigenous peoples, in keeping with the principles of FPIC and through the EIA.....EIA approval.
38. Book 2: Title 5: Chapter#: Health impact Assessment
Suggest link it to a broader human rights due diligence assessment (identify, mitigate, prevent and remedy) as per UNGP on Business and Human Rights
39. Book 2: Title 5: Chapter#: Health impact Assessment: Article:
Suggest to add:
- a. Baseline data on health (including nutrition) in the project...
 - b. Description ofimpacts(e.g. resettlement, food and water insecurity, nutrition, additional work burden, sexually transmitted disease etc.) due to the environment;
 - c. Preserve and maintain the good health of the communities and take measures for improvement where necessary.
40. Book 2: Title 5: Chapter#: Health impact Assessment: Article: ...in assessing the health impacts, Project Proponents must:
Suggest to add ex's above and include
41. Book 2: Title 5: Chapter#: Transboundary Environmental Impact Assessment: Article#:
A Project that has potentially significant trans-boundary environmental impacts is required to conduct a Trans-boundary Environmental Impact Assessment (TbEIA).
Suggest to add references to the Hydropower sustainability Assessment Framework and Protocol
42. Book 2: Title 5: Chapter#: Transboundary Environmental Impact Assessment: Article#:Procedures for conducting TbEIA including government institution jurisdictions.
Suggest to consider e.g Mekong River Commission, but also needs to include, mechanisms to actively involve downstream and upstream communities (e.g in the case of dams), but participation and access to info etc of impacted communities
43. Book 2: Title 5: Chapter#: Transboundary Environmental Impact Assessment: Article#:
Cumulative Impact Assessment
Suggest to

- a. see work on cumulative Impact Assessment By University of Queensland, CSR
 - b. Omit phrase: In the cumulative impacts assessment report.....based ~~on their own time and space parameters and~~ project activities surrounding the project sites.
 - c. Project Proponents must consider following EIA approval guidelines, significant cumulative impacts should result in the immediate withdraw of the license.
44. Book 2: Title 5: Chapter#: Reporting requirements: Article:
Recommendation: the Environmental Monitoring Report should follow a standardized format
45. Book 2: Title 6: ENVIRONMENTAL AUDITS AND ENVIRONMENTAL MANAGEMENT REPORTING: Chapter: Establishment of self reporting for environmental compliance
Suggest on establishment of self reporting:
- a. Highly problematic. It does not work. Should delete.
 - b. Reporting , audit, monitoring must be independent, verifiable and include independent experts
46. Book 2: Title 6: ENVIRONMENTAL AUDITS AND ENVIRONMENTAL MANAGEMENT REPORTING: Chapter#: Obligation to report breaches of Environmental Code
Suggest to add: Mandatory Obligation to report breaches of Environmental Code
47. Book 2: Title 6: ENVIRONMENTAL AUDITS AND ENVIRONMENTAL MANAGEMENT REPORTING: Chapter#: Establishment of system of environmental compliance
Suggest to add: Establishment of system of environmental compliance and non-compliance
48. Book 2: Title 6: ENVIRONMENTAL AUDITS AND ENVIRONMENTAL MANAGEMENT REPORTING: Chapter#: Environmental audits
Suggest to consider: ensuring mandatory on Environmental audits
49. Book 2: Title 6: ENVIRONMENTAL AUDITS AND ENVIRONMENTAL MANAGEMENT REPORTING: Chapter#: Appointment and qualifications of environmental auditors
Suggest to add: Appointment and qualifications of independent environmental auditors
50. Book 2: Title 6: ENVIRONMENTAL AUDITS AND ENVIRONMENTAL MANAGEMENT REPORTING: Chapter # - Monitoring reports to be required for specific project and activities
Suggest to consider this chapter: Linked to risk identification and mitigation plans
51. Book 2: Title 6: ENVIRONMENTAL AUDITS AND ENVIRONMENTAL MANAGEMENT REPORTING: Chapter # - Promoting Corporate Social Responsibility
Recommend this Chapter be called Responsible Business Conduct. This is now widely accepted internationally and will promote better policy coherence with the UN Guiding Principles on Business and human Rights and the OECD Guidelines for Multinational Enterprises

52. Chapter#: Activities prohibited in the National Conservation Corridors
Suggest also include a chapter on Zero tolerance for development in national parks and other environment / biodiversity importance, outside of a particular corridor
53. Book 2: Title 2: Biodiversity management and endangered species protection
Suggest to add Sesan River in the Mekong River
54. Book 2: Title 2: Biodiversity management and endangered species protection:
Chapter: Management and approvals for use of genetically modified organisms
Suggest to consider: No management – these should be prohibited all together
55. Book 2: Title 3: Community Management
Suggest to see:
 - a. <https://communitiesfirst.net/toolkits/3-rights/>
 - b. <http://naturaljustice.org/>
 - c. <http://community-protocols.org/>
56. Book 2: Title 3: Community Management: Chapter #: Establishment of co-management as a multi-stakeholder conservation tool
Suggest to ensure planning and funding for community patrols in conjunction with local authorities to control illegal logging and poaching in the “multi stakeholder conservation tool”.
57. Book 2: Title 4: Cultural and natural heritage management
Suggest to:
 - a. regulate the activities of heritage site establishment to ensure the protection of the rights of citizens living in those areas.
 - b. Have special attention to ethnic minorities on “This would local and national heritage areas”
58. Book 2: Title 5: Water Management: Chapter: Irrigation system and water supply for agricultural purposes
Suggest to ensure that irrigation systems do not capture rice field water.
59. Book 2: Title 5: Water Management: Chapter: Erosion control (riparian vegetation management)
Suggest to add Wetlands rehabilitation and policies to preserve remaining wetlands
60. Book 2: Title 5: Water Management: Chapter: Ground Water Management
Suggest to consider the involvement of community participation and regional planning for digging wells.
61. Book 2: Title 5: Water Management: Chapter: Ground Water Management: Article: Establishing requirements for monitoring wells, with triggers for conservation measures if such wells fall below a critical level
Recommendation: need definition
62. Book 2: Title 6: Coastal zone management: Chapter 1: General Provisions
Recommendation in the number 2) The appropriate ministry.....coastal zone: it is better to have the coordination with MoE
63. Book 2: Title 6: Coastal zone management: Chapter 3: Coastal Zone Management Mandates
Recommendation:

- a. (f) Review, monitorto ensure that their activities are coordinated in a smooth, effective, and sustainable fashion. Should consider that their activities have no negative impact on the ecosystems or social systems in the coastal zone.
 - b. (2) Produce and openly distribute maps..... Should be part of MoE maps above
 - c. (5) omit "be prohibited except under special permit from the appropriate ministry."
 - d. (c) "If an unavoidable.....requirement" This goes against the principal of prevention stated above.
 - e. (7). "unless it can be demonstrated to the appropriate ministry that such developments are specifically designed to withstand such future inundation" suggest to omit it or do not allow.
64. Book 2: Title 7: Solid and hazardous substances Control and contaminated land:
Chapter#: Management of Chemical Substances General Provision
Suggest to consider this chapter: Will need to be linked to the Book on Natural resource Planning and management re mining and mining waste management
65. Book 2: Title 7: Solid and hazardous substances Control and contaminated land:
Chapter7: Use and Disposal: Article 28:
Define term "chemical substances or chemical waste". For future reference, keep discussing notes here before passing the law
66. Book 2: Title 7: Solid and hazardous substances Control and contaminated land:
Chapter8: Chemical Industry
Could include a new chapter here on the mining industry to cover use of hazardous chemicals (e.g. mercury and cyanide in gold mining), as well as waste (tailings) management more broadly, including zero tolerance for riverine waste disposal
67. Book 2: Title 7: Solid and hazardous substances Control and contaminated land:
Chapter8: Chemical Industry: Article 34
Define term "chemical substance"
68. BOOK 3: TITLE 9: ENERGY
- o Description box
 - o It will detail the mechanism to achieve **the rapid development of energy sources** in Cambodia such as hydropower, wind energy, solar energy, biogas, geothermal, tidal energy and nuclear energy.
 - Rapid development of alternative and carbon-free energy sources
 - Omit nuclear energy
 - o It will also examine the development of oil and gas in a manner that promotes sustainable development and transparency.
 - these two activities are contradictory; development of oil and gas should be curtailed.
 - o ADD
 - include CSR plan and De-commission Fund to ensure companies in these industries contribute significantly to protect and or restore the environment

Chapter # - Standards and technology for sustainable energy

- o ARTICLE # - Standards for approval of proposed hydropower projects
- o ARTICLE # - Issuing of permits for hydropower projects
- o ARTICLE # - Standards for management of hydropower projects

- review the HSAF and HSAP
 - Limit large and medium scale hydropower
 - Preference for small-scale hydro projects
- Chapter # - Standards and technology for coal-fired power plants
- Global practices and standards limit the use of coal, because of its destructive effects. Recommend Cambodia to follow this trend
- Chapter # - Provision of clean energy for rural communities
- ARTICLE # - Extending the energy grid
 - Omit this
 - Move toward smaller-scale energy production

69. BOOK 3: TITLE 10: EXTRACTIVE INDUSTRIES

- This Section needs significant work This Title must be framed within a ‘do no harm’, rights based, due diligence framework
- Link to newly established Extractive Industry Governance Framework Platform
- Revise description box to read:
 - This Title will examine the Laws relating to Mining in the provision of sustainable economic, social and environmental benefits to Cambodia.
 - This will link to the Title on EIA, to promote efficient and effective extractive industry development in Cambodia.
 - This will link to the Title on FPIC
 - include CSR plan and De-commission Fund to ensure companies in these industries contribute significantly to protect and or restore the environment

70. BOOK 3: TITLE 10:Chapter # - Extractive Industries Transparency Initiative (EITI) requirements and standards

- Query if this is relevant in the Enviro Code, and probably not as a stand-alone-chapter. It could be included in the following chapter of best practice, i.e. indicating that revenue transparency and disclosure of all oil gas ad mining payments, royalties, taxes etc is best practice. There would need to be a link to payment into a enviro fund for ex. Note. Cambodia is not an EITI Candidate country.

71. BOOK 3: TITLE 10:Chapter # - Adoption of best practice in extractive industry

- Highly recommend review of Oxfam (Australia and America) work on best practice in extractives.
 - <https://www.oxfam.org.au/what-we-do/mining/>
 - <http://politicsofpoverty.oxfamamerica.org/category/resource-rights/>
- Also review ICMM sustainable development framework, principles and guidance.
 - <http://www.icmm.com/our-work/sustainable-development-framework>
 - <http://www.icmm.com/document/9520>
- and OECD Meaningful stakeholder Engagement and Due Diligence in the Extractives Sector
 - <https://mneguidelines.oecd.org/OECD-Guidance-Extractives-Sector-Stakeholder-Engagement.pdf>
- and related OECD Guidance on conflict minerals and gold
 - <https://www.csr.uq.edu.au/publications/agreement-making-with-indigenous-groups>
 - <https://www.csr.uq.edu.au/publications/mining-and-local-level-development-examining-the-gender-dimensions-of-agreements-between-companies-and-communities>
- On ‘Benefit Sharing agreements’

- this could also be in the chapter on financial and economic arrangements

72. BOOK 3: TITLE 10:Chapter # - Financial and economic arrangements to ensure proper site management

- Add benefit sharing agreements

73. BOOK 3: TITLE 10:Chapter # - Licensing and permitting system following EIA approval

- link to FPIC

74. BOOK 3: TITLE 10:Chapter # Artisanal and small scale mining (ASM)

- See work by Daniel Franks

75. BOOK 3: TITLE 10:Chapter # - Rehabilitation and closure plans: Cumulative impacts

- Need to include a separate chapter or link to previous section on cumulative impacts

76. BOOK 3: TITLE 10:Chapter # - Financing remediation and restoration for extractive industry

- Unclear what this is

77. BOOK 3: TITLE 14: Chapter 1 - General Provisions

shall be based on the best scientific evidence, and shall prevent overfishing while achieving on a continuing basis the optimum yield

- Scientific knowledge and local knowledge
- Strict yield limits should be enforced

78. BOOK 3: TITLE 14: Chapter 2 - Marine Fisheries Mandates

Article 1) [final sentence] Fishing without obtaining such a license shall result in a notice of violation and fine.

- For-profit fishing requires license. Fishing for families is permitted

Article 10) Ensure that fishery management in the Marine Fishery Domain is based upon the best available scientific information, and undertake fishery research that adds to this base of scientific knowledge.

- Add local information and local knowledge
- As climate conditions change, slow-moving scientific reports may not have accurate information

Article 12) Monitor and issue an annual summary of changes to marine fishery resources, with special reference to coral reefs, seagrass beds, and mangroves, and analysing links to climate change and other driving factors.

- Add analyzing links to development projects
 - Development projects are well documented to cause damage to coastal ecosystems, they should be monitored
 - Whittington, Jerome. “Modernist Infrastructure and the Vital Systems Security of Water: Singapore’s Pluripotent Climate Futures.” *Public Culture* 28.2 (2016): 415–441.
 - Olewiler, Nancy, Herminia A. Francisco, and Alice Joan G. Ferrer, eds. *Marine and Coastal Ecosystem Valuation, Institutions, and Policy in Southeast Asia*. Springer, 2016.

79. BOOK 3: TITLE 14: Chapter 3- Marine Fisheries Discretionary Authorities;

Article 5(c): A description of the conservation and management measures that can be best applied to the fishery to prevent overfishing while achieving, on a continuing basis, the estimated optimum yield.

- Strict yield limits must be applied
- The term ‘optimum’ must be defined
 - Optimum for what?

- See the accepted description of ‘sustainable development’ and ensure that the language of ‘ensuring fish yields continue for future generations’ be clearly stated.

80. BOOK 3: TITLE 16: Chapter # - Management of ELCs, including management plans, transparency, and relation to sustainable timber production and biodiversity restoration

- ELC should not be involved in timber production any more.
- Their contribution to illegal logging and forest conversion are well documented
 - Forest Trends. Conversion Timber, Forest Monitoring, and Land-Use Governance in Cambodia. Washington, D.C.: N.p., 2015.
 - Milne, Sarah. “Cambodia’s Unofficial Regime of Extraction: Illicit Logging in the Shadow of Transnational Governance and Investment.” *Critical Asian Studies* 47.2 (2015): 200–228. Web.
 - Neef, Andreas, Siphath Touch, and Jamaree Chiengthong. “The Politics and Ethics of Land Concessions in Rural Cambodia.” *Journal of Agricultural and Environmental Ethics* 26 (2013): 1085–1103.

81. BOOK 4: TITLE 1: Chapter # - Sources of revenue to the Environment, Conservation and Social Development Fund

- Main source of revenue for this should come from the private investment sector – over 70%;
- With contribution from national budget

82. BOOK 4: TITLE 3: Chapter # - Partnerships and exchange programmes with other countries’ institutions

- Suggest reference to UN Guiding Principles on Business and Human Rights which includes access to remedy

83. BOOK 4: TITLE 4 – INVESTIGATION, ENFORCEMENT AND ACCESS TO REMEDIES

- Include something on access to both judicial and non-judicial mechanisms, e.g. the OECD Guidelines for Multinational Enterprises.
- Access to Remedy must be consistent with internationally recognized criteria:
 - Legitimate, accessible, predictable, equitable, rights-based, and transparent
- Include something on company / local level grievance mechanisms.
- See: <https://www.oxfam.org.au/what-we-do/mining/>

5. Proposed Language to be Inserted into the Draft Code (if any):

(Optional. Note: when proposing modifications to existing draft Code text, please extract the relevant text and insert here, in track changes if possible.)

6. Cambodian Laws to be Abrogated or Modified (if any):

(Please include the law title and the titles of specific articles and clauses.)

7. Drafting Team Analysis/Response (to be included in public database):

ENVIRONMENTAL CODE OF CAMBODIA

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BOOK 1 — GENERAL PROVISIONS

TITLE 1 — GENERAL PROVISIONS

CHAPTER 1 — OBJECTIVE

History (Preamble) – why is this code being developed now and what issues does it intend to address or changes
How will this code influence existing laws?

Article 1: **Purpose**

The purpose of this Environmental Code is to promote the sustainable development of Cambodia through the protection of the environment and sustainable use of natural resources.

Commented [I11]: To provide a comprehensive and integrated legal framework and organizational system for management, restoration and conservation of environmental and biological resources to contribute to the achievement of sustainable development, equitable development, and poverty reduction in Cambodia

Article 2: **Objective**

The Environmental Code ~~has~~ includes the following objectives:

Commented [N2]: per Anonymous (May 20)

Commented [BR3]: Per Karina Watkins

- (a) Conserve Cambodia's biodiversity, ecosystems and ecosystem services;
- (b) Promote a rights based approach to sustainable development, in accordance with the UN Guiding Principles on Business and Human Rights
- ~~(b)~~(c) Protect the environment from harm and damage, and sustainably manage natural resources, in accordance with Article 59 of the Constitution of Cambodia;
- ~~(c)~~(d) Preserve and promote national culture, preserve ancient monuments and artifacts, and restore historic sites, in accordance with Article 69 of the Constitution of Cambodia;
- ~~(d)~~(e) Guarantee the health of the people, in accordance with Article 72 of the Constitution of Cambodia;
- (f) Safeguard the individual and collective rights of indigenous people as postulated in Sub-decree No 83 (No 83 ANK.BK) and So Chor No 653 (653 So Chor No SR).

Commented [I14]: And also to decrease the incident of toxins and poison in the air water and soil.

Commented [BR5]: Per comment from Sao Sotheary, CI

- ~~(e)~~(g) Ensure that environmental protection and sustainable development objectives are fully integrated into national and regional economic planning and into natural resources planning and management;
- ~~(f)~~(h) Implement the National Environmental Strategy and Action Plan;
- ~~(g)~~(i) Promote a co-operative approach to the protection and management of the environment through meaningful stakeholder engagement involving government, the government, the community, land-holders, indigenous peoples, women, youth and business;
- ~~(h)~~(j) Assist the implementation of Cambodia’s international environmental responsibilities;
- ~~(i)~~(k) Implement the key principles of environmental law and policy as described in Chapter 2;

Article 3: **Scope of the Code**

This Code regulates environmental protection activities; policies, measures and resources for protection of the environment; and the rights and obligations of organizations, community, family households and individuals with respect to protection of the environment.

Applicable entities

This Code applies to Cambodian State bodies, organizations, family households and individuals; to Cambodians residing overseas and “foreign organizations” and individuals with operations in the territory of Cambodia. Where an international treaty of which Cambodia is a member contains provisions, which are different from the provisions in this Code, the provisions of such international treaty shall prevail.

Commented [116]: This seems to exclude corporate and companies

Article 4: **Definition/Glossary**

In this Code, the following terms shall be construed as follows:

(This Article shall contain definitions of key terms used in the Code, such as “sustainable development”, “environmental standards”, “best practices”, and so on.)

(Definitions will be based on existing definitions in Cambodian legislation where applicable, and relevant international usage of key terms.)

Nonexhaustive list to be defined:

- Sustainable development
- Environmental protection
- Environmental conservation
- Environmental standards
- Best practices
- Natural resources
- Environmental disputes
- Environmental harm
- Ecosystem services
- Liability
- Jurisdictional organization
- Forest
- Climate change
- REDD+
- Ecotourism

Risk based due diligence – to identify, prevent, mitigate and remedy actual and potential adverse impacts

Free Prior and Informed Consent (FPIC) – is a right of indigenous peoples, enshrined in the UNDRIP and ILO Convention 169. It means all indigenous peoples and local communities must be adequately informed about projects that affect their lands in a timely manner, free of coercion and manipulation. For Indigenous peoples they have the right under international law to approve or reject a project, based on their standing as distinct, self-determining peoples with collective rights

Meaningful stakeholder engagement – provide meaningful opportunities for interested stakeholders to participate in planning and decision making for projects or related activities that may impact communities, their livelihoods, land and the natural environment

Remedy – Remedy may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (s or guarantees of non-repetition injunction such as fines), as well as the prevention of harm through, for example,

Coastal Lands – The normally dry land extending inland 5 km from the shoreline, including the intertidal zone.

Coastal Waters – Marine waters extending seaward 5 km from the shoreline, including the associated submerged lands.

Coastal Watershed – The river basins in the Kingdom of Cambodia that flow directly to the Gulf of Thailand, taken as a whole.

Commented [I17]: Writing a code without clearly defining the terms first is problematic.

"There are multiple definitions for each of these terms and they can mean vastly different things

Commented [N8]: (per Dr. Ngoung Pheakdey)

Formatted: French (France)

Commented [I19]: Add definition of environment

Coastal Zone – The totality of the coastal waters, shoreline, and land area behind the shoreline that interacts hydrologically with the coastal waters.

Commercial fishing – Fishing in which the marine fishery resources harvested, either in whole or in part, are intended to enter commerce through sale, barter or trade.

Exclusive Economic Zone of the Kingdom of Cambodia – Waters with any detectable degree of salinity extending from the shoreline of the Kingdom of Cambodia to 200 nautical miles offshore, consistent with the 1982 Third United Nations Conference on the Law of the Sea.

EEZ – Exclusive Economic Zone (see definition above).

Environmental Impacts, means any impact on the environment, including human health, flora, fauna, biodiversity, soil, climate, air, water, landscape, ecosystems, natural sites, material assets, cultural heritage and the interaction among these factors

Environmental Report as used in Book 2, Title 4, Strategic Environmental Assessment, means a report that identifies, describes and evaluates the likely significant environmental, including, health, social and ecosystem effects of implementing the plan or programme and its reasonable alternatives, taking into account: (a) Current knowledge and methods of assessment; (b) The contents and the level of detail of the plan or programme and its stage in the decision-making process; (c) The interests of the public; and (d) The information needs of the decision-making body.

Fisher – Any person who engages in Fishing as defined below.

Fishery – One or more stocks of fish or other forms of marine life, occupying a particular geographic area or water depth range, which are deliberately harvested for commercial or non-commercial purposes.

Fishery stock – An individual species or subspecies of fish or marine life harvested for commercial or non-commercial fishery purposes.

Fishery stock complex – A group of species of fish or marine life occupying similar habitat that are harvested in a similar fashion using similar gears, for commercial or non-commercial fishery purposes, and are capable of being treated as a unit for fishery management purposes. Members of a fishery stock complex often share similar ecologies but need not be closely related taxonomically.

Fishing – Consistent with Article 4 of the Law on Fisheries, NS/RKM/506/11, within the Marine Fishery Domain of Cambodia refers to:

- (1) The catching, taking, or otherwise obtaining possession of live fish or other living marine resources;
- (2) The attempted catching, taking or otherwise obtaining possession of live fish or other living marine resources;

(3) Any other activity which can reasonably be expected to result in the catching, taking or otherwise obtaining possession of live fish or other living marine resources;

(4) Any operations at sea in support of, or preparation for, any activity described in subparagraphs (1) through (3) above.

This definition does not include any scientific research activity which is conducted by a researcher or research vessel approved by the appropriate ministry.

Fishing vessel – Any vessel, boat, ship or other craft used for or equipped for the harvest of marine life in the Marine Fishery Domain of Cambodia, or for aiding or assisting one or more vessels at sea in the performance of any activity related to fishing, including but not limited to preparation, supply, storage, refrigeration, transportation or processing.

Foreign fishing vessel – Any fishing vessel not based in and registered by the Kingdom of Cambodia.

Future Inundation Hazard Area – Any portion of the current Cambodian coastal lands that is projected to become flooded by a sea level rise of 1 m above the level of the current shoreline.

Geographic Information System – A computer system capable of capturing, storing, analyzing, and displaying geographically referenced information.

Geospatial information – Data referenced to a specific set of geographic coordinates which can gathered, manipulated, and displayed using a Geographic Information System.

GIS – See Geographic Information System.

Harvest – See Fishing above

Individual fishing quota – A ministerial permit under a limited access system to harvest a quantity of fish or other marine life, expressed by a unit of units representing a percentage of the total allowable catch of a fishery, that may be received or held for exclusive use by an individual person.

Intertidal zone – The fluctuating extent of the shoreline between mean higher high tide and mean lower low tide that is on a daily basis submerged to some degree by the coastal waters

Limited entry system – A system that limits participation in a fishery to those persons satisfying certain eligibility criteria or requirements.

Mapping products – Maps in both electronic or printed formats.

Metadata – A set of data that provides additional information about a geospatial data element, including the author, date of creation, etc.

Marine fishery resources – Consistent with Article 4 of the current Law on Fisheries, NS/RKM/506/11, marine fishery resources consist of all marine organisms, including but not limited to fish, mollusks, crustaceans, and all other forms of animal and plant life other than marine mammals and birds, and the habitats upon which these species depend, including but not limited to coral reefs, mangroves, estuaries, and seagrass beds.

Marine Fishery Domain – Waters with any degree of detectable salinity extending from the shoreline to the outer limit of the Exclusive Economic Zone of the Kingdom of Cambodia.

Marine waters - Those waters comprising or connected to the ocean, which possess a detectable degree of salinity and exhibit daily tidal fluctuations.

Mean higher high tide – The average height on an annual basis of the highest tide of the day. Equivalent to the term Mean Higher High Water as used in other countries.

Mean lower low tide – The average height on an annual basis of the lowest tide of the day. Equivalent to the term Mean Lower Low Water as used in other countries.

Optimum sustainable yield – The rate of harvest from a fishery that provides the greatest long-term level of catch and social benefit while retaining the ecological integrity of the fishery stock or stocks involved.

Overfishing – A rate or level of harvest in a fishery that exceeds the capacity of the fishery to produce the optimum sustainable yield on a continuing basis.

SCUBA – Self-contained underwater breathing apparatus.

Shoreline – The boundary between land and water at the average height of the daily higher high tide along the margins of lands bordering waters with any detectable degree of salinity. Equivalent to the term Mean Higher High Water as used in other countries.

Strategic Environmental Assessment means the evaluation of the likely environmental impacts, including health and social impacts. The steps of an SEA include the following: determination of the scope of an environmental report and its preparation, the carrying out of public participation and consultations, and the taking into account of the environmental report and the results of the public participation and consultations in a plan or programme.

Transshipment – Transportation of fish or other marine life by a foreign vessel or vehicle from a point within the Kingdom of Cambodia or its EEZ to a point outside the Kingdom of Cambodia or its EEZ.

Waters of a foreign nation – Any part of the territorial sea or Exclusive Economic Zone (or equivalent) of a foreign nation, to the extent such territorial sea or Exclusive Economic Zone is recognized by the Kingdom of Cambodia.

The Definition of Terminology shall be determined in the glossary section of this code.

CHAPTER 2 – PRINCIPLES

This Environmental Code is premised on, and should be implemented and interpreted in accordance with, the following fundamental principles of environmental law and policy:

Article 1: The Principle of Public Participation

The principle of public participation, that those who may be affected by a decision shall be entitled to provide informed, timely and meaningful input prior to the decision being made. They shall also be able influence in a transparent, inclusive and accountable manner the decision-making process. Participatory decision-making enhances the ability of governments to respond to public and impacted communities concerns and demands, to build consensus and to improve acceptance of and compliance with environmental decisions because citizens feel ownership over these decisions.

Article 2: The Principle of Access to Information

The principle of access to information, including (free prior and informed consent) that individuals, impacted communities, legal entities and civil society shall have appropriate access to information concerning the environment and development that is held by public authorities and developers (including non-state actors), including social and environmental impact assessments and mitigation plans, resettlement plans, information on hazardous materials and activities in their communities. Information on natural resource management shall be made widely available and publically accessible in a manner that maximizes the opportunity for public participation in planning and decisions affecting the environment and society.

Commented [I110]: Objective

- informing stakeholders about the project proposal and its livelihood affects in order to gain their views, concerns and values
- taking into account of public inputs and decision making process obtaining local knowledge that maybe useful for decision making
- Facilitating consideration of alternative of mitigation measures and trade-off
- Ensure that important impacts are not overlooked, and maximize the benefit
- increasing public confidence and support
- improving transparency and accountability in decision-making
- Reducing Conflict through the early identification of contagious issues
- Provide an opportunity for the public to influence project design in positive manner (thereby creating a sense of ownership of the project proposal

Principles:

- Provide the right information
- allow sufficient time to review and respond
- provide appropriate opportunities/means for stakeholder involvement
- respond issues and concerns raised
- feedback the results of public input
- choose venues, languages and times of events to suit stakeholders

Commented [I111]: and to make better decisions.

This wording makes it sound like people don't want to protect the environment, when it is typically business that is reluctant to comply.

Article 3: The Principle of Access to Effective Remedies

The principle of access to effective remedies, that people, impacted communities, legal organizations and entities, shall have access to appropriate avenues, whether administrative, ~~or~~ judicial, non-judicial, legislative or other appropriate means ~~and~~ to access appropriate and effective remedies, to enable the resolution of environmental and related human rights disputes. Effective and efficient procedures and remedies should exist to enforce procedural rights and to punish those responsible for environmental and related human rights harm. Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome.

Article 4: The Polluter Pays Principle

The polluter pays principle, that all persons, including natural persons, private legal entities and public legal entities who have caused or will cause environmental pollution – such as pollution by noise, vibration, smell, smoke, draining of liquid waste or emission of all kinds of waste or causing damage to the environment, health, economy or society or culture – shall bear the cost for repairing the damage and preventing, avoiding and mitigating the damage.

Article 5: The Precautionary Principle

The precautionary principle, that in situations where the environment may be faced with threats of serious or irreversible damage, the lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

Commented [MB12]: Amended to correct the definition of the precautionary principle

Article 6: The Prevention Principle

The prevention principle, that negative impacts to the environment should be stopped before they occur. In applying this principle, action should be taken at an early stage to reduce or prevent environmental damage rather than wait for potentially irreversible effects to occur. The prevention principle is based on the idea that it is better to prevent harm than employ measures to restore the environment after harm has occurred.

Article 7: The Principle of Intergenerational Equity

The principle of intergenerational equity, that the right to development, including decisions affecting natural resources and ecosystem services, must be fulfilled so as to equitably meet the developmental, social and environmental needs of both present and future generations.

Article 8: The Principle of Environmental Liability

Liability to compensate for environmental harm applies to environmental damage and imminent threat of damage resulting from developmental activities, where it is possible to establish a causal link between the harm and the activity in question. Liability should cover the cost of ecosystem or resource restoration or of replacing the damaged resources, the cost of assessing the damage, and the interim losses pending restoration or replacement. Liability includes personal injury or environmental harm to public natural resources. Liability can be strict-liability without the need for proof of fault and can be joint or several.

Article 9: The Principle of Evidence-Based Decision-Making

Environmental policy and natural resource decision-making should be open and evidence-based, utilizing the best available information. Information can be scientific and technical and can also be gathered from community and indigenous knowledge.

Article 10: Principle of Gender Equality for Natural Resources Decisions

The involvement of women is to be promoted in environmental decision-making at all levels, and at all phases of a project (e.g. in the case of mining – mining exploration, construction, operation, project expansion, mine closure). Gender impact assessments for development projects and environmentally relevant policies will include mechanisms to effectively identify assess the impacts on women, and develop risk management strategies to mitigate and prevent adverse impacts. Gender concerns and perspectives will be integrated into policies and programmes for sustainable development and into the implementation of this Code.

xxx

Article 164: Principle of Free, Prior and Informed Consent (FPIC)

Commented [I113]:

Add #11

For involvement of youths in environment management 10 million youths are involved in environmental activities.

Add #12

Decentralization of decision making from the nation to the sub-national level
National is technical advisors, sub-national are implementers. Policies to come from the community level.

Add #13

Improve the access to environmental permits and requirements for projects and the general public

Add #14

Increase the authority and rights of community resource protection groups

Add #15

Decrease negative impact on community livelihoods and Promote community enterprises

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Commented [BR14]: Note comment from Raphaela Deau to insert User Pays and FPIC as Principles.

FPIC is a specific right of Indigenous Peoples as recognized in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP¹) and ILO Convention 169. . States shall consult and cooperate in good faith with indigenous peoples concerned through their own representative institutions in order to obtain Free, Prior and Informed Consent prior to approval of any project affecting their land or territories (UNDRIP, Article 32(2). Community participation in projects that affect them, their land, and their livelihoods should be consistent with the principles underlying FPIC, including their full and effective participation in project negotiation and planning, free of intimidation, manipulation, coercion; prior to land allocation and in a timely manner; informed of all relevant information. Consent requires indigenous communities to say ‘yes’ or ‘no’ to a project. The right to give or withhold consent is an important distinction between the rights of indigenous peoples (as enshrined in international law) and other project affected communities.

Commented [I115]: Give the same rights of consent to all affected communities.

CHAPTER 3 – GENERAL DUTY TO AVOID ENVIRONMENTAL HARM

Article #:

Recognizing the links between environmental harm and human rights, a person or business enterprise must not carry out any activity that causes, or is likely to cause, environmental harm. As stated in the UN Guiding Principles on Business and Human Rights, “business enterprises must “avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur”; and “seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts” [Chapter 2, Article 13] unless the person takes all reasonable and practicable measures to prevent or minimize the harm (the general environmental duty).

Commented [SL16]: Which Cambodia endorsed

CHAPTER 4 – INTERNATIONAL ENVIRONMENTAL AGREEMENTS

Article # - Cambodia recognizes the value of international and regional environmental agreements as a response to environmental problems and the need to adopt or modify its laws accordingly and in a manner consistent with international and regional agreements to which it is party.

This Code hereby reflects the commitment of Cambodia to effectively implement in its laws and practices the international and regional agreements to which it is party.

Commented [N17]: Per Anonymous (May 20)

¹ Cambodia is a signatory to this Declaration

- *This Chapter will explain how the Environmental Code implements and is based upon existing international and regional agreements.*
- *It will also address future agreements and treaties and how these shall be integrated into the environmental responsibilities of the relevant Ministries.*

TITLE 2 – ORGANIZATION OF JURISDICTIONAL INSTITUTIONS/JURISDICTIONAL ISSUES

- *This [Title](#) will establish the objective of inter-ministerial cooperation and the requirement for consultation and discussion between relevant line Ministries in order to achieve the objectives of the Code. Jurisdictional organization will examine the roles, duties and means of collaboration for the following [institutionMinistries](#):*

- *Ministry of Environment*
- *Ministry of Agriculture, Forests and Fisheries*
- *Ministry of Mines and Energy*
- *Ministry of Water Resources and Meteorology*
- *Ministry of Land Management, Urban Planning and Construction*
- *[Ministry of Economics and Finance](#)*
- *[Ministry of Culture](#)*
- *[Council for the Development of Cambodia](#)*

- *[This Title](#) will establish a ~~One Map~~ National mapping process to require a single national consolidated environmental geographic information database, with open access and mandatory data sharing between ministries and the general public. This will be used to develop the National Environmental and Natural Resources Plans described in Book 2 Title 1.:*

Chapter # - Relevant environmental interactions between the Ministry of Environment and the Ministry of Agriculture, Forestry and Fisheries

Chapter # -Relevant environmental interactions between the Ministry of Environment and the Ministry of Mines and Energy

Chapter # - Relevant environmental interactions between the Ministry of Environment and the Ministry of Water Resources and Meteorology

Chapter # - Relevant environmental interactions between the Ministry of Environment and the Ministry of Land Management, Urban Planning and Construction

Chapter # - Confirming National Council for Sustainable Development (NCSD) role's and responsibilities

Chapter # - Confirming National Programme for Sub-National Democratic Development (NCDD) role's and responsibilities

Chapter # - Role of authorities such as Apsara Authority, Preah Vihear Authority, Tonle Sap Authority and Cambodian National Mekong Committee

Chapter # - Establish mechanism to promote interdepartmental Committee

Chapter # - Establish a National Ecosystem Mapping and Planning Committee

Chapter # - Facilitating environmental information-sharing between relevant ministries

ARTICLE # - Assigning environmental monitoring and information gathering responsibilities among governmental institutions

Commented [N18]: per | Fox-Przeworski

Chapter # - Central repository of government environmental information

Chapter # - Cambodian Environmental Mapping Center

Article 1. General Provisions

Conservation and management measures undertaken by any government institution in relation to the management of biodiversity, natural resources and the environment in the Kingdom of Cambodia shall be based on the best scientific evidence.

Commented [I119]: and best evidence from local knowledge

Pursuant to this, the appropriate government institution shall have the authority to establish a Cambodian Environmental Mapping Center (CEMC). The purpose of this center shall be to establish standards, compile, analyze, and distribute geospatial information. Information may include but is not limited to biodiversity, natural resources (e.g. lands, water and forests), the environment (e.g. water, soil and air qualities), and climate change, using modern, computerized Geographic Information Systems (GIS).

Commented [N20]: Presumed to be the NCSD

Commented [I121]: Also include industry in this map

All geospatial data, mapping products, and metadata held by the CEMC shall be deemed property of the state, and available for public use.

Commented [I122]: How will it be made available

Article 2. Cambodian Environmental Mapping Center Mandates

Pursuant to this authority, the appropriate government institution shall:

- 1) Require all organizations and institutions that are undertaking natural resource and biodiversity mapping in the Kingdom of Cambodia to provide copies of their geospatial data, information, and the reports that are the products of such projects to the CEMC, so that they may be incorporated into a national base of environmental data and information. Such information and data held by the CEMC shall be shared and made available without restriction to all contributing organizations and institutions, through a clearly defined procedure for data transfer and associated data transfer agreement, to be developed by the government institution.
- 2) Ensure that all data provided to the CEMC are made available for public use, with the exception of those data that the appropriate government institution housing the CEMC deems necessarily withheld for the protection of endangered or rare species. If any data are withheld from the public for the above purposes, a specific written justification and explanation must be provided by the appropriate government institution housing the CEMC.
- 3) Ensure that any decision to withhold data from the public may be appealed for reconsideration directly to the office of the minister in charge of the government institution housing the CEMC.
- 4) Set data standards for the collection of new geospatial information. The standards to be specified by CEMC shall include, but are not limited to:
 - (a) A requirement that all geospatial data provided to the CEMC shall utilize the WGS 84 datum.
 - (b) Coordinate system.
 - (c) Assignment and standardized spelling of names for geographic features, such as administrative units, populated places, water bodies, landmarks, hills and mountains, etc.
 - (d) Metadata content and format.
- 5) Require that data collected by other institutions be submitted to the CEMC in the technically standardized format specified by the CEMC.
- 5) Require that geospatial data provided to the CEMC be accompanied by all available and relevant metadata.
- 6) Ensure that collection of geospatial information and data related to specific subjects or sectors is not duplicated among government institutions, and that there is one specified official government institution source for data related to any given subject or sector.

Article 2. Cambodian Environmental Mapping Center Discretionary Authorities

Pursuant to this authority, the appropriate government institution may at its sole discretion:

- 1) Obtain the necessary GIS computer software to effectively analyze, manipulate, and output geospatial data.
- 2) Obtain computer hardware of sufficient technical sophistication and power to run and utilize GIS computer software.
- 3) Accept geospatial data in the following formats:
 - (a) point data
 - (b) line data

- (c) shape files in raster format
- (d) shape files in vector format.

4) Produce maps and other data visualization products and provide these to other relevant ministries to assist such ministries in effectively carrying out their natural resource management authorities and obligations.

5) Produce maps and other data visualization products for public education and outreach, in order to improve awareness of biodiversity conservation and natural resource management in the Kingdom of Cambodia.

6) Establish quality assurance and quality control (QA/QC) procedures for all maps and data visualization products produced by the CEMC.

7) Provide for ongoing maintenance, curation, updates, and access to spatial databases hosted by the CEMC.

8) Adopt new methods and technologies, as they become available, which enhance the utility of GIS products and activities.

9) Promote, wherever possible, collaborative production, use, and analysis of geospatial datasets across ministries.

TITLE 3 – PUBLIC PARTICIPATION AND ACCESS TO ENVIRONMENTAL INFORMATION

- This *Title* will clarify and detail the requirements for public participation. The aim of this *Title* is to provide a consistent approach across all ministries and pertaining to the various decisions made under the Environmental Code.

Commented [BR23]: Consider two separate books. One on pp; one on access to info per Group 7, 6 April workshop

Commented [SL24]: Yes. Two separate books

Chapter # - Public consultation a fundamental requirement for environmental decisions

ARTICLE

The main objective of public participation is to ensure that project-affected persons and relevant stakeholders:

- are well informed about the project,
- have the opportunity to be involved in the discussion and decision-making process related to the project, and
- have the opportunity to participate in the project monitoring.

Project Proponents that are required to conduct an EIA shall include public involvement and consultation from local administrations, civil society, community representatives, the project-affected persons and other relevant stakeholders in the EIA process during project planning in order to:

Commented [BR25]: The following articles in this Book are from the draft EIA Law and will be modified to broaden their scope beyond EIA, project-specific situations to all situations where public participation and access to information are relevant, consistent with the overall framework of the Code.

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- identify areas of significance of environment, economy, society and culture
- collect opinions of stakeholders and integrate such opinions into the decision making process
- review the project proposal and explain impacts on environment, economy, society, and culture.
- consider a wider range of alternatives and mitigation measures.

The public participation process in the stage of studying, consulting and reviewing the EIA report and project monitoring shall be determined by Prakas of MoE.

ARTICLE #.

The EIA Report shall:

- record the public participation and the Project Proponent shall take this into account during the planning and conduct of EIA.
- focus on the issues raised by women and those most vulnerable potentially impacted by the proposed project.
- include the details of the project impacts on the public and the acceptance or rejection of the requests of the public.
- provide clear reasons why those concerns are rejected.

Shall be made public and easily accessible in a language and format that can be understood in order to ensure meaningful participation from the grassroots communities, including ethnic minorities.

Distributed in a format that is accessible by remote non-khmer speaking communities

ARTICLE #.

MoE shall ensure that IEE and EIA reports and related documents, including the EIA Approval Letter and Certificate and EMP, shall be made publically available, and that stakeholders and project-affected communities have access to clear and sufficient information, in a language and format they can understand.

At a minimum the Project Proponent shall make available on publically accessible website copies of the IEE or EIA, any EMP for the project, maps and plans of the project and all proposed mitigation measures for the project.

The procedures for public participation and access to information shall be determined by a Prakas of MoE.

Chapter # - Duty to consult with potential affected persons

Chapter # - Duty to consider concerns raised by the community

Commented [SL26]: The EIA Book can be strengthened. Key additions include:

Broadening the EIA to an SEIA to include the links between environmental and social impacts.

Specifically including reference to human rights impact assessment (e.g. access to clean water, health etc) and a gender impact assessment, recognizing projects such as mining / hydro are not gender neutral and loss of agricultural land / forests will impact on women who are often small scale farmers, fisher people, forest product gatherers. [See Oxfam in Australia publications on gender impact assessment in mining and hydro].

Ensure SEIA's for all projects

Ensure SEIAs are not 'one off' / static. Must be conducted for all phases of a project, e.g. in mining, for exploration, construction, operation, mine expansion, mine closure

Ensure SEIA is in the public domain, accessible and in a format that can be understood

Chapter # - Identification of project affected persons and other stakeholders

Chapter # - Minimum time allowed for public consultation in natural resources matters

Chapter # - Minimum time allowed for public consultation in EIA matters

Chapter # - Minimum time allowed for indigenous people to provide comments

Chapter # - Free, prior and informed consent for indigenous people in natural resources and environmental impact assessment matters

Commented [SL27]: All must be linked to FPIC

Commented [BR28]: Communities??? Per Raphaela Deau comment

Commented [SL29]: See page 10, Article on FPIC. Recommend also including here to ensure that FPIC is part of the SEIA process. This is vital.

ARTICLE #.

The public participation process (including proposed mitigation measures) shall ensure that the consent of the indigenous people's is gained and is based on the internationally recognized principle of free, prior, and informed consent (FPIC). Project-affected community participation in projects that affect them, their land, and their livelihoods should be consistent with the principles underlying FPIC, including their full and effective participation in project negotiation and planning, free of intimidation, manipulation, coercion; prior to land allocation and in a timely manner; informed of all relevant information. project affected communities to the proposed mitigation measures is based on the free, prior, and informed consent principle (FPIC).

In the mitigation measures, the Project Proponent shall:

- identify measures to improve the livelihood and to assist project affected persons.
- 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 fair, suitable and acceptable as equivalent to the market price and that the mitigation measures are appropriate and sustainable.

In cases where the project-affected community disagrees with the mitigation measures proposed by the Project Proponent, the development project still continues; however, the Project Proponent shall seek other appropriate mitigation measures or provide resolution of the impacts to the affected community.

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Commented [SL30]: This is at odds with the FPIC principle, which Cambodia has endorsed

The procedure of resettlement and solution of compensation to the affected community shall be determined by Sub-decree.

The formalities and procedures of payment of compensation to the impacted community shall be determined by an Inter-Ministerial/Ministerial Prakas between MoE and the Ministry of Economy and Finance.

Commented [SL31]: This needs explanation and as a minimum should be consistent with IFC Performance Standard 5, Land Acquisition and Involuntary Resettlement

Chapter # - Responding to public submissions

Chapter # - Taking into account public submissions

TITLE 4 – ACCESS TO ENVIRONMENTAL INFORMATION

- *This Title will clarify and detail the requirements for access to environmental information. The aim of this Title is to provide a consistent approach across all ministries and pertaining to the various decisions made under the Environmental Code.*

Chapter # - Information to be made available

Article #, detailing all ecosystems data, all research and field data, all documents created within the EIA process, all project specific documentation and reporting, and other information that is to be made publicly accessible.

ARTICLE # - Environmental impact (EIA) information to be made publicly available upon request

ARTICLE # - List of such information

ARTICLE # - Procedures for requesting, receiving and appealing decisions to deny such information

ARTICLE # - Environmental indicators

~~Chapter # - Responding to public submissions~~

~~Chapter # - Publication of submissions on natural resources matters~~

Chapter # - Publicizing Commissions of inquiry into EIA or natural resources decisions

Chapter # - Special provisions for project and activities with very significant impacts or controversial projects and activities

Chapter # - Access to information prior to decision being made

Chapter # - Reasonable time for access to information

~~Chapter # - Information to be made available~~

Commented [SL32]: Including in a language and format that is accessible and understood

Commented [I133]: Ensure that this action is done in cooperation with the draft law on access to information
Ensure clear language

Ease of access in one web location

Website and data management partially supported by funds from private sector.

Commented [SL34]: Contradicts principle of access to information, FPIC etc. Delete

Chapter # - Protection of whistleblower for provision of information

Chapter # - Protection of journalists who publish information

Chapter # - Environmental monitoring

ARTICLE # - Public and project affected community participation in environmental monitoring and gathering of information—development of shared or open-source systems.

Commented [SL35]: Ensuring participation of women, youth, indigenous peoples

ARTICLE # - Review and ensuring quality of information

Commented [I136]: Grassroots monitoring data and information must be given stronger consideration than all other kinds of reporting.

~~Chapter # - Environmental monitoring systems~~

Clearly define who has responsibility for the monitoring

Chapter # - Planning of environmental monitoring system

Define how authorities and companies will work with communities to prepare monitoring reports

Chapter # - Environmental monitoring programmes

~~Chapter # - Environmental indicators~~

Chapter # - Provincial level environmental status report

Chapter # - Environmental impact reports by industries and sectors

~~Chapter # - Public accessibility of all environmental reporting~~

~~ARTICLE # - Environmental information to be made publicly available and information available only on request~~

~~ARTICLE # - Procedures for requesting, receiving and appealing decisions to deny such information~~

Chapter # - National environment reports

Chapter # - Environmental statistics and achieving-gathering of environmental data and information

Chapter # - ~~Publication and supply of~~ Procedures for publicising and making available environmental information ~~on environment~~

ARTICLE # - Online publication

ARTICLE # - Use of radio

~~Chapter # – Publication of information and data on environment~~

Chapter # - Exercise of grassroots rights in protection of environment

BOOK 2 — ENVIRONMENTAL PLANNING

TITLE 1 – MAKING OF NATIONAL, SUB-NATIONAL AND LOCAL ENVIRONMENTAL AND NATURAL RESOURCES PLANS

• *This Title will set out the procedures for the adoption of National, Sub-national and Local Environmental and Natural Resources Plans. These Plans will be prepared for environmental and natural resources management, integrating food and water security issues and relevant materials exploitations certifications.*

• *~~This Title will establish a One Map process to require a single national consolidated environmental geographic information database, with open access and mandatory data sharing between ministries and the general public. This will be used to develop the National Environmental and Natural Resources Plans.~~*

• *This Title will provide for a planning framework to set sustainable use limits and protections for Cambodia’s commercial and non-commercial natural resources.*

• *~~This Title will also relate to Book 2, Title 4 Strategic Impact Assessment, as well as EIA that may be are required prior to the adoption of plans and polices.~~*

• *~~This Title will detail the procedures for the creation of a national land and natural resources plan under which regional and local plans will be made and refer to Book 1 Title 3 – Public Participation and Book 1 Title 4 – Access to Environmental Information. The national plans will provide the clear policy and strategic direction. Sub-national plans will provide for the specific measures to implement these national objectives.~~*

• *One option is to try to adopt a single method for the making and approval of management plans for protection and management (including*

Commented [BR37]: Per Teng Rithiny

Commented [BR38]: Per Andeol Cadin comment

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Commented [SL39]: Must link to principles of FPIC and not contradict principles of access to information, participation and EIA best practice.

Policies and strategic direction from the national level must represent the interests of local communities

exploitation) of heritages areas, marine and terrestrial protected areas and management plans for threatened and endangered species.

Chapter # - Preparation of management plans in accordance with national, regional or local environmental and natural resource management plans

Chapter # - Conservation and rational utilization of natural resources

Chapter # - Establishment of the national One Map process; components of the One Map; roles of government and civil society in One Map process

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Chapter # - Creation of a National Environmental and Natural Resource Management Plan (NEP)

Chapter # - Appointment of a commission to prepare the NEP

Chapter # - Draft NEP to be prepared with public participation

Chapter # - Approval of NEP

Chapter # - Preparation and approval of subnational and local NEP

Chapter # - Establishment of a National Land and Resources Geographic Information Database

Chapter # - Database to be publically available

Chapter # - Database to be used to make national, sub-national and local plans

Chapter # - Adopting an ecosystems approach to planning including recognition of ecosystem services

Commented [I140]: Clarify this language:

Projects must not be implemented inside already designated conservation areas

Care must be taken for both biodiversity and ecosystems

Project will contribute funds to ecosystem services areas

Commented [I141]: Consider the spread of urban areas in the planning

TITLE 2 – URBAN LAND USE PLANNING

- This Title will examine land planning for urban areas. It will establish the creation of zoning plans and land classification for urban areas. It will also provide for the approvals process for developments in urban areas, in accordance with appropriate zonings. This may require the review of the Law on Land Management, Urban Planning and Constructions 1994.*

- *Urban areas and the development of towns and cities create significant burdens on the environment and the community. It is suggested that this be dealt with as a separate Title to focus on promoting sustainable urban development.*
- *The Title will establish the procedures for classifying land as urban land and the zone of urban land as housing construction zone, commercial zone and other relevant zones. It will provide the guidance for the sustainable development of cities in accordance with best practice planning principles. This will use the One Map process outlined in Book 2 Title 1.*
- *This Title will also provide the minimum requirements for the management of urban land, including provisions for plans covering water, energy, storm water management, traffic, noise and construction.*
- *The roles of different authorities in land use planning and management will be addressed, referencing [Book 1 Title 2](#).*
- *The Title will address the specific requirements for public participation, referencing [Book 1 Title 3](#).*
- *This Title will address social housing.*

Chapter # - Establishment of transparent zoning process at city and local level, including periodic timing, scope and stakeholders to be involved and how

[ARTICLE # - mitigating and compensating for risks of displacing residents or existing businesses through new zoning](#)

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Chapter # - Classification of urban land

[ARTICLE # - population threshold at which a zoning plan is required](#)

Chapter # - Zoning of urban land

**Chapter # - Minimum standards of urban zoning plans
Include specifications for delineation and co-existence of industrial, commercial and residential zones**

Commented [BR43]: Per comment of M. Ramasamy

Chapter # Buffer zones and prevention of encroachment of non-compatible uses

Chapter # - Urban infrastructure requirements

ARTICLE # - Improving traffic flow (through the use of one way streets, no parking zones/times, bus lanes, stop signs, etc.)

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ARTICLE # - Facilitating public-private infrastructure financing

Chapter # - Public transportation, bicycle access, recycling, waste management, maintenance of urban green spaces, etc. Including clarity on roles and responsibilities of different levels of authorities

Commented [BR44]: Comment of R. Deau

ARTICLE # - Incentivizing public transit ridership.

ARTICLE # - Promoting Walkability

Chapter # - Special building requirements (example: open space set asides, parking space requirements, energy efficiency standards), addressing minimum parking place allocations, open space set aside requirements for urban developments, traffic flow management issues, public transportation, etc.

Commented [BR45]: Per Raphaelae Deau comment

Chapter # - Other private sector provisions

Chapter # - Motor vehicle exhaust standards

Chapter # - Potential new tenure systems for social housing projects

TITLE 3 – ENVIRONMENTAL QUALITY STANDARDS

- *This Title will establish the procedures for the setting of National and Local Environmental Quality Standards (EQS) and Guidelines. It will provide details on the type and quantity of the emissions. It will also adopt existing standards and levels until it is possible to revise or amend the Environmental Standards and Guidelines.*
- *This Title will require that all relevant Ministries will be required to follow the Environmental Quality Standards and Guidelines.*
- *The Environmental Quality Standards and Guidelines in this Title will also extend to food safety principles and objectives.*

Commented [MB46]: From the Group 2 at the Workshop, the EQS should be referred to the international experts to help identify EQS that can be applied to Cambodia.

Chapter # - Setting of environmental Quality Standards (EQS)

Chapter # - Setting of ambient standards

[ARTICLE # - Air Quality Standards](#)

[ARTICLE # - Water Quality Standards](#)

Chapter # - Setting of discharge standards [for waterborne pollutants](#)

[ARTICLE # - Individual pollutant discharge standards to be set in the code](#)

[ARTICLE # - Individual pollutant discharge standards to be set by the relevant ministry](#)

[ARTICLE # - Setting of polluting threshold for emission monitoring](#)

[ARTICLE # - Taking local ecological characteristics into account when setting emissions standards](#)

[ARTICLE # - Relationship to EIA law](#)

[ARTICLE # - Incorporating international standards](#)

[Chapter # - Setting of discharge standards for airborne pollutants](#)

[ARTICLE # - Individual stationary source pollutant discharge standards to be set in the code](#)

[ARTICLE # - Individual stationary source pollutant discharge standards to be set by the relevant ministry](#)

[ARTICLE # - Motor Vehicle emissions standards](#)

[ARTICLE # - Setting of polluting threshold for emission monitoring](#)

[ARTICLE # - Taking local ecological characteristics into account when setting emissions standards](#)

[ARTICLE # - Relationship to EIA law](#)

[ARTICLE # - Incorporating international standards](#)

Chapter # - Revision of EQS

Chapter # - Application of EQS in Cambodia

Chapter # - Provisional adoption of international standards

Chapter # - Definition of best available techniques

Chapter # - Definition of good practices

TITLE 4 – STRATEGIC ENVIRONMENTAL ASSESSMENT

- *This Title will outline the use of Strategic Environmental Assessment (SEA) for the assessment and development of plans and policies in Cambodia. The use of SEA can be for all types of policies and plans, including decisions that may have impacts on natural resources management.*
- *This Title will also provide the link between National Environmental and Natural Resources Plans, SEA and also EIA for specific projects.*

Commented [I147]: This SEA should be done at the national level and all ministries should share the same vision.
Link this to the NSDP and remove from this document Individual ministries do not decide their own SEA

Commented [SL48]: This Title and the content seems to contradict previous and following (EIA) chapters, articles. In this section, it appears that the SEA overrides other earlier stated provisions. Seek clarification

Commented [SL49]: Essential, as well as links to FPIC and resettlement

Chapter #- Objective

To provide a high level of protection to the environment, including health, through the prior assessment of policies, programmes and plans.

Chapter # - Aims

The key aims of SEA include:

- a) Ensuring that environmental impacts, including health and social (human rights, gender, resettlement etc) impacts, are thoroughly taken into account in the development of plans and programmes;
- b) Contributing to the consideration of environmental impacts, including health and social impacts, in the preparation of policies and legislation;
- c) Establishing clear, transparent and effective procedures for strategic environmental assessment;
- d) Providing for genuine public participation in strategic environmental assessment; and
- e) Integrating by these means environmental concerns, including health and social concerns, into measures and instruments designed to further sustainable development.

Chapter # - Implementation of SEA

ARTICLE # - The SEA procedure will include the following steps:

- 1) Screening
- 2) Scoping
- 3) Preparation of the Environmental Report
- 4) Consultation and Public Participation
- 5) Review and Decision
- 6) Information on Decision
- 7) Monitoring

ARTICLE # - Relevant Government institution

The relevant government institution shall be the institution with jurisdiction on the sector the subject of the SEA.

Commented [I150]:

The relevant government institution shall coordinate with the MOE to ensure that these procedures are complied with.

[Confirm institutional arrangements, including role of NCSD].

ARTICLE # - Screening

Any plan or programme that in the opinion of the relevant government institution is likely to have a significant effect on the environment, health or society shall be required to undertake a SEA.

Any plan or programme that is in the following sectors shall be required to undertake a SEA and an SEIA unless the relevant government institution determines that an SEA is not required.

Commented [MB51]: Or this could be in accordance with the Appendix I. Based on the Vietnam Decree on SEA.

- a) agriculture.
- b) forestry.
- c) fisheries.
- d) energy.
- e) industry.
- f) mining.
- g) transport.
- h) infrastructure(roads, rail, ports, energy grids)
- i) regional development.
- j) water management.
- k) waste management.
- l) telecommunications.
- m) tourism.
- n) urban and regional planning or land use.

The relevant government institution shall determine if the plan or programme is likely to have a significant impact on the environment or health or society.

Commented [SL52]: This seems to contradict the principles of public participation, FPIC etc

The relevant government institution shall ensure that all relevant ministries and government institutions are consulted in the preparation of the screening recommendation.

Commented [MB53]: Check the relevant government institution name

The relevant government institution shall provide opportunities for public participation and involvement in determining whether a plan or programme should be the subject of SEA.

In reaching the decision whether to conduct a SEA the relevant government institution shall take into account the following factors:

Commented [MB54]: This is modified from the SEA Protocol, Annex III

1. The relevance of the plan or programme to the integration of environmental, including health and social considerations, and in promoting sustainable development.
2. If the plan or programme will provide an overall framework for projects and other activities, including location, nature, size, operations or the allocation of natural resources.
3. Environmental, including health and social problems and impacts relevant to the plan or programme.
4. The nature of the environmental impacts, including health and social impacts such as probability, duration, frequency, reversibility, magnitude and extent (such as geographical area or size of population likely to be affected).
5. The risks to the environment, including to health and society.
6. If the plan or programme will affect valuable or vulnerable areas, protected areas, including areas with a recognised national or international protection status.
7. If the plan or programme will affect indigenous peoples or natural resources allocation to indigenous people.
8. Comments received from the public participation and consultation process.

The relevant government institution will prepare, in collaboration with MOE, a screening analysis and recommendation.

Once the relevant government institution has determined if the plan or programme requires a SEA, the determination will be made public in accordance with the provision of this Code.

ARTICLE # - Scoping

The relevant government institution shall determine together with MOE and based on the screening process and comments received from other Ministries, the information and scope of the SEA.

The relevant government institution shall ensure that other relevant ministries and institutions are consulted in the preparation of the scoping report and the information to be included in the SEA.

Commented [MB55]: Check the relevant government institution name

The relevant government institution shall provide opportunities for public participation and involvement in determining whether a plan or programme requires preparation of an Environmental Report

ARTICLE # - Consultation and Public Participation

The relevant government institution shall ensure early, timely and effective opportunities for public participation, when all options are available for consideration and amendment, in the SEA of plans and programmes.

The relevant government institution shall provide for consultation and public participation in accordance with the provisions of the Environmental Code.

The relevant government institution shall comply with the provisions of the Environmental Code for access to information.

The relevant government institution shall make the Scoping Report, the Environmental Report, details of submissions received, the SEA Report Assessment and determination of the SEA publicly available in both draft and final forms.

Special consideration shall be given to providing opportunity for participation by vulnerable persons, including women, children, disabled persons, and ethnic minority groups and indigenous peoples.

ARTICLE # - Environmental Report

The relevant government institution shall prepare an Environment Report for those plans and programmes that are subject to SEA.

The relevant government institution may prepare the Environmental Report itself or may use an appropriately qualified consultant.

The Environmental Report shall, in accordance with the Scoping Report, identify, describe and evaluate the likely significant environmental impacts, including health, social and ecosystem impacts, of implementing the plans or programmes and any reasonable alternatives or modifications.

Special consideration shall be given to protecting the rights of and evaluating the impacts on vulnerable persons, including women, children, disabled persons, and ethnic minority groups and indigenous peoples.

ARTICLE # - Review and Decision

The assessment of the SEA shall be conducted by a SEA report assessment committee established by the relevant government institution and will include the representatives of the Office of the PM, the CDC, the institution of the Environment, and other concerned Ministries.

The SEA report assessment committee shall comprise a minimum of 9 members.

The SEA Report assessment committee shall consider the content of the Environmental Report and provide opinions and comments.

The relevant government institution shall provide support and guidance on the operations and management of the SEA report assessment committee.

The SEA report assessment committee may:

- (i) Conduct a survey on areas or adjacent areas where the project is carried out;
- (ii) Verify and evaluate information, data, analysis results, evaluation, or forecast in the Environmental Report;
- (iii) Collect opinions of relevant socio-political organizations, social organizations, socio-professional organizations, or experts;
- (iv) Hold thematic meetings between experts.

The SEA report assessment committee must conduct the assessment and send the results to the relevant government institution and MOE within 45 days of the completion of any further surveys or verification or evaluation.

ARTICLE # - Results of assessment of SEA reports

The SEA report assessment committee shall send the results of the assessment of Environmental Report to the relevant government institution and MOE.

The assessment must contain assessment procedures, outcomes and shortcomings, suggestions of the relevant government institution in order for the SEA report assessment authority to consider approving the plans or programmes.

The relevant government institution must comprehensively and objectively consider opinions or requests of the SEA report assessment authority.

The relevant government institution shall consider approving the plans or programmes according to Environmental Reports.

CHAPTER # - Information on Decision

Once the relevant government institution has considered and made a decision on the plans or programme, this shall be notified to all the parties who have made submissions or been consulted during the SEA process.

The decision shall also be notified on a web-site of the relevant government institution.

CHAPTER # - Monitoring

The relevant government institution in collaboration with MOE shall develop a monitoring programme.

The monitoring programme shall monitor the significant environmental impacts, including health and social impacts, of the implementation of the plans and programmes.

If the monitoring programme identifies any adverse impacts on environment, health or society, by the plans and programmes the relevant government institution should revise the plan or programme to undertake appropriate remedial action.

The results of the monitoring shall be made available to all relevant government institutions and to the public in accordance with the provisions of the Environmental Code.

Chapter # – SEA required for policies and plans

ARTICLE #

The Ministry of the Environment is responsible for reviewing and assessing Strategic Environmental Assessment (SEA) of policies, programs and strategic plans of the Royal Government as well as reviewing the comments received from relevant agencies and the public.

Chapter # – Zoning system

Chapter # – Formulation of Strategic Environmental Assessment (SEA) reports

Chapter # - Content of SEA reports

ARTICLE # - Evaluating effects on ecosystem services.

Chapter # - Appraisal of SEA reports

TITLE 5 - ENVIRONMENTAL IMPACT ASSESSMENT

• This Title will establish the EIA process in Cambodia. It will replace the Sub-Decree on EIA 72 ANRK.BK 1999. It will incorporate the details and provisions of the Draft EIA Law.

Commented [SL56]: Include a general statement to link EIA and SEIA given the links

• This Title will cover new projects as well as existing projects and will provide three levels of assessment:

Commented [SL57]: good

- Environmental Impact Assessment;
- Initial Environmental Evaluation; and
- Environmental Permit.

- The aim of this Title on EIA is to require all development projects and activities that will have an impact on the environment, indigenous peoples, communities, their land and livelihoods and ~~or~~ society more broadly, to undertake some form of environmental assessment. The level of assessment will be determined according to the potential impact on the environment or society.
- An EIA Approval Certificate will be issued and any other permit will be issued in accordance with the EIA Approval Certificate.
- EIA will be required for all projects or activities likely to have a significant impact on the environment or society.
- IEE will be required for those projects or activities likely to have a minor impact on the environment or society.
- An Environmental Permit will be required for those projects or activities that do not require an EIA or IEE. These will be required to have permission to ensure that the project is not likely to cause harm or damage to the environment or society.

Commented [SL58]: Better to just say an EIA will be required for all projects. 'significant' and 'minor' impact is too subjective

Chapter # - Purpose of EIA

Chapter # - Scope of EIA in Cambodia

Chapter # - Objectives of EIA in Cambodia

Chapter # - Application to public and private development projects

Chapter # - Responsibility of Ministry of Environment in EIA

ARTICLE #

Officials of the EIA Unit of the Ministry of Environment have the following authorities:

1. - To inspect and monitor compliance with the laws and regulations in force, guidelines, Environmental Protection Agreement, standards, EMPs and other related environmental requirements. In necessary cases, EIA officials can order the project proponent to provisionally postpone activities or provisionally close the location of the project.
2. - To check documents and electronic data on environmental management and other records on development projects and project operations.
3. - To listen to and make minutes after listening to the answers of workers, employees, representatives of Project Proponents as well as other relevant persons.
4. - To order the workers, employees, managers, legal representatives, and agents of development projects to provide information, written documents, plans as well as minutes of all kinds that are related to the environmental management of a Project Proponent.
5. - To search the project site and seize evidence where a violation of laws or regulations on EIA or EMP is suspected to have been committed.
6. - To meet with Boards of Directors, legal representatives, workers, and employees of development projects at least once per year in order to assess the implementation of this law and other relevant regulations.
7. - To make minutes of searching and seizing of evidence in order to compile the case file of the commission of the offense against this or any other law in order to take measures in accordance with procedures in force.

ARTICLE #

Commented [BR59]: Special features of offshore projects needs to be carefully considered and integrated into the EIA book. Per Kris Energy comment

Commented [I160]: Insert article on the roles of national and sub-national authorities

Article that defines sub-national responsibility to ensure EIA is approved before development begins

Define investment funds to distribute to sub-national authority for EIA administration.

Define the scope of the project to be approved by the national and sub-national level

Commented [BR61]: Need to consider duration of EIA validity as compared to duration of project per Kris Energy

Commented [SL62]: And ensuring EIAs are conducted for each phase of project (exploration, construction, operation, expansion, closure), given different impacts at different phases

Capital and Provincial Environmental Departments of the MoE shall take part in implementing this law in accordance with the laws and regulations in force as well as the assignment of the MoE.

Chapter # - Registration of EIA experts

Commented [MB63]: A number of submissions have been raised to request international experts to be allowed to conduct EIA/IEE in Cambodia.

ARTICLE 21.

EIA Consultants, which could either be natural persons or legal entities, shall be under the management of the MoE.

EIA Consulting Firms shall have Khmer nationality with the project team leader who is the consultant accredited by the MoE.

All EIA consultants must be registered with MoE before professionally preparing EIA with an EIA consulting firm.

Registration of certificates of accreditation as an EIA Consultant shall be valid for a maximum period of 5 years and may be renewed.

Chapter # - Levels of assessment will include EIA, IEE or environmental protection agreement

ARTICLE

All development projects must properly assess the impacts on the environment, economy, society, health and culture, consistent with the principles of FPIC, and with prior approval of the MoE before being sent to the government for decision.

Issuance of licenses or permission letters to development projects by Approval Ministry-Institution shall be done in accordance with the principles of FPIC and conditions determined in the EIA Approval Letter and Certificate. Licenses, permission letters, or decisions that are in contradiction to the spirit of this provision are considered null and void.

ARTICLE

This law does not apply to State's development projects or State activities that have been approved by the government or the National Assembly and that are considered to be

necessary and emergency projects relating to national security, territorial integrity, national sovereignty, or disaster management.

Commented [SL64]: This is a problematic clause. It effectively means that any project could be deemed as 'necessary' (e.g a hydro dam

ARTICLE

The MoE shall conduct screening to determine the type of development projects, to require the project proponent to prepare the following documents:

1. an IEE with an attachment of Environmental Protection Agreement;
2. an EIA with an attachment of Environmental Protection Agreement.
3. an Environmental Protection Agreement (EPA)

The projects that are required to prepare an EPA shall attach with it technical principles such as Environmental Protection Plan (EPP) in accordance with the requirements of the MoE,

ARTICLE

The MoE can determine additional screening of the type of project based on the scale of environmental and social impacts that shall be determined by the MoE.

ARTICLE

In cases where there is any transfer or changes to the Project Proponent by any reasons, then the IEE and/or EIA Approval Letter and Certificate as well as contract and all conditions provided for in this paragraph shall be automatically transferred to the new Project Proponent. The Contract of Transfer or the changes of the Project Proponent shall not be valid for implementation unless the transfer or the changes are done after MoE has received notification about the changes.

ARTICLE 16.

(2) IEE report shall be required for:

1. Projects listed in sub-decree.

(3)2. Projects that have prepared Environmental Protection Agreement and decided by MoE that they do IEE.

(4) When the proposed project is required to do an IEE, the Project Proponent shall cooperate with consulting firms in order to prepare the Terms of Reference (ToR) in accordance with the provisions and guidelines of MoE and submit to EIA Unit for final approval.

Project Proponent and consulting firms shall prepare IEE report based on the approved ToR.

ARTICLE #.

An Environmental Impact Assessment report shall be required for:

1- Projects listed in Annexure 1 or;

2- Projects that have received an IEE and the result of the study demonstrate serious impacts on environment and society and the MoE requires the project to conduct an EIA.

Commented [SL65]: Needs greater clarity

Commented [SL66]: Too subjective

When the proposed project is required to undertake an EIA report, the Project Proponent shall collaborate with consulting firms to draft the Terms of Reference in accordance with any provisions and guidelines of MoE and submit to EIA Unit for final approval.

Project Proponent and consulting firms shall prepare EIA report based on the approved ToR.

ARTICLE #

An Environmental Protection Agreement shall be entered into by all projects that are listed in sub-decree or projects with little negative impacts on environment and society.

When the proposed project is required to conduct an EPA, the project proponent shall enter into to the EPA by attaching with it the technical principles such as Environmental Protection Plan and relevant documents and submit to EIA Unit for final approval.

The form of EPA and EPP shall be determined by MoE.

Chapter # - Establishment of EIA Review Committee

ARTICLE #

All development projects that are required to perform an EIA are required to have technical comments from the Expert Review Committee.

The composition of the Expert Review Committee includes officials from MoE and relevant ministries and institutions, and independent experts with qualifications and

appropriate experience in reviewing EIA reports. Members of an Expert Review Committee shall be selected on a project-by-project basis by MoE based on the technical aspects of the EIA report.

Commented [SL67]: Should include representatives from impacted communities and civil society

The organization and functioning of the Expert Review Committee shall be determined by Prakas of MoE.

The members of the Expert Review Committee shall be reimbursed for their services based on an agreement between MoE, each member, and Project Proponent.

Commented [I168]: Ministers and university professors have salaries and reviewing EIA is part of their jobs. They should not receive excess fees from Project Proponents for the service of approving EIA.

Chapter # - Role of EIA Review Committee

Chapter # - Timeframes for EIA and IEE procedure

ARTICLE

The MoE may only make a determination in accordance with this procedure after the IEE or EIA has been on public exhibition for at least the time period specified in the Code.

For the Environment Protection Agreement the minimum time period for public exhibition and comment is a 3 weeks.

For the IEE Report the minimum time period for public exhibition and comment is a 6 weeks.

For the EIA Report the minimum time period for public exhibition and comment is a 8 weeks.

ARTICLE

The MoE has a period of 30 (thirty) working days to review, comment, approve, reject, or require adjustment or correction to Environmental Protection Agreement and Environmental Protection Plan. The period is counted from the date of the submission of Environmental Protection Agreement, Environmental Protection Plan, and relevant documents.

ARTICLE

MoE shall review and comment on the IEE report within sixty (60) working days counting from the date of receiving the report. The period of sixty (60) days will expire when the Ministry of Environment has provided the comments regardless of whether the comment is in the form of rejection, approval, or an order to make modification or improvement on the reviewed report.

The period of sixty (60) days of working days for the review and comment shall always restart when MoE receives an application asking for review as well as the final EIA report which the Project Proponent has corrected in accordance with the order or instruction that MoE has provided previously.

The Project Proponent shall be liable for any damages caused by their own mistakes for the slowness or failing to make correction in accordance with the above order or instruction.

ARTICLE 24.

MoE shall review and comment on the EIA report within ninety (90) working days counting from the date of receiving the report. The period of the ninety (90) days will expire when the Ministry of Environment has provided the comments regardless of whether the comments are in the form of rejection, approval, or an order to make modification or improvement on the reviewed report.

The period of ninety (90) days of working days for the review and comment shall always restart when MoE receives an application asking for review as well as the final EIA report which the Project Proponent has corrected in accordance with the order or instruction that MoE has provided previously.

The Project Proponent shall be liable for any damages caused by their own mistakes for the slowness or fail to make correction in accordance with the above order or instruction

Chapter # - Preparation of EIA report

Chapter # - Preparation of environmental management plan

ARTICLE #

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 IEE and EIA reports.

The EMP shall be regularly updated to take into account any amendments in Environmental Standards, or changes in sector performance practices or other changing circumstances of the Project.

ARTICLE #

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Commented [SL69]: good

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

In cases where the environmental impacts are greater than those estimated 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 programme shall be approved by MoE. A time limit to make adjustments or improvements shall be agreed upon in writing by all parties.

The Project Proponent shall prepare the environmental monitoring report every three (3) months and submit to EIA Unit for review and evaluation. The EIA Unit has the right to make site inspections and verify the monitoring data of the Project Proponent.

ARTICLE

Project-affected persons and all stakeholders shall have the right to report issues and grievances of environmental and social concerns to the Project Proponent and to petition competent authorities. Such issues will be addressed by a sub-national commission and it can continue to an inter-ministerial commission established as part of the EMP.

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

The formalities and procedures of the grievance or petition shall be determined by Prakas of MoE.

Commented [SL70]: Could be better linked to ensuring impacted communities, CBOs, CSOs on EIA Review C/M.

Chapter # - Submission of EIA report

Chapter # - Consideration and assessment of EIA report

ARTICLE 25.

During the period for review and comment the MoE shall review and comment on the IEE or EIA report after:

- Listening to and considering the official presentation and defending of the report which is conducted by the Project Proponent and consulting firm;
- Considering the comments of direct or indirect project-affected people, opinion of the public and civil society;
- Considering the comments from relevant ministries or institutions, and
- Considering the proposed comments of the Expert Review Committee;

MoE is responsible for ensuring a fair public participation process by inviting representatives of relevant ministries or institutions, territorial authority, civil society, and project-affected persons to provide comments on the proposed project.

Commented [I171]: The opinions of affected persons should carry more weight than the concerns of company.

Chapter # - Revision of EIA report

ARTICLE

The provision of comments in the form of approval or rejection, or the ordering to make adjustments or corrections on IEE or EIA shall be done by taking into consideration the advantages and disadvantages of environment, economy, society, and culture by examining the scope of the project, geographical location, potential impact, other special features of each project, and effectiveness of the implementation of management measures, and/or the protection of environmental quality and social impact mitigation in accordance with the level of the development of technology and science.

In case where MoE approves any IEE or EIA report, MoE shall issue an EIA Approval Letter and Certificate for the project by attaching with it the Environmental Protection Agreement.

In case where the MoE rejects an IEE or EIA report, the MoE shall provide the reasons for the decision.

In case where the MoE provide comments of ordering to make adjustments or corrections of the IEE or EIA report, the MoE shall provide reasons and clearly demonstrate the points that need to be adjusted or corrected.

ARTICLE

Before the decision to grant an EIA Approval Letter and Certificate to development projects which are located in the areas where the indigenous people live, MoE, members of the Expert Review Committee and relevant stakeholders involved in the decision making must take strong heed and special consideration about the project in order to avoid negative impact on the culture, custom, tradition, livelihood, and the property of the indigenous people.

Commented [I172]: Follow the guidelines of FPIC, Human Rights Standards, UNDRIP, and respect existing laws on conservation and safeguard principals. Following Cambodia's signatory status under international guidelines.

Chapter # - Approval or rejection of EIA report

ARTICLE

MoE shall send the decision on the rejection or the order to make adjustment and correction in writing as well as the reasons or condition and/or the points that need to be adjusted or corrected to the Project Proponent and consulting firm in order to prepare the EIA report.

MoE shall send the EIA Approval Letter and Certificate as well as the Environmental Protection Agreement to the Project Proponent and relevant competent ministries and institutions such as Approval Ministries or Institutions, Council for Development of Cambodia, Capital and Provincial Departments of Environment and relevant Commune and Sangkat Councils.

Chapter # - Granting of EIA approval letter

Chapter # - Prohibition of activities without EIA approval letter

ARTICLE

Project Proponents shall not commence any construction activities or Project operations until after the EIA Approval Letter and Certificate has been issued for the Project. The Ministry of the Environment shall have the power to postpone all construction activities or Project operations that do not have an EIA Approval Letter and Certificate.

All Concession Agreements that are granted by the Royal Government of Cambodia at both national level and Capital and Provincial level shall have an official EIA Approval Letter and Certificate with an attachment of Environmental Protection Agreement (EPA).

ARTICLE

The EIA Approval Letter and Certificate shall be valid for the life cycle of the project. In case where the MoE finds that there are changes to Master Plan or that the IEE or EIA reports are not adequate or effective for the implementation of impact mitigation measures, the MoE has the rights to require the project proponent to re-prepare an EIA report and/or to update the existing EIA report in order to receive a new EIA Approval Letter and Certificate in accordance with conditions determined by MoE.

Chapter # - Existing projects

ARTICLE 31.

MoE in consultation with relevant Ministries or institutions shall prepare Guidelines based on project screening for the types of projects that have not conducted the EIA to

Commented [MB73]: Projects that are planned or existing that have completed the EIA process and Government approval processes shall not require further assessment. All existing projects will be required to comply with the Code and be subject to the appropriate penalties if the project causes harm to the environment or society.

Commented [SL74]: And undertake additional EIA for project expansion or change

Commented [BR75]: Potential clarification for existing projects with existing EIAs and operational licenses per Kris Energy.

require the Project Proponent to prepare an IEE or EIA report for existing projects or projects in operation.

The Guidelines shall be published within three (3) months after the MoE has made decision on these guidelines.

Project Proponents shall cooperate with consulting firms to complete their IEE or EIA reports and submit these documents to MoE for review and comments in a period determined by MoE.

MoE shall review, comment, and make a decision on these IEE or EIA reports in accordance with the provisions of the Code.

Chapter # - Matters for consideration

ARTICLE # - Protecting the rights of vulnerable persons, including women, children, disabled persons, and ethnic minority groups and indigenous peoples, in keeping with the principles of FPIC and through the EIA process, including public participation in the EIA process and the implementation measures that are an outcome of EIA approval.

Chapter # - Cumulative impact assessment

ARTICLE #

~~All EIAs must analyze and evaluate the cumulative impact caused by existing and future projects in the surroundings of the Project, which may trigger significant environmental or social impacts.~~

~~In the cumulative impacts assessment report, the Project Proponent must evaluate the capacity of physical, biological and social-economic resources to accommodate additional effects based on their own time and space parameters and project activities surrounding the project sites.~~

~~Project Proponents must consider alternative mitigation measures to offset or avoid potential significant cumulative impacts.~~

Chapter # - Social impact assessment

[To be developed in detail]

Chapter # - Health impact assessment

Commented [SL76]: Good. Suggest link it to a broader human rights due diligence assessment (identify, mitigate, prevent and remedy) as per UNGP on Bus and Human Rights

ARTICLE

All IEEs and EIAs must include a Health Impact Assessment (HIA) that includes:

- baseline data on health (including nutrition) in the project areas and of the affected populations;
- description of potential project impacts (e.g. resettlement, food and water insecurity, nutrition, additional work burden, sexually transmitted disease etc) 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.

Commented [I177]: Preserve and maintain the good health of the communities and take measures for improvement where necessary.

ARTICLE #.

In assessing the health impacts, Project Proponents 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.
- 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 establish preventive measures and management plans for the impacts during these stages.

Commented [SL78]: See suggested ex's above and include

Chapter # - Transboundary Social and Environmental Impact Assessment

Commented [SL79]: Good

ARTICLE # - A Project that has potentially significant trans-boundary Social and environmental impacts is required to conduct a Trans-boundary Environmental Impact Assessment (TbEIA).

Commented [SL80]: Include ref to the Hydropower sustainability Assessment Framework and Protocol

ARTICLE # - Procedures for conducting TbEIA including government institution jurisdictions.

Commented [SL81]: .eg Mekong River Commission, but also needs to include, mechanisms to actively involve downstream and upstream communities (e.g in the case of dams), but participation and access to info etc of impacted communities

Chapter # - Cumulative impact assessment

Commented [SL82]: See work on cumulative Impact Assessment By University of Queensland, CSRM

ARTICLE

All EIAs must analyze and evaluate the cumulative impact caused by existing and future projects in the surroundings of the Project, which may trigger significant environmental or social impacts.

In the cumulative impacts assessment report, the Project Proponent must evaluate the capacity of physical, biological and social economic resources to accommodate additional effects based on their own time and space parameters and project activities surrounding the project sites.

Commented [I183]: Omit phrase

Project Proponents must consider alternative mitigation measures to offset or avoid potential significant cumulative impacts

Commented [I184]: Following EIA approval guidelines, significant cumulative impacts should result in the immediate withdrawal of the license.

Chapter # - Environmental management and monitoring

ARTICLE #.

The EIA Unit and Provincial/Capital Department of Environment are the monitoring authorities on Environmental Management Plans and following up on Environmental Management Plan implementation of Project Proponents by cooperation with the Ministry of Environment, relevant institutions, local authorities and stakeholders.

Chapter # - Provision of information

Chapter # - Reporting requirements

ARTICLE #.

Each development project shall prepare an Environmental Monitoring Report of the project as follows:

Commented [I185]: These should follow a standardized format

- A Quarterly Report (every three months) covering all environmental management and monitoring results shall be submitted to the EIA Unit;
- Within three (3) months after the financial year the Project Proponent shall prepare and submit an 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 quarterly reports and annual environmental report that will be placed on the publicly accessible web-site of MoE and by the Proponent on a publicly accessible web-site.

ARTICLE #.

Each development project with an EIA Approval Letter and Certificate shall submit a quarterly and semi-annual report to the EIA Unit concerning its environmental management and monitoring;

Project Proponents have the obligation to promptly report a critical environmental problem to relevant and competent authorities and to the public to avoid negative impacts to the environment or society;

Project Proponents shall provide information related to environmental management of the project to MoE in accordance with the request of MoE.

Chapter # - Fees and charges

ARTICLE #.

The Project Proponent is liable for all expenses incurred in preparation of the Initial Environmental Examination (IEE) report or the Environmental Impact Assessment (EIA) report and for the expenses for project screening, for project scoping, for the public participation process, for the review and comment on the IEE or EIA report by MoE, for reviewing Environmental Monitoring Report, and for the work of the Expert Review Committee.

ARTICLE #.

The Project Proponent is liable for the expenses of the preparation and implementation of 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 as delineated in the EMP and SDP.

The Project Proponent shall have a deposit [reserved] budget or insurance budget for the management of environmental and social risks which shall be determined by the MoE.

ARTICLE #.

A detailed budget of estimated costs for environmental impact mitigation measures that must be included in the EMP shall be borne by the Project Proponent.

The cost of making documents publically available, including web-site access, as stipulated in Article 40 of this law shall be borne by the Project Proponent.

All costs to adjust or improve the mitigation measures and project monitoring [programme](#) as stipulated in Article 43 of this law shall be borne by the Project Proponents.

All expenses for dispute resolution in both inside and outside of the court system as stipulated in Article 65 of this law are the responsibility of the Project Proponent.

Service fees and other charges shall be determined by an Inter-ministerial Prakas between the MoE and the Ministry of Economy and Finance.

ARTICLE #.

When the Project Proponents submit application for review and comment on IEE or EIA report, MoE has the duty to collect fees and service charges as provided in an Inter-Ministerial Prakas between MoE and Ministry of Economy and Finance on Service Charges for reviewing EIA report.

ARTICLE #.

The Project Proponent shall make payment of fees and service charges for reviewing Environmental Monitoring Report to MoE to enable MoE to carry out its duties to review monitoring reports, respond to requests for investigation of environmental complaints, and to carry out routine compliance monitoring during both construction and operation phases of the project.

ARTICLE #.

An Environmental and Social Fund shall be created by the Ministry of Environment to provide finance for the restoration of environment, conservation of biodiversity and social development in and around the area where the project is located.

ARTICLE #.

The Project Proponent shall make payment of Environmental Endowment Fund based on the agreement between MoE and Project Proponent, on an annual basis until the end of business, based on the type and scale of development project.

~~Title 5~~ **TITLE 6 – ENVIRONMENTAL AUDITS AND ENVIRONMENTAL MANAGEMENT REPORTING**

- *This Title will outline the principles and requirements for environmental audits and for reporting requirements under the relevant provisions of the Environmental Code. An environmental audit will be a key mechanism to ensure that permit holders and those undertaking development projects are*

complying with the conditions of approval. This will include EIA, IEE and environmental protection agreements as well as any conditions attached to permits or licenses or ELC.

- *The Title will also establish a PROPER system for self-report of pollution by companies and a color-coded registration for environmental compliance. Companies will be designated from Green and Blue (Beyond Compliance) to Black (Compliance) to Yellow and Red (Below Compliance)*
- *The aim of this Title is not to increase the regulatory burden on the holder of a license or approval but to ensure that environmental and social obligations are carried out in accordance with the approval conditions.*

Chapter # - Establishment of self reporting for environmental compliance

Chapter # - Mandatory Obligation to report breaches of Environmental Code

Chapter # - Establishment of system of environmental compliance and non-compliance

Chapter # - Register of approvals, permits, licenses and monitoring reports

Chapter # - Unified register to be publically available and easily accessible

Chapter # - Environmental audits

Chapter # - Appointment and qualifications of independent environmental auditors

Chapter # - Projects and activities requiring environmental audits

Chapter # - Projects and activities requiring environmental certification to international standards

Chapter # - Monitoring reports to be required for specific project and activities

Chapter # - Monitoring reports required under EIA approvals

Chapter # - Monitoring reports to be publically available

Chapter # - Promoting Corporate Social Responsibility

Commented [SL86]: Highly problematic. It does not work. Suggest delete.

Reporting , audit, monitoring must be independent, verifiable and include independent experts

Commented [SL87]: Ensure mandatory

Commented [SL88]: Linked to risk identification and mitigation plans

Commented [N89]: Consider cross reference to EIA section

Commented [SL90]: Recommend this Chapter be called Responsible Business Conduct. This is now widely accepted internationally and will promote better policy coherence with the UN Guiding Principles on Business and human Rights and the OECD Guidelines for Multinational Enterprises

~~Title 6~~ **TITLE 7** – CLIMATE CHANGE ADAPTATION AND
MITIGATION

Commented [BR91]: Potential combine of Books 23 and 24 M Ramasamy

- *This Title will outline how to mainstream Climate Change assessment into the management of natural resources in Cambodia. Adopting existing strategies to adapt to and mitigate the impacts of climate change in Cambodia, this Title will provide the details on how those matters should be taken into consideration during the EIA process and the natural resource management process.*
- *The Title will incorporate international climate change mechanisms such as REDD+ CDM and other climate change mechanisms into Cambodia law.*
- *This Title will outline how to reduce greenhouse gas emissions by Cambodia and the promotion of Green Growth.*
- *This Title will also link to Book 3 Title 8 – SUSTAINABLE ENERGY and [Book 4 Title 1 – ENVIRONMENTAL INCENTIVES, FEES AND CHARGES](#).*
- *It will also address some key issues in relation to other relevant Titles, including building resilience to climate change through planning and construction standards (referencing Book 2 Title 2– Urban Land Use Planning and [Book 3 Title 11– Sustainable Cities](#))*

Chapter # - Obligation to address climate change

Chapter # - Incorporating climate change mitigation in all natural resources and environmental decisions

Chapter # - Incorporation of climate change adaptation in all natural resources and environmental decisions

~~Title 7~~ **TITLE 8** – DISASTER RISK REDUCTION AND DISASTER
MANAGEMENT

- *The Title will provide the requirements for reducing disaster risk by proper planning and incorporating risk reduction strategies into natural resource management decisions.*

Chapter # - Disaster management planning

Chapter # - Incorporation of risk-reduction planning

Chapter # - Developments to take into account disaster management planning

Chapter # - Planning for major pollution incidents

Chapter # - Responding to environmental damage

Chapter # - Disaster management for protected areas and heritage locations

Chapter # - Management of disasters at waste facilities

Chapter # - Management of disasters at energy production and storage facilities

Chapter # - Management of disasters at chemical facilities

Chapter # - Obligation to report potential disasters

BOOK 3 — Environmental Management and Sustainability Mechanisms

[Editorial Note: The subsequent three titles require reorganization and restructuring]

~~Title 1~~ TITLE 1 – ESTABLISHMENT OF NATIONAL CONSERVATION CORRIDORS

- *This Title will establish a system of national conservation corridors. These will be areas with specific legal status and protections. This could include:*

- *National parks*
- *Urban parks and tree corridors*
- *Private land with conservation agreements, including eco-resorts, organic agriculture*

Commented [BR92]: Per Andeol Cadin

Chapter # - Establishment of National Conservation Corridors, including naming, location and boundary/map reference

Chapter # - Classification of zones within the National Conservation Corridors

Chapter # - Activities prohibited in the National Conservation Corridors

Chapter # - Preparation and approval of management plans for the National Conservation Corridors

Chapter # - Restoration of damaged habitat or ecosystems in the National Conservation Corridors

Chapter # - Procedures for adjustments to the boundaries of the National Conservation Corridors

**~~Title 9~~ TITLE 2 – BIODIVERSITY MANAGEMENT AND
ENDANGERED SPECIES PROTECTION**

- *This Title will examine the protection, conservation and management of biodiversity, and include different chapters on forests, wetlands, marine ecosystems, endangered species, invasive species and the management of protection areas.*
- *Specific Chapters could address key priority areas including Tonle Sap Lake and the Mekong River.*
- *A submission has been received from some combined NGOs on the policy of Wildlife (or Wild Animal Farming) in Cambodia. The discussion paper raises a number of significant issues and concerns about the possibility of introducing the farming of wild animals in Cambodia. Consideration is being given to the matters raised by the submission.*

Chapter # - Adopting an ecosystems approach to biodiversity management and endangered species protection

Chapter # - Protection of endangered species

ARTICLE # - Identification of endangered species

ARTICLE # - Creation of endangered species management plans

ARTICLE # - Prohibitions on taking of endangered species

Commented [SL93]: Suggest also include a chapter on Zero tolerance for development in national parks and other enviro / biodiversity importance, outside of a particular corridor

Commented [SL94]: And also Sesan River

Commented [N95]: WWF May 20 suggests also enumerate Cardamom Mountains, Deciduous Dipterocarp Forest

Chapter # - Protection of wildlife

Commented [BR96]: Relationship between these two chapters to be clarified, or chapter combined

Chapter # - Protection of plants and plant communities

Chapter # - Protection of native plant and wildlife habitat and important ecological communities (including “critical habitat” for endangered plant and animal species)

Chapter # - Bioregional planning for biodiversity conservation

Chapter # - Prohibition of export or import of specified flora and fauna and products derived from plants and wildlife

Chapter # - Prohibition of trade, possession or sale of endangered species

Commented [I197]: Wildlife or endangered species

Chapter # - Enforcement of CITES and other international agreement obligations

Chapter # - Scientific and educational uses

Chapter # - Establishing/classifying protected areas for biodiversity conservation

Chapter # - Restoration of damaged ecosystems

Chapter # - Wetlands classification, management and conservation

Chapter # - Endangered species protection and management plans (includes identifying key threatening processes and developing threat abatement plans and recovery plans)

Chapter # - Prohibition on damaging or destroying native vegetation and forest protected areas

Chapter # - Prohibition of hunting in certain areas

Chapter # - Prohibited activities in protected areas

Chapter # - Management of invasive species

Chapter # - Definition of genetically modified organisms

Chapter # - Prohibition of use of genetically modified organisms, including seeds

Chapter # - Management and approvals for use of genetically modified organisms

Commented [I198]: No management – these should be prohibited all together

Chapter # - Establishment of marine reserves

Chapter # - Establishment of freshwater production zones

~~Title 10~~ TITLE 3 – COMMUNITY MANAGEMENT

- *The Title would examine options for community use of natural resources, hunting, community fishing and use of land for sustainable community needs.*
- *To include a revision of current CF and CPA procedures*
- *This Title will be harmonised with ongoing efforts to create a separate legal instrument on co-management.*

Commented [SL99]: See;

<https://communitiesfirst.net/toolkits/3-rights/>
<http://naturaljustice.org/>
<http://community-protocols.org/>

Chapter # - Promotion of Community Forests and Community Protected Areas under a unified management framework

Chapter # - Establishment of co-management as a multi-stakeholder conservation tool

Commented [I1100]: ensure planning and funding for community patrols in conjunction with local authorities to control illegal logging and poaching.

Chapter # - Tenure, scope and duration in co-management

Commented [N101]: This chapter will modify current tenure duration limits in Community Forests and Community Protected Areas and modify the 2001 Land Law limits on leasing of state public land.

Chapter # - Mechanisms and elements of co-management

ARTICLE # Extraction Limits for areas under co-management

ARTICLE # Protecting natural and cultural heritage through co-management

Chapter # - Procedures to establishment a co-management zone

~~Title 11~~ TITLE 4 – CULTURAL AND NATURAL HERITAGE MANAGEMENT

- *This Title will examine the identification, protection and management of cultural and natural heritage. It will consider the need to protect both tangible and intangible items of cultural heritage.*
- *This Title will look at the operation of the APSARA Authority and related legislation to ensure a consistent approach to the protection and management of natural, cultural and built heritage, including both tangible and intangible heritage.*
- *Ministry of Culture and Fine Arts and other authorities related to heritage protection and management.*
- *This would examine both World Heritage and Ramsar listed areas, as well as local and national heritage areas.*
- *It will regulate key activities in heritage areas, including tourism, research, archeological digs and any other development activity. Also note new chapter on rescue archaeology and salvage archeological surveys*
- *Other protection mechanisms will include anti-trafficking provisions, protections against intentional or accidental damage or demolition of known or unknown cultural or natural heritage, restoration and repair of damaged heritage, and financial incentives for heritage protection.*

Commented [I1102]: It will regulate the activities of heritage site establishment to ensure the protection of the rights of citizens living in those areas.

Commented [MB103]: Recommendations from STWG4

Commented [I1104]: With special attention to ethnic minorities

Commented [BR105]: Group 4, 6 April workshop

Chapter # - National Inventory list of cultural and natural heritage

- Article # The relevant Ministry shall established a National Inventory list of cultural and natural heritage sites
- Article # The National Inventory list shall be updated on a regular basis
- Article # Establishment of local and national heritage zones

Commented [BR106]: Group 4, 6 April workshop

Chapter # - Identification and designation of cultural and natural heritage sites

Chapter # - Damage and Conservation status classifications

Commented [MB107]: Recommendation from STWG4

Chapter # - Special considerations in EIA for cultural and natural heritage sites

Chapter # - Protection for cultural and natural heritage sites from activities not covered by EIA

Chapter # - Management plans for sites

- Article # The Minister may require for a Heritage Management Plan to be prepared for a cultural and natural heritage site listed on the National Inventory
- Article # The Heritage Management Plan shall be developed in consultation with the local community and interested stakeholders.
- Article # The Heritage Management Plan shall also establish protected zones and core zones for heritage management of the site.
- [Article # Ensuring sustainable use of cultural and natural heritage sites](#)

Chapter # - Requirements for heritage impact assessment

Commented [N108]: This chapter will cross-reference the Title on EIA

Chapter # - Rescue Archaeology or Salvage Archaeology of threatened or endangered sites

Chapter # - Order to halt construction or clearing if a site is threatened or endangered

Chapter # - Impact of protected site on communities

Commented [MB109]: Recommendation from STWG4

Chapter # - Illegal trafficking of artifacts

ARTICLE # - Illegal trafficking defined

ARTICLE # - Mechanisms to prevent illegal trafficking

Chapter # - Education and public awareness of cultural and natural heritage

Chapter # - Incentives for conservation of cultural and natural heritage

Chapter # - Funding mechanisms for natural and cultural heritage sites

ARTICLE # - Entrance fees

ARTICLE # - Public-private partnerships

Title 12 TITLE 5 – WATER MANAGEMENT

- *This Title will provide details of water management and water planning. Plans for water management should be prepared under the provisions of [Book 2 Title 1](#) dealing with National, Regional and Local Management Plans.*
- *This will need to consider the benefit-sharing arrangements for the use of transboundary watercourses in accordance with international legal obligations.*

- *Waste water and water pollution will be dealt with in Book 3 Title 7 – Solid and Hazardous Substances Control and Contaminated Land.*

Chapter # - Whole-of-catchment concerns (including relationships between upper and lower river reaches and between different users)

Chapter # - Identifying and quantifying (through monitoring and mapping) all surface and ground water sources

Chapter # - Irrigation system and water supply for agricultural purposes

Commented [I1110]: Ensure that irrigation systems do not capture rice field water.

Chapter # - Erosion control (riparian vegetation management)

Commented [I1111]: Wetlands rehabilitation and policies to preserve remaining wetlands

Chapter # - Man-made waterway

Formatted: French (France)

Formatted: French (France)

Chapter # - Water reservoirs for public use (referencing urban planning in [Book 2Title 2](#))

[Chapter # - Groundwater Management](#)

Commented [I1112]: Should involve community participation and regional planning for digging wells.

[ARTICLE # - Establishing requirements for monitoring wells, with triggers for conservation measures if such wells fall below a critical level](#)

Commented [I1113]: Needs definition

Chapter # - Allocation and trade of entitlements to use water

[ARTICLE # - Groundwater](#)

[ARTICLE # - Rivers, streams and lakes](#)

Chapter # - Introducing monitoring and reporting systems (in reference to [Book 2Title 6](#))

[ARTICLE # - Mandatory reporting of normal emissions and effluents.](#)

[ARTICLE # - Mandatory reporting of sudden discharges during maintenance or accidents](#)

Commented [N114]: per J Fox-Przeworski

~~Title 13~~ [TITLE 6](#) – COASTAL ZONE MANAGEMENT

- *This Title will provide a planning framework for the use and management of the coastal zone.*

- *It will provide details for the management of tourism and economic development in the coastal zone. It will adopt strong interim controls and safeguards to protect the coastal zone from poor development.*
- *This will include existing areas receiving special treatment and a system for designating new areas for development, including existing and proposed new institutional management.*

~~Chapter # – Development of a draft Coastal Zone Management Plan (CZMP)~~

~~Chapter # – Overall objectives of coastal zone conservation and management~~

Commented [BR115]: Per R. Deau comment

~~Chapter # – Special provisions for mangrove conservation~~

~~Chapter # – Contents of a draft CZMP~~

~~Chapter # – Adoption of a CZMP~~

~~Chapter # – Implementation of a CZMP~~

~~Chapter # – Coastal zone mapping, including mapping of coral reefs~~

~~Chapter # – Amendment of the CZMP~~

Chapter 1. General Provisions

1) The Kingdom of Cambodia finds that there is a national interest in the effective management, beneficial use, protection, and development of the Coastal Zone.

2) The appropriate ministry shall have the authority to manage natural resources of all waters and lands, both emergent and submerged, in the Coastal Zone of the Kingdom of Cambodia, and to oversee and regulate all development or other activities affecting the waters, lands and associated natural resources of the Coastal Zone.

Commented [I1116]: Better coordination with MoE

2) Consistent with the National Water Resources Policy for the Kingdom of Cambodia approved by Council of Ministers on 16 January 2004, the appropriate ministry shall:

(a) Take full account of and minimize the potential impacts to Coastal Waters by managing natural resources and human activity in the coastal watershed, consisting of the river basins that flow directly to the Gulf of Thailand.

(b) Manage natural resources and human activity in the Coastal Zone in a fully integrated way, in order to avoid or minimize unintended impacts to Coastal Waters.

(c) Actively and comprehensively manage all land-based and shoreline sources of solid, liquid and airborne environmental contaminants that may enter Coastal Waters.

3) All activity, development, construction, or other type of projects which have an impact on natural resources in the Coastal Zone shall be subject to an EIA.

Chapter 2: Coastal Subzones

1) The Coastal Zone shall be considered to consist of three subzones:

- (a) Coastal Waters – Those waters extending seaward 5 km. from the shoreline, including the associated submerged lands.
- (b) Coastal Lands – Those emergent lands extending inland from the shoreline for a distance of 5 km, including the intertidal zone.
- (c) Coastal Watershed – The entirety of the combined watersheds draining to the marine waters of Cambodia.

2) The appropriate ministry shall develop regulations appropriate to each subzone in order to manage proposed future development and associated natural resources impacts.

Chapter 3. Coastal Zone Management Mandates

Pursuant to this authority, the appropriate ministry shall:

1) Consistent with the responsibilities listed in Article 5 of the Royal Decree on The Establishment of a National Committee on Coastal Zone Management and Development of Cambodia *[The status of this committee needs to be considered.]*, undertake the following roles and responsibilities:

- (a) Prepare policies, strategic plans, master plans, action plans, programmes, and various projects pertaining to coastal management and development.
- (b) Produce necessary regulation and guidance to ensure the transparent, equitable, and sustainable management of the Coastal Zone.
- (c) Review and take any necessary action in regard to any passive activities affecting the environment and natural resources of the Coastal Zone.
- (d) Review and evaluate every project proposed for development and implementation in the Coastal Zone to ensure compliance with guidelines for Coastal Zone development issued by the Royal Government.
- (e) Participate in checking and providing comments to competent institutions on investment proposals that may impact the Coastal Zone.
- (f) Review, monitor, and mediate all activities undertaken, or planned to be undertaken, by ministries, institutions, sub-national administrations, national and international organizations, non-government organizations, civil societies, and private sectors that may have impacts in the Coastal Zone so as to ensure that their activities are coordinated in a smooth, effective, and sustainable fashion.

Commented [I1117]: That thir activities have no negative impact on the ecosystems or social systems in the coastal zone

(g) Provide guidance on laws and regulations governing Coastal Zone development to the sub-national administration, the private sector, and all other relevant stakeholders.

(h) Submit a yearly report on Coastal Zone management activities for submission to the Royal Government.

2) Produce and openly distribute maps of the Coastal Zone and its subzones, so that all parties, both public and private, may clearly understand the areas in which special Coastal Zone regulations apply.

Commented [I1118]: Should be part of MoE maps above

3) Ensure that all proposed developments in the Coastal Waters, Coastal Lands, and Coastal Watershed are consistent with the applicable zoning restrictions applying to these lands and waters. Development projects that are found to be inconsistent with such zoning shall not be allowed.

4) Consistent with the current Law on Fisheries, NS/RKM/506/11, ensure that coral reefs, sea grass and mangroves are designated Coastal Zone aquatic resources of special value, and are accorded protected status, and updated maps of the location and extent of these resources shall be prepared based on the existing maps presented by the National Committee for the Management and Development of the Coastal Area in their Report of Shoreline Assessment in 2014.

5) Ensure that any activity, construction, or other type of project that results in loss of coral reef, sea grass or mangroves shall be prohibited except under special permit from the appropriate ministry. In issuing such a permit, the following criteria must be applied:

Commented [I1119]: omit

(a) It must be demonstrated that there is no practical alternative site for the proposed activity, construction, or type of project that would avoid the loss of coral reef, sea grass or mangroves.

(b) If a certain degree of loss is unavoidable due to the requirements of the activity, construction, or other type of project, then best management practices must be specified in the permit issued by the appropriate ministry that will serve to minimize the total loss of coral reef, sea grass or mangroves. Failure to follow these best management practices shall be considered a permit violation, and the permittee subject to a fine set by the appropriate ministry.

(c) If an unavoidable loss of coral reef, sea grass, or mangroves is permitted, then the permittee must enter into an agreement with the appropriate ministry to ensure that an equivalent area of the same ecosystem type, and of similar quality, be set aside in permanent protected status as a mitigation offset. Such mitigation offsets may be added to existing protected areas in order to satisfy this requirement.

Commented [I1120]: This goes against the principal of prevention stated above.

6) Produce updated maps of Future Inundation Hazard Areas for the coastal lands of Cambodia, based on existing maps presented by the National Committee for the Management and Development of the Coastal Area in their Report of Shoreline Assessment in 2014. Such Future Inundation Hazard Areas shall consist of all areas of the Cambodian coastal lands that are projected to become flooded by a sea level rise of 1 m above the level of the current shoreline.

7) Ensure that development of roads, resorts, industrial facilities and other major construction or infrastructure shall not be allowed in Future Inundation Hazard Areas unless it can be demonstrated to the appropriate ministry that such developments are specifically designed to withstand such future inundation. Construction of homes, landfills, and power plants shall not be allowed in such zones.

Commented [1121]: Omit the unless—do not allow.

9) Regulate the discharge of dredged and fill material into the waters of the coastal watershed through a permitting system. Applicants for such permits must demonstrate that they have taken all reasonable steps to avoid and minimize impacts to streams, wetlands, and marine waters within the Coastal Zone.

10) Evaluate the effects of current and proposed hydropower development projects on the natural resources of the Coastal Zone, and provide recommendations for minimizing or mitigating such impacts.

Chapter 4. Coastal Zone Management Discretionary Authorities

Pursuant to this authority, the appropriate ministry may at its sole discretion:

1) Develop watershed management plans for each major river basin in the Coastal Watershed, including at a minimum the Kampot, Pongrol, Areng, Tatai, and Koh Pao river basins. Such plans shall contain:

(a) A description and characterization of the watershed.

(b) A strategy to control sedimentation and pollution within the watershed.

(c) Proposed management measures.

(d) Monitoring and evaluation protocols to measure the success of the sedimentation and pollution controls.

2) Assist in education and development of human resources to properly address Coastal Zone management and development.

Chapter # - Planning for climate change in coastal zone management

Chapter # - Roles and responsibilities of Ministries

Chapter # - Roles of citizen and communities

Chapter # - Requirements for public consultation

Chapter # - Promotion of sustainable development in the coastal zone

~~Chapter # - Prohibition of activities in the coastal zone that are not in accordance with the CZMP~~

**Title 15 TITLE 7 – SOLID AND HAZARDOUS SUBSTANCES
CONTROL AND CONTAMINATED LAND**

- *The Title will reexamine the provisions of the Sub-Decree on Solid Waste Management 36 ANRK.BK 1999. It will update the relevant provisions about solid waste and hazardous waste management. It will also update and incorporate the provisions dealing with the Sub-Decree on Water Pollution 27 ANRK.BK 1999*
- *This Title will include environmental controls on agricultural practices, including fertilizer, pesticide and herbicide use.*
- *Fees and charges will be provided in accordance with [Book 4 Title 1](#).*
- *Reporting and monitoring requirements, including public disclosure, will be dealt with in [Book 2 Title 6](#).*
- *Procedures for investigation on breaches and offences will be dealt with in [Book 4 Title 4](#). The aim is that investigations and proceedings for all waste management and pollution offences will be the same as for other offences and breaches of the Environmental Code.*

Commented [N122]: Moved up

Chapter # - Promoting waste avoidance and reduction

ARTICLE # - Packaging regulations

ARTICLE # - Industrial waste reduction through regulations, financial incentives and other mechanisms.

ARTICLE # - Reducing the use of plastic bags

Commented [N123]: To be harmonised with prakas under development.

Chapter # - Encouraging and facilitating recycling (including regulating recycling businesses)

ARTICLE # - Establishing pilot paper and glass recycling programmes.

ARTICLE # - Improving capacity for and use of plastic recycling.

ARTICLE # - Encouraging public-private partnerships in recycling.

Chapter # - Roles and responsibilities of government, private sector and citizens in recycling, waste reduction, and waste management

Commented [BR124]: Per R. Deau comment

ARTICLE # - Manufacturer responsibility over the lifetime of the product

ARTICLE # - Manufacturer responsibility for industrial waste

ARTICLE # - Ownership and operation of municipal solid waste facilities and landfill

ARTICLE # - Permitting requirements for private waste management facilities.

ARTICLE # - Bidding process for award of municipal solid waste collection contracts.

ARTICLE # - Responsibilities of national, regional and sub-regional governments in waste reduction and management.

ARTICLE # - Setting of rules and conditions of separating solid waste according to classification (e.g. organic, recyclable, non-recyclable, hazardous) at source.

Commented [N125]: Per STWG 2.

Chapter # - Labeling of waste

Chapter # - Identification, management and rehabilitation and remediation of contaminated land

Commented [N126]: per M. Desrousseaux Comment

Chapter # - Regulation of waste management facilities, including rubbish dumps

ARTICLE # - Waste management and treatment facilities subject to EIA approval

ARTICLE # - Integrating risk management into the planning and licensing process for waste management facilities

Chapter # - Standards for classification of waste

ARTICLE # - International best practices for defining hazardous waste and appropriate subcategories (hazardous chemicals, medical waste, etc.)

Commented [N127]: Defining and treating industrial non-hazardous waste and household waste separately?

Chapter # - Management of waste incinerators

Commented [N128]: Note: Definitions possibly go in "definitions" glossary.

ARTICLE # - Capture requirements

ARTICLE # - Obtaining energy from waste incineration

Chapter # - Solid Waste management and disposal

ARTICLE # - Identifying and promoting alternatives to landfills

[ARTICLE # - Operation of landfills including monitoring and reporting requirements](#)

[ARTICLE # - Operation of waste incinerators including monitoring and reporting requirements](#)

Commented [N129]: Per STWG2

Chapter # - Hazardous waste management

[ARTICLE #- Collection of Radiological and biological waste from medical facilities](#)

[ARTICLE # - Treatment and proper storage of medical and biological waste](#)

[ARTICLE # - Requirements for the operation of Electronic waste facilities](#)

[ARTICLE # - Promoting proper disposal of electronic waste.](#)

[ARTICLE # - Immediate reporting requirements for any spills, leaks or discharges.](#)

Chapter # - Transportation of waste

[ARTICLE # - Collection and transport divided based on waste types](#)

[ARTICLE # - Setting rules and regulations for transport, loading of municipal solid waste, hazardous waste.](#)

Commented [N130]: per STWG 2.

Chapter # - Public drainage system, rain water drainage

Chapter # - Sewage treatment system

[ARTICLE # - Improving rural sewage treatment](#)

[ARTICLE # - Improving urban sewage treatment](#)

[ARTICLE # - Improving coastal sewage treatment](#)

[ARTICLE # - Seasonal adaptations in sewage treatment](#)

[ARTICLE # - Separation of storm water drainage and sewage infrastructure](#)

[ARTICLE # - Understanding and supporting the role of wetlands in waste filtration and preserving wetlands](#)

ARTICLE # - Promoting and regulating private septic tanks

ARTICLE # - Mandatory reporting of normal discharge, effluents and sudden discharge.

Chapter # - Import and export of waste

ARTICLE # - Restrictions on the import and export of hazardous or e-waste materials

ARTICLE # - Restrictions on the import and export of solid waste

Chapter # - Application of international conventions on waste

Chapter # - Contaminated Land

Chapter # - Management of Chemical Substances

General Provision

Editorial note: The use of the terms “chemical substance,” “chemical product,” and “chemical” in the following articles needs to be analysed and rationalised.

Article 1.

This Law has the following objectives:

1. To promote effective management and safe use of hazardous chemical substances and hazardous chemical products in Cambodia;
 2. To ensure proper registration, classification and labeling of chemical substances and chemical products in order to prevent misuse and to promote safe handling in the work place;
 3. To enhance public awareness and access to information on safety and mitigation of risks throughout chemical life cycle, including production, storage, transportation, use and disposal;
 4. To set up appropriate institutional coordination mechanism and information system for effective management and control of hazardous substances and hazardous chemical products in all stages of chemical life cycle;
 5. To ensure an operational national system to incorporate cleaner production solutions in all manufacturing and service sectors, as well as in households.
- (5)

Article 2.

This law has the goal of protecting the social infrastructure, human life, animals and environment from risks and hazards caused by misuse and mishandling of hazardous chemical substances and hazardous chemical products throughout chemical life cycle;

Commented [MB131]: New Chapters inserted from Draft.

Commented [SL132]: Will need to be linked to the Book on Natural resource Planning and management re mining and mining waste management

Commented [BR133]: The following text, Articles 1-36, is from a draft law on the management of chemical substances. This text will be carefully reviewed for any possible amendments and overall coherence within the overall framework of the Code, as well as whether agricultural chemicals (pesticides, fertilizers, and PRTR etc.) fall within it.

Commented [BR134]: Need to address periodic review of emission standards M Ramasamy

Article 3.

This law covers all hazardous chemical substances or hazardous chemical products and applies to all organizations or individuals that produce, transport, purchase, sell, use, store, release or discard these chemical substances and their chemical derivatives at different stages of their life cycles.

Commented [N135]: Per N. Sheridan Comment May 19

This law does not apply to radioactive substances, pharmaceuticals, cosmetics, food additives, food products and household appliances or toys that are governed by separate law and regulations.

Article 4.

The definitions of the main technical terms related to hazardous chemicals are provided in ~~the~~ annex 1.

**Chapter 2
Institutional Responsibility**

Article 5

The Ministry of Environment is responsible for administration and implementation of this law in cooperation with relevant ministries and institutions, and in harmonization with existing laws and regulations related to the management of chemicals and chemical wastes in Cambodia.

Article 6

The Royal Government of Cambodia shall set up appropriate mechanisms for effective management and control of hazardous chemicals through its life cycle, especially for information sharing, inspection, classification, and hazard communication and risk assessment of registered and new hazardous chemicals circulating in Cambodia.

Article 7

The Ministry of Environment shall coordinate implementation of international treaties or conventions relevant to hazardous chemical substances.

Article 8

No person shall undertake the following activities:

- (a) The introduction or delivery of any misbranded hazardous substance or banned hazardous substance.
- (b) The alteration, destruction, or removal of the whole or any part of the label of any hazardous substance during shipment or sale (whether or not the first sale).

(c) The receipt of any misbranded hazardous substance or banned hazardous substance and the delivery or proffered delivery thereof for pay or otherwise.

Article 9

No person can manufacture, use and distribute persistent organic pollutants (POP) totally banned by Stockholm Convention as listed in the annex 2 of this Law. This list shall be updated according to the revised decision of COP under the Stockholm Convention to which the Royal Government of Cambodia is a party.

Article 10

Any misbranded hazardous [chemical](#) substance or [hazardous chemical product](#) or banned hazardous substance [or hazardous chemical product when introduced into Cambodia](#) shall be subject to confiscation and seizure, ~~but is not applicable for any substance intended for export to other countries.~~

Article 11

No person shall manufacture, possess, handle, store, transport, import, [export](#), distribute or use a hazardous [chemical](#) substance [or hazardous chemical product](#) that is not registered under Sub-decree dated October 2009 on “Management of Classification and Labeling of Chemicals”.

Article 12

No person shall store, import, export or distribute a hazardous chemical that is not packaged in accordance with the regulations and the conditions of registration.

Article 13

No person shall package or advertise a hazardous chemical in a way that is false, misleading or likely to create an erroneous impression regarding its character, value, quantity, composition, safety or registration.

Article 14

No person is allowed to use chemical substances such as acid, gasoline, or toxic chemicals that can cause corrosion, burn, oxidation, injury and destruction of human organs implicating health and human life.—, [except in accordance with international safety standards. In the case of chemical reactions, burns or oxidation causing damage to human or environmental health, responsible legal entities or natural persons shall pay a fine and compensation for the damages.](#)

Chapter 4
Registration and Information Disclosure

Article 15

Organizations and individuals shall have the duty to hold valid official registration of any hazardous chemical substances and hazardous chemical products intended for manufacture, distribution, sale and use in Cambodia.

Commented [N136]: per N. Sheridan comment May 19

Commented [N137]: per N. Sheridan comment May 19

Article 16

An application for registration shall be submitted to the respective agencies with at least a minimum information on the manufacturing company, name of chemicals, hazard classification, amount, purpose of import or use, safety data sheets, hazard statement, potential risks to human health and address of delivery.

Article 17

Information on hazardous chemicals shall be reviewed and endorsed by the Ministry of Environment before submission to the respective ministry for approval. The Ministry of Environment in cooperation with respective agencies may conduct additional tests and consultation to verify the correctness of information provided.

Article 18

The relevant ministries having the mandate to approve registration shall provide information on all hazardous chemical substances and products to the Ministry of Environment for inventory, monitoring, risk assessment and inspection purposes.

Article 19

Following official registration, organization or individual shall prepare appropriate action plan for prevention, emergency response, mitigation, monitoring and risk management for hazardous chemical substances. He or she shall act in good faith ~~ee~~ to provide accurate information on hazardous chemical substances to the responsible agencies when requested.

Chapter 5 Classification and Labeling

Article 20

Classification and labeling of hazardous chemical substances shall follow regulations specified by the Sub-decree No 180 dated 20 October 2009 on Management of Classification and Labeling of Chemicals.

Article 21

Hazard criteria for physical hazards, health hazards and environmental hazards shall be specified by an inter-ministerial task force with members designated from line agencies and universities following the Globally Harmonized System for Classification and Labeling (GHS). Role and functions of this inter-ministerial task force shall be specified by a sub-decree.

Article 22

Organizations or individuals involved in packaging, distribution, transportation, and sale of hazardous chemical substances or products shall put correct labeling on hazard substances and chemical products following regulations specified in the Sub-decree No 180 dated 20 October 2009 before distribution, transportation or sale.

Article 23

Organizations or individuals shall publish brochures or newsletters on safety data sheet, hazards prevention and mitigation, and health risks for all hazardous substances intended for distribution and sale in Cambodia.

**Chapter 6
Transportation**

ARTICLE 24

An organization or individual that transports hazardous chemicals shall abide by the provisions on transportation of hazardous chemical substances or products as prescribed in this Law and other relevant laws.

Transport operators and transport owners shall prepare staff health and safety plans and response plans for substance specific hazardous materials incident response plans in order to:

(a) Identify and take necessary measures to minimize potential incidents and remedy consequences if they take place, including training all staff involved in transportation in safety measures and response plans, and

(b) Identify and notify the nearest local authorities and concerned ministries about the incident if an incident occurs en route – either on road, inland waterway, railway, air or sea transport.

Transport operators and transport owners shall ensure that any vehicle used in the transport of hazardous chemical substances or products is suitable for the transport of that substance or product and that the vehicle is visibly marked with the appropriate hazard warning marks and symbols.

Commented [N138]: Per N. Sheridan Comment May 19

Commented [N139]: Per N. Sheridan Comment May 19

Article 25

The Ministry of Environment shall coordinate with the Ministry of Public Works and Transport, concerned ministries and competent agencies to formulate additional technical regulations on transportation of hazardous chemical substances or hazardous chemical products.

Chapter 7

Use and Disposal

Article 26

All Cambodian people have the rights to use hazardous chemicals according to regulations stipulated by this law and shall follow technical specifications, labeled description and safety instructions of any hazardous substance.

Article 27

Organization or individual that uses hazardous substances for manufacturing or production of goods and products shall be responsible for compensation or rehabilitation of the social infrastructure, human health, animal health and the environment damage caused by chemical hazards and accidents for which they have been deemed responsible.

Article 28

No person can burn and dispose of any part or whole of **chemical substances or chemical wastes** into the environment, including water, soil and air without the approval of the Ministry of Environment.

Commented [I1140]: Define this term

For future reference, keep discussing notes here before passing the law

Disposal of any part of hazardous chemical and its package shall follow regulations and guidelines specified by the sub-decree No 36 ANRK.BK dated 27 April 1999 on Solid Waste Management and the Sub-decree No 27 ANRK.BK dated 06 April 1999.

Additional guidelines on disposal of hazardous chemical substances and chemical wastes shall be specified by a Prakas of the Ministry of Environment.

Article 29

Organization or individual using hazardous chemicals for scientific research shall have the following duty:

- Use of hazardous chemical substances following regulations stipulated by this Law;
- Laboratory shall have sufficient equipment for safe storage and handling of hazardous chemical substances and personal protective equipment for workers;
- Hazardous substances shall have correct labeling according to the regulations specified by the Sub-decree dated October 2009;
- The Laboratory shall have an appropriate filing systems and records of hazardous chemical substances being used;
- Disposal of hazardous substance or chemical wastes shall follow regulations specified under Article 25 of this Law.
- Identifying and minimizing any potential hazards which may be caused by the use and ~~dispose~~ disposal of hazardous substance or chemical wastes through setting up effective mechanisms to minimize risk and mitigate effects of any hazard which may occur.

Article 30

No person shall use hazardous chemical substances in food products, cosmetics, and toys that can cause direct health hazards to human beings.

Chapter 8 Chemical Industry

Article 31

Organization or individual engaged in production of chemical substances shall have technical capacity for environmental and social safeguarding as shown below:

- Workshops, storehouse and technological equipment;
- Safety equipment and devices, equipment and devices for prevention and fighting of fire, explosions, lightning, chemical leakages or dispersal and other chemical incidents;
- Labor protection equipment and devices;
- Environmental protection equipment and devices,
- Waste disposal and treatment systems;
- Prevention and response [Plan](#), including posting visible hazard pictogram and hazard communication;

Article 32

Organizations and individuals engaged in production of chemical substances shall have professional staff with qualifications relevant to the scope, type, and scale of the chemical-related activity along with thorough knowledge about technologies and chemical safety plans and measures.

Article 33

Organizations or individuals ~~is-are~~ encouraged to review manufacturing processes that can produce chemical substances or products involving less green house gases emission, less energy consumption, and minimal hazard and toxicity to the environment and human.

Article 34

Organizations or individuals engaged in production of chemical substances or products shall have proper registration of the substances and manufacturing permits issued by relevant responsible ministry or authority.

Article 35

In case of production of hazardous chemicals or hazardous chemical products, organization or individual shall provide annual report on manufacturing processes, the amount of hazardous ingredients, intended use, point of delivery, waste disposal and treatment systems, and safety plan and measures to the respective ministries and the Ministry of Environment. The format of reports shall be developed by responsible Ministry in cooperation with the Ministry of Environment.

Chapter 9 Prevention and Response

Commented [SL141]: Could include a new chapter here on the mining industry to cover use of hazardous chemicals (e.g. mercury and cyanide in gold mining), as well as waste (tailings) management more broadly, including zero tolerance for riverine waste disposal

Commented [N142]: deleted "green" per Dian Turnheim

Commented [I1143]: define term

Article 36

Organizations or individuals shall have the duty to:

- Strictly follow technical specification, labeling and safety instruction defined by each hazardous substance;
- Have prevention and emergency response measures (first aid, evacuation plan, fire elimination equipment) including personal protective equipment for workers at the work place;
- Organize training on safe use and safe handling of hazardous substances, including a safe-drill toward the occurrence of hazard to human health and/or the environment;
- Set up a chemical emergency response.

Article #

In case of accidents caused by hazardous chemical substances, organization or individual shall cease immediately the activities in question and immediately inform the relevant authorities and the Ministry of Environment. Adequate action shall be taken according to the prevention and emergency response plan aiming for reducing hazards and damage to human health, environment and the property.

Any organization or individual directly involved in the accident shall immediately inform any local members of the public who may be affected by the accident of the exact risks posed to the public's health and property by the accident and advise the public on measures to mitigate those risks.

Commented [N144]: per N. Sheridan comment May 19

Article #

A Hazard Chemical Insurance Mechanism shall be set up by a financing mechanism for prevention, response and compensation of hazards or accidents associated with hazard substances. The regulations and operation of this insurance shall be specified by a Sub-decree.

**Chapter 10
Public Awareness**

Article #

Organization or individual involved in distribution, sale and use of hazardous chemical substances shall provide all information related to safety data sheets, hazard communication, prevention and mitigation measures to the responsible ministries, the users and the public.

Title 16 TITLE 8 – AIR POLLUTION CONTROL AND MANAGEMENT

- *This chapter will revise and incorporate the Control of Air Pollution and Noise Disturbance 42 ANRK 2000.*

Chapter # - Types of pollution to be covered by this Title: ~~Pollution-control issues, including air, water, noise, smell, smoke, haze, vibration, light, ozone, radioactivity~~

Chapter # - Polluter Reporting of emissions

ARTICLE # - Increasing compliance with mandatory emitter self-monitoring and reporting of emissions

ARTICLE # - Mandatory reporting for sudden discharges during maintenance or accidents

Chapter # - Regulating emissions from burning agricultural byproducts and promoting alternative uses of organic material

Chapter # - Ensuring Cambodian compliance with the Montreal Protocol on Substances that Deplete the Ozone Layer

Chapter # - Vehicular emissions/Motor Vehicle

Article # - Ensuring foreign-manufactured cars meet Cambodian vehicle emissions standards

Chapter # - Transboundary pollution

Chapter # - Haze pollution

Title 17/TITLE 9 – ENERGY

- *This Title will set goals and standards for the development of sustainable energy for Cambodia.*
- *It will detail the mechanism to achieve the rapid development of energy sources in Cambodia such as hydropower, wind energy, solar energy, biogas, geothermal, tidal energy and nuclear energy.*
- *It will also examine the development of oil and gas in a manner that promotes sustainable development and transparency.*

Formatted: French (France)

Commented [I1145]: in Energy and in Extractive industries titles include CSR plan and De-commission Fund to ensure companies in these industries contribute significantly to protect and or restore the environment

Commented [I1146]: alternative and carbon-free energy

Commented [I1147]: omit

Commented [I1148]: these two activities are contradictory

- *include CSR plan and De-commission Fund to ensure companies in these industries contribute significantly to protect and or restore the environment*

Chapter # - Sustainable Energy Plan

ARTICLE # - Procedures for developing a Sustainable Energy Plan

ARTICLE # - Setting targets for percentage of renewable and nonrenewable energy production sources

Chapter # - Standards and technology for sustainable energy

ARTICLE # - Standards for approval of proposed hydropower projects

ARTICLE # - Issuing of permits for hydropower projects

ARTICLE # - Standards for management of hydropower projects

ARTICLE # - Standards for approval of proposed wind and solar projects

ARTICLE # - Issuing of permits for wind and solar projects

ARTICLE # - Standards for management of wind and solar projects

ARTICLE # - Promoting the diffusion of sustainable energy technology

Chapter # - Standards and technology for coal-fired power plants

ARTICLE # - Standards for approval of proposed coal-fired power plants

ARTICLE # - Issuing of permits for coal-fired power plants

ARTICLE # - Standards for management of coal-fired power plants

Chapter # - Standards and technology for natural gas-fired power plants

ARTICLE # - Standards for approval of proposed natural gas-fired power plants

ARTICLE # - Issuing of permits for natural gas-fired power plants

ARTICLE # - Standards for management of natural gas-fired power plants

Commented [I1149]: Limit large and medium scale hydropower
Preference for small-scale hydro projects

Commented [SL150]: review the HSAF and HSAP

Commented [I1151]: Global practices and standards limit the use of coal, because of its destructive effects. Recommend Cambodia to follow this trend

Chapter # - Provision of clean energy for rural communities

ARTICLE # - Extending the energy grid

Chapter # – Definition of sustainable energy sources

Chapter # – Promotion of sustainable energy

Chapter # - Development of micro and mini-grid systems

~~Title 18~~ TITLE 10 – EXTRACTIVE INDUSTRIES

- *This Title will examine the Laws relating to Mining in the provision of sustainable economic, social and environmental benefits to Cambodia.*
- *This will link to the Title on EIA, to promote efficient and effective extractive industry development in Cambodia.*
- *This will link to the Title on FPIC*
- *include CSR plan and De-commission Fund to ensure companies in these industries contribute significantly to protect and or restore the environment*

Chapter # - Extractive Industries Transparency Initiative (EITI) requirements and standards

Chapter # - Adoption of best practice in extractive industry

At a minimum this chapter should include:

- **Gender impacts and gender impact assessment best practice**
- **Resettlement best practice**
- **Benefit sharing agreements**
- **FPIC**
- **Managing human rights impacts and due diligence, including access to remedy**

Commented [I1152]: Move toward smaller –scale energy production

Commented [SL153]: It was noted on April 6 meeting there are significant translation inaccuracies in this Title / Book

Commented [SL154]: This Title must be framed within a 'do no harm', rights based, due diligence framework

Commented [SL155]: This Section needs significant work

Commented [SL156]: Link to newly established Extractive Industry Governance Framework Platform

Formatted: Font: Italic

Commented [SL157]: Query if this is relevant in the Enviro Code, and probably not as a stand-alone-chapter. It could be included in the following chapter of best practice, i.e. indicating that revenue transparency and disclosure of all oil gas ad mining payments, royalties, taxes etc is best practice. There would need to be a link to payment into a enviro fund for ex. Note. Cambodia is not an EITI Candidate country.

Commented [SL158]: Highly recommend review of Oxfam (Australia and America) work on best practice in extractives.

<https://www.oxfam.org.au/what-we-do/mining/>

<http://politicsofpoverty.oxfamamerica.org/category/resource-rights/>

Also review ICMM sustainable development framework, principles and guidance.

<http://www.icmm.com/our-work/sustainable-development-framework>

<http://www.icmm.com/document/9520>

and OECD Meaningful stakeholder Engagement and Due Diligence in the Extractives Sector

<https://mneguidelines.oecd.org/OECD-Guidance-Extractives-Sector-Stakeholder-Engagement.pdf>

and related OECD Guidance on conflict minerals and gold

See also:

<https://www.csr.uq.edu.au/publications/agreement-making-with-indigenous-groups>

<https://www.csr.uq.edu.au/publications/mining-and-local-level-development-examining-the-gender-dimensions-of-agreements-between-companies-and-communities>

Commented [SL159]: this could also be in the chapter on financial and economic arrangements

- Meaningful stakeholder engagement (including access to information and participatory decision making)
- Use of security personnel
- Waste management (tailings management, riverine waste disposal)
- Water usage and treatment
- Corruption, bribery, facilitation payments
- Extractives infrastructure (road, rail, ports, energy grids)

Chapter # - **Financial and economic arrangements to ensure proper site management**

Commented [SL160]: benefit sharing agreements

Chapter # - Provisions for closure **and remediation** and restoration of extractive industry sites

Commented [SL161]: not clear why included in this chapter

Chapter # - **Licensing and permitting system following EIA approval**

Commented [SL162]: link to FPIC

Chapter # - Sand mining

Chapter # - Rock and aggregate mining

Chapter # - Minerals

Chapter # - Metal mining

Chapter # - Oil and Gas

Chapter # Artisanal and small scale mining (ASM)

Commented [BR163]: Per R. Deau

Commented [SL164]: See work by Daniel Franks

Chapter # - Rehabilitation and closure plans

Cumulative impacts

Commented [SL165]: Need to include a separate chapter or link to previous section on cumulative impacts

Chapter # - **Financing remediation and restoration for extractive industry**

Commented [SL166]: Not clear what may be in this?

ARTICLE # - Establishment of a Superfund

~~Title 19~~ TITLE 11 – SUSTAINABLE CITIES

- *This Title will require that land use planning and management for urban areas be conducted to promote sustainable and resilient cities.*

- *It will ensure that planning takes into account long-term impacts on urban areas, including climate change, energy, water, population and economic development.*
- *It will also examine the management of trees along public roads and the development of people and nature friendly cities, including the promotion of renewable energy in urban areas.*
- *Establishment of special institution to promote capacity building and technical education on sustainable cities*

Commented [BR167]: Per Andeol Cadin comment

Chapter # - Development of sustainable urban centers

Chapter # - Making a sustainable city plan

ARTICLE # - Measuring progress towards sustainability

Chapter # - Establishment of recycling plans for urban areas

Chapter # - Promoting energy efficiency

Chapter # - Setting of energy efficiency standards

Chapter # - Setting of standards for green buildings

Chapter # - Interim adoption of international standards

Chapter # - Creation of sustainable and better housing

ARTICLE # - Identifying and remedying threats to human and environmental health in existing housing stock

ARTICLE # - implementing an environmentally sound, sustainable and affordable social housing programme

Chapter # - Open space, public parks and green spaces

Chapter # - Ensuring climate resilience in urban areas

Title 20/TITLE 12 – SUSTAINABLE TOURISM AND ECO-TOURISM

- *This Title will create a framework for encouraging appropriate eco-tourism activities in Cambodia.*
- *Eco-tourism activities include small scale, community based tourism opportunities.*
- *This Title will also create a framework to promote sustainable tourism in general, including larger scale tourism with reduced environmental impact.*

Chapter # - Promotion of ecotourism and sustainable tourism as development priorities

Chapter # - Designation of special ecotourism areas

[ARTICLE # - Ecotourism in protected areas or wildlife reserves](#)

[ARTICLE # - Zoning for ecotourism](#)

Chapter # - Financial incentives for ecotourism operations

Chapter # - Ecotourism operational standards (community guidelines, community management, community fund, etc.)

[ARTICLE # - Standards for ecotourism benefits to the local economy](#)

[ARTICLE # - Protecting cultural heritage](#)

[ARTICLE # - Independent Certification of Ecotourism](#)

Commented [N168]: per J Fox-Przeworski

Chapter # - Marketing and promotion of ecotourism

Commented [I1169]: how does this relate to the effects of eco tourism?

[ARTICLE # - Regulating false claims in ecotourism](#)

Chapter # - ~~Greening mass~~Sustainable tourism: developing standards, guidelines, and application for the general tourism sector

[ARTICLE # - Independent certification for sustainable tourism](#)

Commented [N170]: per J Fox-Przeworski

Chapter # - Code of Conduct for eco-tourism development

~~Title 21~~[TITLE 13](#) – SUSTAINABLE FORESTRY

- *As part of the planning framework, this Title will allow for the designation of areas with specific legal status and protection to allow for sustainable timber management.*

Chapter # - Establishment of a sustainable forestry sector; objectives and limitations of sustainable timber management

Chapter # - Development of sustainable forestry management plans

Chapter # - Prohibition of the cutting, removal, transport, export and use of timber without a permit granted in accordance with the Code

Chapter # - Assessment of applications for permits to harvest timber or export of timber

Chapter # - Prohibition of removal of timber on Economic Land Concessions without a the proper permit

Chapter # - Permit to cut or remove timber only to be granted following environmental assessment of the activity

Chapter # - Sustainable harvesting of timber, fuel wood and non-timber forest products in Forest Production Zones; including international certification mechanisms

Commented [BR171]: Per Andeol Cadin

Chapter # - Sustainable harvesting of timber, fuel wood and non-timber forest products from Community Forests, Community Zones Co-management Areas and Indigenous Communal Titled Lands

Chapter # - Government and citizen roles in monitoring and oversight of sustainable timber management operations

Chapter # - Restoration of damaged habitat or ecosystems

Title 22 TITLE 14 – SUSTAINABLE MARINE FISHERIES

- *As part of the planning framework, this Title will allow for the designation of areas with specific legal status and protection to allow for sustainable marine fisheries management.*

- *This title will also Consider a relevant certification system establish responsibilities of the relevant ministry to issue licenses, receive data on marine fishery landings, regulate fishing gear and other aspects of marine fishing.*

Commented [BR172]: Per Andeol Cadin

Chapter 1 - General Provisions

The Kingdom of Cambodia claims and will exercise sovereign rights and exclusive fishery management authority over all fish and other marine fishery resources within its Exclusive Economic Zone.

The appropriate ministry shall have the authority to oversee, regulate and enforce laws relating to all types of fishing, both commercial and non-commercial, for marine fishery resources in the Exclusive Economic Zone of the Kingdom of Cambodia, including intertidal zones, also referred to collectively as the Marine Fishery Domain.

The conservation and management measures undertaken by the appropriate ministry shall be based on the best scientific evidence, and shall prevent overfishing while achieving on a continuing basis the optimum yield for any given fishery stock or stock complex. To the extent possible, individual fishery stocks shall be managed as a single unit throughout their entire range in the Marine Fishery Domain of Cambodia, rather than as individual stocks within individual provinces.

Commented [I1173]: Scientific knowledge and local knowledge

Strict yield limits should be enforced

Chapter 2 - Marine Fisheries Mandates

Pursuant to this authority, the appropriate ministry shall:

1) Require a license for all fishing activities in the Marine Fishery Domain, consistent with Article 32 of the Law on Fisheries, NS/RKM/506/11. This license shall include an annual fee in order to help support the fishery research and management activities of the appropriate ministry. The amount of the annual fee shall be determined by the appropriate ministry. Fishing without obtaining such a license shall result in a notice of violation and fine.

Commented [I1174]: For-profit fishing requires license. Fishing for families is permitted

2) Require that all motorized fishing vessels with motors greater than 5 horsepower, if used in whole or in part for fishing purposes in the Marine Fishery Domain, be registered with the appropriate ministry. This registration shall include an annual fee. The amount of the annual fee shall be determined by the appropriate ministry. Failure to register such a vessel shall result in a notice of violation and fine. For vessels operating in the Marine Fishery Domain, this provision shall replace the registration requirement in Article 33 of the Law on Fisheries, NS/RKM/506/11.

3) Require that data on marine fishery landings be collected from all entities or individuals who purchase marine fishery resources harvested in the Marine Fishery Domain. This data collection shall take the form of a monthly report to the appropriate ministry detailing the individual types of marine fishery resources purchased (preferably

identified to the level of species), the number of pieces of each type purchased, the total pounds of each type purchased, the sources from which the fishery resources were purchased, including those sources' license numbers, and the port or ports of landing for each type of purchase. This report shall be filed on a form provided by the appropriate ministry. Failure to file this report within 30 days of the end of each month shall result in a notice of violation and fine of not less than US\$100. Failure to file such a report for three consecutive months shall result in a notice of violation and fine of not less than US\$500. Failure to file such a report for more than three months shall result in a notice of violation and revocation of the company's or individual's business license. For the Marine Fishery Domain, this provision shall replace the daily logbook requirement in Articles 34 and 45 of the Law on Fisheries, NS/RKM/506/11, with Article 45 being hereby repealed.

4) Issue an updated and revised list of all fishing gear types prohibited for sale, possession, or use in the Marine Fishery Domain, consistent with gears already banned as per Articles 20 and 21 of the Law on Fisheries, NS/RKM/506/11. In addition to the banned gears already listed in Articles 20 and 21, use of trawl gears and take of fish by spear while using SCUBA shall both also be prohibited in the Marine Fishery Domain. Any types of fishing gear not included on the prohibited list produced by the appropriate ministry shall be presumed to be allowed unless specifically designated otherwise.

5) In cooperation with the Ministry of Foreign Affairs, establish a system by which foreign fishing vessels may purchase fishing rights to harvest marine resources in the Exclusive Economic Zone of the Kingdom of Cambodia. The amount of the annual fee for obtaining such fishing rights shall be determined by the appropriate ministry. Continued retention of such fishing rights by any foreign fishing vessel shall be contingent upon the maintenance of a daily logbook detailing the number of daily gear sets, and the weight and type of daily catch, with the logbook open to examination by the appropriate ministry upon request; and the filing of a monthly catch report with the appropriate ministry detailing the individual types of marine fishery resources harvested (preferably identified to the level of species), the number of the total pounds of each type harvested, and the port or ports of landing for the catch. Foreign fishing vessels purchasing fishing rights in the EEZ of the Kingdom of Cambodia must also comply with the following terms and conditions:

(a) The owner and operator of any foreign fishing vessel will abide by all laws of the Kingdom of Cambodia;

(b) Any officer authorized to enforce the laws of the Kingdom of Cambodia shall be permitted to board, search and inspect any foreign fishing vessel at any time, and to make arrests, and seizures whenever such officer has reasonable cause to believe, as a result of such search or inspection, that the vessel or any person upon it has violated the laws of the Kingdom of Cambodia;

(c) The owner or operator of the foreign fishing vessel shall not, in any year, harvest an amount of fish or other marine life which exceeds any limits on harvest that may be set by the appropriate ministry of the Kingdom of Cambodia.

6) Designate and delineate marine zones in which various types of fishing activities are allowed, specially managed, or banned. Such zoning shall include a coastal waters zone extending from the shoreline to 5 km offshore, which shall supersede the definition of a nearshore zone extending from the shoreline to 20 m depth. Community Fishing Areas may be established within this nearshore zone, consistent with the Subdecree on Community Fisheries Management. Such zoning shall also include an exclusion zone in the inshore waters of the Marine Fishery Domain for vessels using large-scale fishing gears as defined in Article 31 of the Law on Fisheries, NS/RKM/506/11, such that gears of this type may not be used in areas lying within 25 km of the shoreline. Such an exclusion zone shall also apply uniformly to foreign fishing vessels of any size which have purchased annual fishing rights in the Exclusive Economic Zone of the Kingdom of Cambodia.

7) In relation to highly migratory fishery stocks, cooperate directly or through appropriate international organizations, such as the South East Asian Fisheries Development Centre, with those nations involved in fisheries harvesting such species with a view to ensuring conservation and to promote the achievement of optimum sustainable yield of such species throughout their ranges, both with and beyond the EEZ of the Kingdom of Cambodia.

8) Issue an updated and revised list of all activities prohibited in the Marine Fishery Domain, consistent with activities already prohibited as per Article 52 of the Law on Fisheries, NS/RKM/506/11. In addition to the prohibited activities already listed in Article 52, the harvest and landing of sharks or shark products (such as shark fins), as well as the harvest and landing of sea turtles or sea turtle products (such as shells or portions thereof) shall be specifically prohibited.

9) Issue an updated and revised list of all activities that may be undertaken in the Marine Fishery Domain under a permit from the appropriate ministry, consistent with those listed in Article 23 of the Law on Fisheries, NS/RKM/506/11.

10) Ensure that fishery management in the Marine Fishery Domain is based upon the best available scientific information, and undertake fishery research that adds to this base of scientific knowledge.

Commented [I1175]: And local knowledge

11) Undertake a programme to produce updated maps of the distributions of species harvested and the location and extent of key marine fishery resources in the Marine Fishery Domain, with special reference to coral reefs, seagrass beds, and mangroves.

12) Monitor and issue an annual summary of changes to marine fishery resources, with special reference to coral reefs, seagrass beds, and mangroves, and analysing links to climate change and other driving factors.

Commented [I1176]: development

13) Regulate aquaculture in the Marine Fishery Domain consistent with the provisions in Articles 53-58 of the Law on Fisheries, NS/RKM/506/11.

14) Regulate the landing, transport, and international trans-shipment of marine fishery resources harvested in the Exclusive Economic Zone of the Kingdom of Cambodia, consistent with the provisions in Articles 64-69 of the Law on Fisheries, NS/RKM/506/11.

15) Regulate the import into Cambodia of marine fishery resources harvested in the waters of a foreign nation, and require importers to certify that such resources have been harvested in accordance with the fishery laws prevailing in their countries of origin.

16) Undertake measures to combat illegal, unreported, and unregulated fishing, including market-based measures to prevent the trade or importation of fish or other marine life caught by vessels identified as having engaged in such unauthorized fishing;

17) Develop a National Fishery Management Plan as per Article 15 of the Law on Fisheries, NS/RKM/506/11. This plan shall be reviewed and amended as necessary every 5 years.

18) Undertake enforcement actions against those entities or individuals who violate fishery laws in the Marine Fishery Domain, as per Articles 72-85 of the Law on Fisheries, NS/RKM/506/11.

19) Assess penalties against those entities or individuals found guilty of violating fishery laws in the Marine Fishery Domain, as per Articles 86-107 of the Law on Fisheries, NS/RKM/506/11.

Chapter 3- Marine Fisheries Discretionary Authorities

Pursuant to this authority, the appropriate ministry may at its sole discretion:

1) Utilize the following conservation and management measures in order to ensure sustainability of marine fishery resources in the Marine Fishery Domain, depending on which method is most appropriate to the species and circumstances involved:

(a) Set daily individual fisher bag limits for any species of marine life, or for the combined catch from any stock complex consisting of multiple species;

(b) Set minimum or maximum size limits for any species of marine life, below or above which harvest is not permitted;

(c) Set a total allowable catch for any given species of fish or marine life, or for any defined fishery stock or stock complex, during the course of a year, or any other period of time;

(d) Create limited entry systems in relation to a harvest of any particular marine fishery resource, stock or stock complex, or in relation to a particular geographic area;

(e) Allocate non-transferable individual fishing quotas over a given period of time for any particular marine fishery resource, stock or stock complex;

(f) Implement seasonal closures for any particular marine fishery resource, stock or stock complex, or in relation to a particular geographic area;

(g) Implement permanent or temporary area closures for the harvest of any particular marine fishery resource, stock or stock complex, or in relation to a particular geographic area;

(h) Implement restrictions on the type, size and amount of gear used to harvest any particular marine fishery resource, or their use in any particular geographic area.

2) Implement spatially-based management by designating various types of Marine Managed Areas in the Marine Fishery Domain, including:

(a) Marine National Park (MNP) – Such areas shall fall under strict protected status, with all entry and activities controlled by a permit from the appropriate ministry. Such areas may be established consistent with the Protected Areas Law, NS/RKM/0208/007, and with Article 19 of the Law on Fisheries, NS/RKM/506/11, such that no fishing of any type shall be allowed, no entry for navigation shall be allowed without a permit except by the appropriate ministry's enforcement agents or within strictly defined transit corridors, and no new settlements shall be allowed within 2 km of the boundaries of such areas. Such MNP areas may have subzones, including those established for non-commercial community subsistence fishing purposes consistent with the Subdecree on Community Fisheries Management.

(b) Marine Life Conservation Area (MLCA) – Such areas may be established consistent with Articles 18, 19 and 26-29 of the Law on Fisheries, NS/RKM/506/11, and shall be used to protect marine resources of particular importance to fishery recruitment, including but not limited to mangrove, seagrass and coral reef. Fishing may be prohibited in such areas, whereas freedom of navigation is allowed. Day entry for non-extractive tourism purposes shall be allowed under permit from the appropriate ministry. Such MLCA areas shall not contain subzones, except for those established for non-commercial community subsistence fishing purposes consistent with the Subdecree on Community Fisheries Management.

(c) Fishery Management Area (FMA) – Such areas shall be used to implement management measures for designated fishery stocks or stock complexes. Fishing

shall be allowed, although there may be harvest restrictions or prohibition of take imposed for certain species in need of special management to ensure long-term sustainability. Freedom of navigation shall be allowed. Day entry for non-extractive tourism purposes shall be allowed under permit from the appropriate ministry. Such MLCA areas shall not contain subzones, except for those established for non-commercial community subsistence fishing purposes consistent with the Subdecree on Community Fisheries Management.

3) Implement community-based sub-zoning, for non-commercial subsistence fishery purposes only, within Marine Reserves or Marine Life Conservation Areas as described above. Such community-based subzones shall have restrictions on the types of fishing gears allowed for use. Such gear restrictions shall be determined by the appropriate ministry, which may restrict allowable gear types to pole-and-line, handline, cast net, and fish traps.

4) Set limits on the number, size and type of vessels that may participate in any given fishery, or that may enter designated marine zones or marine managed areas, so as to adequately control fishing effort and ensure sustainability of harvest for any given stock or stock complex.

5) Based on the best available scientific information, create Fishery Management Plans for individual fisheries. Such plans shall be deemed sufficient to justify any management measures applied within any given fishery, and should contain at a minimum:

(a) A description of the fishery in question, including the number of vessels involved, the type of quantity of fishing gear used, the species of marine life harvested, and the geographic extent of the fishery;

(b) An estimate of optimum sustainable yield from the fishery and its probable future condition, including a summary of the information used in making this determination;

(c) A description of the conservation and management measures that can be best applied to the fishery to prevent overfishing while achieving, on a continuing basis, the estimated optimum yield.

6) Enact measures to limit fishery bycatch of non-target species such as seabirds, marine mammals and sea turtles.

7) Create special licensing, vessel registration and catch reporting provisions for sport charter fishing vessels, with daily limits on catch of individual species, and daily special license fees for fishers. Such fees may be set higher at higher levels for citizens of foreign countries in comparison to those charged to citizens of the Kingdom of Cambodia.

8) Issue permits for marine fisheries research, and for the collection and export of specimens related to such research.

Commented [I1177]: To prevent overfishing. The yield must be limited.

Chapter # - aquaculture

Chapter # - Tenure of fisheries

Chapter # - Identification of aquatic organisms

Chapter # - Community fisheries

Chapter # - Prohibition of export of fish or aquatic organisms without a permit

Chapter # - Permit to export fish or aquatic organisms only to be granted if sustainable

Chapter # - ~~Government and e~~Citizen roles in monitoring and oversight of sustainable fisheries management operations

Chapter # - Restoration of damaged fisheries habitat or aquatic ecosystems

~~**Chapter # - Management of activities that impact on fisheries and aquatic ecosystems**~~

~~**Chapter # - Establishment of freshwater fisheries reserves**~~

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TITLE 15 – SUSTAINABLE FRESHWATER FISHERIES AND AQUACULTURE

- As part of the planning framework, this Title will allow for the designation of areas with specific legal status and protection to allow for sustainable freshwater fisheries management.*
- This title will also establish responsibilities of the relevant ministry to issue licenses, receive data on freshwater fishery landings, and regulate all aspects of freshwater fisheries and aquaculture.*

Chapter # - Establishment of a sustainable fisheries industry

Chapter # - Provision for capture fisheries and aquaculture and fisheries protection areas

Chapter # - Protection of fisheries and aquatic ecosystems

Chapter # - Tenure of fisheries and aquaculture operations

Chapter # - Identification of aquatic organisms

Chapter # - Prohibition on commercial fishing that is not sustainable

Chapter # - Assessment of applications for commercial fishing

Chapter # - Community fisheries

Chapter # - Prohibition of export of fish or aquatic organisms without a permit

Chapter # - Permit to export fish or aquatic organisms only to be granted if sustainable

Chapter # - Sustainable management of fisheries and fish breeding areas

Chapter # - Government and citizen roles in monitoring and oversight of sustainable fisheries management operations

Chapter # - Restoration of damaged fisheries habitats or aquatic ecosystems

Chapter # - Management of activities that impact fisheries and aquatic ecosystems

Chapter # - Establishment of freshwater fisheries reserves

Chapter # - Establishing regulations for aquaculture operations including permitting, monitoring and enforcement

Commented [N178]: New

~~Title 23~~ TITLE 16 – LAND MANAGEMENT

- *This Title will review the role and functions of Economic Land Concessions and the implementation of projects using-on ELCs.*
- *This title will also include selected revisions of the current Cambodian Land Management Framework.*
- *This title will establish a framework for soil protection and management*

Chapter # - Procedures for granting, monitoring and terminating ELCs

Chapter # - Management of ELCs, including management plans, transparency, and relation to sustainable timber production and biodiversity restoration

Commented [I1179]: ELC should not be involved in timber production any more.

Chapter # – revisions of the current Cambodian Land Management Framework.

ARTICLE # - Reviewing land cadastral system and making changes as needed (considering problems of transference of title, mistaken title, etc.).

ARTICLE # - Procedures for expedited land titling.

ARTICLE # - Increasing land security among the poor, including streamlining and clarification of indigenous peoples' communal land rights and possession rights.

ARTICLE # - Consistent land tenure approaches for Community Protected Areas, Community Forests and Co-management areas.

ARTICLE # - formalizing and regulating informal settlements

Commented [BR180]: Perhaps include in Land Management Book

TITLE 17 – SOIL PROTECTION AND MANAGEMENT

- This Title will set out the procedures for developing a national policy of soil protection and management.
- It will include provisions on the use of fertilizers, pesticides, herbicides and other agricultural chemicals.
- It will also include provisions to create a programme to monitor soil health.

Book 3 BOOK 4— Education, Enforcement and Awareness

TITLE 1 – ENVIRONMENTAL INCENTIVES, FEES AND CHARGES

- *This Title will set out the mechanism by which the responsible Ministries will be able to charge for fees and services.*

- *This Title will include clear provisions to ensure that all fees and charges that are levied and received and all economic instruments that are established such as environmental funds will be managed in accordance with international standards on accountability and transparency.*
- *A submission has been received that highlights that Cambodia does not have a Trust Fund Law that would assist in developing funding arrangements to finance the protection of protected areas and protected forests. Consideration should be giving to enable Trusts to be created.*

Chapter # - Fees payable for services provided by Ministry

Chapter # - Auditing of funds

Chapter # - Environmental taxation

Chapter # - Economic incentives for green investment

Chapter # - Special incentives for public/private partnerships

Chapter# - Financial incentives and taxation measures to promote green urban infrastructure

Chapter # - Financial incentives and taxation measures to promote eco-tourism and sustainable tourism

Chapter # - Financial incentives and taxation measures to reduce deforestation, and promote natural resource conservation and biodiversity

Chapter # - Financial incentives and taxation measures to promote community resource management

Chapter # - Financial incentives and taxation measures to promote sustainable low carbon energy production

Chapter # - Financial incentives and taxation measures to promote sustainable forestry

Chapter # - Financial incentives and taxation measures to promote sustainable fisheries

Chapter # - Establishment of the Environment, Conservation and Social Development Fund; goals of the Fund

Chapter # - Sources of revenue to the Environment, Conservation and Social Development Fund

Commented [I1181]: Main source of revenue for this should come from the private investment sector – over 70%
With contribution from national budget

Chapter # - Transparency and governance procedures for the Environment, Conservation and Social Development Fund

Chapter # - Criteria for grant-making and disbursement from the Environment, Conservation and Social Development Fund

Chapter # - Green financing

ARTICLE # - Incentives to switch to more efficient consumer appliances and the phasing out of inefficient devices

Chapter # - Eco-labeling

ARTICLE # - Financing for eco-labeling

ARTICLE # - Independent Certification for eco-labeling of products and services

Commented [N182]: per J Fox Przeworski

Chapter # - Environmental liability mechanisms for payments by polluters/environmental damage (e.g. bond, environment and social fund)

Chapter # - Community initiative funds

Chapter # - Valuation of Ecosystems services

ARTICLE # - Scope and procedures for valuation of ecosystem services, including natural capital assessment

ARTICLE # - Payment for ecosystem services

ARTICLE # - Requiring appropriate compensation for loss of ecosystem services

TITLE 2 – ENVIRONMENTAL PUBLIC AWARENESS AND ENVIRONMENTAL EDUCATION

- *This Title will detail plans for the promotion of public awareness on environmental protection and environmental issues using mass communication means, including cinemas, the internet and advertising.*
- *It will establish an Environmental Information Initiative to educate the public and the private sector on environmental obligations and environmental issues.*

Chapter # - Promotion of environmental awareness in schools

and

~~Chapter # - Promotion of environmental awareness in universities~~

Chapter # - Promotion of investor and developer awareness and understanding of environmental laws and procedures for Environmental Impact Assessment

Chapter # - Promotion of environmental awareness to the public

ARTICLE # - Respecting and drawing on indigenous and local environmental knowledge and values.

ARTICLE # - Requirement to promote environmental awareness in cinemas and mass media

ARTICLE # - Support for environmental awareness campaigns

ARTICLE # - Promotion of World Environment Day

ARTICLE # - Promoting awareness of waste-disposal and recycling programmes

Commented [N183]: per STWG2

Chapter # - Establishment of Environmental Education Committee

**Chapter # - Development of environmental education materials and training
Specialized vocational training ~~program~~programmes?**

Commented [BR184]: R. Deau

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~~Chapter # - Promotion of environmental awareness to the public~~

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~~Chapter # - Requirement to promote environmental awareness in cinemas and mass media~~

~~Chapter # - Support for environmental awareness campaigns~~

~~Chapter # - Promotion of World Environment Day~~

Chapter # - Promotion of special environmental ~~program~~programmes

**TITLE 3 – ENVIRONMENTAL AND NATURAL RESOURCES STUDY
AND RESEARCH**

- *This Title will provide details on the promotion of research on environmental and natural resource management issues.*
- *It will promote research and development for innovative practices to protect and manage the environment and natural resources.*

Chapter # - Establishment of environmental research institutes

Chapter # - Provision of scholarships for environmental studies

Chapter # - Promoting of environmental research at universities

**Chapter # - Establishment of Center of Excellence in Natural Resource
Management and Sustainable Development**

Chapter # - Funding of environmental research

**Chapter # - Partnerships and exchange programmes with other countries'
institutions**

Commented [N185]: Per J Fox-Przeworski

**TITLE 4 – INVESTIGATION, ENFORCEMENT AND ACCESS TO
REMEDIES**

- *This Title will deal with the powers of the relevant Ministries to investigate the environmental offences outlined in Book 4 Title 5.*
- *It will make provision to allow for citizens and organizations to follow dispute resolutions procedures and bring proceedings to the relevant review body. These provisions will also identify mechanisms for citizens and organizations to bring general complaints and other proceedings.*
- *This Title will also examine the use of relevant dispute resolution procedures and grievance mechanisms, including Environmental Courts and Tribunals (ECTs), to deal with environmental and natural resources*

Commented [SL186]: Suggest reference to UN Guiding Principles on Business and Human Rights which includes access to remedy

Commented [SL187]: Include something on access to both judicial and non-judicial mechanisms, e.g. the OECD Guidelines for Multinational Enterprises.

Commented [SL188]: Access to Remedy must be consistent with internationally recognized criteria: Legitimate, accessible, predictable, equitable, rights-based, and transparent

Include something on company / local level grievance mechanisms.

See: <https://www.oxfam.org.au/what-we-do/mining/>

development decisions. This Title will examine options for the Ministry of Environment to establish an Environmental Tribunal to reexamine environment and natural resource management decisions made under the Environmental Code.

- *This Title will also look at other options such as administrative tribunals and an Environmental Commissioner, to review problems and concerns relating to environmental and natural resources decisions. These would be established to be accessible to the community and open and transparent.*
- *For example, one matter would be the use of municipal planning tribunals to resolve conflict between planning and land use decisions in the urban context.*

Chapter # - Environmental complaints

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Section 1 Parties of Environmental Complaint

Article #: ~~Directed~~ Directly Affected Parties

Article #: Participation of Relevant NGOs in Environmental Complaint

Article #: The Governmental authorities in the Environmental Complaint

Section 2 Type of Environmental Complaint

Article #: Civil Complaints

Article #: Criminal Complaint

Article #: Complaint Against Administrative Decision of the Government or Governmental Authorities

Article #: Relation of Civil and Criminal Complaint

Chapter # - Procedures for resolution of environmental complaints

Section 1 General Provision

Article#: Objective

Article #: Scope of Code Application

Article #: General Principle

Article #: Type of Environmental Dispute Resolution

Article #: Establishing Enforcement Priorities

Commented [N189]: per J Fox-Przeworski

Section 2 Out of Court Resolution of Environmental Dispute

- Article #: Objective
Article #: Appointment of Mediator/Arbitrator
Article #: Obligation of Government to Create the Environmental Arbitration Institute
Article #: Appeal to the Decision of Arbitrator to the Court
- Section 3 Resolution of Environmental Dispute through the Court
- Article #: Rights of Effected Parties
Article #: Obligation of Government to Create the Environmental Court Attach to Lower Court and higher Court
Article #: Decision of Court
Article #: Appeal to Decision of Lower Court to Higher Court
- Section 4 Complaint Against to Decision of Administration of Governmental Authorities
- Article #: Right of Affected Natural Person/Legal Entities
Article #: Time Limitation of Issuance of Decision on the Complaint
Article #: Appeal to Decision of Higher Administration Institute

Chapter # - Judicial police officers

- Article #: Component of Judicial Police Officers
Article #: Role and Obligation of Judicial Police Officers
Article #: Procedure of Qualification of Judicial Police Officers
Article #: Territory of Judicial Police Officers
Article #: Investigation of Environmental Crime of Judicial Police Officers
Article #: Obligation of Relevant Authorities in Co-Operation to Environmental Crime Investigation
Article #: Procedure of Environmental Complaint Compilation
Article #: Uniform Consumption in Environmental Complaint Investigation

Chapter # Establishment of Royal Academy of Ranger Professionals

Commented [BR190]: Per comment from Meas Sophal

Chapter # Establishment of Environmental and Natural Resources Court or Tribunal (ECT)

Chapter # - Establishment of Environment Commissioner

Chapter # - Role of the Environment Commissioner

Chapter # - Monitoring, compliance and enforcement rights of citizens

ARTICLE # - Establishment of enforcement rights for citizens and civil society organisations.

ARTICLE # - Types of citizen enforcement – for private action and public inaction

ARTICLE # - Protections for those taking citizen enforcement action

ARTICLE # - Remedies available as an outcome of a citizen enforcement action

Chapter # - All Citizens may bring complaints before the ECT for breaches of the Environmental Code

Chapter # - Rights of review of environmental and natural resources decisions

Chapter # - NGOs may assist citizens and communities to bring matters to the ECT

Chapter # - Obligation of ECT to hear and determine matters quickly and fairly

TITLE 5 – ENVIRONMENTAL OFFENCES AND REMEDIES

- *This Title will outline the Environmental Offences that will be subject to possible action under the Civil Code or Criminal Code.*
- *It will provide an outline for determining which breaches of the Code should be subject to criminal prosecution.*
- *The Title will identify specific offences and failures to comply with relevant provisions of the Code.*
- *This will provide relevant information about compensation and restoration orders, if a breach of the Code has led to environmental harm or harm to human health.*
- *It will provide options for penalties from fines to imprisonment and remediation orders. It will be based of the work done on the draft EIA Law.*

Chapter # - Breach of any provision of the Environmental Code

Chapter # - Environmental Impact Assessment offenses

Chapter # - Penalty provisions

Chapter # - Orders for compensation

Chapter # - Restitution and restoration of environmental damage

Chapter # - Air pollution offenses

Chapter # - Water pollution offense

Chapter # - Waste offenses

Chapter # - Contamination offenses

Chapter # - Application of Criminal Code to environmental offenses

Chapter # - Application of civil penalties for environmental offenses

Chapter # - Table of penalties for offenses

Book 4**BOOK 5**— **Transitional Provisions**

- *This Book will provide details of the transitional provisions required to allow the Code to become effective in the shortest period of time.*
- *It will provide details of how existing protected areas and relevant reserves will be maintained, based on the principles of the Environmental Code, until they have been reviewed and assessed in accordance with the provisions of the Code.*
- *The development of the Environmental Code should not be used to allow continued environmental destruction during the period that new management plans are being developed.*
- *This Book will provide details of the laws and sub-decrees that will be repealed.*

- *This Book will clarify how the Environmental Code will amend the various existing natural resources laws and laws relating to environmental protection and natural resource management.*

~~Book 5~~BOOK 6— Final Provisions

Submission Form

Recommendations from the STWGs to the Secretariat of the Project to Develop the Environmental Code of Cambodia

Email to: Lim Nalin at Vishnu Law Group: limn@vishnulawgroup.com

- *For comments on the draft Code, please copy and paste selected text into this form and use Track Changes.*
- *If needed, please submit large documents as an attachment.*
- *Please submit all comments in Khmer and English when possible.*

Date of Submission: 22 July 2016

Submitted by (provide individual and STWG contact information):

Mang Muni, Winrock, USAID Supporting Forests and Biodiversity (SFB) Project

1. Issue:

- a. Objectives of the Code
- b. Principle of Access to Information
- c. The Polluter Pays Principle
- d. Organization of Jurisdictional Institutions/Jurisdictional Issues
- e. Community Management
- f. Penalty Clause
- g. Process of system or mechanism

2. Reference to Code Book and Chapter (if applicable):

- a. Article 2, Chapter 1, Title 1 of Book 1
- b. Article 2, Chapter 2, Title 1 of Book 1
- c. Article 4, Chapter 2, Title 1 of Book 1
- d. Title 2 of Book 1
- e. Title 3 of Book 3
- f. Title 4 & 5 of Book 4

3. Comparative Experience (including Cambodian and international examples and experience):

4. Recommendation:

a. Objectives

→ should add the following phrases to reflect what is stated in the Code:

– To promote environmental awareness and harm prevention through transparency, public participation, involvement and special measure especially for most vulnerable group such as indigenous people;

– To enhance community livelihood through community management, eco-tourism and sustainable harvesting

b. Principles of Access to Information

→ should mention whether the information available is in soft or hard copy. If in hard copy, please demonstrate how to request for it. EIA report, status of EIA process of each case should be updated in any official pages available for the transparency and public awareness.

c. The Polluter Pays Principle

→ We would like to through ideas on how this Principle work, what mechanism should be applied with judicial level.

d. Organization of Jurisdictional Institutions/Jurisdictional Issues

→ Ministry of Tourism should be included regarding Eco-Tourism. To our understanding, MoE, MAFF and MoT have overlapping jurisdiction on Eco-Tourism when Community Based Tourism (CBT) located in PA and MAFF mandate while MoT has expertise in Tourism.

e. Community Management

→ + We think Indigenous Communal Tenure (ICT), Community-Based (Eco) Tourism (CBET), Community Fisheries (CFi) should be considered as well.

+ Community Forestry (CF) establishment process has 11 steps according to the Prakas on CF guideline 2006: We would suggest to apply D&D reform as see in the attachment to speed up the process. My apology, it's in Khmer version. I had no time to translate it to English for foreigner fellows.

f. Penalty Clause

→ We think Title 4 & 5 of Book 4 should be under separated Book as it stating about Remedies and Offenses rather than Education and Awareness. It should be under Penalty Book.

g. Process of system or mechanism

→ We would suggest to use flow chart of any process of a system or mechanism in the draft for better and easy understanding. Once the flow chart is agreed, narrative can be followed.

5. Proposed Language to be Inserted into the Draft Code (optional) (Note: when proposing modifications to existing draft Code text, please extract the relevant text and insert here, in track changes if possible):

6. Cambodian Laws to be Abrogated or Modified (include specific articles and clauses):

7. Drafting Team Analysis/Response (to be included in public database):

Submission Form

Recommendations from the STWGs to the Secretariat of the Project to Develop the Environmental Code of Cambodia

Email to: Lim Nalin at Vishnu Law Group: limn@vishnulawgroup.com

- For comments on the draft Code, please copy and paste selected text into this form and use Track Changes.
- If needed, please submit large documents as an attachment.
- Please submit all comments in Khmer and English when possible.

Date of Submission: 7/22/2016

(Required)

Submitted by (provide individual and STWG contact information):

(Required, including relevant STWG, if any.) Mark Barash

1. Issue: The requirement in Chapter 3 (CZM management) (5)(c) , in the nature of statutorily mandated mitigation falls far short of actually compensating for the loss. Applying protection to an area only equivalent to the area which will be lost would only compensate fully over time if the area to be protected was 100% certain to be immediately otherwise lost. Since, however, it is almost always areas at risk, not on the cusp of destruction which will be so protected , the benefit stream from protection is probabilistic, a function of the year by year likelihood the habitat would be lost if not protected. Therefore. A ration, or multiplier (I suggest 3times) be applied on an areal basis. Also the provision should require the areas to be protected to be of the same or greater quality in ecological terms.

(Please provide a brief description of the issue that is addressed by the recommendation included in number 4 [“4. Recommendation”] below.).

2. Reference to Code Book and Chapter Title (if applicable): Chapter 3, CZM, (5)(c)

(Please provide the Book and Chapter titles and not just the number; the Book and Chapter numbers may change from one draft to the next if the Code is reordered.)

3. Comparative Experience (if any):

(Please include any Cambodian and international examples and experience.)

EPAsometimes, and numerous states’ laws or regulations require a mitigation ration , often x3. Formal calculation of lost services under natural resource damage (compensatory restoration schemes) always end up quantifying a need for more than 1 to 1 replacement

4. Recommendation: see one above

(Please include here the text of the recommendation to address the issue provided in number 1 [“1. Issue”] above. If needed, note “See Attachment” for corresponding documents.)

5. Proposed Language to be Inserted into the Draft Code (if any): see one above

(Optional. Note: when proposing modifications to existing draft Code text, please extract the relevant text and insert here, in track changes if possible.)

6. Cambodian Laws to be Abrogated or Modified (if any):

(Please include the law title and the titles of specific articles and clauses.)

7. Drafting Team Analysis/Response (to be included in public database):

Submission Form

Recommendations from the STWGs to the Secretariat of the Project to Develop the Environmental Code of Cambodia

Email to: Lim Nalin at Vishnu Law Group: limn@vishnulawgroup.com

- *For comments on the draft Code, please copy and paste selected text into this form and use Track Changes.*
- *If needed, please submit large documents as an attachment.*
- *Please submit all comments in Khmer and English when possible.*

Date of Submission: 22nd July 2016

Submitted by (provide individual and STWG contact information):

The European Chamber of Commerce in Cambodia (EuroCham Cambodia)

Blaise Kilian, Advocacy Manager

b.kilian@eurocham-cambodia.org ; 023 964 141

1. Issue:

The submission is referenced to the draft Environmental Code, version 23rd June 2016; Title 5 (Environmental Impact Assessment); Chapter # entitled “Registration of EIA Experts”; particularly the article (labelled Article 21 in the text) stipulating that “...**EIA consulting firms shall have Khmer nationality with the project team leader who is the consultant accredited by the MoE...**”.

According to Cambodia’s WTO schedule of commitments, **Cambodia allows foreign environment consulting services companies to offer EIA consulting services both cross-border and through local establishment (CPC 9409)**. The schedule has no additional restrictions or regulation requirements for offering environmental services cross-border, consumption abroad and through a legal establishment (both Market Access and National Treatment) in Cambodia.

On this basis, the draft Environmental Code restricting environmental consulting services to firms of Khmer nationality only, if approved to a law, raises serious doubts about its compatibility with Cambodia’s international commitments.

*The Cambodia’s Schedule of Specific Commitments is separately attached to this submission for the reference.

2. Reference to Code Book and Chapter Title (if applicable):

The draft Environmental Code, version 23rd June 2016, Book 2 – Environmental Planning, Title5 – Environmental Impact Assessment, Chapter # - Registration of EIA experts.

3. Comparative Experience (if any): N/A

(Please include any Cambodian and international examples and experience.)

4. Recommendation:

Remove the nationality requirement for EIA consulting firms from the future Environmental Code.

5. Proposed Language to be Inserted into the Draft Code (if any): N/A

(Optional. Note: when proposing modifications to existing draft Code text, please extract the relevant text and insert here, in track changes if possible.)

6. Cambodian Laws to be Abrogated or Modified (if any): N/A

(Please include the law title and the titles of specific articles and clauses.)

7. Drafting Team Analysis/Response (to be included in public database):

**WORLD TRADE
ORGANIZATION**

GATS/SC/140
25 October 2005

(05-4937)

Trade in Services

THE KINGDOM OF CAMBODIA

Schedule of Specific Commitments

(This is authentic in English only)

Modes of supply: 1) Cross-Border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
A. HORIZONTAL COMMITMENTS APPLICABLE TO SECTORS LISTED IN THE SECTORAL PART OF THE SCHEDULE			
Subsidies		(3), (4) Unbound for subsidies, including for research and development.	
Tax measures		(1), (2), (3) None with respect to taxes	
Land		(3) Non-Cambodian natural and juridical persons may lease but not own land.	
Acquired rights	The conditions of ownership, management, operation, juridical form and scope of activities as set out in a license or other form of approval establishing or authorizing the operation or supply of services by an existing foreign service supplier, will not be made more restrictive than those in existence as of the date of Cambodia's accession to the WTO.		
Investment incentives	(3) Investors, seeking incentives under the provisions of the Law on Investment, shall have the obligation to provide adequate and consistent training to Cambodian staff, including for promotion to senior positions.	(3) None	

Modes of supply: 1) Cross-Border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
Presence of natural persons	<p>(4) Unbound except for measures concerning the entry and temporary stay of a natural person who falls in one of the following categories:</p> <p><u>Business visitors</u></p> <p>A natural person who:</p> <ul style="list-style-type: none"> - enters Cambodia for the purposes of participating in business meetings, establishing business contacts including negotiations for the sale of services and/or other similar activities; - stays in Cambodia without receiving income from within Cambodian sources; - does not engage in making direct sales to the general public or supplying services. <p>Entry visa for business visitors shall be valid for a period of 90 days for an initial stay of 30 days, which may be extended.</p>	(4) Unbound, except for measures affecting the categories referred to under market access.	

Modes of supply: 1) Cross-Border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
	<p><u>Persons responsible for setting up of a commercial establishment:</u> Persons working in an executive or managerial position, receiving remuneration from an entity as defined below, who are responsible for the setting up, in Cambodia, of a commercial presence of a service provider of a Member, that will support employment of persons described in a, b, and c below. The subject persons are not subject to a maximum duration of stay.</p> <p><u>Intra-Corporate Transferees</u> Natural persons who have been employed by a juridical person of another member for a period of not less than 1 year and who seek temporary entry to provide services through a branch, subsidiary and affiliate in Cambodia and who are:</p> <p>a) <u>Executives:</u> without requiring compliance with labour market tests, persons within an organization who primarily direct the management of the organization, exercise wide latitude in decision-making, and receive only general supervision or direction from higher-level executives, the board of directors, or shareholders of the business. Executives would not directly perform tasks related to the actual supply of a service or services of the organization.</p>		

Modes of supply: 1) Cross-Border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
	<p>b) <u>Managers</u>: without requiring compliance with labour market tests, natural persons employed by a juridical entity and who possess knowledge at an advanced level of expertise or proprietary knowledge of a juridical entity product, service, research, equipment, techniques, or management, and who primarily direct the organization or a department of the organization; supervise and control the work of other supervisory, professional or managerial employees; have the authority to hire and fire or recommend hiring, firing or other personnel actions; and exercise discretionary authority over day-to-day operations. They do not include first-line supervisors, unless the employees supervised are professionals, nor do they include employees who primarily perform tasks necessary for the supply of the service.</p> <p>c) <u>Specialists</u>: Natural persons, within an organization who possess knowledge at an advanced level of continued expertise and who possess proprietary knowledge of the organization's services, research equipment, techniques, or management.</p> <p>Temporary residency and work permit is required for the natural persons in the categories defined under intra-corporate transferees. Such permits are issued for two years and may be renewed annually up to maximum of total five years.</p>		

Modes of supply: 1) Cross-Border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
B. SECTOR-SPECIFIC COMMITMENTS			
I. BUSINESS SERVICES			
1. Professional Services			
(a) Legal services (CPC 861):	(1) None (2) None (3) In commercial association with Cambodian law firms ¹ , and may not directly represent clients in courts. (4) Unbound, except as indicated in the horizontal section.	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section.	
Foreign legal consultancy on law of jurisdiction where service supplier is qualified as a lawyer (including home country law, third country law, and international law)	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section.	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section.	
(b) Accounting, auditing, bookkeeping (CPC 86211, 86212, 86220)	(1) None, except must have commercial presence in Cambodia for auditing services. (2) None (3) None (4) Unbound, except as indicated in the horizontal section	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section.	
(c) Taxation services (CPC 8630)	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section	

¹ If legal services provided in foreign law (including home country and third country law) and international law, the commercial association with Cambodian law firms is not required. Commercial association is understood to include any commercial arrangement and does not imply a specific juridical form.

Modes of supply: 1) Cross-Border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
(d) Architectural services (consulting, planning or design services) (CPC 8671)	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section.	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section.	
(e) Engineering services (CPC 8672) (f) Integrated engineering services (CPC 8673) (g) Urban planning and landscape architectural services (CPC 8674)	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section.	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section.	
(h) Specialized medical services (CPC 93122) Dental services (CPC 93123**) These services are limited only to orthodontic services, oral surgery, and other specialized dental services	(1) Unbound (2) None (3) Provision of services is permitted through a joint venture with Cambodian juridical persons (4) Unbound, except as indicated in the horizontal section	(1) Unbound (2) None (3) None (4) Unbound, except as indicated in the horizontal section	
2. Computer and Related Services			
(a) Consultancy services related to the installation of computer hardware (CPC 841) (b) Software implementation services (CPC 842) (c) Data processing services (CPC 843) (d) Data base services (CPC 844) (e) Other (CPC 845+849)	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section.	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section.	

Modes of supply: 1) Cross-Border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
5. Rental/Leasing Services without Operators			
(d) Renting and leasing of studio recording equipment (CPC 83109**)	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section.	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section.	
6. Other Business Services			
(a) Advertising services (CPC 871)	(1), (2), (3) Unbound until 31 December 2008. (4) Unbound, except as indicated in the horizontal section	(1), (2), (3) Unbound until 31 December 2008. (4) Unbound, except as indicated in the horizontal section	Cambodia will undertake commitment no later than 1 January 2009.
(b) Market research services (CPC 86401) (c) Management consulting services (CPC 865) (d) Services related to man. Consulting (CPC 866) (e) Technical testing and analysis services (CPC 8676)	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section.	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section.	

Modes of supply: 1) Cross-Border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
(h) Services incidental to mining (CPC 883**) <p>(j) Services incidental to energy distribution (887**) Exclusively covers only consultancy services related to the transmission and distribution on a fee or contract basis of electricity, gaseous fuels and steam and hot water to household, industrial, commercial and other users</p>	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section.	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section.	
(k) Placement and supply services of Personnel (CPC 872) <p>(m) Engineering related scientific and technical consulting services (CPC 8675)</p> <p>(q) Packaging services (CPC 876)</p>	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section.	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section.	
II. COMMUNICATION SERVICES			
2. Courier Services			
Courier services (CPC 7512)	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section.	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section.	

Modes of supply: 1) Cross-Border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
3. Telecommunication Services Commitments are taken consistent with "Notes for Scheduling Basic Telecom Services Commitments" (S/GBT/W/2/Rev.1) and Market Access Limitations on Spectrum Availability" (S/GBT/W/3).			
(a) Voice telephone services (CPC 7521) (b) Packet-switched data transmission services (CPC 7523**) (c) Circuit-switched data transmission services (CPC 7523**) (d) Telex services (CPC 7523**) (e) Telegraph services (CPC 7522) (f) Facsimile services (CPC 7521**+ 7529**) (g) Private leased circuit services (CPC 7522**+7523**)	(1) Services provided only over the circuits leased from Telecom Cambodia. Starting no later than 1 January 2009: None (2) None (3) Provided exclusively by Telecom Cambodia. Starting no later than 1 January 2009: None, except subject to requirement for local share holding of up to 49%. (4) Unbound, except as indicated in the horizontal section	(1) Services provided only over the circuits leased from Telecom Cambodia. Starting no later than 1 January 2009: None (2) None (3) Provided exclusively by Telecom Cambodia. Starting no later than 1 January 2009: None (4) Unbound, except as indicated in the horizontal section	Cambodia undertakes obligations contained in the Reference Paper attached.
(h) E-mail (CPC 7523**) (i) Voice-mail (CPC 7523**) (j) On-line information and data base-retrieval (CPC 7523**) (k) Electronic Data Interchange (CPC 7523**) (l) Enhanced/value added facsimile services, incl. store and forward, store and retrieve (7523**) (m) Code and protocol conversion (n) On-line information and/or data processing (including transaction processing) (CPC 843**)	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section.	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section.	
(o) Other services: - Mobile services	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section.	Cambodia commits to permit licensed suppliers of mobile telecommunications services choice of technology used in the supply of such services.

Modes of supply: 1) Cross-Border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
III. CONSTRUCTION AND RELATED ENGINEERING SERVICES			
1. General Construction Work for Buildings (CPC 512)	(1) Unbound* (2) None (3) None	(1) Unbound* (2) None (3) None	
2. General Construction Work for Civil Engineering (CPC 513)	(4) Unbound, except as indicated in the horizontal section	(4) Unbound, except as indicated in the horizontal section	
3. Installation and Assembly Work (CPC 514; CPC 516)			
4. Building Completion and Finishing Work (CPC 517)			
5. Other (CPC 511, 515, 518)			
IV. DISTRIBUTION SERVICES			
1. Commission agents' services (CPC 621)	(1), (2), (3) Unbound until 31 December 2008, thereafter, None (4) Unbound, except as indicated in the horizontal section	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section	Cambodia will undertake commitments no later than 1 January 2009.

* Unbound due to lack of technical feasibility.

Modes of supply: 1) Cross-Border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
2. Wholesale trade services Wholesale trade services of motor vehicles (CPC61111) Sales of parts of motor vehicles (CPC6113) Sales of motorcycles and related parts (CPC6121) Wholesale trade services of radio and television equipment, musical instruments and records, music scores and tapes (CPC62244)	(1) None (2) None (3) None (4) Unbound except as indicated in the horizontal section	(1) None (2) None (3) None (4) Unbound except as indicated in the horizontal section	

Modes of supply: 1) Cross-Border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
<p>3. Retailing services</p> <ul style="list-style-type: none"> - Retail sales of motor vehicles (CPC 61112); - Sales of parts of motor vehicles (CPC 6113); - Sales of motorcycles and related parts (CPC 6121). <p>For supermarkets and large department stores only²:</p> <ul style="list-style-type: none"> - Food and non-food retailing services (CPC631+632), excluding sales of pharmaceutical goods, medical and orthopaedic goods (CPC63211). - Retailing services of radio and television equipment, music instruments, music scores, and audio and video records and tapes (CPC 63234) 	<ul style="list-style-type: none"> (1) None (2) None (3) None (4) Unbound except as indicated in the horizontal section 	<ul style="list-style-type: none"> (1) None (2) None (3) None (4) Unbound except as indicated in the horizontal section 	

² Large supermarkets and department stores are those of floor space no less than 2,000 m².

Modes of supply: 1) Cross-Border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
5. Franchising services (CPC 8929)	(1), (2), (3) Unbound until 31 December 2008, thereafter, None (4) Unbound, except as indicated in the horizontal section	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section	Cambodia will undertake commitments no later than 1 January 2009.
6. Other - Retail sales of motor fuel (CPC 613)	(1) None (2) None (3) None (4) Unbound except as indicated in the horizontal section	(1) None (2) None (3) None (4) Unbound except as indicated in the horizontal section	
V. EDUCATIONAL SERVICES			
3. Higher education services (CPC 923)	(1) None (2) None	(1) None (2) None	Cambodia will seek to establish an independent national accrediting process for market purposes in education and professional services which is in keeping with global practice.
4. Adult education (CPC 924)	(3) None (4) Unbound except as indicated in the horizontal section	(3) None (4) Unbound except as indicated in the horizontal section	
5. Other education services (CPC 929)			
VI. ENVIRONMENTAL SERVICES			
1. Sewage services (CPC 9401)	(1) None (2) None	(1) None (2) None	
2. Refuse disposal services (CPC 9402)	(3) None (4) Unbound except as indicated in the horizontal section	(3) None (4) Unbound except as indicated in the horizontal section	
3. Sanitation and similar services (CPC 9403)			
4. Other services			
- Cleaning of exhaust gases (CPC 9404)			
- Noise abatement services (CPC 9405)			
- Nature and landscape protection services (CPC 9406)			
- Other environmental services not included elsewhere (CPC 9409)			

Modes of supply: 1) Cross-Border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
VII. FINANCIAL SERVICES			
1. All insurance and insurance-related services			
(a) Life insurance services (CPC 81211)	(1) Natural or juridical person can enter into contract only with the insurance companies licensed to carry out insurance business in the Kingdom of Cambodia (2) None (3) None (4) Unbound, except as indicated in the horizontal section	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section	
(b) Non-life insurance services (CPC 8129)	(1) None for marine, aviation, and transport insurance from 1 January 2009, or once a law has been passed, the appropriate regulations in place and a local firm authorized, whichever comes first. Until the conditions above are met, marine, aviation and transport insurance services may be supplied by insurance companies licensed to carry out insurance business in the Kingdom of Cambodia. For all other non-life insurance services, natural or juridical persons can enter into contract only with the insurance companies licensed to carry out insurance business in the Kingdom of Cambodia. (2) None (3) None (4) Unbound, except as indicated in the horizontal section	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section	

Modes of supply: 1) Cross-Border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
(c) Reinsurance and retrocession (CPC 81299)	(1) None, except companies must reinsure 20% of their risk in Cambodia Re until 31 December 2008. Insurance contracts of total sum insured of less than or equal to USD 500,000 must be reinsured locally until 31 December 2008. Thereafter, None (2) None (3) None, except companies must reinsure 20% of their risk in Cambodia Re until 1 January 2008. Thereafter, None. (4) Unbound, except as indicated in the horizontal section.	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section.	
(d) Services auxiliary to insurance (including broking and agency services) (CPC 8140)	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section.	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section.	

Modes of supply: 1) Cross-Border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
2. Banking and other financial services			
The commitments for subsectors (a), (b) and (d) refer to commercial banking only.			
(a) Acceptance of deposits and other repayable funds from the public (CPC 81115 – 81119)	(1) None, except deposits from the public must be reinvested in Cambodia	(1) None	
(b) Lending of all types, including, inter alia, consumer credit, mortgage credit, factoring and financing of commercial transaction (CPC 8113);	(2) None (3) None, except only permitted through authorized financial institutions as banks (4) Unbound, except as indicated in the horizontal section.	(2) None (3) None (4) Unbound, except as indicated in the horizontal section.	
(d) All payment and money transmission service, including credit, charge and debit cards, traveller cheques and bankers drafts (CPC 81339 ³)			
The commitments for subsectors (c) and (e) refer to commercial banking only.			
(c) Financial leasing	(1) Unbound (2) None (3) Unbound until related laws and regulations are established (4) Unbound, except as indicated in the horizontal section.	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section.	
(e) Guarantees and commitments			

³ According to Services sectoral classification list, this refers to only part of the total range of activities covered by the CPC concordance.

Modes of supply: 1) Cross-Border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
<p>(f) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following</p> <p>(A) money market instruments (including cheques, bills, certificates of deposits);</p> <p>(B) foreign exchange</p> <p>(C) derivative products including, but not limited to, futures and options;</p> <p>(D) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;</p> <p>(E) transferable securities;</p> <p>(F) other negotiable instruments and financial assets, including bullion</p> <p>(g) Participation in issues of all kinds of securities, including underwriting and placement as agency (whether publicly or privately) and provision of services related to such issues;</p> <p>(h) Money broking;</p> <p>(i) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;</p>	<p>(1) Unbound</p> <p>(2) None</p> <p>(3) Unbound for subsectors (f) – (l), until the Government of Cambodia determines what types of entities can conduct these services, the related laws and regulation are established, and such business is authorized by the government or other relevant designated authority.</p> <p>(4) Unbound, except as indicated in the horizontal section.</p>	<p>(1) None</p> <p>(2) None</p> <p>(3) None</p> <p>(4) Unbound, except as indicated in the horizontal section</p>	

Modes of supply: 1) Cross-Border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
<p>(j) Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;</p> <p>(k) Provision of financial information, and financial data processing and related software by suppliers of other financial services</p> <p>(l) Advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (v) through (xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.</p>			
VIII. HEALTH RELATED AND SOCIAL SERVICES			
<p>1. Hospital services Ownership and management of private hospitals and clinics only</p>	<p>(1) None (2) None (3) None, except at least one director for technical matters must be Cambodian (4) Unbound, except as indicated in the horizontal section.</p>	<p>(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section</p>	

Modes of supply: 1) Cross-Border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
IX. TOURISM AND TRAVEL RELATED SERVICES			
1. Hotels (CPC 64110)	(1) None (2) None (3) None for hotel 3 stars or higher ⁴ . (4) Unbound, except as indicated in the horizontal section.	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section	
Restaurants (CPC 642, 643)	(1) Unbound* (2) None (3) Permit is granted taking into account characteristics of the area ⁵ (4) Unbound	(1) Unbound* (2) None (3) Unbound (4) Unbound	
2. Travel agencies and tour operators services (CPC7471)	(1) None (2) None (3) None, except foreign equity participation limited to 51% for travel agencies (4) Unbound, except as indicated in the horizontal section.	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section.	
3. Tourist guides services (CPC 7472)	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section. Cambodian nationality requirement for tourist guides	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section	
X. RECREATIONAL, CULTURAL AND SPORTING SERVICES			
- Other entertainment services n.e.c. (CPC 96199): -- Cinema theatre services, including cinema projection services	(1) None (2) None (3) None (4) Unbound, except as provided in the horizontal section	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section	

⁴ 3 stars hotel is defined as in the Fifth Draft Hotel Rating Classification of March 2003 which will be implemented in December 2003.

⁵ The main criteria are: the number of and impact on existing restaurants, historical and artistic characteristics of the location, geographic spread, impact on traffic conditions and creation of new employment.

Modes of supply: 1) Cross-Border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
XI. TRANSPORT SERVICES			
1. Maritime Services			
International transport (Freight and passengers) (CPC7211 and 7212), excluding cabotage	(1) Unbound (2) Unbound (3) Unbound (4) Unbound	(1) Unbound (2) Unbound (3) Unbound (4) Unbound	Where not otherwise made available to the international maritime transport suppliers pursuant to Article XXVIII (c) (ii), no measures shall be applied which deny reasonable and non-discriminatory access to the following services: <ol style="list-style-type: none"> 1. Towing and tug assistance; 2. Provisioning, fuelling and watering; 3. Garbage collecting and ballast waste disposal; 4. Emergency repair facilities; 5. Lightering and water taxi services; 6. Ship agencies; 7. Custom brokers; 8. Stevedoring and terminal services; 9. Surveying and classification services.
3. Air Transport Services			
- Aircraft repair and maintenance services (CPC 8868) - Selling and marketing of air transport services - Computer Reservation System Services (CRS)	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section.	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section.	

Modes of supply: 1) Cross-Border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
6. Road Transport Services			
(a) Passenger transportation (CPC 7121 + 7122)	(1) None (2) None	(1) None (2) None	
(b) Freight transportation (CPC 7123)	(3) None (4) Unbound, except as indicated in the horizontal section.	(3) None (4) Unbound, except as indicated in the horizontal section.	
(c) Rental of commercial vehicles with operator (CPC 7124)			
(d) Maintenance and repair of road transport equipment (CPC 6112+8867)	(1) None (2) None (3) None	(1) None (2) None (3) None	
(e) Supporting services for road transport services (CPC 744)	(4) Unbound, except as indicated in the horizontal section.	(4) Unbound, except as indicated in the horizontal section.	
7. Pipeline Transport Services			
(a) Transport of fuels (CPC 7131)	(1) Services must be provided through a contract of concession granted by the State on case-by- cases basis.	(1) None	
(b) Transport of other goods (CPC 7139)	(2) None (3) Services must be provided through a contract of concession granted by the State on case-by-cases basis.	(2) None (3) None	
	(4) Unbound, except as indicated in the horizontal section.	(4) Unbound, except as indicated in the horizontal section.	

REFERENCE PAPER

Scope

The following are definitions and principles on the regulatory framework for the basic telecommunications services.

Definitions

Users mean service consumers and service suppliers.

Essential facilities mean facilities of a public telecommunications transport network or service that:

- (a) are exclusively or predominantly provided by a single or limited number of suppliers; and
- (b) cannot feasibly be economically or technically substituted in order to provide a service.

A major supplier is a supplier which has the ability to materially affect the terms of participation (having regard to price and supply) in relevant market for basic telecommunications services as a result of:

- (a) control over essential facilities; or
- (b) use of its position in the market.

1. Competitive safeguards

1.1. Prevention of anti-competitive practices in telecommunications

Appropriate measures shall be maintained for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.

1.2. Safeguards

The anti-competitive practices referred to above shall include in particular:

- (a) engaging in anti-competitive cross-subsidization;
- (b) using information obtained from competitors with anti-competitive results; and
- (c) not making available to other services suppliers on timely basis technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

2. Interconnection

2.1. This section applies to linking with suppliers, providing public telecommunications transport networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier, where specific commitments are undertaken.

2.2. Interconnection to be ensured

Interconnection with a major supplier will be ensured at any technically feasible point in the network. Such interconnection is provided:

- (a) under non-discriminatory terms, conditions (incl. technical standards and specifications) and rates and of a quality no less favourable than that provided for its own like services or for like services of non-affiliated service suppliers or for its subsidiaries or other affiliates;
- (b) in a timely fashion, on terms, conditions (incl. technical standards and specifications) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and
- (c) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

2.3. Public availability of the procedures for interconnection negotiations

The procedures applicable for interconnection to a major supplier will be made publicly available.

2.4. Transparency of interconnection arrangements

It is ensured that a major supplier will make publicly available either its interconnection agreements or a reference interconnection offer.

2.5. Interconnection: dispute settlement

A service supplier requesting interconnection with a major supplier will have recourse, either:

- (a) at any time or
- (b) after a reasonable period of time which has been made publicly known to an independent domestic body, which may be a regulatory body as referred to in paragraph 5 below, to resolve disputes regarding appropriate terms, conditions and rates for interconnection within a reasonable period of time, to the extent that these have not been established previously.

3. Universal service

Any Member has the right to define the kind of universal service obligation it wishes to maintain. Such obligations will not be regarded as anti-competitive *per se*, provided they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Member.

4. Public availability of licencing criteria

Where a licence is required, the following will be made publicly available:

- (a) all the licensing criteria and the period of time normally required to reach a decision concerning an application for a licence and
- (b) the terms and conditions of individual licences.

The reasons for the denial of a licence will be made known to the applicant upon request.

5. Independent regulators

The regulatory body is separate from, and not accountable to, any supplier of basic telecommunications services. The decisions of and the procedures used by regulators shall be impartial with respect to all market participants.

6. Allocation and use of scarce resources

Any procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, will be carried out in an objective, timely, transparent and non-discriminatory manner. The current state of allocated frequency bands will be made publicly available, but detailed identification of frequencies allocated for specific government uses is not required.

Submission Form

Recommendations from the STWGs to the Secretariat of the Project to Develop the Environmental Code of Cambodia

Email to: Lim Nalin at Vishnu Law Group: limn@vishnulawgroup.com

- For comments on the draft Code, please copy and paste selected text into this form and use Track Changes.
- If needed, please submit large documents as an attachment.
- Please submit all comments in Khmer and English when possible.

Date of Submission:

26 July 2016

Submitted by (provide individual and STWG contact information):

Ewa Madon – madonewa@gmail.com, skype: ewamadon

1. Issue:

Gender mainstreaming

2. Reference to Code Book and Chapter Title (if applicable):

Draft 3, Book 1, Title 1, Chapter 2, Article 2

3. Comparative Experience (if any):

The United Nations Fourth World Conference on Women, Beijing:

<http://www.un.org/womenwatch/daw/beijing/platform/institu.htm#object3>

FAO's Gender-Sensitive Indicators for Natural Resources Management:

<ftp://ftp.fao.org/docrep/fao/010/a0521e/a0521e00.pdf>

UNEP's Towards gender mainstreaming in environmental policies:

<http://www.unep.org/PDF/Women/ChapterSix.pdf>

4. Recommendation:

Principle of Gender Equality for Natural Resources Decisions

The involvement of women is to be promoted in environmental decision-making at all levels. Impact assessments for development projects and environmentally relevant policies will include mechanisms to effectively assess the impacts on women. Gender concerns and perspectives will be integrated into policies and programmes for sustainable development and into the implementation of this Code

Not only do impacts on women need to be assessed but actions implemented that mitigate negative impacts on women, as well as advance women's status and decision-making power. Highlighting the need to undertake gender-sensitive monitoring and evaluation is also recommended.

5. Proposed Language to be Inserted into the Draft Code (if any):

(Optional. Note: when proposing modifications to existing draft Code text, please extract the relevant text and insert here, in track changes if possible.)

6. Cambodian Laws to be Abrogated or Modified (if any):

(Please include the law title and the titles of specific articles and clauses.)

7. Drafting Team Analysis/Response (to be included in public database):

1. Issue:

Gender mainstreaming

2. Reference to Code Book and Chapter Title (if applicable):

Draft 3, Book 1, Title 3, Article #

3. Comparative Experience (if any):

(Please include any Cambodian and international examples and experience.)

4. Recommendation:

Duty to consult with potential affected persons

Included in this section should be specific text about the need to develop and undertake specific participation strategies for women.

5. Proposed Language to be Inserted into the Draft Code (if any):

(Optional. Note: when proposing modifications to existing draft Code text, please extract the relevant text and insert here, in track changes if possible.)

6. Cambodian Laws to be Abrogated or Modified (if any):

(Please include the law title and the titles of specific articles and clauses.)

7. Drafting Team Analysis/Response (to be included in public database):

1. Issue:

Gender mainstreaming

2. Reference to Code Book and Chapter Title (if applicable):

Draft 3, Book 1, Title 3, Article #

3. Comparative Experience (if any):

(Please include any Cambodian and international examples and experience.)

4. Recommendation:

In the mitigation measures, the Project Proponent shall:

- identify measures to improve the livelihood and to assist project affected persons.

This text should be updated to ensure that measures are also gender-sensitive and advance women's status and decision-making power.

5. Proposed Language to be Inserted into the Draft Code (if any):

(Optional. Note: when proposing modifications to existing draft Code text, please extract the relevant text and insert here, in track changes if possible.)

6. Cambodian Laws to be Abrogated or Modified (if any):

(Please include the law title and the titles of specific articles and clauses.)

7. Drafting Team Analysis/Response (to be included in public database):

1. Issue:

Gender mainstreaming

2. Reference to Code Book and Chapter Title (if applicable):

Draft 3, Book 1, Title 4, Article #

3. Comparative Experience (if any):

The United Nations Fourth World Conference on Women, Beijing:

<http://www.un.org/womenwatch/daw/beijing/platform/institu.htm#object3>

FAO's Gender-Sensitive Indicators for Natural Resources Management:

<ftp://ftp.fao.org/docrep/fao/010/a0521e/a0521e00.pdf>

GIZ's Guidelines on designing a gender-sensitive results-based monitoring (RBM) system:

<https://www.oecd.org/dac/gender-development/GIZ-guidelines-gender-sensitive-monitoring.pdf>

4. Recommendation:

Environmental monitoring

Included in this section should be specific text about this monitoring being gender-sensitive.

5. Proposed Language to be Inserted into the Draft Code (if any):

(Optional. Note: when proposing modifications to existing draft Code text, please extract the relevant text and insert here, in track changes if possible.)

6. Cambodian Laws to be Abrogated or Modified (if any):

(Please include the law title and the titles of specific articles and clauses.)

7. Drafting Team Analysis/Response (to be included in public database):

1. Issue:

Gender mainstreaming

2. Reference to Code Book and Chapter Title (if applicable):

Draft 3, Book 1, Title 4, Article #

3. Comparative Experience (if any):

The United Nations Fourth World Conference on Women, Beijing:

<http://www.un.org/womenwatch/daw/beijing/platform/institu.htm#object3>

FAO's Gender-Sensitive Indicators for Natural Resources Management:

<ftp://ftp.fao.org/docrep/fao/010/a0521e/a0521e00.pdf>

GIZ's Guidelines on designing a gender-sensitive results-based monitoring (RBM) system:

<https://www.oecd.org/dac/gender-development/GIZ-guidelines-gender-sensitive-monitoring.pdf>

4. Recommendation:

Environmental statistics and gathering of environmental data and information

Included in this section should be specific text about this monitoring being gender-sensitive.

5. Proposed Language to be Inserted into the Draft Code (if any):

(Optional. Note: when proposing modifications to existing draft Code text, please extract the relevant text and insert here, in track changes if possible.)

6. Cambodian Laws to be Abrogated or Modified (if any):

(Please include the law title and the titles of specific articles and clauses.)

7. Drafting Team Analysis/Response (to be included in public database):

1. Issue:

Gender mainstreaming

2. Reference to Code Book and Chapter Title (if applicable):

Draft 3, Book 2, Title 1, Article #

3. Comparative Experience (if any):

(Please include any Cambodian and international examples and experience.)

4. Recommendation:

Appointment of a commission to prepare the NEP

A gender expert should be appointed to this commission to ensure full consideration and implementation of the gender elements in the NEP.

5. Proposed Language to be Inserted into the Draft Code (if any):

(Optional. Note: when proposing modifications to existing draft Code text, please extract the relevant text and insert here, in track changes if possible.)

6. Cambodian Laws to be Abrogated or Modified (if any):

(Please include the law title and the titles of specific articles and clauses.)

7. Drafting Team Analysis/Response (to be included in public database):

1. Issue:

Gender mainstreaming

2. Reference to Code Book and Chapter Title (if applicable):

Draft 3, Book 2, Title 4, Article #

3. Comparative Experience (if any):

Guidelines for Integrating HIV and Gender-related Issues into Environmental Assessment in Eastern and Southern Africa. Prepared for UNDP Regional Centre for Eastern and Southern Africa by the Southern African Institute for Environmental Assessment (2012):

http://www.undp.org/content/dam/undp/library/hivaids/English/Guidelines_for_Integrating_HIV_and_Gender_related_Issues_into_Environmental_Assessment_in_Eastern_and_Southern_Africa.pdf

4. Recommendation:

Consultation and Public Participation

Special consideration shall be given to providing opportunity for participation by vulnerable persons, including women, children, disabled persons, and ethnic minority groups and indigenous peoples

Recommended that text for this article be modified to state “Special participation strategies shall be undertaken to....”.

5. Proposed Language to be Inserted into the Draft Code (if any):

(Optional. Note: when proposing modifications to existing draft Code text, please extract the relevant text and insert here, in track changes if possible.)

6. Cambodian Laws to be Abrogated or Modified (if any):

(Please include the law title and the titles of specific articles and clauses.)

7. Drafting Team Analysis/Response (to be included in public database):

1. Issue:

Gender mainstreaming

2. Reference to Code Book and Chapter Title (if applicable):

Draft 3, Book 2, Title 4, Article #

3. Comparative Experience (if any):

Guidelines for Integrating HIV and Gender-related Issues into Environmental Assessment in Eastern and Southern Africa. Prepared for UNDP Regional Centre for Eastern and Southern Africa by the Southern African Institute for Environmental Assessment (2012):

http://www.undp.org/content/dam/undp/library/hivaids/English/Guidelines_for_Integrating_HIV_and_Gender_related_Issues_into_Environmental_Assessment_in_Eastern_and_Southern_Africa.pdf

4. Recommendation:

Review and Decision

The assessment of the SEA shall be conducted by a SEA report assessment committee established by the relevant government institution and will include the representatives of the Office of the PM, the CDC, the institution of the Environment, and other concerned Ministries

A gender expert should be included to this committee to ensure full consideration of gender elements in the SEA.

5. Proposed Language to be Inserted into the Draft Code (if any):

(Optional. Note: when proposing modifications to existing draft Code text, please extract the relevant text and insert here, in track changes if possible.)

6. Cambodian Laws to be Abrogated or Modified (if any):

(Please include the law title and the titles of specific articles and clauses.)

7. Drafting Team Analysis/Response (to be included in public database):

1. Issue:

Gender mainstreaming

2. Reference to Code Book and Chapter Title (if applicable):

Draft 3, Book 2, Title 4, Article #

3. Comparative Experience (if any):

The United Nations Fourth World Conference on Women, Beijing:

<http://www.un.org/womenwatch/daw/beijing/platform/institu.htm#object3>

FAO's Gender-Sensitive Indicators for Natural Resources Management:

<ftp://ftp.fao.org/docrep/fao/010/a0521e/a0521e00.pdf>

GIZ's Guidelines on designing a gender-sensitive results-based monitoring (RBM) system:

<https://www.oecd.org/dac/gender-development/GIZ-guidelines-gender-sensitive-monitoring.pdf>

4. Recommendation:

Monitoring

The relevant government institution in collaboration with MOE shall develop a monitoring programme.

Included in this section should be specific text about this monitoring being gender-sensitive.

5. Proposed Language to be Inserted into the Draft Code (if any):

(Optional. Note: when proposing modifications to existing draft Code text, please extract the relevant text and insert here, in track changes if possible.)

6. Cambodian Laws to be Abrogated or Modified (if any):

(Please include the law title and the titles of specific articles and clauses.)

7. Drafting Team Analysis/Response (to be included in public database):

1. Issue:

Gender mainstreaming

2. Reference to Code Book and Chapter Title (if applicable):

Draft 3, Book 2, Title 5, Chapter #, Article #

3. Comparative Experience (if any):

Guidelines for Integrating HIV and Gender-related Issues into Environmental Assessment in Eastern and Southern Africa. Prepared for UNDP Regional Centre for Eastern and Southern Africa by the Southern African Institute for Environmental Assessment (2012):

http://www.undp.org/content/dam/undp/library/hivaids/English/Guidelines_for_Integrating_HIV_and_Gender_related_Issues_into_Environmental_Assessment_in_Eastern_and_Southern_Africa.pdf

4. Recommendation:

Review and Decision

The composition of the Expert Review Committee includes officials from MoE and relevant ministries and institutions, and independent experts with qualifications and appropriate experience in reviewing EIA reports.

A gender expert should be included to this committee to ensure full consideration of gender elements in the EIA.

5. Proposed Language to be Inserted into the Draft Code (if any):

(Optional. Note: when proposing modifications to existing draft Code text, please extract the relevant text and insert here, in track changes if possible.)

6. Cambodian Laws to be Abrogated or Modified (if any):

(Please include the law title and the titles of specific articles and clauses.)

7. Drafting Team Analysis/Response (to be included in public database):

1. Issue:

Gender mainstreaming

2. Reference to Code Book and Chapter Title (if applicable):

Draft 3, Book 2, Title 5, Chapter #, Article #

3. Comparative Experience (if any):

Guidelines for Integrating HIV and Gender-related Issues into Environmental Assessment in Eastern and Southern Africa. Prepared for UNDP Regional Centre for Eastern and Southern Africa by the Southern African Institute for Environmental Assessment (2012):

http://www.undp.org/content/dam/undp/library/hivaids/English/Guidelines_for_Integrating_HIV_and_Gender_related_Issues_into_Environmental_Assessment_in_Eastern_and_Southern_Africa.pdf

4. Recommendation:

Review and Decision

The composition of the Expert Review Committee includes officials from MoE and relevant ministries and institutions, and independent experts with qualifications and appropriate experience in reviewing EIA reports.

A gender expert should be included to this committee to ensure full consideration of gender elements in the EIA.

5. Proposed Language to be Inserted into the Draft Code (if any):

(Optional. Note: when proposing modifications to existing draft Code text, please extract the relevant text and insert here, in track changes if possible.)

6. Cambodian Laws to be Abrogated or Modified (if any):

(Please include the law title and the titles of specific articles and clauses.)

7. Drafting Team Analysis/Response (to be included in public database):

1. Issue:

Gender mainstreaming

2. Reference to Code Book and Chapter Title (if applicable):

Draft 3, Book 2, Title 5, Chapter #- Preparation of environmental management plan, Article #

3. Comparative Experience (if any):

The United Nations Fourth World Conference on Women, Beijing:

<http://www.un.org/womenwatch/daw/beijing/platform/institu.htm#object3>

FAO's Gender-Sensitive Indicators for Natural Resources Management:

<ftp://ftp.fao.org/docrep/fao/010/a0521e/a0521e00.pdf>

GIZ's Guidelines on designing a gender-sensitive results-based monitoring (RBM) system:

<https://www.oecd.org/dac/gender-development/GIZ-guidelines-gender-sensitive-monitoring.pdf>

4. Recommendation:

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

Included in this section should be specific text about this monitoring being gender-sensitive.

5. Proposed Language to be Inserted into the Draft Code (if any):

(Optional. Note: when proposing modifications to existing draft Code text, please extract the relevant text and insert here, in track changes if possible.)

6. Cambodian Laws to be Abrogated or Modified (if any):

(Please include the law title and the titles of specific articles and clauses.)

7. Drafting Team Analysis/Response (to be included in public database):

1. Issue:

Gender mainstreaming

2. Reference to Code Book and Chapter Title (if applicable):

Draft 3, Book 2, Title 5, Chapter # - Matters for consideration, Article # -Protecting the rights of vulnerable persons, including women, children, disabled persons, and ethnic minority groups and indigenous peoples, through the EIA process, including public participation in the EIA process and the implementation measures that are an outcome of EIA approval

3. Comparative Experience (if any):

Guidelines for Integrating HIV and Gender-related Issues into Environmental Assessment in Eastern and Southern Africa. Prepared for UNDP Regional Centre for Eastern and Southern Africa by the Southern African Institute for Environmental Assessment (2012):
http://www.undp.org/content/dam/undp/library/hiv aids/English/Guidelines_for_Integrating_HI V_and_Gender_related_Issues_into_Environmental_Assessment_in_Eastern_and_Southern_Africa.pdf

European Commission, A Guide to Gender Impact Assessment, European Commission, Brussels <http://www.ec.europa.eu/social/BlobServlet?docId=4376&langId=en>

4. Recommendation:

Consider requiring gender impact assessments to be undertaken for an EIA (and possibly IEE?)

5. Proposed Language to be Inserted into the Draft Code (if any):

(Optional. Note: when proposing modifications to existing draft Code text, please extract the relevant text and insert here, in track changes if possible.)

6. Cambodian Laws to be Abrogated or Modified (if any):

(Please include the law title and the titles of specific articles and clauses.)

7. Drafting Team Analysis/Response (to be included in public database):

1. Issue:

Gender mainstreaming

2. Reference to Code Book and Chapter Title (if applicable):

Draft 3, Book 2, Title 6, Chapter # - - Monitoring reports to be required for specific project and activities

3. Comparative Experience (if any):

Guidelines for Integrating HIV and Gender-related Issues into Environmental Assessment in Eastern and Southern Africa. Prepared for UNDP Regional Centre for Eastern and Southern Africa by the Southern African Institute for Environmental Assessment (2012):

http://www.undp.org/content/dam/undp/library/hiv aids/English/Guidelines_for_Integrating_HIV_and_Gender_related_Issues_into_Environmental_Assessment_in_Eastern_and_Southern_Africa.pdf

4. Recommendation:

Consider requiring regular gender monitoring reports for those development projects that potentially/have a significantly negative impact on gender issues (which would be highlighted through the gender impact assessment).

5. Proposed Language to be Inserted into the Draft Code (if any):

(Optional. Note: when proposing modifications to existing draft Code text, please extract the relevant text and insert here, in track changes if possible.)

6. Cambodian Laws to be Abrogated or Modified (if any):

(Please include the law title and the titles of specific articles and clauses.)

7. Drafting Team Analysis/Response (to be included in public database):

Submission Form

Recommendations from the STWGs to the Secretariat of the Project to Develop the Environmental Code of Cambodia

Email to: Lim Nalin at Vishnu Law Group: limn@vishnulawgroup.com

- *For comments on the draft Code, please copy and paste selected text into this form and use Track Changes.*
- *If needed, please submit large documents as an attachment.*
- *Please submit all comments in Khmer and English when possible.*

Date of Submission:

26 July 2016

Submitted by (provide individual and STWG contact information):

STWG 2 Hazardous Waste and Substances Group

1. Issue:

Hazardous Waste and Substances Management Proposed Structure. Revised from submission dated 18 May 2016 (“19 Thol Chanthan 18-MAY-16.docx”).

2. Reference to Code Book and Title (if applicable):

Book 3 Environmental Management and Sustainability Mechanisms

Title 7 Solid and Hazardous Substances Control and Contaminated Land

3. Comparative Experience (if any):

(Please include any Cambodian and international examples and experience.)

4. Recommendation:

Please see attachment “63 STWG 2 Hazardous Waste and Substances 26-JUL-16 Attachment/docx”.

5. Proposed Language to be Inserted into the Draft Code (if any):

Please see attachment “63 STWG 2 Hazardous Waste and Substances 26-JUL-16 Attachment/docx”.

6. Cambodian Laws to be Abrogated or Modified (if any):

(Please include the law title and the titles of specific articles and clauses.)

7. Drafting Team Analysis/Response (to be included in public database):

នាយកដ្ឋានគ្រប់គ្រងសារធាតុគ្រោះថ្នាក់
Department of Hazardous Substances Management
សេចក្តីព្រាងចុងក្រោយ ធាតុចូលសម្រាប់ក្រមបរិស្ថាន
Final Draft Inputs for Environmental Code

មាតិកា ៣ ៖ ការគ្រប់គ្រងសំណល់គ្រោះថ្នាក់

Title 3: Hazardous Waste Management

1. ការកំណត់ ការចាត់ចំណាត់ថ្នាក់ និងការដាក់ស្លាកសញ្ញាសំណល់គ្រោះថ្នាក់
Hazardous waste determination, classification and labeling.
2. ការប្រមូល ការរៀបចំ ការស្តុក ការកែច្នៃ និងការធ្វើប្រព្រឹត្តិកម្មសំណល់គ្រោះថ្នាក់
Hazardous waste collection, packaging, storage, recycling and treatment.
3. ការបោះបង់ចោលសំណល់គ្រោះថ្នាក់ (ការដុត ការបំផ្លាញចោល និងទីលានបោះបង់ចោល)
Disposal of hazardous waste (incineration, destruction, and landfill)
4. ការត្រួតពិនិត្យសំណល់គ្រោះថ្នាក់
Monitoring of hazardous waste
5. តម្រូវការប្រតិបត្តិការសម្រាប់សម្ភារៈបរិក្ខារសំណល់គ្រោះថ្នាក់
Operational requirements for all hazardous waste facilities.
6. ការនាំចូល និងនាំចេញសំណល់គ្រោះថ្នាក់
Import and export of hazardous waste.
7. បទបញ្ញត្តិលើការដឹកជញ្ជូនឆ្លងកាត់
Transitional provision
8. តម្រូវការផ្នែករដ្ឋបាល (ការចុះបញ្ជីការ លិខិតអនុញ្ញាត ការដឹកជញ្ជូន វិធីសាស្ត្រការវិភាគ...)
Administrative requirements (Registration, license, shipments, analytical methods..etc)
9. ការគ្រប់គ្រងសំណល់គ្រោះថ្នាក់ជាក់លាក់ (សំណល់អាបេស្តូស ប្រេង ថ្នាំលាប...)
Management of specific hazardous wastes (waste asbestos, oil, paint,...etc.)
10. ការអនុវត្តអនុសញ្ញាអន្តរជាតិស្តីពីសំណល់គ្រោះថ្នាក់
Application of international conventions on hazardous waste.
11. ស្តង់ដារសម្រាប់ការចាត់ចំណាត់ថ្នាក់សំណល់គ្រោះថ្នាក់
Standard for classification of hazardous waste
12. ស្តង់ដារសម្រាប់ការបោះបង់ចោលសំណល់គ្រោះថ្នាក់
Standard for disposal of hazardous waste
13. ទោសបញ្ញត្តិ
Penalty

ការចង្អុលបង្ហាញសម្រាប់ PRTR

Directive for PRTR

1. ការបកប្រែ (ការកំណត់និយមន័យ សារធាតុបំពុល ការបំលាស់ទី ការសាយភាយ ការចុះបញ្ជីការ...)
Interpretation (definition, pollutant, transfer, release, register...etc)

2. ការរៀបចំ និងរចនាសម្ព័ន្ធ (តារាងវត្ថុធាតុដើម ទម្រង់របាយការណ៍ និងសំណាយភាយទៅក្នុងបរិស្ថាន)
Design and structure (materials list, form and environment media release)
3. ការធ្វើរបាយការណ៍ដោយម្ចាស់គ្រប់គ្រង/ម្ចាស់សម្ភារៈបរិក្ខារ(កាលវិភាគសម្រាប់ការរាយការណ៍ព័ត៌មាន)
Reporting by generator/facilities (schedule for submission information/report...)
4. ស្តង់ដារសម្រាប់ប៉ាន់ប្រមាណពិកម្រិតសាយភាយសារធាតុពុល (ចូលក្នុងខ្យល់ ក្នុងទឹក ដី...)
Estimation standard for emission release (to air, water, land...etc.)
5. ការវាយតម្លៃនិងការធានាគុណភាព
Quality assurance and assessment.
6. ការទទួលព័ត៌មាន (ការចូលរួមជាសាធារណៈ ការលើកកម្ពស់ការយល់ដឹង)
Access to information (public participation, awareness raising)
7. ការរក្សាការសម្ងាត់
8. Confidentially
9. ទោសបញ្ញត្តិ
Penalty
10. អយ្យការនៃបទល្មើស
Prosecution of offensive

មាតិកា ៤៖ ការគ្រប់គ្រងសារធាតុគីមីគ្រោះថ្នាក់ចំពោះបរិស្ថាន

Title 4: Hazardous chemical substances management to Environment

1. និយមន័យ
Definition
2. ស្ថាប័នទទួលខុសត្រូវ
Institutional responsibility
3. ការហាមឃាត់នៃសារធាតុគ្រោះថ្នាក់
Prohibition of hazardous substances
4. ការស្រាវជ្រាវ ការចុះបញ្ជី និងការផ្តល់ព័ត៌មានសារធាតុគ្រោះថ្នាក់
Research, Registration and Information disclosure of hazardous substances
5. សន្និធិ ការចាត់ចំណាត់ថ្នាក់ និងស្លាកសញ្ញានៃសារធាតុគ្រោះថ្នាក់
Inventory, Classification and Labeling of hazardous substances
6. ការផលិត ការចែកចាយ ការស្តុក ការដឹកជញ្ជូន ការប្រើប្រាស់ និងការបោះបង់ចោល
Production, Distribution, Storage, Transportation, Usage and Disposal
7. ការនាំចូល និងនាំចេញ
Import and Export
8. ការត្រួតពិនិត្យនៃការវាយតម្លៃសុវត្ថិភាពសារធាតុគ្រោះថ្នាក់
Monitoring of hazardous substances safety assessment
9. ការការពារភាពចៃដន្យ ការត្រៀមបង្ការទុក និងការឆ្លើយតប
Accident prevention, preparedness and responses

10. ការអនុវត្តអនុសញ្ញាអន្តរជាតិស្តីពីសារធាតុគីមី
Application of international convention on hazardous substances
 - a. អនុសញ្ញា POPs
POPs Convention
 - b. អនុសញ្ញាមីណាម៉ាតា
Minamata Convention
 - c. កិច្ចព្រមព្រៀងអន្តរជាតិ
International Agreements
11. ទោសបញ្ញត្តិ
Penalty

ការចង្អុលបង្ហាញសម្រាប់ PRTR

Directive for PRTR

1. ការបកប្រែ (ការកំណត់និយមន័យ សារធាតុបំពុល ការបំលាស់ទី ការសាយភាយ ការចុះបញ្ជីការ...)
Interpretation (definition, pollutant, transfer, release, register...etc)
2. ការរៀបចំ និងរចនាសម្ព័ន្ធ (តារាងវត្ថុធាតុដើម ទម្រង់របាយការណ៍ និងសំណាយភាយទៅក្នុងបរិស្ថាន)
Design and structure (materials list, form and environment media release)
3. ការធ្វើរបាយការណ៍ដោយម្ចាស់គ្រប់គ្រង/ម្ចាស់សម្ភារៈបរិក្ខារ(កាលវិភាគសម្រាប់ការរាយការណ៍ព័ត៌មាន)
Reporting by generator/facilities (schedule for submission information/report...)
4. ស្តង់ដារសម្រាប់ប៉ាន់ប្រមាណពីកម្រិតសាយភាយសារធាតុបំពុល (ចូលក្នុងខ្យល់ ក្នុងទឹក ដី...)
Estimation standard for emission release (to air, water, land...etc.)
5. ការវាយតម្លៃនិងការធានាគុណភាព
Quality assurance and assessment.
6. ការទទួលបានព័ត៌មាន (ការចូលរួមជាសាធារណៈ ការលើកកម្ពស់ការយល់ដឹង)
Access to information (public participation, awareness raising)
7. ការរក្សាការសម្ងាត់
Confidentially
8. ទោសបញ្ញត្តិ
Penalty
9. អយ្យការនៃបទល្មើស
Prosecution of offensive

Submission Form

Recommendations from the STWGs to the Secretariat of the Project to Develop the Environmental Code of Cambodia

Email to: Lim Nalin at Vishnu Law Group: limn@vishnulawgroup.com

- For comments on the draft Code, please copy and paste selected text into this form and use Track Changes.
- If needed, please submit large documents as an attachment.
- Please submit all comments in Khmer and English when possible.

Date of Submission: 28/07/2016

(Required)

Submitted by Muni Mang, Winrock International, mmang@winrock.org

(Required, including relevant STWG, if any.)

1. Issue:

Clarifying earlier comments on polluter pays principle

2. Reference to Code Book and Title (if applicable):

Book 1, Title 1, Chapter 2 (General Principles)

3. Comparative Experience (if any):

(Please include any Cambodian and international examples and experience.)

4. Recommendation:

we would

- like the drafter to thoroughly explain about the Principle for easy commenting in the future and how it works in the rest of the code;
- like to know how this principle works when coming to judicial level, if any (but we are sure only judge can decide how much the polluters have to pay) and what reference that judge should decide on paying the damage.

In environmental field, this principle has been there for long known to environmental expert but it's new to Cambodia's concept, we guess. Personally, I am not familiar in this principle, so it's a bit hard for me throw any idea to fill in the form, but I rather want to know how it works in Cambodia context and in the code as a whole.

6. Cambodian Laws to be Abrogated or Modified (if any):

(Please include the law title and the titles of specific articles and clauses.)

7. Drafting Team Analysis/Response (to be included in public database):

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- Please submit all comments in Khmer and English when possible.

Date of Submission:

5th August 2016

Submitted by (provide individual and STWG contact information):

STWG 3/5 PA sub-group, members include:

Sarah Brook (WCS)
Alistair Mould (WCS)
Stacy Crevello (FAO)
Moeko Saito Jensen (UNDP)
Tom Gray (WA)
Raphaele Deau (consultant)
Virginia Simpson (CI)
Steve Bernacki (IUCN)
Romeo Garreau (ODC)
Kate West (FFI)
Kimheak Chhay (WWF)
Pheakkdey Nguon (RUPP)
Rithiny Teng (WCS)
Sao Sotheary (WCS)

1. Issue:

Additional title recommended and new name suggested for title 2 (see attached)

2. Reference to Code Book and Chapter Title (if applicable):

Book 3 - Environmental Management and Sustainability Mechanisms.

3. Comparative Experience (if any):

These recommendations have been formulated based on a review of the structure of other country's laws with regards to wildlife and protected areas, and on existing Cambodian laws.

4. Recommendation:

We recommend a new title is added underneath title 1, entitled "Protected Areas Management". See attached document for the suggested Chapters within that title and other recommendations related to PA management.

We recommend existing title 2 (Biodiversity management and endangered species protection) is renamed to "Wildlife Protection, Conservation and Management". See the attached document for the suggested Chapters within that title.

5. Proposed Language to be Inserted into the Draft Code (if any):

See attached documents for proposed new structures

6. Cambodian Laws to be Abrogated or Modified (if any):

These recommendations relate to the existing PA Law and components of the Law on Forestry, Law on Customs and Sub-decree on CITES (regarding wildlife).

7. Drafting Team Analysis/Response (to be included in public database):

Recommendations for the Environmental Code from STWG3/5 PA sub-group - Protected Areas Management

1. Add a new title on **Protected Areas** (name: Protected Areas Management), perhaps best situated after the title on corridors and before the title on biodiversity management and species protection

Proposed structure of the new Title on Protected Areas Management:

Chapter 1: General Provisions

Chapter 2: Ministry of Environment/Responsible Institutions

Chapter 3: Establishment, Modification and Classification of Protected Areas

Chapter 4: Zoning of Protected Areas

Chapter 5: Protected Areas Management Plans

Chapter 6: Access and User Rights of Local Communities and Indigenous Ethnic Minority Communities

Chapter 7: Prohibited Activities in Protected Areas

Chapter 8: Permits and Authorities

Chapter 9: Enforcement and Protection

Chapter 10: Monitoring and Evaluation of Effectiveness

Chapter 11: Staffing of Protected Areas

Chapter 12: Protected Areas Budgets and Financing

Chapter 13: Procedures to Resolve Offences

Chapter 14: Offences and Legal Penalties

Chapter 15: Implementation of Court Verdict

Chapter 16: Final Provisions

DEFINITIONS

Commented [SB1]: This proposed structure follows and adds to the structure of the existing PA Law

Commented [SB2]: To refer to co-management legal instrument here/ responsibilities of other stakeholders in PA management

Commented [SB3]: This will include reference to the title on wildlife/species protection

Commented [SB4]: Permitting process for all controlled activities/access inside PAs

Other Recommendations from PA sub-group of STWG3/5

1. Title #3 - re-name to **Community-based Natural Resource Management** ("Community Management" implies the management of communities)

2. We strongly recommend that what is currently being referred to as "Co-management" is renamed to "**Collaborative Management**". Reports from MOE at sub-national level suggests the term Co-management is already being misconstrued by MOE staff - some staff think that PAs will from now on be managed by communities. It is important to address this mis-understanding quickly and to adopt a term that is more appropriate and easily understood in both English and Khmer, which represents management of PAs by a wide range of stakeholders working in collaboration.

3. **Co-management Zones** - we strongly recommend that the number and name of zones for Co-Management Protection Zones remains the same as the current zones for Protected Areas. Co-management Zones are likely to cover many Protected Areas; having two separate zoning systems with similar names will be extremely confusing to understand and apply, for MOE staff, communities and for legal staff (e.g. courts).

Book 3. Environmental Management and Sustainability Mechanisms

The PA sub-group of STWG3/5 recommends the amendment of title 2 (biodiversity management and endangered species protection) to "Wildlife Protection and Management" following the structure below. [NB: An additional title will need to be developed to incorporate, plants, habitats and ecosystems].

Title: Wildlife Protection and Management

- Chapter 1: General Provisions
- Chapter 2: Responsible Institutions
- Chapter 3: Classification of wildlife species
- Chapter 4: Prohibitions on hunting
- Chapter 5: Special exceptions on hunting of wild animals
- Chapter 6: Granting of permits for special purposes
- Chapter 7: Suspension or cancellation of permits
- Chapter 8. Prohibition of trade, trafficking or commerce in wild animals, trophies, animal parts and all derivatives of wild animals
- Chapter 9: Adherence to other international conventions and agreements
- Chapter 10: Management of confiscated wildlife
- Chapter 11: Management of Captive breeding, wildlife rescue centres and zoological institutions
- Chapter 12: Management of wildlife farms
- Chapter 13: Species Management and Recovery Plans
- Chapter 14: Procedures to Resolve Offences
- Chapter 15: Offences and Legal Penalties
- Chapter 16: Implementation of Court Verdict
- Chapter 17: Final Provisions

Commented [SB1]: To include CITES, international and regional resolutions, mechanisms for inter-agency and international collaboration on wildlife trafficking

Submission Form

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Email to: Lim Nalin at Vishnu Law Group: limn@vishnulawgroup.com

Date of Submission: *5th August 2016*

Submitted by (provide individual and STWG contact information):

Sarah Brook (WCS)
Stacy Crevello (FAO)
Moeko Saito Jensen (UNDP)

1. Issue:

Recommend for revision of the Code structure to further ensure its clarity in terms of the scopes and issues that the Code covers as well as the logical flows among books and chapters (see attached)

2. Reference to Code Book and Chapter Title (if applicable):

Entire Code

3. Comparative Experience (if any):

4. Recommendation:

We recommend

- **Revisiting the Title of Book 2 to include “assessment and monitoring” to adequately reflect the contents of the Book 2**
- **Keeping the Book on environmental management and sustainability mechanisms only to include issues related to sustainable cities, wastes, energy, climate change, disasters** (these issues are of a different nature from the issues listed below. In addition, the below aspects of conservation and production of natural resources are closely inter-linked—so they should be at least listed in a sequential manner)
- **Creating a separate Book that focuses upon conservation of biodiversity**
 - Creating new chapters on Protected Areas, Wildlife, and Plants etc
- **Creating a separate Book that focuses upon sustainable management of natural resources and ecosystems**
 - Combining marine fishery and fresh water fishery into “sustainable fishery”
 - Combining land management and soil management into “sustainable land management” as these issues are also closely interrelated.

5. Proposed Language to be Inserted into the Draft Code (if any):

See attached documents for proposed new structures

6. Cambodian Laws to be Abrogated or Modified (if any):

7. Drafting Team Analysis/Response (to be included in public database):

ENVIRONMENTAL CODE OF CAMBODIA

Third Draft - DRAFT 3.0 -- 23 June 2016

BOOK 1 — General provisions

- Title 1 – General provisions
- Title 2 – Organizaton of jurisdictional institutions/jurisdictional issues
- Title 3 – Public participation
- Title 4 – Access to environmental information

Book 2 — Environmental planning, assessment and monitoring

- Title 1 – Making of national, sub-national and local environmental and natural resources plans
- Title 2 – Urban land use planning
- Title 3 – Environmental quality standards
- Title 4 – Strategic environmental assessment
- Title 5 – Environmental impact assessment
- Title 6 – Environmental audits and environmental management reporting
- Title 7 – Climate change adaptation and mitigation planning and assessment
- Title 8 – Disaster risk reduction and disaster planning and assessment

Commented [MSJ1]: To adequately reflect the below contents that include planning, assessment and monitoring

Book 3 — Environmental management and sustainability mechanisms

- Title 1 – Sustainable cities
- Title 2 – Solid and hazardous substances and wastes control and contaminated land
- Title 3 – Air pollution control and management
- Title 4 – Sustainable Energy
- Title 5 – Climate change adaptation and mitigation management
- Title 6 – Disaster risk reduction and disaster management

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Commented [MSJ2]: This could also be addressed as a cross-cutting theme for Book 4 and Book 5 instead of being an independent title

Book 4 — Conservation and protection of natural resources and ecosystems biodiversity

- Title 1 – Establishment of national conservation landscapes and corridors
- Title 2 – Protected Areas Management
- ~~Title 3 – Wildlife protection, conservation and management~~ Biodiversity Title 3 – Protected Area Management
- ~~management and endangered species protection~~
- Title 4 – Protection of threatened plants, habitats and ecosystems
- ~~Title 3 – Protected Area Management~~
- Title 5 – Collaborative management of conservation landscapes and corridors
- Title 6 – Cultural and natural heritage conservation

Commented [MSJ3]: Depending on the definition of the corridors, th

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Book 5 — Sustainable management of natural resources and ecosystems

- Title 1 – Coastal zone management
- Title 2 – Sustainable extractive industries
- Title 3 – Sustainable tourism and eco-tourism
- Title 4 – Sustainable forestry

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- Title 5 – Sustainable Fisheries (**marine, freshwater, and aquaculture**)
- Title 6 – Sustainable Land management
- Title 7 – Sustainable water management

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Commented [MSJ4]:

Commented [MSJ5]: Suggest: Combining land management with soil management—as they are inter-linked

Commented [MSJ6]: The title should group education and awareness together rather than “education, enforcement and awareness)

- Book 4 – **Education, Awareness, and enforcement**
- Title 1 – Environmental incentives, fees and charges
- Title 2 – Environmental public awareness and environmental education
- Title 3 – Environmental and natural resources study and research
- Title 4 – Investigation, enforcement and access to remedies
- Title 5 – Environmental offences and remedies

BOOK 5 – Transitional Provisions

BOOK 6 – Final Provisions

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- *For comments on the draft Code, please copy and paste selected text into this form and use Track Changes.*
- *If needed, please submit large documents as an attachment.*
- *Please submit all comments in Khmer and English when possible.*

Date of Submission:

August 3rd of 2016

Submitted by (provide individual and STWG contact information):

Maylis Desrousseaux, STWG 2

Maylis.desrousseaux@gmail.com

1. Issue:

Soil protection / Soil management

Soil is generally a forgotten element of environmental law. Where water resource, air or biodiversity benefit from a status of protection, soil issues are split into different branches of the law, regarding different activities.

Therefore, land degradation and land restoration mechanisms are not built according to a standard of environmental quality, but according to the uses planned by different stakeholders.

What we want to address here is the lack of a proper soil status in environmental law.

(Please provide a brief description of the issue that is addressed by the recommendation included in number 4 [“4. Recommendation”] below.).

2. Reference to Code Book and Title (if applicable):

Book 3, Title 17 “Soil protection and management”

Title 4 “Access to environmental information”

3. Comparative Experience (if any):

Sorry I don’t have any example of countries with a similar level of development. However, I can provide European examples if needed.

4. Recommendation:

Prior to the elaboration of a soil regime, the code has to ensure that soil is part of the elements of the environment and that people will have access to the information impacting soils.

Title 4 “access to environmental information”

Considered as information about the environment under the terms of the present chapter is any information available, irrespective of the medium, the subject of which is:

1 The state of environmental elements, notably the air, the atmosphere, the water, the soil, the land, landscapes, natural sites, coastal or marine zones and biological diversity, as well as the interaction between these elements;

2 The decisions, activities and factors, notably substances, energy, noise, radiation, waste, emissions, spills and other waste likely to have effects on the state of the elements described in 1;

3 The state of human health, safety and the living conditions of people, constructions and cultural heritage, providing that they can be altered by environmental elements, the decisions, activities or factors mentioned above;

4 The analyses of costs and advantages as well as the economic hypotheses used in the framework of the decisions and activities described in 2;

5 The reports drawn up by the public authorities or on their behalf on the application of the legislative and regulatory provisions relating to the environment.

Then, soil must be defined.

The title 17 provides a great opportunity to protect soils and could insure that soil issues are taken into consideration by the other tools of the environmental code: Environmental impact assessment for instance. Furthermore, it will include soils in the implementation of Environmental principles: the most important being according to me “information”, “prevention” and “polluter-pays”.

Here I propose the definition given by the proposal for a soil framework directive of the European Union, which is the combined result of working groups (including the IUCN). An approach of soil functions and services seems to be the most appropriate.

Article 1

Subject-matter and scope

This Title establishes a framework for the protection of soil and the preservation of the capacity of soil to perform any of the following environmental, economic, social and cultural functions:

- (a) biomass production, including in agriculture and forestry;
- (b) storing, filtering and transforming nutrients, substances and water;
- (c) biodiversity pool, such as habitats, species and genes;
- (d) physical and cultural environment for humans and human activities;
- (e) source of raw materials;
- (f) acting as carbon pool;
- (g) archive of geological and archeological heritage.

To that end, it lays down measures for the prevention of soil degradation processes, both occurring naturally and caused by a wide range of human activities, which

undermine the capacity of a soil to perform those functions. Such measures include the mitigation of the effects of those processes, and the restoration and remediation of degraded soils to a level of functionality consistent at least with the current and approved future use.

Then we propose a statement of principle:

Article 2¹

Soil is a common heritage, and its protection is in the public interest.

Article 3

Land planning policies must take into account the scarcity of the soil and integrate soil functions and services in order to ensure the appropriate and economic use of the land and its properly ordered settlement.

Article 4²

Obligations to Prevent Hazards

- (1) Any person who is by his action affecting the soil shall act in such a manner that harmful soil changes do not occur.
- (2) The property owner and the occupant of a real property shall be obligated to take measures to prevent harmful soil changes originating from their property.
- (3) The party who caused a harmful soil change or a contaminated site, and his universal successor, as well as the relevant property owner and the occupant of the relevant real property, shall be obligated to remediate the soil and contaminated sites, and any water pollution caused by harmful soil changes or contaminated sites, in such a manner that no hazards, considerable disadvantages or considerable nuisances for individuals or the general public occur in the long term. In cases of burdens from pollutants, in addition to decontamination measures also securing measures are to be taken into consideration, that permanently prevent spread of pollutants. Where such measures are not possible or cannot be reasonably required, other protection and restriction measures shall be carried out. Persons who, for reasons of commercial law or company law, are required to answer for a legal entity that owns a real property that is encumbered with harmful soil changes to the soil or site contamination, and persons who give up ownership of such properties, is also obliged to carry out remediation.
- (4) As part of fulfilment of obligations relative to the soil and to contaminated sites, pursuant to paragraphs (1) through (3), the permissible use of the piece of land under planning law, and the resulting protection requirements, shall be taken into account, as far as this is compatible with the protection of the soil functions. If relevant determinations under planning law are lacking, the nature of the relevant area, taking into account its expected development, shall determine the requirements for protection. The requirements to be fulfilled in connection with rehabilitation of bodies of water shall be determined by law pertaining to water.
- (5) If harmful soil changes or contaminated sites have occurred after (*to be determined*), pollutants shall be eliminated, where this is a reasonable requirement with respect to the previous soil pollution. This shall not apply to a party who, at the time the pollution was

¹ European soil charter

² German soil act protection

caused, expected that such impacts to the soil would not occur because he had fulfilled the applicable legal requirements, and whose good faith is worthy of protection, taking the circumstances of the relevant individual case into account.

(6) The former owner of a real property is obligated to carry out remediation if he has transferred his property after *(to be determined)*, and if he was aware of, or should have been aware of the relevant harmful soil change or site contamination. This shall not apply to a party who, when purchasing the real property, confided that such harmful soil changes or contaminated sites would not be present, and whose confidence is worthy of protection, taking the circumstances of the relevant individual case into account.

5. Proposed Language to be Inserted into the Draft Code (if any):

Cf supra

(Optional. Note: when proposing modifications to existing draft Code text, please extract the relevant text and insert here, in track changes if possible.)

6. Cambodian Laws to be Abrogated or Modified (if any):

(Please include the law title and the titles of specific articles and clauses.)

7. Drafting Team Analysis/Response (to be included in public database):

Submission Form

Recommendations from the STWGs to the Secretariat of the Project to Develop the Environmental Code of Cambodia

Email to: Lim Nalin at Vishnu Law Group: limn@vishnulawgroup.com

- *For comments on the draft Code, please copy and paste selected text into this form and use Track Changes.*
- *If needed, please submit large documents as an attachment.*
- *Please submit all comments in Khmer and English when possible.*

Date of Submission:

10 March 2016

Submitted by (provide individual and STWG contact information):

Steve Wolfson, USEPA

1. Issue:

Environmental Principles.

2. Reference to Code Book and Title (if applicable):

Environmental Principles.

3. Comparative Experience (if any):

4. Recommendation:

Consider including or referencing environmental justice

Consider including or referencing sustainable materials management

Addressing environment and natural resources consistently in principle of access to information

Add discussion of government enforcement and culture of compliance, perhaps in connection with principle 4 (or 7)

Consider including explicit reference to the concept of protection of health with adequate margin of safety, and the need to protect vulnerable sub-populations (beyond women and children), perhaps in connection with principle 14 (or 7 or 18)

Suggest not over-emphasizing role of EIA over other important environmental law and policy tools i.e. not highlighting only that one tool under many principles

A few additional examples to consider including under various principles

A bunch of questions on non-regression and a suggestion that a protection principle be considered

See Attachment.

5. Proposed Language to be Inserted into the Draft Code (if any):

See Attachment.

6. Cambodian Laws to be Abrogated or Modified (if any):

7. Drafting Team Analysis/Response (to be included in public database):

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Draft Principles of the Environmental Code Prepared by Vishnu Law Group

The purpose of the Environmental Code is to promote the sustainable development of Cambodia through the conservation of the environment and sustainable use of natural resources. There are a number of principles of environmental law that are applicable to Sustainable Development law in general. These principles will serve as the general framework and guiding concepts under which the detailed provisions of the Draft Environmental Code of Cambodia are developed in the months ahead.

This document outlines these key environmental law principles that will be used to guide consideration of the various environmental issues that will be addressed in the development of the Environmental Code. This document is complementary to the Zero Draft of the Code.

The document begins with a list of the nineteen draft principles, followed by a summary section, which includes the Statement of Principle for each of the principles.

The document then provides a more detailed explanation of the principles. The section for each principle includes the Statement of Principle, followed by an in-depth assessment of the principle, beginning with the general description.

Following the general description, each of the principles is considered in the international and Cambodian context.

Finally, there is a brief analysis of the potential relevance of the principle to Cambodia and the recommendation for including the principle for the Environmental Code. The specific application of the principles will be an ongoing process in the drafting of the Environmental Code.

The Permanent Secretariat of the Technical Working Group for the preparation of the Draft Environmental Code is seeking comments from the Sub-Technical Working Groups on these draft principles of the Environmental Code.

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Draft Principles of the Environmental Code

These are the proposed principles for the Environmental Code for consideration and comment.

The purpose of the Environmental Code:

1. Principle of Sustainable Development

The Environmental Code is premised on, and should be implemented and interpreted in accordance with, the following fundamental principles of environmental law and policy:

2. Principle of Public Participation
3. Principle of Access to Information
4. Principle of Access to Effective Remedies
5. Precautionary Principle
6. Principle of Intergenerational Equity
7. Prevention Principle
8. Polluter Pays Principle
9. Principle of Environmental Liability
10. Principle of Evidence-Based Decision-Making
11. Principle of Gender Equality for Natural Resources Decisions

Possible # 12. Environmental Justice

The development of the Environmental Code should also be guided by the following relevant principles of environmental law and policy:

12. Principle of Integration
13. Principle of the Public Trust
14. Principle of Public Interest in Protecting the Environment vs. Private Interest
15. User Pays Principle
16. Principle of Free, Prior and Informed Consent for Indigenous Peoples
17. Principle of Free, Prior and Informed Consent for Local Communities
18. Principle of Non-Regression
19. Principle of International Cooperation

Possible # 20. Sustainable materials management

Commented [WS1]: Environmental Justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. . . . It will be achieved when everyone enjoys the same degree of protection from environmental and health hazards and equal access to the decision-making process to have a healthy environment in which to live, learn, and work. <http://www3.epa.gov/environmentaljustice/>. Perhaps this could be considered for addition as a new principle 12 or be folded into another principle such as principle 11.

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Commented [WS2]: Would this principle serve as a disincentive for establishing stringently protective standards in the first place, in that they arguably could not be relaxed if they proved to be untenable in practice?

Commented [WS3]: Communities around the world are reducing pollution by creating more sustainable patterns of consumption, including source reduction, which minimizes the quantity and toxicity of materials that later need to be disposed of. <http://www.epa.gov/smm>. Perhaps this could be considered for addition as a new principle 20 or be folded into another principle such as principle 7.

1. Principle of Sustainable Development

Statement of Principle

Promoting economic outcomes that equitably meet developmental and environmental needs of present and future generations, where environmental protection is an integral part of the development process and cannot be considered in isolation from it.

2. Principle of Public Participation

Statement of Principle

Those who may be affected by a decision shall be entitled to provide informed, timely, and meaningful input prior to the decision being made. They shall also be able influence in a transparent, inclusive, and accountable manner the decision-making process. Participatory decision-making leads to more well-informed decisions, enhances the ability of governments to respond to public concerns and demands, to build consensus, and to improve acceptance of and compliance with environmental decisions because citizens feel ownership over these decisions.

Commented [WS4]: Already captured in "improve acceptance"? Is consensus really the goal?

3. Principle of Access to Information

Statement of Principle

Individuals, legal entities, and civil society shall have appropriate access to information concerning the environment and development that is held by public authorities, including information on hazardous materials and activities in their communities. Information on natural resource management shall be made widely available and publically accessible in a manner that maximizes the opportunity for public participation in decisions affecting the environment and society.

Commented [WS5]: "far-reaching"?

Commented [WS6]: The 2nd sentence, re access to info re natural resources, is not limited to publicly held information. PRTs and other mechanisms can help ensure that pollution sources are required to disclose pollutant releases. (without having to go through government information request procedures).

Alternative combining environment and NR info in one sentence:

Information on natural resource management and on the environment shall be made widely available and publically accessible in a manner that maximizes the opportunity for public participation in decisions affecting the environment and society.

4. Principle of Access to Effective Remedies

Statement of Principle

People, legal organizations, and entities shall have access to appropriate venues, whether administrative or judicial, and to appropriate and effective remedies, to enable the resolution of environmental disputes. Effective and efficient procedures and remedies should exist to enforce procedural rights, and to punish those responsible for environmental harm, and establish an incentive structure that encourages a culture of compliance.

5. Precautionary Principle

Statement of Principle

Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

6. Principle of Intergenerational Equity

Statement of Principle

The right to development, including decisions affecting natural resources and ecosystem services, must be fulfilled so as to equitably meet the developmental, social, and environmental needs of both present and future generations.

7. Prevention Principle

Statement of Principle

Negative impacts to the environment should be stopped before they occur. In applying this principle, action should be taken at an early stage to reduce or prevent environmental damage rather than wait for potentially irreversible effects to occur. The Prevention Principle is based on the idea that it is better (and often more cost-effective) to prevent harm than employ measures to restore the environment after harm has occurred.

8. Polluter Pays Principle

Statement of Principle

Those who cause harm or damage to the environment or human health should bear the cost of mitigation, abatement, or avoidance of the potential harm or damage. In the event that the activity causes actual harm to the environment or human health, it is the polluter who must pay the cost of restoration or rehabilitation and any compensation to people or to the environment as a consequence of the pollution or harm.

9. Principle of Environmental Liability

Statement of Principle

Liability to compensate for environmental harm applies to environmental harm and imminent threat of damage resulting from developmental activities, where it is possible to establish a causal link between the damage and the activity in question. Liability should cover the cost of ecosystem or resource restoration or of replacing the damaged resources, the cost of assessing the damage, and the interim losses pending restoration or replacement. Liability includes personal injury or environmental harm. Liability can be strict liability without the need for proof of fault and can be joint or several.

10. Principle of Evidence-Based Decision-Making

Statement of Principle

Environmental policy and natural resource decision-making should be open and evidence-based, utilizing the best available information. Information can be scientific and technical and can also be gathered from community and indigenous knowledge.

11. Principle of Gender Equality for Natural Resources Decisions

Statement of Principle

The Principle of Gender Equality for Natural Resources Decisions promotes the effective protection of women and youth against discrimination. Specifically, the principle recognizes that women and youth are disproportionately vulnerable to the impacts from environmental degradation and asserts that sustainable development and equitable natural resources management requires the meaningful involvement and active participation of all stakeholders, including women and youth.

12. Principle of Integration

Statement of Principle

Environmental protection and sustainable development objectives must be integrated into the development planning and decision-making process. The principle requires

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integrating environmental protection, economic development, and environmental rights at the conceptual level as well as the implementation stage of policies and laws.

13. Principle of the Public Trust

Statement of Principle

In environmental law the Principle of the Public Trust provides that the government is the trustee of all natural resources, including both economically and ecologically important resources, and these resources must be held on behalf of the people and for the benefit of the people, including current and future generations.

14. Principle of Public Interest in Protecting the Environment vs. Private Interest

Statement of Principle

Priority should be given to public health and environmental protection over economic considerations or private interest. Standards for protection of health should provide an adequate margin of safety for vulnerable sub-populations.

15. User Pays Principle

Statement of Principle

The User Pays Principle states that natural resources, including ecosystem services, have value and the users of natural resources, including ecosystem services, should pay the direct and indirect cost for use of or the impacts from use of these resources and services.

16. Principle of Free, Prior and Informed Consent for Indigenous Peoples

Statement of Principle

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization, or exploitation of mineral, water, or other resources

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17. Principle of Free, Prior and Informed Consent for Local Communities

Statement of Principle

States shall consult and cooperate in good faith with the local communities concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

18. Principle of Non-Regression

Statement of Principle

The Principle of Non-Regression is an emerging environmental principle that states that existing environmental laws must not be modified to the detriment of environmental protection. The principle does not prohibit repealing or amending existing law, so long as the changes do not contravene fundamental environmental policy objectives.

19. Principle of International Cooperation

Statement of Principle

States must notify and consult one another, prior to engaging in any activity or initiative that is likely to cause transboundary environmental impact, so that the state of origin of the potentially dangerous activity may take into consideration the interests of any potentially exposed state and to mitigate potential risks.

1. Principle of Sustainable Development

Statement of Principle

Promoting economic outcomes that equitably meet developmental and environmental needs of present and future generations, where environmental protection is an integral part of the development process and cannot be considered in isolation from it.

General Description

Sustainable Development has emerged as a new paradigm of development, integrating economic growth, social development, and environmental protection as interdependent and mutually supportive elements of long-term development (Del Mel and Sirimanne 2009). The Principle of Sustainable Development includes the concept of the existence of needs, with particular focus on the needs of the poor, and the idea that protecting the environment ~~has limitations in~~ is critical to meeting the needs of present and future generations (WCED 1987; Hohmann 1994).

The principle addresses the need to reconcile issues of development and environmental protection (Louka 2006), recognizing that development requires economic exploitation to satisfy the needs of the growing population while at the same time protecting the environment for future generations (Philippine Judicial Academy 2011). It ensures "that conservation is treated as an integral part of the planning and implementation of development activities" (WCED 1987). According to this principle, there must be optimal management of natural resources, and ~~non-renewable~~ exhaustible natural resources must be used as efficiently as possible (Hohmann 1994). The principle recognizes that the right to development is "universal and inalienable" but "entails, inter alia, the obligation to meet the environmental, as well as social and economic needs of humanity in a just, sustainable and equitable manner" (IUCN Environmental Law Programme 2015).

The Principle of Sustainable Development emphasizes a participatory, multi-stakeholder approach to policy making and implementation, mobilizing public and private resources for development and making use of the knowledge, skills, and energy of all social groups concerned with the future of the planet (UN World Summit on Sustainable Development 2002a). The principle also recognizes that "the eradication of poverty is indispensable for sustainable development" ~~[(IUCN Environmental Law Programme] 2015).~~

There are four key elements of Sustainable Development, as reflected in international agreements, including:

1. Preserving natural resources for the benefit of future generations (Intergenerational Equity),
2. Exploiting natural resources in a manner that is sustainable, prudent, rational, wise, and appropriate (sustainable use),
3. Equitable use of natural resources, and

Commented [WS7]: Should this say "exhaustible natural" rather than "non-renewable"? Even if a resource (e.g. forests) is renewable, it should still be used efficiently (if not protected completely).

Commented [WS8]: Potentially stronger site here might be Rio + 20 outcome doc "The Future We Want"

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4. Ensuring that environmental considerations are integrated into economic and development plans, programs, and projects, and that development needs are taken into account in applying environmental objectives (Integration) (Del Mel and Sirimanne 2009).

The Organisation for Economic Cooperation and Development (OECD) report Policies to Enhance Sustainable Development includes the following important elements of sustainable development policies:

1. Long term planning,
2. Pricing that reflects full costs and benefits,
3. Effective delivery of public goods,
4. Cost-effectiveness,
5. Environmental effectiveness,
6. Policy integration,
7. Precaution,
8. International cooperation, and
9. Transparency and accountability (OECD 2001).

Sustainable Development requires environmental rule of law predicated on:

1. Fair, clear and implementable environmental laws;
2. Public participation in decision-making, and access to justice and information in environmental matters, in accordance with Principle 10 of the Rio Declaration;
3. Accountability and integrity of institutions and decision makers, including through the active engagement of environmental auditing and enforcement;
4. Clear and coordinated mandates and roles, across and within institutions;
5. Accessible, fair, impartial, timely and responsive dispute resolution mechanisms, including developing specialized expertise in environmental adjudication, and innovative environmental procedures and remedies;
6. Recognition of the mutually reinforcing relationship between human rights and the environment; and
7. Specific criteria for the interpretation of environmental law. (UNEP 2015).

The Principle of Sustainable Development incorporates other environmental principles, including the principles of Polluter Pays, Precaution, Prevention, Public Participation, Access to Information, and Access to Effective Remedies (Del Mel and Sirimanne 2009), as well as the principles of Intergenerational Equity, Integration, Environmental Liability, and User Pays.

Application in International and Domestic Law Context

The idea of sustainability emerged in the 1970s, with the UN Stockholm Conference (UN Conference on the Human Environment 1972) being the first major international meeting that considered how human activities were harming the environment (Del Mel and Sirimanne 2009). In 1987, the Brundtland Commission released Our Common Future, which pointed out that while economic development cannot stop, it must change course to fit within the planet's ecological limits (World Commission on Environment

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and Development 1987). 1992 Rio Declaration [put sustainable development at the center and](#) proclaimed that the protection of the environment and social and economic development are fundamental to Sustainable Development (UNCED 1992b). The Rio Conference provided the fundamental principles and the program of action for achieving Sustainable Development (UN World Summit on Sustainable Development 2002b).

Principle 4 of the 1992 Rio Declaration states that “in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it” (UNCED 1992b). In order “to achieve sustainable development and a higher quality of life for all people” the Declaration states in Principle 8 that “states should reduce and eliminate unsustainable patterns of production and consumption” and in Principle 9 that “states should cooperate to strengthen endogenous capacity-building for sustainable development” (UNCED 1992b). Agenda 21 is the 1992 Rio Earth Summit’s international blueprint for socially, economically, and environmentally Sustainable Development, and it outlines the actions that governments, international organizations, industries, and communities can take to achieve the objectives of the alleviation of poverty, hunger, sickness, and illiteracy worldwide while halting the deterioration of ecosystems that sustain life (UNCED 1992c). The 2002 Johannesburg Plan of Implementation of the World Summit on Sustainable Development built on previous achievements to promote the goals for Sustainable Development: economic development, social development, and environmental protection (Del Mel and Sirimanne 2009).

The Principle of Sustainable Development is applied in many countries’ environmental legislation. The Australian Environment Protection Biodiversity Conservation Act 1999 states as one of the act’s objectives: “to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources.” The Indonesian Environmental Protection and Management Law 2009 (Article 3) includes Sustainable Development in the list of goals for environmental protection and management.

Many countries have recognized the principle in environmental law through the courts; for example, in Sri Lanka, the Supreme Court made detailed reference to and relied on the principle in reaching its conclusions in a case relating to natural resources in 2000, stating that “. . . the human development paradigm needs to be placed within the context of our infinite environment, so as to ensure the future sustainability of the mineral resources and the water and soil conservation ecosystems . . .” (Del Mel and Sirimanne 2009).

Application in International Agreements to Which Cambodia is a Party

The Principle of Sustainable Development has been applied in international agreements to which Cambodia is a party, including the ASEAN Charter, the ASEAN Agreement on Transboundary Haze Pollution, the UN Framework Convention on Climate Change, the Convention on Biological Diversity, the Cartagena Protocol on Biosafety to the Convention on Biological Diversity, and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity.

Commented [WS9]: Preamble to the WTO Agreement recognizes central role of sustainable development too, placing it above trade in hierarchy of objectives: “expanding the production of and trade in goods and services, while allowing for the optimal use of the world’s resources in accordance with the objective of sustainable development . . .”

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Application in Cambodian Law

The Principle of Sustainable Development has been applied explicitly or implicitly in Cambodia in existing legislation, including the Constitution of the Kingdom of Cambodia, the Law on Environmental Protection and Natural Resource Management, the Law on Forestry, Law on Nature Protection Areas (Protected Areas Law), the Law on Water Resources Management of the Kingdom of Cambodia, the Sub-Decree on the Establishment of Seima Protection Forest and Biodiversity Conservation Area, Mondulkiri and Kracheh Provinces, the Inter-Ministerial Proclamation on the Strengthening of Economic Land Concessions Management, the Prakas on Establishment of Technical Working Group for Reviewing and Commenting on EIA Report, the Prakas on Registration of Consulting Firm for Studying and Preparing Environmental and Social Impact Assessment Report, the Sub-Decree on Organisation and Functioning of the Ministry of Environment, and the Royal Decree on the Establishment of Community Fisheries, and is also applied in the Draft Law on Environmental Impact Assessment and the Draft Sub-Decree on the Establishment of Prey Lang Forestry Protected and Biodiversity Conservation Area.

Potential Relevance to Cambodia

The Principle of Sustainable Development has both practical application for Cambodia in environmental policy and law and application as a policy-making objective. One important applied tool for Sustainable Development is Environmental Impact Assessment, which is designed to "protect the environment, to conserve ecosystems, ensure appropriate use of natural resources, and promote sustainable development by establishing mechanisms for Environmental Impact Assessments caused by all development projects that may create impacts on the environment, health, society, economy and culture."

Recommendation

The Principle of Sustainable Development is widely accepted internationally as the over-arching framework a fundamental principle of environmental law at the international and domestic level around the world. In addition, the principle is currently applied in international agreements to which Cambodia is a party and is applied explicitly or implicitly in Cambodian domestic law. The principle addresses the need to reconcile issues of development and environmental protection and incorporates many other environmental principles, including the principles of Intergenerational Equity, Precaution, Prevention, Public Participation, Access to Information, Access to Effective Remedies, Integration, Polluter Pays, Environmental Liability, and User Pays. This principle is recommended for inclusion in the Code.

Commented [WS10]: I'd suggest its more than a principle, it's the over-arching framework from which the other more discrete principles flow.

2. Principle of Public Participation

Statement of Principle

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Those who may be affected by a decision shall be entitled to provide informed, timely, and meaningful input prior to the decision being made. They shall also be able influence in a transparent, inclusive, and accountable manner the decision-making process. Participatory decision-making enhances the ability of governments to respond to public concerns and demands, to build consensus, and to improve acceptance of and compliance with environmental decisions because citizens feel ownership over these decisions.

General Description

The Principle of Public Participation is a fundamental part of good environmental governance critical to ensuring quality and legitimacy in environmental assessments and decisions.

The Principle of Public Participation is defined as the opportunity for the community to provide informed, timely, and meaningful input and influence decisions on general policies, strategies, and plans at various levels and on individual projects that have environmental impacts (Dresang and Gosling 1999). Closely related to the principles of Access to Information and Access to Effective Remedies, the Principle of Public Participation is based on the right to hold and express opinions and to seek, receive, and impart ideas (Foti et al. 2008). Public Participation in issues relating to the environment can be considered as a need fundamental to the decision-making process (Foti et al. 2008).

All persons should have the right to participate effectively during decision-making processes at the local, national and international levels regarding activities, measures, plans, programmes and policies that may have a significant effect on the environment (IUCN Environmental Law Programme 2015).

The goal of Public Participation in environmental decision-making is to improve the quality, legitimacy, and capacity of environmental assessments and decisions (Dietz and Stern, eds. 2008). Informed and meaningful Public Participation is a mechanism for integrating citizens' concerns and knowledge into public policy decisions related to the environment (Petkova et al. 2002). Public involvement "is critical to ensure that all relevant information is included, that it is synthesized in a way that addresses parties' concerns, and that those who may be affected by a risk decision are sufficiently well informed and involved to participate meaningfully in the decision" (Stern and Fineberg, eds. 1996). Participatory decision-making enhances the ability of governments to respond to public concerns and demands, to build consensus, and to improve acceptance of and compliance with environmental decisions because citizens feel ownership over these decisions (Foti et al. 2008). Public participation in decision-making can improve the quality of environmental decisions (Petkova et al. 2002).

Public Participation in environmental decision-making requires mechanisms for public input into national sectoral policies, strategies, and plans; mechanisms for public input into sub-national decision-making, especially land-use planning; and mechanisms for public input into project-level decisions (Petkova et al. 2002). For example, most Environmental Impact Assessment laws have provisions for public participation to

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facilitate direct public input into decisions on issues of environment and development (Shelton and Kiss 2005).

In order to be effective, Public Participation should be provided for, designed to be meaningful, and legally enforceable (Shelton and Kiss 2005). The UN Environment Programme (UNEP) has developed Guidelines (Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters) for the development of national legislation on Public Participation in environmental decision-making, including proactively seeking early and effective participation and ensuring public comments are taken into account (Governing Council of the UNEP 2010).

Application in International and Domestic Law Context

As with the principles of Access to Information and Access to Effective Remedies, the origins of the Principle of Public Participation come from the concept of a universal right to access to justice in the 1948 Universal Declaration of Human Rights and the 1966 Covenants on Civil and Political Rights and Economic, Social and Cultural Rights (Pring and Pring 2009). Major recognition of access rights came in 1992 with Principle 10 of the Rio Declaration on Environment and Development (UNCED 1992b).

The Principle of Public Participation is one of three fundamental elements defined by Principle 10 of the Rio Declaration for good environmental governance: transparency (access to information), inclusiveness (public participation), and accountability (access to justice) (UNCED 1992b). Principle 10 specifically states that “environmental issues are best handled with the participation of all concerned citizens” (UNCED 1992b). Agenda 21, the plan of action adopted at the Rio Conference, calls Public Participation “one of the fundamental prerequisites for the achievement of sustainable development” (UNCED 1992c). These rights are embedded in local and national laws, regional and international agreements, and judicial decisions (Pring and Pring 2009).

The first binding treaty completely devoted to access rights, including Public Participation, is the 1998 Aarhus Convention, officially the UN Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters (Pring and Pring 2009). The convention outlines the requirements for public participation in decision-making for activities or projects that may have a significant effect on the environment (UN Economic Commission for Europe 1998). Since this convention, the standards for public access have continued to develop and are widely found in international treaties and national laws and policies (Pring and Pring 2009).

Many countries apply the Principle of Public Participation in environmental decision-making. For example, the Australian Environment Protection Biodiversity Conservation Act 1999 applies the Principle of Public Participation in environmental decision-making in the act’s objective “to promote a co-operative approach to the protection and management of the environment involving governments, the community, land-holders and indigenous peoples.” The Indonesian Environmental Protection and Management Law 2009 (Article 2) includes Public Participation (“participation”) in the list of principles on which environmental protection and management should be executed.

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Many countries apply the Principle of Public Participation in their domestic law through Environmental Impact Assessment; for example, the Philippines' 1978 presidential decree Establishing An Environmental Impact Statement System, Including Other Environmental Management Related Measures and for Other Purposes, Thailand's 1992 Enhancement and Conservation of National Environmental and Quality Act, Sri Lanka's National Environmental Act (passed in 1980, amended in 1988, 2000, and 2005), and Vietnam's 2005 Law on Environmental Protection. The United States applies the Principle of Public Participation to environmental decision-making through the policy of Environmental Impact Assessment (Environmental Impact Statement) under the National Environmental Policy Act (NEPA) [and through rulemaking and permit procedures under the Administrative Procedure Act, Clean Air Act, Clean Water Act, and other laws](#). The policy allows for the public to be informed about and to inform the decision-making process through a prescribed public participation process.

Application in International Agreements to Which Cambodia is a Party

The Principle of Public Participation has been applied in international agreements to which Cambodia is a party, including the ASEAN Charter, the ASEAN Agreement on Transboundary Haze Pollution, the UN Framework Convention on Climate Change, the Stockholm Convention on Persistent Organic Pollutants, the Convention on Biological Diversity, and the Cartagena Protocol on Biosafety to the Convention on Biological Diversity.

Application in Cambodian Law

The Principle of Public Participation has been applied in Cambodia in existing legislation, including the Constitution of the Kingdom of Cambodia, the Law on Environmental Protection and Natural Resource Management, the Law on Forestry, the Law on Nature Protection Areas (Protected Areas Law), the Law on Water Resources Management of the Kingdom of Cambodia, the Sub-Decree on Economic Land Concessions, the Sub-Decree on the Procedures for the Establishment, Classification and Registration of Permanent Forest Estate, the Prakas on General Guidelines for Developing Initial and Full Environmental Impact Assessment Reports, the Sub-Decree on Organisation and Functioning of the Ministry of Environment, and the Sub-Decree on Environmental Impact Assessment Process, and is also applied in the Draft Law on Environmental Impact Assessment.

Potential Relevance to Cambodia

The Principle of Public Participation has the potential for practical application in Cambodia in environmental policy and law. Public Participation is an important and necessary component of the Environmental Impact Assessment, [rulemaking, permit issuance](#), and [other subsequent](#) decision-making processes. Public Participation in environmental decision-making can be prescribed in legislation for this process, as well as for other environmental decision-making.

Recommendation

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The Principle of Public Participation is widely accepted internationally as a fundamental principle of environmental law for effective decision-making on environmental and natural resources management issues. The principle is recognized internationally as one of three fundamental elements for good environmental governance, including Public Participation, Access to Information, and Access to Effective Remedies. The principle is applied in international agreements and in many countries' domestic laws. In addition, the principle is currently applied in international agreements to which Cambodia is a party and in Cambodian domestic law. This principle is recommended for inclusion in the Code.

3. Principle of Access to Information

Statement of Principle

Individuals, legal entities, and civil society shall have appropriate access to information concerning the environment and development that is held by public authorities, including information on hazardous materials and activities in their communities. Information on natural resource management shall be made widely available and publically accessible in a manner that maximizes the opportunity for public participation in decisions affecting the environment and society.

General Description

The Principle of Access to Information is a fundamental right of good environmental governance that proves openness and transparency in environmental decision-making. It empowers and motivates citizens to participate in an informed and meaningful manner. The ability of communities of access information facilitates more transparent, inclusive, and accountable decision-making in matters affecting the environment and development.

The Principle of Access to Information is defined as the ability of citizens to obtain environmental information ~~in the possession of public authorities~~ (Dresang and Gosling 1999) as a prerequisite to effective public participation in environmental decision-making (Shelton and Kiss 2005, IUCN Environmental Law Programme 2015).

Closely related to the principles of Public Participation and Access to Judicial Remedy, the Principle of Access to Information is based on the fundamental human right to hold and express opinions and to seek, receive, and impart ideas (Foti et al. 2008). Informed decisions require early and complete Access to Information to prevent irreversible environmental impacts (Shelton and Kiss 2005).

As a key component of effective environmental decision-making, Access to Information is an important part of the Environmental Impact Assessment process (UNCED 1992b). UN Environment Programme (UNEP) has developed guidelines for the development of national legislation on Access to Information in environmental decision-making, including affordable, effective, and timely access to updated, relevant environmental information about environmental quality, environmental impacts on health, environmental legislation and policy, and imminent threat of harm to human health or

Commented [WS11]: Many countries today afford access to privately held environmental information as well, such as through PRTR systems requiring public disclosure of emissions.

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the environment held by public authorities, with narrowly interpreted grounds for refusal (Governing Council of the UNEP 2010). For example, while legitimate trade secrets such as product formulas or customer lists can be withheld as confidential business information, information on the amount or impact of pollutant releases should be disclosed, even if it may result in negative publicity for the source.

Application in International and Domestic Law Context

As with the principles of Public Participation and Access to Effective Remedies, the origins of the Principle of Access to Information come from the concept of a universal right to access to justice in the 1948 Universal Declaration of Human Rights and the 1966 Covenants on Civil and Political Rights and Economic, Social and Cultural Rights (Pring and Pring 2009). The importance of developing and sharing environmental information through scientific exchange, educational programs, and the media has been recognized at the international level at least since the UN Conference on the Human Environment in 1972 (Petkova et al. 2002). Major recognition of access rights came in 1992 with Principle 10 of the Rio Declaration on Environment and Development (UNCED 1992b). The Principle of Access to Information is one of three fundamental elements defined by Principle 10 of the Rio Declaration for good environmental governance: transparency (access to information), inclusiveness (public participation), and accountability (access to justice) (UNCED 1992b).

The first binding treaty completely devoted to access rights, including Access to Information, is the 1998 Aarhus Convention, officially the UN Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters (Pring and Pring 2009). Since this convention, the standards for public access have continued to develop and are widely found in international treaties and national laws and policies (Pring and Pring 2009).

Access to Information rights are widely found in international environmental treaties; for example, the 1992 Helsinki Convention on the Protection and Use of Transboundary Watercourses and International Lakes, the 1992 Espoo Convention on Environmental Impact Assessment in a Transboundary Context, and the 1992 Paris Convention on the North-East Atlantic (Shelton and Kiss 2005).

Article 23 of the 2012 ASEAN Human Rights Declaration states that “Every person has the right to freedom of opinion and expression, including freedom to hold opinions without interference and to seek, receive and impart information, whether orally, in writing or through any other medium of that person’s choice.”

The right to Access to Information is recognized in many countries either by constitutional provision or by specific freedom of information legislation that covers most information held by public authorities, including environmental information (Shelton and Kiss 2005). In Indonesia, the Public Information Disclosure Act requires that information be published proactively, with different types of information provided periodically, immediately, and at any time, with requests for information allowed by Indonesian citizens or corporations. Also in Indonesia, the Environmental Protection and Management Act requires polluters to provide to communities warning information about environmental pollution or damage. The Act also requires that national and

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regional governments develop and make available an environmental information system. When China enacted a law requiring access to government information in 2008, the Ministry of Environmental Protection was the first agency to issue implementing regulations, highlighting the central role of access to information in environmental governance. In Vietnam, the 2005 Law on Environmental Protection states the right for the public “[t]o be informed and obtain information and data from the government service in matters concerning the enhancement and conservation of environmental quality” for the purpose of “public participation in the enhancement and conservation of national environment quality.” In many countries, laws requiring Environmental Impact Assessment apply the Principle of Access to Information through the Public Participation process in order to gain comment by the public.

The judiciary has applied the principle in many countries, as well, such as, for example, in the 2000 Supreme Court case in Sri Lanka, where the court emphasized the importance of public access to environmental information (Carnwath 2008), in the 1986 High Court of Bombay case in India, where the court upheld the right of social action groups to obtain information, a right to information that the court stated came from the right of free speech and expression guaranteed in the constitution (Shelton and Kiss 2005).

Application in International Agreements to Which Cambodia is a Party

The Principle of Access to Information has been applied in international agreements to which Cambodia is a party, including the ASEAN Charter, the UN Framework Convention on Climate Change, the Stockholm Convention on Persistent Organic Pollutants, the Montreal Protocol on Substances that Deplete the Ozone Layer and Amendments, and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.

Application in Cambodian Law

The Principle of Access to Information has been applied in Cambodia in existing legislation, including the Constitution of the Kingdom of Cambodia, the Law on Environmental Protection and Natural Resource Management, the Law on Forestry, the Law on Nature Protection Areas (Protected Areas Law), the Law on Water Resources Management of the Kingdom of Cambodia, the Sub-Decree on Economic Land Concessions, the Sub-Decree on the Procedures for the Establishment, Classification and Registration of Permanent Forest Estate, the Sub-Decree on the Control of Air Pollution and Noise Disturbance, the Sub-Decree on Social Land Concessions, the Sub-Decree on Water Pollution Control, the Inter-Ministerial Proclamation on the Strengthening of Economic Land Concessions Management, the Prakas on Establishment of Technical Working Group for Reviewing and Commenting on EIA Report, the Sub-Decree on Organisation and Functioning of the Ministry of Environment, and the Prakas on Registration of Consulting Firm for Studying and Preparing Environmental and Social Impact Assessment Report, and is also applied in the Draft Law on Environmental Impact Assessment.

Potential Relevance to Cambodia

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The Principle of Access to Information has the potential for practical application in Cambodia in environmental policy and law. The principle can be applied in legislation on Environmental Impact Assessment to provide for public Access to Information regarding proposed activities and development, as well as in legislation regarding other environmental issues, including, for example, pollution sources that may affect public health.

Recommendation

The Principle of Access to Information is widely accepted internationally as a fundamental principle of environmental law for effective decision-making on environmental and natural resources management issues. The principle is recognized internationally as one of three fundamental elements for good environmental governance, including Public Participation, Access to Information, and Access to Effective Remedies. The principle is applied many international agreements and in numerous countries' constitutional provisions and domestic legislation. In addition, the principle is currently applied in international agreements to which Cambodia is a party and in Cambodian domestic law. This principle is recommended for inclusion in the Code.

4. Principle of Access to Effective Remedies

Statement of Principle

People, legal organizations, and entities shall have access to appropriate venues, whether administrative or judicial, and to appropriate and effective remedies, to enable the resolution of environmental disputes. Effective and efficient procedures and remedies should exist to enforce procedural rights and to punish those responsible for environmental harm.

General Description

The Principle of Access to Effective Remedies is a fundamental right of good environmental governance that protects the rights to Access to Information and Public Participation and allows for the appropriate review of administrative decisions.

Access to Effective Remedies is broadly defined as the ability of citizens to turn to impartial arbiters to resolve disputes over access to information and participation in decisions that affect the environment (Dresang and Gosling 1999). Such impartial arbiters include mediators, administrative courts, and formal courts of law, among others. (Dresang and Gosling 1999). This can be facilitated by the availability of multiple mechanisms for redress, including administrative courts and alternative dispute-resolution mechanisms, in which citizens can seek redress (Petkova et al. 2002). Access to Effective Remedies allows people to hold government agencies, companies, and individuals accountable for environmental decisions (Foti et al. 2008) and also ensures that recourse is available for prompt and adequate compensation or other relief for environmental damage (Shelton and Kiss 2005). The aim is to protect the rights to access to information and participation, questions decisions, and requires competent

Commented [WS12]: I'm not clear on why EIA is emphasized under so many principles rather than a more complete set of environmental law and policy tools that advance the principles, including transparent and protective standards, permits that define legal obligations of pollution sources in detail, robust compliance and enforcement systems, information tools like PRTR, etc. While EIA is a useful tool I would not suggest that it is a tool that obviates the need to develop other tools.

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legal bodies to protect environmental rights and independent and expeditious judicial processes for environmental damage (Ndoye 2013).

Access to Effective Remedies is a key component of effective environmental decision-making (UN Conference on Environment and Development 1992b). The UN Environment Programme (UNEP) has developed guidelines for the development of national legislation on Access to Effective Remedies (access to justice) in environmental decision-making, including access to an affordable and informed review procedure to challenge unreasonably refused requests for environmental information and substantive and procedural legality of decisions, to allow for an effective and timely review of issues relating to implementation and enforcement of laws and decisions, and to provide for timely and effective enforcement of decisions (Governing Council of the UNEP 2010).

Application in International and Domestic Law Context

As with the principles of Public Participation and Access to Information, the origins of the Principle of Access to Effective Remedies come from the concept of a universal right to access to justice in the 1948 Universal Declaration of Human Rights and the 1966 Covenants on Civil and Political Rights and Economic, Social and Cultural Rights (Pring and Pring 2009). Major recognition of access rights came in 1992 with Principle 10 of the Rio Declaration on Environment and Development (UNCED 1992b).

The Principle of Access to Effective Remedies is one of three fundamental elements defined by Principle 10 of the Rio Declaration for good environmental governance: transparency (access to information), inclusiveness (public participation), and accountability (access to justice) (UNCED 1992b). Principle 10 specifically states that “environmental issues are best handled with the participation of all concerned citizens . . . [with] effective access to judicial and administrative proceedings, including redress and remedy” (UNCED 1992b). Agenda 21, the plan of action adopted at the Rio Conference, calls for establishing judicial and administrative procedures for “legal redress and remedy of actions affecting environment and development that may be unlawful or infringe on rights under the law, and should provide access to individuals, groups and organizations with a recognized legal interest” (UNCED 1992c).

The first binding treaty completely devoted to access rights, including Access to Information, is the 1998 Aarhus Convention, officially the UN Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters (Pring and Pring 2009). Since this convention, the standards for public access have continued to develop and are widely found in international treaties and national laws and policies (Pring and Pring 2009).

The enforcement of environmental law in some countries generally lies in the hands of regulatory authorities who have the power to bring criminal actions and impose administrative sanctions (Carnwath 2008). In addition to, or in place of, these methods of environmental law enforcement, in many countries public interest litigation is an important tool for remedying disputes over or violation of environmental law and in promoting environmental protection (Carnwath 2008). Direct or indirect citizen enforcement can help government to expand its limited law enforcement resources to

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detect deviance and to ensure compliance with the law (Carnwath 2008). Citizen suits have played a significant role in the advancement of environmental law in the U.S. In 2014 China enacted a framework Environmental Protection Law which includes a provision authorizing social organizations to bring lawsuits against polluters violating the public interest. In 2010 the Philippines enacted a provision authorizing citizens to bring a writ of *Kalikasan* for protection from serious environmental threats. Alternative remedies, such as expert committees to supervise environmental measures and monitor their performance, have been equally important in many countries (Carnwath 2008).

Commented [WS13]: (AM. No. 09-6-8-SC, Rules of Procedure for Environmental Cases)

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It is also critical for government authorities to have sufficient enforcement authorities to encourage a culture of compliance with environmental requirements. Monitoring, record-keeping, and reporting requirements are critical to the ability of the government to assess whether a source is complying with requirements. Inspection authority is necessary to ensure compliance. Penalties for violations of environmental requirements should be stringent enough to remove the economic benefit a pollution source got by noncompliance. In addition, to encourage sources to act proactively rather than waiting to see if they get caught, there should also be a punitive factor to punishment for violations. Courts should also have the ability to issue injunctions to stop an ongoing harm and to order remediation to fix the problem. (International Network for Environmental Compliance and Enforcement (INECE) Handbook) <http://inece.org/resource/principles/>.

Application in International Agreements to Which Cambodia is a Party

The Principle of Access to Effective Remedies has been applied in international agreements to which Cambodia is a party, including the ASEAN Charter and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity.

Application in Cambodian Law

The Principle of Access to Effective Remedies has been applied in Cambodia in existing legislation, including the Constitution of the Kingdom of Cambodia, the Sub-Decree on Organisation and Functioning of the Ministry of Environment, and the Inter-Ministerial Proclamation on the Strengthening of Economic Land Concessions Management, and is also applied in the Draft Law on Environmental Impact Assessment.

Potential Relevance for Cambodia

The Principle of Access to Effective Remedies ensures that the Environmental Code can be effectively enforced through efficient and cost effective means and has the potential for practical application in Cambodia in environmental policy and law. The principle can be applied in legislation that creates specific review and grievance mechanisms through legal or administrative means and defines who has standing to bring issues for remedy.

Recommendation

The Principle of Access to Effective Remedies is widely accepted internationally as a fundamental principle of environmental law for effective decision-making on environmental and natural resources management issues. The principle is recognized

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internationally as one of three fundamental elements for good environmental governance, including Public Participation, Access to Information, and Access to Effective Remedies. The principle is applied in numerous international agreements. In many countries the principle is applied through domestic legislation, while in others it has been recognized through the courts. In addition, the principle is currently applied in international agreements to which Cambodia is a party and in Cambodian domestic law. This principle is recommended for inclusion in the Code.

5. Precautionary Principle

Statement of Principle

Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

General Description

The Precautionary Principle addresses how environmental decisions are made in the face of scientific uncertainty. The principle mandates that where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing measures to prevent environmental degradation (Del Mel and Sirimanne 2009). In its broader application, the principle can provide that the burden of establishing the absence of environmental harm falls on those engaging in a potentially damaging activity (Shelton and Kiss 2005). The Precautionary Principle imposes a duty to foresee and assess environmental risks, to warn potentially affected people of those risks, and to act in ways that prevent or mitigate such risks (Del Mel and Sirimanne 2009). ~~The purpose of application of the Precautionary Principle is reduction of environmental risks to as great an extent as possible (Veinla, 2010).~~ This focus on avoiding delay and on acting before environmental harm occurs illustrates the principle's emphasis on anticipating and avoiding harm. In this respect, the principle speaks more to when policy measures can be taken and on what basis, than to what type of measures should be taken. (Del Mel and Sirimanne 2009).

Commented [WS14]: As noted below, precaution goes more to when a measure is taken than to the nature or stringency of the measure. i.e. not waiting for all uncertainties to be resolved before acting

Precautionary measures include prohibitions and restrictions, measures for the general reduction of environmental impact, environmental quality limit values, volumetric restrictions on use of the environment, and the requirement to use the best possible technology or equipment (Veinla, 2010). The Precautionary Principle ensures that decision-makers consider all relevant environmental factors, including potential environmental harm, before making decisions. Environmental Impact Assessment for proposed activities is an important tool for applying the Precautionary Principle in environmental decision-making. The principle recognizes that environmental regulators often have to act on the frontiers of scientific knowledge, and that a science-based approach does not preclude action in absence of scientific certainty.

Application in International and Domestic Law Context

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With its roots in German environmental policies in the 1970s [and environmental laws of many countries](#), the Precautionary Principle was first declared internationally by the UN General Assembly in the 1982 World Charter of Nature (Faure and Niessen 2006). This was followed by the first international convention to explicitly refer to the principle, the 1985 Vienna Convention on the Protection of the Ozone Layer (Cameron 2001). Since then, the principle has become intrinsic to international environmental policy, particularly with the adoption of the 1992 Rio Declaration (Freestone and Hey 1996).

Principle 15 of the 1992 Rio Declaration on Environment and Development, which states that “in order to protect the environment, the precautionary approach shall be widely applied” and “where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation” (UNCED 1992b), is the most widely accepted elaboration of the precautionary principle. Principle 15 prohibits using scientific uncertainty as a reason for postponing cost-effective measures to prevent environmental harm (UNCED 1992b).

The Precautionary Principle has been applied in many countries’ domestic environmental law; for example, in France’s Environmental Code, Article L 1001-1, which applies “[t]he principle of precaution . . . [meaning that] the absence of certainty in regard to the current scientific and technical knowledge, should not be used to postpone the adoption of effective and proportionate measures aimed at preventing the risks of serious or irreversible damage to the environment . . .” and in Germany’s Federal Emission Control Act, which states that “precaution is [to be] taken to prevent detrimental environmental effects and other hazards, significant detriments or nuisances . . .” [The “reasonable certainty of no harm” standard in the U.S. Food Quality Protection Act incorporates precaution.](#)

Many countries apply the Precautionary Principle in their domestic law through Environmental Impact Assessment; for example, the Philippines’ 1978 presidential decree Establishing An Environmental Impact Statement System, Including Other Environmental Management Related Measures and for Other Purposes, Thailand’s 1992 Enhancement and Conservation of National Environmental and Quality Act, Sri Lanka’s National Environmental Act (passed in 1980, amended in 1988, 2000, and 2005), and Vietnam’s 2005 Law on Environmental Protection, as well as the European Union Environmental Impact Assessment Directive.

In some countries, the Precautionary Principle has been endorsed through the courts. For example, the Philippines Supreme Court decided in *Leatch v. Natural Parks and Wildlife Service* (1993) that “[w]hile there is no express provision requiring consideration of the ‘Precautionary Principle,’ consideration of the state of knowledge or uncertainty regarding a species, the potential for serious or irreversible harm to an endangered fauna and the adoption of a cautious approach in protection of endangered fauna is clearly consistent with the subject matter, scope and purpose of the Act.” The Indian Supreme Court explained the Precautionary Principle to mean that “[t]he state government and statutory authorities must anticipate, prevent and attack the causes of environmental degradation, [w]here there are threats of serious and irreversible damage, the lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation, and [t]he onus of proof is on the actor

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or the developer to show that his action is environmentally benign” (Del Mel and Sirimanne 2009).

Application in International Agreements to Which Cambodia is a Party

The Precautionary Principle has been applied in international agreement to which Cambodia is a party, including the Stockholm Convention on Persistent Organic Pollutants, the Vienna Convention for the Protection of the Ozone Layer, the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and Their Disposal, the ASEAN Agreement on Transboundary Haze Pollution, the UN Framework Convention on Climate Change, the Convention on Biological Diversity, the Montreal Protocol on Substances that Deplete the Ozone Layer and Amendments, the Cartagena Protocol on Biosafety to the Convention on Biological Diversity, and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

Application in Cambodian Law

The Precautionary Principle has been applied in Cambodia in existing legislation, including the Law on Environmental Protection and Natural Resource Management, the Law on Forestry, the Sub-Decree on Economic Land Concessions, the Sub-Decree on Social Land Concessions, the Inter-Ministerial Proclamation on the Strengthening of Economic Land Concessions Management, the Prakas on General Guidelines for Developing Initial and Full Environmental Impact Assessment Reports, the Sub-Decree on Organisation and Functioning of the Ministry of Environment, and the Sub-Decree on Environmental Impact Assessment Process, and is also applied in the Draft Law on Environmental Impact Assessment.

Potential Relevance to Cambodia

Coupled with other foundation principles, the Precautionary Principle is designed to avoid the potential for harm and damage to the environment. Given the pervasive scientific uncertainty in the environmental arena, the principle provides an incentive for those proposing an activity to generate sufficient scientific information to allow for a thorough assessment of the environmental risks. The principle has the potential for practical application in Cambodia in environmental policy and law. For example, Environmental Impact Assessment is a well-established mechanism for applying the Precautionary Principle.

Recommendation

The Precautionary Principle is widely accepted internationally as a fundamental principle of environmental law and has been applied in many countries’ domestic environmental law, in particular through regulations requiring Environmental Impact Assessment for proposed activities and development and many other environmental laws. In addition, the principle is currently applied in international agreements to which Cambodia is a party and in Cambodian domestic law. This principle is recommended for inclusion in the Code.

Commented [WS15]: You might also include reference to the WTO. International trade litigation has also recognized precaution. In the US Hormones dispute, the WTO Appellate Body noted that Article 5.7 of the WTO Agreement on Sanitary and Phytosanitary Standards, which allows interim measures without a risk assessment when data is insufficient for a risk assessment to be completed, reflects a precautionary approach. The decision also notes that several WTO provisions recognize the right of WTO Members to establish their own levels of protection, which might be more cautious than that provided for by international standards.

6. Principle of Intergenerational Equity

Statement of Principle

The right to development, including decisions affecting natural resources and ecosystem services, must be fulfilled so as to equitably meet the developmental, social, and environmental needs of both present and future generations.

General Description

The Principle of Intergenerational Equity supports the proposition that it is “each generation’s responsibility to leave an inheritance of wealth no less than what they themselves have inherited” (Weiss 1990). While each generation has the right to use and enjoy environmental services and natural resources, the basis of the Principle of Intergenerational Equity is the duty of the current generation to protect natural systems for future generations (Weiss 1992).

The principle encourages equality between generations, neither authorizing the present generation to exploit resources to the exclusion of future generations, nor imposing unreasonable burdens on the present generation to meet indeterminate future needs (Weiss 1992). The principle does not require one generation to predict the values of future generations, but rather gives future generations flexibility to achieve their goals according to their own values (Weiss 1992).

Application of the Principle of Intergenerational Equity in environmental policy assists in overcoming the barriers to long-term environmental decision-making, such as individual behavioral biases, short-term financial incentives, political pressures, and the tendency towards maintaining the status quo (Woods 2011). The principle also provides for decision-makers to think about cumulative environmental impacts (Woods 2011). Decision-makers tasked with natural resource management over the long-term must be able to make independent decisions, unbiased by short-term incentives (Woods 2011).

Application in International and Domestic Law Context

Numerous international declarations and reports recognize the importance of the Principle of Intergenerational Equity for environmental protection and sustainable development. The 1972 Stockholm Declaration’s preamble notes that “to defend and improve the human environment for present and future generations has become an imperative goal of humankind,” while Principle 1 states that “man . . . bears a solemn responsibility to protect and improve the environment for present and future generations,” with Principle 2 requiring the safeguarding of natural resources and ecosystems “for the benefit of present and future generations” (UN Conference on the Human Environment 1972). The 1987 Brundtland Report defines sustainable development at that which “meets the needs of the present without compromising the ability of future generations to meet their own needs” (World Commission on Environment and Development 1987).

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Principle 3 of the 1992 Rio Declaration states that “the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations” (UNCED 1992b).

Many countries apply the Principle of Intergeneration Equity explicitly; for example, the Indonesian Environmental Protection and Management Law 2009 (Article 3) includes Intergenerational Equity (“assuring the fulfilment of justice for the present and future generations”) in the list of goals for environmental protection and management. Many other countries apply the principle implicitly, for example through legislation on Sustainable Development.

The Principle of Intergenerational Equity has been endorsed in many countries through the courts; for example, in the 1994 case before the Philippines Supreme Court that held that future generations could be represented by the current generation in a court case to stop deforestation (*Minors Oposa v. Secretary of the Department of Environment and Natural Resources*).

Application in International Agreements to Which Cambodia is a Party

The Principle of Intergenerational Equity has been applied in international agreements to which Cambodia is a party, including the ASEAN Charter, the UN Framework Convention on Climate Change, and the Convention on Biological Diversity.

Application in Cambodian Law

The Principle of Intergenerational Equity has been applied in Cambodia in draft legislation in the Draft Law on Environmental Impact Assessment.

Potential Relevance to Cambodia

The Principle of Intergenerational Equity has potential for practical application and as a policy-making objective in environmental policy and law in Cambodia. For example, a law that requires restoration of timber harvested areas allows access by future generations to the same resources available to the current generation.

Recommendation

The Principle of Intergenerational Equity is integral to the Principle of Sustainable Development and is widely accepted internationally as a fundamental principle of environmental law. In addition, the principle is currently applied in international agreements to which Cambodia is a party and in draft environmental legislation in Cambodia. This principle is recommended for inclusion in the Code.

7. Prevention Principle

Statement of Principle

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Negative impacts to the environment should be stopped before they occur. In applying this principle, action should be taken at an early stage to reduce or prevent environmental damage rather than wait for potentially irreversible effects to occur. The Prevention Principle is based on the idea that it is better to prevent harm than employ measures to restore the environment after harm has occurred.

General Description

The Prevention Principle is based on the idea that it is better to prevent environmental harm than to repair damage after it has occurred (Philippine Judicial Academy 2011). It is primarily applied when it is not possible to remedy environmental injury once it has occurred, such as the extinction of a species of fauna or flora, erosion, and the dumping of persistent pollutants into the sea (Shelton and Kiss 2005), or when harm is remediable but the cost of rehabilitation is very high (Shelton and Kiss 2005). Application of the Prevention Principle should be taken at an early stage to reduce environmental damage rather than wait for the irreversible effects to occur (Soto 1996). Prevention of environmental harm should have priority over environmental remediation (IUCN Environmental Law Programme 2015).

In contrast to the Polluter Pays Principle, the Prevention Principle applies when damage has not yet occurred, but when it is reasonable to suspect that damage would occur if prevention is not undertaken (Faure and Niessen. 2006). The Precautionary Principle obliges preventive measures even when risks have not yet been established with full scientific certainty (Faure and Niessen. 2006), in contrast to the Preventive Principle, which is applied in cases of a known hazard or significant environmental nuisance (Veinla, 2010).

This also creates the obligation by states to prevent damage to the environment, and to reduce, limit, or control activities that may cause risk or damage to the environment within a state's own territory (Del Mel and Sirimanne 2009). A state may implement the Prevention Principle through regulatory, administrative, or other measures (Del Mel and Sirimanne 2009). These can include licensing or authorizations that define conditions and the consequences for their violation (Shelton and Kiss 2005), including financial penalties and civil liability (Del Mel and Sirimanne 2009), as well as criminal penalties (de Sadeleer 2002).

This principle clearly emphasizes the need to anticipate environmental damage and to act prospectively and cooperatively to avoid or minimize the risk. This reflects that protection of the environment is best achieved by *preventing* environmental harm in the first place rather than relying on remedies or compensation for such harm after it has occurred. Preventing environmental damage is almost always less costly than allowing the damage and incurring the environmental costs and other consequences later. As a guiding principle for international negotiations and national implementation, the prevention principle gives preference to environmental management policies that eliminate and reduce the risk of environmental damage before it occurs. This is consistent with what is sometimes called the 'mitigation hierarchy', prioritizing avoiding pollution or harm to natural resources above minimizing/mitigating damage and restoring or compensating for damage. From both an environmental protection and an economic perspective, prevention is a better strategy.

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Risk assessment involves a cost benefit analysis, to consider the cost to society vs. the cost to government or private industry. General cost benefit analyses can be tricky as environmental protection can be deemed too expensive. But if a model assesses costs from a specific environmental incident, such as an oil spill or other water contamination, the costs of early prevention techniques outweigh the costs of clean-up and containment.

Commented [WS16]: It might be useful to include discussion of sustainable resource management here

A state may implement the Prevention Principle through regulatory, administrative, or other measures (Del Mel and Sirimanne 2009). These can include licensing or authorizations that define conditions and the consequences for their violation (Shelton and Kiss 2005), including financial penalties and civil liability (Del Mel and Sirimanne 2009), as well as criminal penalties (de Sadeleer 2002). States should “identify and evaluate substances, products, technologies, processes and categories of activities that have or are likely to have significant adverse effects on the environment or health. The measures [should] provide for a system of survey, authorisation and registration, as well as procedures for management, substitution or prohibition, as appropriate to prevent harm and redress potential risks” (IUCN Environmental Law Programme 2015).

Application in International and Domestic Law Context

The Prevention Principle is implicitly or explicitly set out by an extensive body of international treaties and related instruments, including the UN Convention on the Law of the Sea (1982), the Basel Convention on the Control of Transboundary Movement of Hazardous Substances (1989), the Environmental Protocol to the 1959 Antarctic Treaty (1991), the Convention on the Protection of the Alps (1991), the Espoo Convention on Environmental Impact Assessment in a Transboundary Context (1991), the Rio Declaration (1992), the UN Framework Convention on Climate Change (1992), the Convention on Biological Diversity (1992), the Helsinki Convention on the Transboundary Effects of Industrial Accidents (1992), the UN Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks (1995), and the UN Convention on Non-navigational Uses of International Watercourses (1997) (Sands 1995).

In order to avoid environmental damage, the principle requires due care or due diligence measures, which can include Environmental Impact Assessment, monitoring, and consultation (Faure and Niessen. 2006). Principle 17 of the 1992 Rio Declaration promotes Environmental Impact Assessment “as a national instrument . . . [to] be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority” (UNCED 1992b) Article 14 of the 1992 Convention on Biodiversity also promotes Environmental Impact Assessments of “proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects (UNCED 1992a).

The primary objective of many countries’ environmental legislation is the prevention of damaging impacts through measures for environmental protection; for example, in Sri Lanka the 1964 Water Resources Board Act, which states the duties of the board, including preventing pollution of rivers, streams and other water courses, and the 2008 Marine Pollution Prevention Act, which provides for the prevention, reduction, and

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control and management of marine pollution (Del Mel and Sirimanne 2009). Other examples include France's Environmental Code, which states in Article L 110-1 "[t]he principle of preventive and curative action, as a priority at source, of damage to the environment and this is by using best available techniques at reasonable costs," and Germany's 1974 Federal Emission Control Act states in Section 5(1) that "an installation which is subject to licensing shall be built and operated in such a way that . . . no detrimental environmental effects or other hazards [or] noticeable adverse effects and nuisance to the public and neighbourhood are caused."

Many countries apply the Prevention Principle in their domestic law through Environmental Impact Assessment; for example, the Philippines' 1978 presidential decree Establishing An Environmental Impact Statement System, Including Other Environmental Management Related Measures and for Other Purposes, Thailand's 1992 Enhancement and Conservation of National Environmental and Quality Act, Sri Lanka's National Environmental Act (passed in 1980, amended in 1988, 2000, and 2005), and Vietnam's 2005 Law on Environmental Protection, as well as the European Union Environmental Impact Assessment Directive.

Application in International Agreements to Which Cambodia is a Party

The Prevention Principle has been applied in international agreements to which Cambodia is a party, including the ASEAN Agreement on Transboundary Haze Pollution, the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and Their Disposal, the Convention on Biodiversity, the Cartagena Protocol on Biosafety to the Convention on Biological Diversity, the Stockholm Convention on Persistent Organic Pollutants, and the UN Framework Convention on Climate Change.

Application in Cambodian Law

The Prevention Principle has been applied in Cambodia in existing legislation, including the Law on Environmental Protection and Natural Resource Management, the Law on Forestry, the Sub-Decree on the Control of Air Pollution and Noise Disturbance, the Sub-Decree on Organisation and Functioning of the Ministry of Environment, and the Sub-Decree on Water Pollution Control, and in draft legislation in the Draft Law on Environmental Impact Assessment.

Potential Relevance to Cambodia

The Prevention Principle has the potential for practical application in Cambodia in environmental policy and law. Many environmental laws are at their core designed to prevent environmental damage. One important tool for implementing the Prevention Principle is Environmental Impact Assessment.

Recommendation

The Prevention Principle has been implicitly or explicitly applied in a large number of international agreements and is the primary objective of many countries' environmental legislation. The principle is applied in many countries in part through domestic regulations requiring Environmental Impact Assessment for proposed

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activities and development. It is a widely accepted fundamental principle of environmental protection law. In addition, the principle is currently applied in international agreements to which Cambodia is a party and in Cambodian domestic law. This principle is recommended for inclusion in the Code.

8. Polluter Pays Principle

Statement of Principle

Those who cause harm or damage to the environment or human health should bear the cost of mitigation, abatement, or avoidance of the potential harm or damage. In the event that the activity causes actual harm to the environment or human health, it is the polluter who must pay the cost of restoration or rehabilitation and any compensation to people or to the environment as a consequence of the pollution or harm.

General Description

The Polluter Pays Principle is the principle according to which the polluter should bear the cost of measures to reduce pollution according to the extent of either the damage done to society or the exceeding of an acceptable level (standard) of pollution. The costs of pollution prevention, control and reduction measures are to be borne, to the fullest extent possible, by the originator (IUCN Environmental Law Programme 2015). In other words, the costs of pollution should be borne by those who cause it (Del Mel and Sirimanne. 2009). The goal of the principle is the internalization of the environmental externalities of economic activities so that the prices of goods and services fully reflect the costs of production (Shelton and Kiss 2005). The aim of the principle is to encourage the incorporation of environmental costs into the decision-making process to promote sustainable development (Faure 2000).

While the Polluter Pays Principle is primarily aimed at avoiding the costs of repairing environmental damage being borne by society as opposed to those who have caused the damage, potentially, due to high costs imposed on the potential polluter from internalizing the externality, the principle also has a deterrent effect, so that it would prevent the repetition of damages from occurring (Faure and Niessen. 2006).

The Polluter Pays Principle covers pollution prevention and control measures, as well as liability and costs for the clean-up of damage to the environment. (OECD 1992) The principle is normally implemented through two different policy approaches: command-and-control and market-based. Command-and-control approaches include performance and technology standards, such as environmental regulations in the production of a given polluting technology. Market-based instruments include taxes, fines, fees, liability and compensation schemes, and tradable permit schemes (Vicha 2011).

The Polluter Pays Principle is a generally recognized principle of international environmental law and is considered a fundamental principle of environmental policy (Munir 2013). It has been widely adopted as part of the internalization of the external costs of pollution and environmental harm.

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Application in International and Domestic Law Context

The Polluter Pays Principle was first formally adopted in 1972 by the OECD (OECD 1972). Since then, the principle has developed into an established legal principle and has been included in numerous international conventions and laws and national legislations world-wide (e.g., 1992 Rio Declaration on Environment and Development, 2009 Treaty on the Functioning of the European Union, 1992 Convention on the Protection of the Marine Environment of the Baltic Sea Area) (Munir 2013).

The 1992 Rio Declaration states in Principle 13 that “states shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage . . . , and shall also cooperate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction” (UNCED 1992b). The Declaration further states in Principle 16 that “national authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of the pollution, with due regard to the public interest and without distorting international trade and investment” (UNCED 1992b).

Many countries apply the Polluter Pays Principle in domestic law. For example, Brazil’s constitution includes the Polluter Pays Principles and its statutory codes provide means for enforcement (Jones et al. 2015). Another example is Indonesia, which applies the Polluter Pays Principle in the 2009 Environmental Protection and Management Act (Law No. 32), implementing the constitutional right to a healthy environment and the Polluter Pays Principle, which is stated to mean that “every personnel in charge of business and/or activities polluting and/or damaging the environment is obliged to bear the cost of environmental restoration.” The statute provides that “[e]verybody shall be obliged to preserve the environmental functions as well as control environmental pollution and/or damage,” and prohibits, among other things, “committing action causing environmental pollution and/or damage.”

The principle has been endorsed through the courts as well, such as, for example, in India where the Supreme Court enforced the Polluter Pays Principle in the 1997 case *M.C. Mehta v Kamal Nath*, requiring payment by a polluter for costs for restoration of environmental damage (Del Mel and Sirimanne 2009).

Application in International Agreements to Which Cambodia is a Party

The Polluter Pays Principle has been applied in international agreements to which Cambodia is a party, including the Stockholm Convention on Persistent Organic Pollutants and the Nagoya – Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety.

Application in Cambodian Law

The Polluter Pays Principle has been applied in Cambodia in existing legislation, including the Law on Environmental Protection and Natural Resource Management, the

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Law on Water Resources Management of the Kingdom of Cambodia, and the Prakas on General Guidelines for Developing Initial and Full Environmental Impact Assessment Reports, and is also applied in the Draft Law on Environmental Impact Assessment for the Kingdom of Cambodia currently in development.

Potential Relevance to Cambodia

The Polluter Pays Principle has the potential for practical application in Cambodia in environmental policy and law. Application of the principle in Cambodia could include regulations setting limits on pollution or other environmental impacts, with fines and liability for violations or damages; requiring Environmental Impact Assessment for all proposed activities and development with avoidance, minimization, and mitigation measures for potential impacts; implementing taxes on polluting industries or services; and mandating liability insurance and payments to an environmental fund for addressing unexpected or other potential impacts.

Recommendation

The Polluter Pays Principle is an established legal principle in environmental law and has been included in numerous international conventions and laws and national legislations world-wide. In addition, the principle is currently applied in international agreements to which Cambodia is a party and in Cambodian domestic law. While the Polluter Pays Principle is closely related to both the User Pays Principle and the Principle of Environmental Liability in that all three principles address direct or indirect costs associated with impacts to or from use of the environment and natural resources, it is an independent and equally important principle because it alone addresses the need for those who cause harm or damage to the environment or human health to bear the cost of mitigation, abatement, or avoidance of the potential harm or damage. This principle is recommended for inclusion in the Code.

9. Principle of Environmental Liability

Statement of Principle

Liability to compensate for environmental harm applies to environmental damage and imminent threat of damage resulting from developmental activities, where it is possible to establish a causal link between the harm and the activity in question. Liability should cover the cost of ecosystem or resource restoration or of replacing the damaged resources, the cost of assessing the damage, and the interim losses pending restoration or replacement. Liability includes personal injury or environmental harm. Liability can be strict liability without the need for proof of fault and can be joint or several.

General Description

The goal of the Principle of Environmental Liability is to ensure that the financial consequences of certain types of harm caused to the environment will be borne by the economic operator who causes this harm. Liability includes direct or indirect costs necessary to prevent or remediate environmental damage.

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Liability provisions often focus on pollution but are equally relevant to other types of environmental harm, such as deforestation, trafficking of protected wildlife, illegal mining and logging, and soil, water, and air contamination from mining and illegal waste disposal (Jones et al. 2015).

Civil and criminal sanctions are generally designed to promote compliance with laws and regulations (Jones et al. 2015). Liability for environmental harm is designed to compensate affected parties, with a particular focus on restoring or replacing injured resources and/or providing compensation for lost value (Jones et al. 2015). Liability provisions can serve not only as a deterrent, through increasing costs for those who harm the environment, but can also serve to fill the gaps in environmental law by covering activities that result in environmental harm but that are not specifically identified as illegal (Jones et al. 2015). Because a state is the trustee for the environment and natural resources under the Principle of the Public Trust, it is critical to protecting a country's natural heritage that the state establish authority to collect damages (Jones et al. 2015).

Five key features of environmental liability statutes (Jones et al. 2015):

1. What scope of resources and classes of injuries are covered?
2. What liability standard applies (joint or several)?
3. Who has standing to bring claims for damages?
4. What is the measure of damages for environmental harm?
5. Is there a mandate that recovered funds are to be spent on restoration?

Application in International and Domestic Law Context

The 1992 Rio Declaration states in Principle 13 that "states shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage . . . , and shall also cooperate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction" (UNCED 1992b).

International agreements applying the Principle of Environmental Liability include the International Convention of 27 November 1992 on Civil Liability for Oil Pollution Damage; the International Convention of 27 November 1992 on the Establishment of an International Fund for Compensation for Oil Pollution Damage; the International Convention of 23 March 2001 on Civil Liability for Bunker Oil Pollution Damage; and the International Convention of 3 May 1996 on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea.

Environmental Liability has strong roots in early US environmental law, which possesses well-articulated, longstanding statutes and guidelines on liability provisions that have heavily influenced legislation globally (Jones et al 2015). US environmental liability legislation, which grants public trustees authority to recover damages, is generally circumscribed, covering specific actions and specific resources, with strict, retroactive, joint, and several liability for costs including restoration plus interim loss

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(Jones et al. 2015). One set of US statutes include the Comprehensive Emergency Response, Compensation, and Liability Act (CERCLA) and the Oil Pollution Act (OPA).

The European Union and member states apply the Principle of Environmental Liability through the Environmental Liability Directive (ELD). The purpose of the ELD is to establish a framework of environmental liability, based on the "polluter-pays" principle, to prevent and remedy environmental damage. The ELD requires operators of certain occupational activities to take preventive measures in case of an imminent threat to the environment. If damage has already occurred, they are obliged to take the appropriate measures to remedy it and pay for the costs.

Mexico's constitution endorses the Principle of Environmental Liability and the Federal Environmental Liability Act (2013) governs Environmental Liability for public and private owned resources, requiring those causing environmental harm to restore damaged environments to their baseline or pay for damages when restoration is not possible (Jones et al. 2015).

Indonesia applies the Principle of Environmental Liability in the 2009 Environmental Protection and Management Act (Law No. 32), which establishes liability for harm to natural resources, not limited to specific types of resources or types of injuries, with actionable damages defined as human actions that "directly or indirectly" change the "physical, chemical and/or biological characteristics of the environment so as to exceed the standard criteria for [pollution and/or] environmental destruction" (Jones et al 2015).

Brazil's National Environmental Policy Act of 1981 establishes civil and criminal liability for environmental harm as well as strict liability "to compensate or provide reparations for damage caused to the environment or to third parties, affected by his or her activity", with courts acknowledging strict liability for environmental harms, broadly interpreting causation, and applying joint and several liability (Jones et al. 2015).

Application in International Agreements to Which Cambodia is a Party

The Principle of Environmental Liability has been applied in international agreements to which Cambodia is a party, including the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, the Convention on Biodiversity, and the Nagoya - Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety.

Application in Cambodian Law

The Principle of Environmental Liability has been applied in Cambodia in existing legislation, including the Law on Environmental Protection and Natural Resource Management, the Law on Forestry, the Law on Nature Protection Areas (Protected Areas Law), and the Prakas on General Guidelines for Developing Initial and Full Environmental Impact Assessment Reports, and is also applied in the Draft Law on Environmental Impact Assessment.

Potential Relevance to Cambodia

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The Principle of Environmental Liability has the potential for practical application in Cambodia in environmental policy and law. Legislation specifying the types of damages and types of liability that are applicable, and the definition of who has standing to bring suit.

Recommendation

The Principle of Environmental Liability is widely accepted internationally as a fundamental principle of environmental law and is applied by numerous international agreements and by many countries in their domestic environmental protection legislation. In addition, the principle is currently applied in international agreements to which Cambodia is a party and in Cambodian domestic law. While the Principle of Environmental Liability is closely related to both the Polluter Pays Principle and the User Pays Principle in that all three principles address direct or indirect costs associated with impacts to or from use of the environment and natural resources, it is an independent and equally important principle because it alone addresses the need for compensation for environmental harm that covers the cost of ecosystem or resource restoration or of replacing the damaged resources, the cost of assessing the damage, and the interim losses pending restoration or replacement. This principle is recommended for inclusion in the Code.

10. Principle of Evidence-Based Decision-Making

Statement of Principle

Environmental policy and natural resource decision-making should be open and evidence-based, utilizing the best available information. Information can be scientific and technical and can also be gathered from community and indigenous knowledge.

General Description

Science can provide a clear understanding of the basic dimensions of environmental problems, identifying both what is known and what is uncertain, it can describe and identify options for the appropriate solution of those problems, some of which might not be considered by political decision makers, and it can contribute to the resolution of environmental problems by estimating the economic, social, environmental, and political consequences of proposed solutions through time and space, and across population groups (Levien 1979).

The principle refers to the issuing of decisions based on clear deciding-criteria, with technical analysis of multi-source evidence. Vulnerabilities of sensitive sub-populations should be taken into account. Additionally the principle recognizes that local knowledge and indigenous knowledge that is based on a close understanding of the local environment and resources can be relevant to good decision-making.

Application in International and Domestic Law Context

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The principle is originally outlined in international environmental policy in Principle 18 of the 1972 Stockholm Declaration, which states that “science and technology, as part of their contribution to economic and social development, must be applied to the identification, avoidance and control of environmental risks and the solution of environmental problems and for the common good of mankind” (UN Conference on the Human Environment 1972).

Principle 9 of the 1992 Rio Declaration states that “states should cooperate to strengthen endogenous capacity-building for sustainable development by improving scientific understanding through exchanges of scientific and technological knowledge, and by enhancing the development, adaptation, diffusion and transfer of technologies, including new and innovative technologies” (UNCED 1992b).

Application in International Agreements to Which Cambodia is a Party

The Principle of Evidence-Based Decision-Making has been applied in international agreements to which Cambodia is a party, including the UN Framework Convention on Climate Change, the Vienna Convention for the Protection of the Ozone Layer, the Stockholm Convention on Persistent Organic Pollutants, the Convention on Biological Diversity, the Montreal Protocol on Substances that Deplete the Ozone Layer and Amendments, and the Cartagena Protocol on Biosafety to the Convention on Biological Diversity.

Application in Cambodian Law

The Principle of Evidence-Based Decision-Making has been applied in Cambodia in existing legislation, including the Law on Environmental Protection and Natural Resource Management, the Law on Forestry, the Law on Nature Protection Areas (Protected Areas Law), and the Royal Decree on the Protection of Natural Areas.

Potential Relevance to Cambodia

The Principle of Evidence-Based Decision-Making has both practical application for Cambodia in environmental policy and law and application as a policy-making objective. The principle supports decision-making that will promote good environmental governance and improve the integrity of decision-making that impacts on natural resource management.

Recommendation

The Principle of Evidence-Based Decision-Making is recognized internationally as critical for effective decision-making on environmental and natural resources management issues. In addition, the principle is currently applied in international agreements to which Cambodia is a party and in Cambodian domestic law. This principle is recommended for inclusion in the Code.

11. Principle of Gender Equality for Natural Resources Decisions

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Statement of Principle

The Principle of Gender Equality for Natural Resources Decisions promotes the effective protection of women and youth against discrimination. Specifically, the principle recognizes that women and youth are disproportionately vulnerable to the impacts from environmental degradation and asserts that sustainable development and equitable natural resources management requires the meaningful involvement and active participation of all stakeholders, including women and youth.

General Description

The Principle of Gender Equality for Natural Resources Decisions promotes the protection of women and youth against discrimination. The Convention on the Elimination of All Forms of Discrimination against Women defines discrimination against women as "... any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field" (United Nations 1979).

The principle also recognizes that women and youth are disproportionately vulnerable to the impacts from environmental degradation and maintains that sustainable development and equitable natural resources management requires the meaningful involvement and active participation of all stakeholders, including women and youth. The principle acknowledges that women have a vital role in environmental management and development, and their full and effective participation in environmental policy formulation and decision-making is essential for achieving sustainable development. Despite this, women have been under-represented in all levels of policy- and decision-making in environmental management, conservation, protection, and rehabilitation. Ending gender-based discrimination and ensuring equal access for women and youth to resources requires women's equal participation in natural resources management and their active involvement in economic and political decision-making.

The 1985 UN report Nairobi Forward-looking Strategies for the Advancement of Women (Paragraph 226) identifies the need to "increase the self-help potential of women in conserving and improving their environment" and the need for strengthening "national and international emphasis on ecosystem management and the control of environmental degradation" and recognizing women "as active and equal participants in this process" (United Nations 1985). The report further notes (Paragraph 293) that "national and international emphasis on ecosystem management should be strengthened, environmental degradation should be controlled and options provided for alternative means of livelihood," recognizing that "measures should be established to draw up national conservation strategies aimed at incorporating women's development programmes" (United Nations 1985).

Application in International and Domestic Law Context

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Signatories of the Convention on the Elimination of All Forms of Discrimination against Women agree to undertake measures to end discrimination against women, including incorporating the principle of equality of men and women in their legal system, abolishing all discriminatory laws and adopting appropriate laws prohibiting discrimination against women; establishing tribunals and other public institutions to ensure the effective protection of women against discrimination; and ensuring elimination of all acts of discrimination against women by persons, organizations or enterprises (United Nations 1979).

Gender was first recognized in international environmental law at the 1992 Earth Summit (UNDP 2013). The 1992 Convention on Biodiversity identifies “the vital role that women play in the conservation and sustainable use of biological diversity” and “the need for the full participation of women at all levels of policy-making and implementation for biological diversity” (UNCED 1992a). The 1992 Rio Declaration (Principle 20) recognizes that “women have a vital role in environmental management and development . . . [and t]heir full participation is therefore essential to achieve sustainable development” (UNCED 1992b). Agenda 21 (Chapter 24 Global Action for Women Towards Sustainable and Equitable Development) further recognizes that “effective implementation” of the goals of Agenda 21 as well as other programs – including the Plan of Action for implementing the 1990 World Declaration on the Survival, Protection and Development of Children – to “end gender-based discrimination and ensure women access to land and other resources” require “women's participation in national and international ecosystem management and control of environment degradation” and “the active involvement of women in economic and political decision-making” (UNCED 1992c).

The Beijing Declaration and Platform for Action from the 1995 Fourth World Conference on Women recognizes that “women have an essential role to play in the development of sustainable and ecologically sound consumption and production patterns and approaches to natural resource management” and that “sustainable development will be an elusive goal unless women's contribution to environmental management is recognized and supported” (UN Fourth World Conference on Women 1995). The declaration further notes that while the “actions needed for sound environmental management require a holistic, multidisciplinary and intersectoral approach,” including “women's participation and leadership,” women have been “largely absent at all levels of policy formulation and decision-making in natural resource and environmental management, conservation, protection and rehabilitation” (UN Fourth World Conference on Women 1995). The declaration went on to state that “in addressing the lack of adequate recognition and support for women's contribution to conservation and management of natural resources and safeguarding the environment, governments and other actors should promote an active and visible policy of mainstreaming a gender perspective in all policies and programmes, including, as appropriate, an analysis of the effects on women and men, respectively, before decisions are taken” (UN Fourth World Conference on Women 1995).

The Plan of Action from the 2002 UN World Summit on Sustainable Development recognizes the importance of gender equality in successful implementation of strategies for sustainable development and acknowledged that youth, women and indigenous and

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local communities play a specific role in conserving and using biodiversity in a sustainable way (UN World Summit on Sustainable Development 2002).

Convention on Biological Diversity adopted the Gender Plan of Action in 2008, and in 2010, the CBD Secretariat developed technical Guidelines for Mainstreaming Gender into National Biodiversity Strategies and Action Plans (Secretariat of the Convention on Biological Diversity 2010).

The 2009 UN Framework Convention on Climate Change Conference of Parties (COP15) recognized that “the effects of climate change will be felt more acutely by those parts of the population that are already vulnerable owing to youth, gender, age or disability” and acknowledged the need for “gender equality and the effective participation of women” (UN Framework Convention on Climate Change 2009).

In 2011, the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity recognized “the vital roles that women play in access and benefit-sharing” and affirmed “the need for the full participation of women at all levels of policy-making” (Secretariat of the Convention on Biological Diversity 2011).

The outcome document of the UN Conference on Sustainable Development in 2012 (Rio+20) The Future We Want affirms that “gender equality and women’s empowerment are important for sustainable development” and “sustainable development requires the meaningful involvement and active participation of . . . all major groups” including “women, children and youth” (UN Conference on Sustainable Development 2012). Further, the document acknowledged the need for women’s “full and effective participation in sustainable development policies, programmes and decision-making at all levels” (UN Conference on Sustainable Development 2012).

Many countries address gender equality in their constitutions, such as, for example, the constitutions of Tunisia, Zimbabwe, Cuba, and Turkey, and Ireland, and legislation, such as, for example, the EU Gender Equality Law (updated 2013), the 2010 UK Equality Act, the 2012 Australia Workplace Gender Equality Act, the 2006 Vietnam Law on Gender Equality, the 2015 Thailand Gender Equality Act, and the Canadian Charter of Rights and Freedoms (updated 1985 for equality rights).

Application in International Agreements to Which Cambodia is a Party

The Principle of Gender Equality in Natural Resources Decisions has been applied in international agreements to which Cambodia is a party, including the Stockholm Convention on Persistent Organic Pollutants, the Convention on Biological Diversity, the Convention on the Elimination of All Forms of Discrimination against Women, and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity.

Application in Cambodian Law

The Principle of Gender Equality in Natural Resources Decisions has been applied in Cambodia in existing legislation, including the Constitution of the Kingdom of Cambodia

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(although not specifically addressing natural resources decisions), and is also applied in the Draft law on Environmental Assessment.

Potential Relevance to Cambodia

The Principle of Gender Equality in Natural Resources Decisions has the potential for practical application in Cambodia in environmental policy and law. Legislation and policy can be developed that both promotes and requires gender equality in environmental decision-making.

Recommendation

The Principle of Gender Equality in Natural Resources Decisions – the meaningful involvement and active participation of women – is recognized internationally as critical for Sustainable Development. While many countries address gender equality more broadly in their constitutions or domestic law and Public Participation in general in their domestic environmental law, effective decision-making on environmental and natural resources management issues requires the full and effective participation of women in Sustainable Development policies, programmes, and decision-making at all levels. The principle is currently applied in draft environmental legislation in Cambodia. This principle is recommended for inclusion in the Code.

12. Principle of Integration

Statement of Principle

Environmental protection and sustainable development objectives must be integrated into the development planning and decision-making process. The principle requires integrating environmental protection, economic development, and environmental rights at the conceptual level as well as the implementation stage of policies and laws.

General Description

With the aid of the Principle of Integration, environmental considerations are being introduced to almost all areas of human activity (Veinla 2010). Also called ecological modernization, proceeding from the idea that economic and social development must not and need not be the reason for environmental harm and may under certain conditions instead entail an improvement of the quality of the environment, the Principle of Integration requires that high-quality environmental protection be ensured through incorporation of environmental requirements into the determination of the development of all areas of life and legal regulation (Veinla 2010). States should “pursue integrated policies aimed at eradicating poverty, encouraging sustainable consumption and production patterns, and conserving biological diversity and the natural resource base as overarching objectives of, and essential requirements for, sustainable development” and “at all stages and at all levels, integrate environmental conservation into the planning and implementation of their policies and activities giving full and

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equal consideration to environmental, economic, social and cultural factors” (IUCN Environmental Law Programme 2015).

Application in International and Domestic Law Context

The principle goes as far back as the 1972 Stockholm Declaration, which states “In order to achieve a more rational management of resources and thus to improve the environment, States should adopt an integrated and coordinated approach to their development planning so as to ensure that development is compatible with the need to protect and improve environment for the benefit of their population” (UN Conference on the Human Environment 1972). Since then, the Principle of Integration has been included in numerous international environmental laws, policies, and reports, including the 1987 Brundtland report, which lists several strategic imperatives necessary for achieving sustainable development, including “merging environment and economics in decision making” (World Commission on Environment and Development 1987). The report expands on the explanation of the principle by stating that “environmental protection and sustainable development must be an integral part of the mandates of all agencies of governments, of international organizations, and of major private sector institutions” and that “States shall ensure that conservation is treated as an integral part of the planning and implementation of development activities” (World Commission on Environment and Development 1987).

Principle 4 of the 1992 Rio Declaration, states that “in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it” (UNCED 1992b). The 2002 Johannesburg Implementation Plan further developed the principle in sustainable development policy (UN World Summit on Sustainable Development. 2002), and the report *The Future We Want* (Rio+20), reconfirms the necessity of the principle, acknowledging “the need to further mainstream sustainable development at all levels, integrating economic, social and environmental aspects and recognizing their interlinkages, so as to achieve sustainable development in all its dimensions (UN Conference on Sustainable Development 2012)

The European Union applies the Principle of Integration in the Treaty on the Functioning of the European Union, which specifies in Article 11 that “environmental protection requirements must be integrated into the definition and implementation of . . . policies and activities, particularly with a view to promoting sustainable development” (European Union 2007). This means that there is no area of life affecting the environment in which environmental requirements should not be taken into consideration (Veinla 2010).

The Indonesian Environmental Protection and Management Law 2009 (Article 2) includes (the Principle of) Integration in the list of principles on which environmental protection and management should be executed.

Application in International Agreements to Which Cambodia is a Party

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The principle has been applied in international agreements to which Cambodia is a party, including the UN Framework Convention on Climate Change and the Convention on Biological Diversity.

Application in Cambodian Law

The Principle of Integration has had no explicit practical application in Cambodian legislation or policy to date.

Potential Relevance to Cambodia

The Principle of Integration has application for Cambodia as an objective to frame policy. The principle requires integrating environmental protection, economic development, and human rights at the conceptual level of policies and laws and at the implementation stage of these policies and laws. The Environmental Code will embody this principle to ensure that environmental protection and Sustainable Development objectives are fully integrated into natural resources planning. Although current law incorporates the principles of rational and sustainable use into natural resources planning, the Environmental Code will update and modernise this approach.

Recommendation

The Principle of Integration is recognized internationally in numerous international and domestic environmental laws and policies as necessary for achieving Sustainable Development and is a fundamental principle of environmental law. In addition, the principle is currently applied in international agreements to which Cambodia is a party. This principle is recommended for inclusion in the Code.

13. Principle of the Public Trust

Statement of Principle

In environmental law the Principle of the Public Trust provides that the government is the trustee of all natural resources, including both economically and ecologically important resources, and these resources must be held on behalf of the people and for the benefit of the people, including current and future generations.

General Description

In Common Law, a trust is “the legal relationship between one person having an equitable ownership in property and another person owning the legal title to such property” (Bento 2010). Public trust considers that certain things, such as natural resources and the exercise of public power, are held by governments in trust for citizens and must be used for public benefit (Shelton and Kiss 2005). Under the Principle of the Public Trust, as trustee the state has a duty of stewardship of the public’s environmental capital, and natural resources must be held in trust for the benefit and use of the general public (Kameri-Mbote 2007).

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While the Public Trust Doctrine has historically protected public use such as navigation and commerce, it has been extended as a principle in environmental law to protect ecologically important resources as well (Shelton and Kiss 2005). In this wider environmental sense, the doctrine also expresses the idea that the present generation holds natural resources in trust for future generations (Del Mel and Sirimanne 2009).

Application in International and Domestic Law Context

The origins of the Principle of the Public Trust date to the Justinian code of sixth century Rome, where the doctrine of *res communes* stated that resources such as the air, running water, and the sea and its shores were “common to mankind” and the state held title to these resources in trust for the people (Sax 1970). The principle was revived in medieval England and then became entrenched in American law in the nineteenth century through the process of statehood (Blumm and Wood 2013). In the twentieth century, the Public Trust Doctrine was identified for its ability to recognize public rights in private property and has gained widespread attention as a principle of environmental law for its potential to force government protection of environmental resources (Blumm and Wood 2013) and the courts in the United States have used it widely (Del Mel and Sirimanne 2009).

In addition countries such as India, the Philippines, Mexico, and Uganda have all adopted the Principle of the Public Trust into either the Constitution or the law. It can cover all manner of areas. In Uganda, it is comprehensive, as it is based on a broad constitutional provision referring to navigable waters, surface waters, public lands, including forests, wildlife, plants and mineral resources. In addition to protecting the traditional purposes, it also extends to protection of ecological, recreational, religious and medicinal use of natural resources.

Since the principle is based on the idea that the public resources ultimately belong to the people, the public has used it (in India and the Philippines) to enforce environmental protection in accordance with the changing expectations of the people. Furthermore, in some countries the principle not only involves a requirement for sustainable management and conservation of natural resources, but also intergenerational equitable distribution.

Many countries have established the Principle of the Public Trust through the courts; for example, the Indian Supreme Court expressly recognized the applicability of the Public Trust Doctrine to natural resources in 1997 (Del Mel and Sirimanne 2009). The United States (for the most part) has not created private ownership rights to the atmosphere, oceans, estuaries, rivers, and plant and animal species, but rather has designated them as public trust resources, and has established a system of public management to promote beneficial uses of the resources at no (or limited) charge to the public (Jones et al. 2015).

Application in International Agreements to Which Cambodia is a Party

The principle has not been explicitly applied in international agreements to which Cambodia is a party.

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Application in Cambodian Law

The Principle of the Public Trust has been applied in Cambodia in existing legislation, including the Sub-Decree on Organisation and Functioning of the Ministry of Environment. In addition, the concept is implicit in the Constitution of the Kingdom of Cambodia in the concept of public or state property. Article 58 states that “state property notably comprises land, mineral resources, mountains, sea, underwater, continental shelf, coastline, airspace, islands, rivers, canals, streams, lakes, forests, natural resources, economic and cultural centers, bases for national defense and other facilities determined as State property.”

Potential Relevance to Cambodia

The Principle of the Public Trust has practical application for Cambodia in environmental policy and law and application as an objective to frame policy development. The principle is the basis for which the government acts as the trustee in protecting the environment for the public.

Recommendation

The Principle of the Public Trust has been applied to certain natural resources since the sixth century, and as a principle of environmental law, it has been expanded more recently to include ecologically important resources. The principle is applied in many countries’ domestic environmental law, requiring governments to act as steward of the countries’ environmental capital on behalf of the public and to hold natural resources in trust for the benefit and use of the public. In addition, the principle is currently applied in implicitly in Cambodia’s Constitution and in domestic environmental law. By ensuring the protection of the environment and natural resources for the benefit of the public, the principle is integral to successful protection and sustainable use of natural resources. This principle is recommended for inclusion in the Code.

14. Principle of Public Interest in Protecting the Environment vs. Private Interest

Statement of Principle

Priority should be given to public health and environmental protection over economic considerations or private interest.

General Description

The Principle of Public Interest in Protecting the Environment vs. Private Interest is closely related is the *Principle of High-Level and Comprehensive Protection of the Environment*, which states that the measures for protecting people and the environment must provide effective protection against environmental damage, and the automatic favouring of economic considerations over the necessity of protecting the environment and human health and well-being is not permissible (Veinla 2010). The principle further states that comprehensive environmental protection must be ensured and must take

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into consideration the possibility of environmental impact carrying over from one element of the environment to another (Veinla 2010).

Application in International and Domestic Law Context

The Treaty of the European Union includes among the main objectives of EU law the goal of achieving “a high level of protection and improvement of the quality of the environment” (European Union 2007). The European Court of Justice further notes that one of the most important indicators of a high level of environmental protection is effective protection of the fundamental rights of those who depend on the environment (Veinla 2010).

Application in International Agreements to Which Cambodia is a Party

The Principle of the Public Interest in Protecting the Environment vs. Private Interest has not been explicitly applied in international agreements to which Cambodia is a party.

Application in Cambodian Law

The Principle of the Public Interest in Protecting the Environment vs. Private Interest has had no explicit practical application in Cambodian legislation or policy to date.

Potential Relevance to Cambodia

The Principle of the Public Interest in Protecting the Environment vs. Private Interest has application for Cambodia as an objective to frame environmental legislation and to incorporate into policy development.

Recommendation

The Principle of Public Interest in Protecting the Environment vs. Private Interest gives priority in environmental and natural resources decision-making to public health and environmental protection over economic considerations or private interest and is a key aspect of Sustainable Development. This principle has been applied internationally, including by the European Union as a key indicator of one of the primary objectives of EU law, which is a high level of environmental protection. This principle is recommended for inclusion in the Code.

15. User Pays Principle

Statement of Principle

The User Pays Principle states that natural resources, including ecosystem services, have value and the users of natural resources, including ecosystem services, should pay the direct and indirect cost for use of or the impacts from use of these resources and services.

General Description

The User Pays Principle, which is a variation of the Polluter Pays Principle, calls upon the user of a natural resource to bear the cost of running down natural capital. The User Pays Principle states that all resource users should pay for the full long-term marginal social and environmental cost of the use of a resource (Dommen 1993). In other words, authorized users should pay for the privilege granted to them to use a public resource. The User Pays Principle attributes a price to the consumption of natural resources (de Sadleir 2002). The user of a public facility, or consumer of a public good, pays for the environmental good or service or the damages that may arise from that use (OECD 1995). As with the Polluter Pays Principle, the User Pays Principle is part of the overall internalisation of environmental costs, which involves consumers paying directly for use of environmental assets as well as having producer costs passed through to product prices (OECD 1995). The main difference between the two principles is that the User Pays Principle applies to resources and their users, while the Polluter Pays Principle applies to discharges of pollution or environmental damage (de Sadleir 2002).

The principle can be implemented through payments for licences or quotas or through taxes. Theoretically, a user fee equivalent to the total use value would be charged for use of an environmental resource (OECD 1995). Anyone who benefits directly or indirectly from the environment would pay a cost related to the level of the benefit received (OECD 1995). In the case of inexhaustible environmental goods such as habitat areas, game parks and forests, users might be encouraged to pay for the existence of the resource (OECD 1995). Similarly, the consumption of exhaustible resources might be regulated on a user pays basis (OECD 1995).

The principle can also be implemented through Payments for Ecosystem (Environmental) Services. Ecosystems provide society with a wide range of services, from reliable flows of clean water to productive soil and carbon sequestration (UNEP 2008). Ecosystem services have quantifiable economic value (UNEP 2008). Many of these services have either been undervalued or have had no financial value at all because natural resource management decisions have been focused on immediate financial returns (UNEP 2008). However, this value can be used to encourage sustainable use of natural resources and to counteract the current trend of environmental services being degraded faster than they can recover (UNEP 2008). Payments for Ecosystem Services schemes allow for beneficiaries to contribute their share to restoring and maintaining ecosystem services (UNEP 2008). These schemes provide a new source of income for land management, restoration, conservation, and sustainable-use activities, and by this have significant potential to promote sustainable ecosystem management (UNEP 2008).

Application in International and Domestic Law Context

The User Pays Principle is applied in numerous international agreements and in many countries' domestic laws; for example, the EU applies the principle in the Water Framework Directive, which requires water pricing policies based on the principle. The directive states in Article 9 that "[m]ember states shall take account of the principle of recovery of the costs of water services, including environmental and resource costs."

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Examples of regulatory incentives for private sector Payments for Ecosystem Services include for biodiversity: Wetland Banking (U.S. Clean Water Act), Conservation Banking, (U.S. Endangered Species Act), Habitats and Birds Directive (European Union), Offsets for Forest Regulation and National System of Conservation Units (Brazil), Federal Law for the Protection of Nature and Landscape (Switzerland), New South Wales Green Offsets Scheme and other initiatives (Australia), Biodiversity Offsets Program (Netherlands), and National Forestry Commission Fund to finance forest ecosystem services (Mexico); for watersheds: Forest Law 7575 - Payments for Ecosystem Services program (Costa Rica), Sloping Land Conversion Program (China), Forest Ecosystem Compensation Fund (China), and Safe Drinking Water Act, Clean Water Act (US); and for carbon: Regional Greenhouse Gas Initiative (U.S. 9 Northeastern and Mid-Atlantic States), California Climate Act of 2006 (U.S., State of California), Kyoto Protocol to the UN Framework Convention on Climate Change EU Kyoto, New South Wales (NSW) Greenhouse Gas Abatement Scheme (Australia), and Oregon CO2 Standard (U.S., State of Oregon) (UNEP 2008).

Application in International Agreements to Which Cambodia is a Party

The User Pays Principle has been applied in the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, and international agreement to which Cambodia is a party.

Application in Cambodian Law

The User Pays Principle has been applied in Cambodia in existing legislation, including the Law on Forestry, the Law on Nature Protection Areas (Protected Areas Law), the Law on Water Resources Management of the Kingdom of Cambodia, the Sub-Decree on Economic Land Concessions, the Inter-Ministerial Proclamation on the Strengthening of Economic Land Concessions Management, the Prakas on General Guidelines for Developing Initial and Full Environmental Impact Assessment Reports, the Sub-Decree on Organisation and Functioning of the Ministry of Environment, and the Kret-Chbab on Fishery Management, and is also applied in the Draft Law on Environmental Impact Assessment.

Potential Relevance to Cambodia

The User Pays Principle has both practical application for Cambodia in environmental policy and law and application as a policy-making objective. The principle can be applied, for example, through legislation that mandates payment of real costs for natural resource use, specifically for private entities extracting resources or utilizing ecosystem services. In addition, policy can be developed to promote Payment for Ecosystem Services projects to provide financial support for protected areas management and conservation of natural resources and to encourage Corporate Social Responsibility.

Recommendation

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The User Pays Principle is widely accepted and applied internationally, both in international agreements and domestic laws, and is a fundamental principle of environmental law. In addition, the principle is currently applied in international agreements to which Cambodia is a party and in Cambodian domestic law. While the User Pays Principle is closely related to both the Polluter Pays Principle and the Principle of Environmental Liability in that all three principles address direct or indirect costs associated with impacts to or from use of the environment and natural resources, it is an independent and equally important principle because it alone addresses the need for valuation of and payment for use of natural resources, including ecosystem services. This principle is recommended for inclusion in the Code.

16. Principle of Free, Prior and Informed Consent for Indigenous Peoples

Statement of Principle

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization, or exploitation of mineral, water, or other resources

General Description

The UN Office of the High Commissioner for Human Rights defines the components of the Principle of Free, Prior and Informed Consent as follows:

1. "Free" implies that there is no coercion, intimidation or manipulation;
2. "Prior" implies that consent is to be sought sufficiently in advance of any authorization or commencement of activities and respect is shown to time requirements of indigenous consultation/consensus processes;
3. "Informed" implies that information is provided that covers a range of aspects, including the nature, size, pace, reversibility and scope of any proposed project or activity; the purpose of the project as well as its duration; locality and areas affected; a preliminary assessment of the likely economic, social, cultural and environmental impact, including potential risks; personnel likely to be involved in the execution of the project; and procedures the project may entail.

For indigenous peoples, their claims of sovereignty over their traditional lands and self-determination includes the right to provide or withhold consent to activities that are proposed in their traditional lands (United Nations 2007). According to UN Declaration on the Rights of Indigenous Peoples "indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources" and "states shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources"

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(United Nations 2007). The principle ensures that indigenous peoples are not coerced or intimidated, that their consent is sought and freely given prior to the authorisation or start of any activities, that they have full information about the scope and impacts of any proposed developments, and that ultimately their choices to give or withhold consent are respected (UN Commission on Human Rights 2005).

Application in International and Domestic Law Context

Indigenous Peoples' right to Free, Prior and Informed Consent is acknowledged by numerous international bodies, declarations, and conventions, including the International Labour Organisation's Convention on Indigenous and Tribal Peoples in Independent Countries (1989), UN Declaration on the Rights of Indigenous Peoples (2007), the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, and the ASEAN Draft Agreement on Access to Biological and Genetic Resources (2000) (Tamang 2005).

The ASEAN Draft Framework Agreement on Access to Biological and Genetic Resources (2000) acknowledges "the fundamental principle [of] the prior informed consent of the Member State and its indigenous peoples and local communities embodying traditional lifestyles" and states the following objectives "[t]o ensure the conservation and sustainable use of biological and genetic resources and equitable sharing of benefits arising from access to those resources, consistent with the principle of prior informed consent" and "[t]o establish effective and participatory measures for the grant of prior informed consent up to the local level taking into account national perspectives and priorities" (ASEAN 2000). The agreement also states that "[t]he procedures leading to the grant of prior informed consent at the local level shall provide for the active involvement of indigenous peoples and local communities embodying traditional lifestyles. The prior informed consent process shall respect and comply with the customary laws, practices and protocols of indigenous peoples and local communities and the disclosure of any information pertaining to the access shall be in a language understandable to the local communities" (ASEAN 2000).

The 1992 Rio Declaration states in Principle 22 that "indigenous people and their communities, and other local communities, have a vital role in environmental management and development because of their knowledge and traditional practices . . . states should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development" (UNCED 1992b). The 1992 Convention on Biodiversity calls on participating states "to respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities . . . and promote their wider application with the approval and involvement of the holders of such knowledge, innovation and practices" (UNCED 1992a). Free, Prior and Informed Consent is referred to in the UN Declaration on the Rights of Indigenous Peoples related to the forcible removal from their lands or territories; redress for loss of cultural, intellectual, religious and spiritual property; redress for loss of lands, territories and resources; and storage or disposal of hazardous materials (United Nations 2007).

The 2011 Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological

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Diversity states in Article 6 that, “[i]n accordance with domestic law, each Party shall take measures, as appropriate, with the aim of ensuring that the prior informed consent or approval and involvement of indigenous and local communities is obtained for access to genetic resources where they have the established right to grant access to such resources.” (Secretariat of the Convention on Biological Diversity 2011).

In the Philippines, the 1997 Indigenous Peoples’ Rights Act (IPRA), which recognizes indigenous peoples’ rights to self-determination and provides mechanisms for the protection of indigenous ancestral domains and resources, includes the Principle of Free, Prior and Informed Consent in order to protect indigenous rights and interests and give them a voice in matters that affect them, including matters that affect the environment (Oxfam America 2013).

Aotearoa-New Zealand’s, Crown Minerals Act 1991 provides special protection for Maori land, as defined by the Te Ture Whenua Maori Act 1993, stating that if the Maori land is regarded as sacred areas, access even for minimum impact activities can only be obtained if the Maori landowners give their consent, and for activities other than minimum impact activities, the owners of Maori land also have a right to consent even where there may be public interest grounds that would require arbitration in the case of non-Maori land owners.

Guyana’s policy and practice on mining (Government’s Policy for Exploration and Development of Minerals and Petroleum of Guyana) requires that consent be obtained prior to authorization of mining on indigenous lands, as do Peru’s laws pertaining to protected areas (Supreme Decree 038-2001-AG, 2001 amendment to 1997 Law No. 26834 Law of Natural Protected Areas).

The right to give or withhold free, prior and informed consent has also been recognized in the courts. The Colombian Constitutional Court held in a 1997 ruling (SU-039/97) that “. . . the information or notification that is given to the indigenous community in connection with a project of exploration or exploitation of natural resources does not have the same value as consultation. It is necessary . . . that formulas for concerted action or agreement with the community are put forward, and, finally, that the community declares, through their authorized representatives, either their consent or their dissatisfaction in relation with the project, and the way in which their ethnic, cultural, social, and economic identity is affected.” The Canadian Supreme Court held on a number of occasions that the duty of the state to consult with indigenous peoples is proportionate to the expected impacts on traditional lands and resources. In the case of minor impacts, a duty to discuss important decisions pertains while full consent pertains for serious issues and impacts.

Application in International Agreements to Which Cambodia is a Party

The Principle of Free, Prior and Informed Consent for Indigenous Peoples has been applied in international agreements to which Cambodia is a party, including the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity.

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Application in Cambodian Law

The Principle of Free, Prior, and Informed Consent for Indigenous Peoples has been applied in Cambodia in draft legislation, the Draft Law on Environmental Impact Assessment.

Potential Relevance to Cambodia

The Principle of Free, Prior and Informed Consent for Indigenous Peoples has practical application for Cambodia in law and policy for environmental decision-making. The principle is especially applicable in the Environmental Impact Assessment process.

Recommendation

The Principle of Free, Prior and Informed Consent for Indigenous Peoples is widely recognized internationally in environmental law and is acknowledged by numerous international bodies, declarations, and conventions and is applied in many countries' domestic laws. In addition, the principle is currently applied in international agreements to which Cambodia is a party and in draft environmental legislation in Cambodia. The principle recognizes the vital role that indigenous people and their communities have in environmental management and development, as well as indigenous peoples' right to prior informed consent or approval of any project affecting their lands or territories and other resources. This principle is recommended for inclusion in the Code.

17. Principle of Free, Prior and Informed Consent for Local Communities

Statement of Principle

States shall consult and cooperate in good faith with the local communities concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

General Description

The UN Office of the High Commissioner for Human Rights defines the components of the Principle of Free, Prior and Informed Consent as follows:

1. "Free" implies that there is no coercion, intimidation or manipulation;
2. "Prior" implies that consent is to be sought sufficiently in advance of any authorization or commencement of activities and respect is shown to time requirements of indigenous consultation/consensus processes;
3. "Informed" implies that information is provided that covers a range of aspects, including the nature, size, pace, reversibility and scope of any proposed project or activity; the purpose of the project as well as its duration; locality and areas affected; a preliminary assessment of the likely

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economic, social, cultural and environmental impact, including potential risks; personnel likely to be involved in the execution of the project; and procedures the project may entail.

The Principle of Free, Prior and Informed Consent relates not only to indigenous communities, but all local communities.

States have an obligation to “develop or improve mechanisms to facilitate the involvement of [not only] indigenous peoples, [but also] local communities, and vulnerable or marginalized persons in environmental decision-making at all levels and shall take measures to enable them to pursue sustainable traditional practices” (IUCN Environmental Law Programme 2015).

Application in International and Domestic Law Context

The 1992 Rio Declaration states in Principle 22 that not only “indigenous people and their communities” but also “other local communities, have a vital role in environmental management and development because of their knowledge and traditional practices . . . states should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development” (UNCED 1992b). The 1992 Convention on Biodiversity calls on participating states “to respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities . . . and promote their wider application with the approval and involvement of the holders of such knowledge, innovation and practices” (UNCED 1992a).

The ASEAN Draft Agreement on Access to Biological and Genetic Resources (2000) acknowledges “the fundamental principle [of] the prior informed consent of the Member State and its indigenous peoples and local communities embodying traditional lifestyles” and states the following objectives “[t]o ensure the conservation and sustainable use of biological and genetic resources and equitable sharing of benefits arising from access to those resources, consistent with the principle of prior informed consent” and “[t]o establish effective and participatory measures for the grant of prior informed consent up to the local level taking into account national perspectives and priorities” (ASEAN 2000). The agreement also states that “[t]he procedures leading to the grant of prior informed consent at the local level shall provide for the active involvement of indigenous peoples and local communities embodying traditional lifestyles. The prior informed consent process shall respect and comply with the customary laws, practices and protocols of indigenous peoples and local communities and the disclosure of any information pertaining to the access shall be in a language understandable to the local communities” (ASEAN 2000).

Application in International Agreements to Which Cambodia is a Party

The Principle of Free, Prior and Informed Consent for Local Communities has been applied in international agreements to which Cambodia is a party, including the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity.

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Application in Cambodian Law

The Principle of Free, Prior and Informed Consent for Local Communities has been applied in Cambodia in draft legislation, the Draft Law on Environmental Impact Assessment.

Potential Relevance to Cambodia

The Principle of Free, Prior and Informed Consent for Local Communities has practical application for Cambodia in environmental law and policy for environmental decision-making. The principle is especially applicable in the Environmental Impact Assessment process.

Recommendation

The Principle of Free, Prior and Informed Consent for Local Communities is recognized in international agreements and declarations. In addition, the principle is currently applied in international agreements to which Cambodia is a party and in draft environmental legislation in Cambodia. The principle recognizes the vital role that local communities have in environmental management and development, as well as their right to prior informed consent or approval of any project affecting their lands or territories and other resources. This principle is recommended for inclusion in the Code.

18. Principle of Non-Regression

Statement of Principle

The Principle of Non-Regression is an emerging environmental principle that states that existing environmental laws must not be modified to the detriment of environmental protection. The principle does not prohibit repealing or amending existing law, so long as the changes do not contravene fundamental environmental policy objectives.

General Description

The Principle of Non-Regression is an emerging international law principle requiring that legal norms that have been established by states should not be revised in ways that would imply going backwards on previous standard of protection (World Congress on Justice, Governance and Law for Environmental Sustainability 2012). The idea behind the principle is that certain types of legislation that serve social protection functions, such as human rights and environmental law, must be progressive rather than regressive (Voight 2013). In environmental law, therefore, the Principle of Non-Regression states that existing law must not be modified to the detriment of environmental protection (Voight 2013).

The Principle of Non-Regression does not prohibit repealing or amending existing law, so long as the changes do not contravene fundamental environmental policy objectives (Priour 2012). The main objective of the principle is that any new policy or law

Commented [WS17]: One fundamental objection to this principle is that it seems to operate in only one direction. It does not address situations where existing law and policy are not protective enough. It just precludes relaxing protections, however strong or weak they may be.

Commented [WS18]: If the principle does not preclude repeal or amendment, what does it do? Does the subjectivity of what is considered “fundamental” undermine this statement? Does it just beg the question of what is fundamental?

Might a “protection” principle be a better approach? I.e. to protect human health with an adequate margin of safety. This would allow some room for relaxing protections (as long as protection is still adequate) but would also entail a duty to act where significant risks are unregulated (or under-regulated).

While there is subjectivity in the term “adequate” but that is a question that an environmental regulator has the expertise and mandate to decide.

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continues to contribute to environmental protection and does not worsen pollution or increase loss of biodiversity (Prieur 2012).

Regression of environmental law can take many forms and is rarely overt(?) (Prieur 2012). It can occur based on political, economic, or psychological threats (Prieur 2012). These include the misplaced desire to simplify laws leading to deregulation or the repeal of environmental legislation, the erroneous call for fewer legal environmental obligations in the face of global economic crisis, and the mistaken appeal for less restrictive environmental laws that are not as complex and difficult to understand for non-specialists (Prieur 2012). In addition, environmental legislation is subject to regression through changing procedures that diminish the means of protection or render them ineffective (Prieur 2012).

Application in International and Domestic Law Context

To counter the threat of regression or backtracking of environmental protections, the IUCN Commission on Environmental Law ~~was~~ created a sub-committee(?) in 2010 to investigate the concept of Non-Regression (Prieur 2012). At the European and international level, Non-Regression was the subject of proposals and discussion, first in the European Parliament in 2011 (Resolution 29 September 2011), then in the framework of Rio+20 in 2012 (Prieur 2012).

It can be argued that Non-Regression is implicit in Principle 11 of the 1992 Rio Declaration, which dictates that “states shall enact effective environmental legislation,” because, in order for environmental laws to be effective, they must continue to improve environmental conditions and must not regress or backtrack. (UNCED 1992b).

The Principle of Non-Regression is currently reflected in environmental law in the case of norms in multilateral environmental agreements that prohibit its parties to enter into other agreements with lower levels of protection (World Congress on Justice, Governance and Law for Environmental Sustainability 2012).

Leading up to the United Nations Conference on Sustainable Development (Rio+20), the European Parliament’s resolution of 29 September 2011 on developing a common EU position affirmed the Principle of Non-Regression, as did the Declaration on the Principle of Non-Regression of Environmental Protection in Anticipation of the United Nations Conference on Sustainable Development (Rio+20), which was adopted at the international colloquium organized by the Brazilian Senate in Brasilia on 29 March 2012. Although not explicitly stated as Non-Regression, the Rio+20 outcome document The Future We Want states, after noting some backtracking in “the integration of the three dimensions of sustainable development . . . [that] it is critical that we do not backtrack from our commitment to the outcome of the UN Conference on Environment and Development” (UN Conference on Sustainable Development 2012).

Would Paris provision on subsequent INDCs being increasingly ambitious be an example of non-regression in a treaty context?

The Principle of Non-Regression is recognized in a small number of national constitutions, some implicitly (e.g., Brazil, Portugal, Germany, Argentina, Spain) and

Commented [WS19]: This paragraph seems to focus not on regression per se but on the political objections to the arguments that are often made in favor of specific acts of regression. For me this gives rise to uncertainty over whether this is really a principle, or more a political debate being presented as a principle.

Commented [WS20]: IUCN CEL was not itself created to investigate non-regression – perhaps it created a sub-committee to investigate?

Commented [WS21]: Does this support non-regression principle, or just the broader international law principle that a treaty party should not undertake conflicting treaty obligations?

Also, don't all governments have the sovereign right to leave the original MEA and enter into other agreements with lower levels of protection?

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some explicitly (e.g. Ecuador and Bhutan) and legislations (e.g. Switzerland, the US state of California), and some courts have referred to the principle in environmental decisions (Priour 2012).

Application in International Agreements to Which Cambodia is a Party

The Principle of Non-Regression has not been explicitly applied in international agreements to which Cambodia is a party.

Application in Cambodian Law

The Principle of Non-Regression has had no explicit practical application in Cambodian legislation or policy to date.

Potential Relevance to Cambodia

The Principle of Non-Regression has practical application for Cambodia in environmental law and policy, as well as application as a policy-making objective. In addition, it will be important to ensure that this principle is used to strengthen and streamline existing laws.

Recommendation

The Principle of Non-Regression has been ~~acknowledged by~~ gaining momentum in international and European bodies as an important emerging principle to protect against the modification of existing environmental laws that would lead to the detriment of environmental protection. The need for the principle has been recognized in some international declarations and conferences and is currently reflected in environmental law in a treaty context in the Paris Agreement [the case of norms in multilateral environmental agreements that prohibit its parties to enter into other agreements with lower levels of protection]. In addition, the principle is currently applied implicitly or explicitly in a number of countries' constitutions, environmental laws, and environmental court case decisions. This principle is recommended for inclusion in the Code.

19. Principle of International Cooperation

Statement of Principle

States must notify and consult one another, prior to engaging in any activity or initiative that is likely to cause transboundary environmental impact, so that the state of origin of the potentially dangerous activity may take into consideration the interests of any potentially exposed state and to mitigate potential risks.

General Description

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The Report of the World Commission on Environment and Development: Our Common Future states that “there is a growing need for effective international cooperation to manage ecological and economic interdependence” and that international cooperation is required to assure sustainable development (World Commission on Environment and Development 1987). The report further states that “the unity of human needs requires a functioning multilateral system that respects the democratic principle of consent and accepts that not only the Earth but also the world is one” (World Commission on Environment and Development 1987).

The Principle of International Cooperation calls not only for international regulation for global common areas and of resources that are shared by nations, but also, as international environmental issues become more urgent and ecological interrelatedness becomes recognized, cooperation regarding natural resources within national boundaries, which have historically been considered to be within the province of national law and development priorities (Hunter et al. 1997).

Application in International and Domestic Law Context

While environment is not explicitly specified, the 1970 UN Declaration of Principles on International Law declares that “states have the duty to co-operate with one another, irrespective of the differences in their political, economic and social systems, in the various spheres of international relations, in order to maintain international peace and security and to promote international economic stability and progress, the general welfare of nations and international co-operation free from discrimination based on such differences” (United Nations 1970).

Principle 24 of the 1972 Stockholm Declaration, however, explicitly addresses environmental issues, stating that “international matters concerning the protection and improvement of the environment should be handled in a cooperative spirit by all countries, big and small, on an equal footing. Cooperation through multilateral or bilateral arrangements or other appropriate means is essential to effectively control, prevent, reduce and eliminate adverse environmental effects resulting from activities conducted in all spheres, in such a way that due account is taken of the sovereignty and interests of all States” (UN Conference on the Human Environment 1972).

Principle 27 of 1992 Rio Declaration encourages “states and people [to] cooperate in good faith and in a spirit of partnership in . . . the further development of international law in the field of sustainable development (UNCED 1992b). In addition, other principles in the Declaration require or encourage International Cooperation to address issues related to sustainable development, including poverty alleviation; capacity-building; the conservation, protection, and restoration of the Earth’s ecosystem; the relocation and transfer of pollution; and the maintenance of an open international economic system (Hunter et al. 1997).

International Cooperation is integral to the 1992 Rio Earth Summit’s blueprint for sustainable development, Agenda 21, which notes “the increasing interdependence of the community of nations and that sustainable development should become a priority item on the agenda of the international community” (UNCED 1992c).

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More recently, the International Law Commission has found that states “shall cooperate in good faith . . . in preventing significant transboundary harm or at any event in reducing the risk thereof” (UN International Law Commission 2001).

The Principle of International Cooperation in international environmental law relates to a general obligation of states to cooperate in investigating, identifying, and avoiding environmental harms. Within this obligation of International Cooperation are more specific responsibilities relating to exchange of information (e.g. the Vienna Convention for the Protection of the Ozone Layer, the 1982 U.N. Convention on the Law of the Sea, and the 1992 Biodiversity Convention), coordination of scientific research (e.g. Vienna Convention), prior notification regarding potentially damaging activities (e.g. Principle 19 of the Rio Declaration), prior informed consent (e.g. Basel Convention), notification in case of an emergency with transboundary effects (e.g. Principle 18 Rio Declaration), and emergency assistance (e.g. Principle 18 Rio Declaration, Principle 9 UN Environment Programme (UNEP) Principles for Shared Natural Resources) (Hunter et al. 1997).

There are three main components to international cooperation regarding environmental protection, including prevention and mitigation of transboundary harm, compliance with international Environmental Impact Assessments, and negotiation and consultation with surrounding states. Prevention and mitigation of transboundary harm can be accomplished through liability (e.g., 1974 Nordic Environmental Protection Convention; which incorporated the reciprocity rule permitting citizens of the parties to sue in the courts of any other state for compensation based on transboundary pollution) or specific pollution limitations (e.g., 1974 Conventions on Long Range Transboundary Air Pollution addressing acid rain, radioactive contamination, ozone depletion, toxic oil spills, etc.). National legislation for Environmental Impact Assessment is necessary to assess environmental risks within a state and between border states (i.e., transboundary harm). In addition, there are integrated environmental committees that work on a regional level, such as ASEAN (1995). Notification of and consultation with surrounding states are some of the most effective means for obtaining information and to mitigating risks from activities or initiatives that are likely to cause transboundary environmental harm.

Application in International Agreements to Which Cambodia is a Party

The Principle of International Cooperation has been applied in international agreements to which Cambodia is a party, including the Mekong Agreement (Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin), the Stockholm Convention on Persistent Organic Pollutants, the Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar Convention), the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and Their Disposal, the ASEAN Agreement on Transboundary Haze Pollution, the UN Framework Convention on Climate Change, the Vienna Convention for the Protection of the Ozone Layer, the Convention on Biological Diversity, the Cartagena Protocol on Biosafety to the Convention on Biological Diversity, the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and the Rotterdam

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Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.

Application in Cambodian Law

The Principle of International Cooperation has been applied in Cambodia in existing legislation, including the Law on Forestry and the Law on Water Resources Management of the Kingdom of Cambodia and Sub-Decree on Organisation and Functioning of the Ministry of Environment, and is also applied in the Draft Law on Environmental Impact Assessment.

Potential Relevance to Cambodia

The Principle of International Cooperation has the potential for practical application in Cambodia in environmental policy and law, through both international agreements and domestic law.

Recommendation

The Principle of International Cooperation is widely accepted internationally as a fundamental principle of environmental law and is applied in numerous international agreements. In addition, the principle is currently applied in international agreements to which Cambodia is a party and in Cambodian domestic law. The Principle of International Cooperation is integral to preventing and mitigating transboundary environmental harm and to promoting Sustainable Development. This principle is recommended for inclusion in the Code.



Report on
Second National Workshop on the Draft of
Environmental Code of Cambodia

7th- 8th, July 2016, Sokha Hotel, Phnom Penh

Participants: 247 persons

Purposes: This Second National Workshop will coordinate discussion of the Draft of the Environmental Code by way of a public hearing. The Workshop will also review a detailed work plan for the next phase of creating the Code. Moreover, the Workshop will allow Sub-Technical Working Groups (STWGs) to identify issues to be addressed in the next phase, to assign responsibilities among STWG members, and to create internal timelines.

Minute Takers: OI Bunthoeun
 SANG Kimthach
 Vishnu Facilitators in each STWG

ANNOTATED AGENDA

I National Anthem

II Welcoming Remark of Vishnu Law Group (Atty. Sao Kagna, Manager of Vishnu Law Group and Deputy Head of the Permanent Secretariat)

Ms. Sao Kagna was sure to note the ample cooperation between Vishnu Law Group and the Ministry of Environment in both establishing Environmental Code as well as in the process of Drafting Environmental Impact Assessments (EIA).

To facilitate the process of drafting the environmental code, the Ministry has created an inter-ministerial working group, a technical working group, and sub-technical working groups. These STWGs invite participation from public-private institutions as well as national and international experts to examine both technical issues

and key international principles. Other key features such as co-management on environmental issues, rights of communities, and rights of indigenous



ethnic minorities etc. have also been incorporated into the code.

III Remark from UNDP Cambodia (Ms. Claire Van Der Vaeren, Resident Coordinator of the UN, and Resident Representative of UNDP in Cambodia)

Ms. Van Der Vaeren referenced phase three of the Royal Government of Cambodia (RGC)'s triangle strategy which includes the government's goals of achieving sustainable development and poverty reduction. Environmental sustainability and sustainable natural resources management of triangle strategy were also prioritized as key points for the government.



Ms. Van Der Vaeren also expressed the belief that the presence of all participants at the workshop as well as the debates and discussions that would ensue will be a driving force for bettering the Environmental Code. The existence of this environmental code represents a big step forward in terms of environmental reform and concurrently has helped to establish The National Council of Sustainable Development, the National Environmental Strategy, and additional national plans that are all advancing under the perspective and leadership of H.E. Say Samal.

She continued that the purposes of this code are to support sustainable development in Cambodia through environmental protection and promote the sustainable use of natural resources. Moreover, this code will clarify the mandate and duties of relevant government institutions.

IV Opening Speech (His Excellency (H.E.) Dr. Say Samal, Minister of Environment)

H.E. Dr. Say Samal gave thanks as well as high praise to the working groups of the environmental code. In addition, the Minister also acknowledged the development partners who have lent their support both technically and financially. Moreover, the Minister urged for continuous support until the completion of the project.



Furthermore, H.E explained in depth the environmental sector reforms that the ministry seeks to make through the Environmental Code in areas such as education, biodiversity, policy making and natural resource management. He also outlined some of the difficulties the ministry has faced in achieving that goal, such as budgetary and human resource constraints. The Minister also insisted that the development of the code needs adjustments that are representational of both the context and factual situation of the Cambodia.

Above all, H.E. Dr. Say Samal cited from the government’s speech on the achievement of biodiversity conservation.

There are 113 company land concessions in which 23 company land concessions have been terminated due to noncompliance and non-implementation of Cambodian legal principles. To protect and conserve the environment, the government has designated some areas as special corridors that are expected to be effective from a conservation standpoint. These areas include the North-east conservation corridor, the Northern Tonle Sap Conservation Corridor, the Southern Tonle Sap Conservation Corridor, and the coastal zone. Islands will also be designated as conservation areas. Officials are currently deliberating designating Prey Lang and Prey Roka as joint protected areas, and in the next two to three weeks there will be an open consultation with the community. His excellency also stated that this environmental code will surely be a beautiful piece of legislation that will ensure greater natural resource management and environmental protection.

V Group Photo Session





VI Presentation on Progress of the Code to date, Overall Implementation Schedule for the Code, and Key Activities Going Forward (H.E. E Vuthy, Advisor to the Ministry of Environment and Chair of the Technical Working Group to Create the Environmental Code; Megan Quenzer, Expert to Vishnu Law Group)



H.E. E Vuthy, Advisor to the Ministry of Environment and Chair of the Technical Working Group to Create the Environmental Code

H.E. E Vuthy shared his insights on both the initial drafts of the code as well as the recent efforts in creating the blueprints for this new legislation. As well as acknowledging key initiatives put into action by the Minister of Environment, E Vuthy suggested that the 7 Sub-technical Working Group (STWG) current format be consolidated to accommodate only 6 STWGs. Further, he mentioned that questions of jurisdiction between the Ministry of Environment and the Ministry of Agriculture, Forestry, and Fishery will be settled from mandates set out in this code's

drafting process. The code also works out transfers of jurisdiction for all concession companies which were under the jurisdiction of the Ministry of Environment to the Ministry of Agriculture, Forestry and Fishery and vice versa, the latter gives conserved areas which are under its jurisdiction to the former.

H.E also noted that the Environmental Code is a law for everyone in the entire nation. It is thus important to ensure the code is implemented effectively and verify that any regulations contrary to this effect shall be modified.

Megan Quenzer, Expert to Vishnu Law Group

In her presentation, Ms. Quenzer gave additional insight into the process of developing the Environmental Code as well as the activities of all 6 STWGs while outlining the levels of participation from both national and international experts. So far there have been international experts working directly with each STWG including STWG 1 and 3/5. Many international experts have already come to Cambodia greatly assisted in the development to the code with STWGs and many more are scheduled to do so.



Ms. Quenzer also highlighted some key comments provided by more than 50 international experts working overseas. She also shared the five-step process of developing provisions within the Environmental code and presented a detailed plan for the next steps in the drafting process and for ultimately finishing the legislation.

VII The Draft Environmental Code: Its Structure and Key Provisions (H.E. Sum Sokhamphou, Assistant to the Ministry of Environment and Head of the Permanent Secretariat; Brian Rohan, Advisor to Vishnu Law Group and Member of the Permanent Secretariat)

H.E. Sum Sokhamphou, Assistant to the Ministry of Environment and Head of the Permanent Secretariat

H.E presented and reported on the development of Environmental Code in regards to both:

- the background and history of developing the code from 2013 to the present with the honored initiative from the Minister of the Ministry of Environment
- the results from this year's previous workshops on March 23 and July 7

Moreover, H.E. also asked for comments on the law's formality, structure, and final provisions. He also made sure to note that the when synthesizing the longer previous draft into more concise versions, it is important to preserve the same definitions and meanings moving forward.



Brian Rohan, Advisor to Vishnu Law Group and Member of the Permanent Secretariat

Mr. Rohan presented on the following:



- Updates of key provisions
- Key points of research, such as: sustainable forest, land management, co-management, and public participation on EIA. All topics will be made available for public discussion via the next workshop on July 19, 2016.
- The next steps for analyzing existing law and legal instruments in Cambodia, facilitating inter-ministerial dialogue, group work among the Technical and Sub-technical Working Groups and experts, as well as determining tools for Environmental Code and Prakas Implementation.

VIII Question and Answer Period (Participants/ Speakers)



After the speakers' presentations, the floor opened for participants to put forth questions, comments, and suggestions to the presenters. Participants raised comments, worries, and questions related to implementation, procedure, and accountability as it pertained to the code. One of the main concerns raised by participants was that with such a short amount of time remaining before deadline of the code's first draft, there might be a high number of gaps or insufficient provisions that

would result in jurisdictional and investment overlap.

There were also numerous recommendations that called for ensuring comprehensive participation from all relevant ministries in addition to sending explanations of provisions in the code

to all the relevant ministries so as to achieve cross-ministerial understanding and ultimate success of the code.

IX STWGs Review the Current Draft of the Code, Develop Comments and Plan Future Work, Including Internal timelines and Assignments of Responsibilities (Small Group Discussion, Led by the Chair or Deputy Chair of each of the STWGs)



X Review of above mentioned results (Atty. Tep Neth, Deputy Manager of Vishnu Law Group and Member of the Permanent Secretariat to the Technical Working Group to Create the Environmental Code)

Atty. Tep Neth gave some final words on the morning's presentations and discussions. He provided a synopsis from the welcome remarks delivered by Atty. Sao Kagna, the remarks from UNDP Cambodia delivered by Ms. Claire Van der Vaeren, the Opening Speech delivered by H.E. Dr. Say Samal, the Presentation on Progress of the Code delivered by H.E. E Vuthy, Ms. Megan Quenzer's , presentation on the structure and key provisions of the Environmental Code, and reflections by H.E. Sum Sokhamphou and Mr. Brian Rohan.

In closing, Mr. Tep Neth also reviewed various points, comments, recommendations, and suggestions produced by the workshop participants.

XI Reports from the STWGs on Comments on the Code, Future Work plan, and Assignments of Responsibilities

STWG 1

- The Representative of the Ministry of Interior has suggested incorporating into the Code of the duty in, the implantation of the location and the local administrative structures, and the preparation of the conservation and the development, to all developer of island.
- The representative of Land Management, Urban Planning and Construction emphasising suggested to thorough review the law and all regulation still be enforced in the area of the urbanisation and construction (URBAN Planning of Capital Sub-Decree 42 -9 categories of urban classify) matching to the spirit of the Code and reinforce their implementation. At the same time, the request to separate and to create an individual book of sustainable city to cover all the aspects such as the integration of Transportation, Urban Plans which should focus the policy intervention like example of the traffic. In addition to that suggestion, the Deputy Director General of the Department of Urban Planning insisted that the Code should create the mechanism to monitor the implementation of the project/or the urban and construction plan regarding the Construction permits and the EIA mechanism should be matched. The Code should have the detail provisions of the Funds concerning: matched between the funds which the owner of the development project should paid the funds (Development Contribution fee) for Ministry of Land Management, Urban Planning and Construction and other funds so called Environmental-Social Funds, the protected area funds, Environmental restoration funds.



- Human Right-based language has to be incorporated in the code aligning with international law, treaties, or conventions
- Cambodia has ratified on many conventions but the secretary review what might affect these.
- Core Area definition on the Community Co-Management concept and the Core Area in the protected areas concept should be clearly identified and definite in the Code.
- Terminology: clearly definite
 - Local Environmental Plans vs. Local Land Use Plans
 - National Spatial Planning /Regional Spatial Planning
 - Implementation process vs. development plans is not consistent
- Climate Resilience:
 - Should be more attention to the Climate Issues
 - Pollution Control from industrial zone nearby the city or urban is also close to the climate resilience
- Green Industry (Promoted by the Ministry of Industry and Handicraft) need to review and find a way to incorporate to the Code.
- Nuclear Power Plant: is the new thing to be educated.

STWG 2

Book 3: Environmental Management and Sustainable Mechanisms

STWG-2 wishes this book to include contents as follows:

Title: Hazardous Waste Management

1. Hazardous waste determination, classification and labeling
2. Hazardous waste collection, packaging, storage, recycling and treatment
3. Disposal of hazardous waste (incineration, destruction, and landfill)
4. Monitoring and inspection of hazardous waste
5. Operational requirements for all hazardous waste facilities
6. Import and export of hazardous waste
7. Transitional provision
8. Administrative requirements (Registration, license, shipments, analytical methods, etc.)
9. Management of specific hazardous wastes (waste asbestos, oil, paint, etc.)
10. application of international conversations on hazardous waste
11. Standard for classification of hazardous waste
12. Standard for disposal of hazardous waste
13. Penalty

Title: Management of Hazardous Chemical Substance to Environment

1. Definition
2. Institutional Responsibility
3. Prohibition on Hazardous Substances
4. Research, Registration and Information Disclosure of Hazardous Substances
5. Inventory, Classification and Labeling of Hazardous Substances
6. Production, Distribution, Storage, Transportation, Usage and Disposal

7. Import and Export
8. Monitoring and Inspection of Hazardous Substances Safety Assessment
9. Accident Prevention, Preparedness and Responses
10. Application of International Convention on Hazardous substances
 - a. POPs Convention
 - b. Minamata Convention
 - c. International Agreements
11. Penalty

Title: Directive for PRTR (*to be included in titles on Hazardous Waste Management and Hazardous Substances Management*)

1. Interpretation (definition: pollutant, transfer, release, register, etc.)
2. Design and structure (materials list, form and environmental media release)
3. Reporting by generator/facilities (schedule for submission information/report...)
4. Estimation standard for emission release (to air, water, land, etc.)
5. Quality assurance and assessment
6. Access to information (public participation, awareness, raising)
7. Confidentiality
8. Penalty
9. Prosecution of offense

Title: Water Pollution Control

1. Responsible institutions
2. Measures to prevent water pollution
 - a. Permission of liquid waste discharge
3. Water pollution source control
4. Monitoring and evaluation of public water pollution
5. Sewage System and Sewage Treatment System management
 - a. Responsible institutions
 - b. Responsibilities of site owner
 - c. General measure to sewage management
 - d. Provision of sewage system management and sewage treatment system management services
 - e. Natural storing basin and Sewage Treatment System management
 - f. Penalty
6. Water pollution offenses

Title: Marine Pollution Control (*This title should be included in water pollution/coastal zone management/separate section?*)

1. Prevention of pollution by oil & oily water
2. Control of pollution by noxious liquid substances in bulk
3. Prevention of pollution by harmful substances carried by sea in packaged form
4. Pollution by sewage from ships
5. Pollution by garbage from ships
6. Prevention of air pollution from ships

Title: Air pollution, Noise and Vibration Control

I. Air pollution source control

1. Air pollution from mobile source
2. Air pollution from immobile source
3. Indoor air pollution

II. Noise and Vibration Control

1. Noise emission from mobile source
2. Noise emission from immobile source
3. Noise emission in workplaces/inside buildings

III. Controlling and Monitoring of Atmospheric Quality

IV. Measures to prevent and reduce air pollution, noise and vibration

V. Transboundary pollution

VII. The Setting of Public Air Quality

Title: Ozone Layer Protection

1. Importing and exporting of ozone depleting substances control
2. Exportation and usage of ozone depleting substances control
3. Cleaning up, recycling and destructing of ozone depleting substances control
4. Cooling substances and tools control
5. Program to eliminate ozone depleting substances control
6. Monitoring, controlling and managing of ozone depleting substances control
7. Formality of registration and license application

Title: Solid Waste Management

1. Management plan and responsible jurisdiction
2. Responsibilities of waste owner
3. Service and transport management
4. 3Rs principle
5. Management of plastic bags and plastic packaging materials use reduction
6. Measures on disposal

STWG 3/5

Comments/Questions on the Code and Tasks Identified to be Undertaken by the STWG.

Book 3 Environmental Management and Sustainable Mechanisms

Title 1. Establishment of National Conservation Corridors

Need to clarify concept, description of national conservation corridors. What are corridors connecting? How does the national conservation corridors concept relate to the existing classifications for Protected Areas? How do the corridors relate to the 4 established PA zones?

Well defined terminology throughout the Code necessary

Recommend ecosystem / landscape management perspective for Protected Areas

Should this section be revised to address not only conservation corridors, but Protected Areas in general, and include conservation corridors and the different management mechanisms or approaches for Protected Areas such as co-management?

STWG Task: Establish a small working group (of STWG members and local experts, with input from international experts) dedicated to addressing the issue of protected areas, including conservation corridors and co-management

Title 2. Biodiversity Management and Endangered Species Protection

(Some provisions for biodiversity conservation and species protection under development by local experts.)

Propose changing Title 2 name to “Biodiversity Conservation and Species Protection”—“endangered” is a technical term and use of it in the Code limits the species protected under the provisions

Articles on endangered species: Two alternatives: (1) adopting an international list (e.g., IUCN) or (2) Cambodian list

What is meant by “critical habitat” in the Code? Is a recommendation needed from the STWG for how critical habitat should be defined?

The position of the Code is unclear at this stage regarding prohibition of management of genetically modified organisms: Does a position need to be taken based on recommendations (e.g., position paper from STWG 3/5 with supporting rationale)?

In Cambodia, management plan and action plan mean different things, e.g., species management plan vs. species action plan. Which one is accurate for the Code? Definition of action plan and/or management plan need to be included in the Code.

Wetlands classification, management, conservation: Propose moving to Title 5 (Water Management)

Does “establishment of freshwater protection zones” = PAs for fish breeding?

What are the obligations under international agreements?

Need to keep in mind that there is often a bias towards wildlife species conservation and need to address protections for plants as well

Title 3. Community Management

(Co-management legal instrument under development.)

Does this section include, in addition to CFs and CPAs, Community Fisheries?

How will areas under MAFF jurisdiction be addressed?

Need to include participation from FA and FiA

How does the proposal for co-management differ from community management? Co-management is not the same as community management. How do they differ? Should this Title name be revised?

Co-management is one management option for Protected Areas? Should it be addressed under the section for Protected Areas?

How does co-management relate to the existing classifications for Protected Areas?

What areas will be eligible for Co-Management? What areas are appropriate for co-management?

Roles, responsibilities (capacity building), and rights of communities (with co-management) must be clearly defined

Clear mechanism for co-management at various government levels and for stakeholders

Where is the money coming from for management?

Mandate community participation? Voluntary?

What are indigenous rights / access to land with regards to PAs?

Should title extend past CF and CPA? Link with geography?

Commune, District, Province all have own plans, but have not been implemented: How can these be integrated into the Code? What kind of engagement? (Relates to Planning Book)

Title 4. Cultural and Natural Heritage Management

Are there official classifications and/or technical definitions of “natural heritage” site or a “cultural heritage” site?

Does status (e.g., official classification as natural heritage) change management?

How does how “natural heritage” is defined relate to issues addressed by STWG 3/5 as opposed to STWG 4?

What are the obligations (and guidelines) under international agreements? (e.g., Ramsar, World Heritage)

How can different management plan at different scales be integrated?

Title 5. Water Management

Chapter: Allocation and trade of entitlements to use water requires also integrating international water management (e.g., MRC), benefit sharing between countries

Proposed including wetlands in water management (currently in Title 2 Biodiversity Management and Endangered Species Protection)

Where does hydropower fit into water resources management? Hydropower is addressed by STWG 6, but water resources need to be considered for hydropower

Articles: Mandatory reporting of normal emissions and effluents; mandatory reporting of sudden discharges during maintenance or accidents: Do these articles belong in sections related to waste and pollution control?

Need to be sure to include both human and non-human uses and needs in water resources management, including biodiversity (e.g., aquatic wildlife/ fisheries), ecosystem functioning, watersheds, wetlands, etc.

Title 6. Coastal Zone Management

(Proposed provisions developed by expert from US DOI with input from STWG 3/5 members and local experts.)

Need clarification/definition of coastal wetland

Should mangroves be included and protected?

Need to clarify marine area zoning

Coral reefs and pests should be addressed

Salt farming needs to be addressed

Title 9. Energy

Article: Standards for approval of proposed hydropower projects: Relates to Title 5 Water Resources Management

Title 12. Sustainable Tourism and Ecotourism

Distinction between sustainable tourism (STWG 1?) and ecotourism (STWG 3/5)

STWG Task: Will provide feedback on the ecotourism draft proposal in development by US DOI expert Alan Robinson once completed

Title 13. Sustainable Forestry

Sustainable forest and PA financing recommendation submitted by STWG member/expert partnership

Working on multi-scalar and inter-ministerial cooperation and participation

STWG Task: Will work with the expert from US DOI in August

Title 14. Sustainable Marine Fisheries

(Proposed provisions developed by expert from US DOI with input from STWG 3/5 members and local experts.)

Sections on Marine National Park and Marine Life Conservation Area may need to be moved to section on Protected Areas

Noted that there is a distinction between freshwater and marine fisheries

Feedback from fisheries experts (FiA) needed on these provisions

Title 15. Sustainable Freshwater Fisheries and Aquaculture

Shrimp farming (in coastal zone) needs to be addressed

Title 16. Land Management (STWG 1 and/or STWG 3/5?)

Title 17. Soil Protection and Management

Which STWG should address soil protection and management?

Book 4: Education, **Enforcement** and Awareness

Should Enforcement be separate from Education and Awareness?

Proposed Alternative name: “Education, Awareness, and Enforcement”

Title 1. Environmental Incentives, Fees, and Charges

PES (e.g., Title 5 and Title 9); Fees (e.g., permitted activities), EIA (environmental fund development fee); financial incentives; tax policy

Title 4. Investigation, **Enforcement** and Access to Remedies

Fines

Title 5. Environmental Offences and Remedies

STWG 4

In the afternoon of the first day of the workshop, STWG 4 discussed on Title 4 of Book 3 which is about “Cultural and Natural Heritage Management”. The discussion decided to add a number of key issues to Title 4 of the draft Environmental Code, and the following result was presented by Mr. Seng Sort, Chairman of STWG 4 on the second day of the workshop.

- Chapter 1 “General Provision” which includes 3 articles as follows:
 - Article 1 “Objective” should include the following: To preserve, protect, and manage natural resource and to conserve cultural heritage in a sustainable way; To preserve, protect cultural identity of the nation which is the workmanship of our forefathers (intellectual property of national identity); To preserve the beauty and the protect the historical identity of the capital, province, urban area, ancient site and shrine (worship place); To preserve and conserve biodiversity and ecosystem; To create the balance of nature and society; To promote the development of tourism; To create the collaboration between the Ministry of Environment and relevant institutions as well as National and International Organizations and development partners; To improve the livelihood, tradition, culture and custom of indigenous community; To create funds to preserve and protect cultural and natural heritage.
 - Article 2 “Scope”: This provision has the scope of application throughout the Kingdom of Cambodia over both state land and private land.
 - Article 3 “Definition”: This article should include definitions of key terms such as Cultural and Natural Heritage and others.
- Chapter 2 “Zoning of Cultural and Natural Heritage Protection Area”: this chapters should include key issues such as Historical Parks, Cultural Landscape, Cultural Village, Site Museum, and Ancient Sites.

- Chapter 3 “Criteria”: This Chapter should include key points as follows:
 - Copy from the guideline of UNESCO
 - Determination of cultural property (by determining the number of years, the age of the property, or based on its era for example French Colonization Era and Sangkim Reas Niyum Era)
 - A number of workmanship is not so old but it is of a special value which cannot be found elsewhere (of Mr. Van Molivann)
 - new innovation which is valuable to the society
 - Cultural property which is of a special value for the nation
 - A movement of architecture which reflect national identity
 - An architectural workmanship which influence the next generations

- Chapter 4 consists of 2 sections: “Inventory and Classification”.
 - Section 1: Inventory should include key points as follows:
 - Article #: Competent Institutions shall prepare cultural property inventory
 - Article #: Cultural Property Inventory shall be updated every five years
 - Obligation of competent institutions
 - Obligation of owners of cultural property (1- Sell to the State; 2- Prohibition to any damage to the outside beauty; 3- Do not have the right to build any new or additional construction)
 - Preservation and usage of cultural property inventory
 - Budget used for the work on cultural property inventory
 - Section 2: Classification
 - Article #: Copy from the Law on Heritage Protection of 1996 and relevant sub-decrees;
 - The state pay a portion of the cost for repairing private building (built in Sangkum Reas Niyum Era)
 - The owners of the building must submit request for support to repair the building from the state
 - The state shall provide technical experts to help repair the building

- Chapter 5: Should be about “Preventive and Salvage Excavation”

Because of the time limit, STWG 4 was not able to discuss other chapter headings under Title 4 of Book 3 of the draft Environmental Code and thus decided to leave them as they are.

STWG 6

According to the program outlined in the schedule, STWG 6 members were to meet and come up with main points and comments on the existing draft to be included into the next draft of the code. This was also for preparing to present during the next day’s Public Hearing. The following is the summary of the minutes related to Book 3, Title 09 - Energy, Title 10 - Extractive Industry and the whole code structure.

1. METHODS AND SPECIFIC COMMENTS:

- **MME:** Financial Cost, recovering cost, financial issues are quite complicated. We cannot explore or discuss enough. There need to be more small meetings between Ministries. Even after a year, the draft is not dealing with the issues specifically. There is a need for the right consultant; we cannot have consultants without expertise. We concern that things do not get across. We do not know enough to ask questions. In the experts' CVs, none has shown they have the direct and exact experience with extractive industry.
- **MME:** We doubt whether our points do not get across. Speaking through STWGs' coordinators and facilitators VS direct communication with the experts and drafter are quite different.
- **Kelvin Tang (Kris Energy):** There needs to be clarity for standards and "best practice" that is included within the Code.
 - Abandonment, decommissioning, and site closure is a place of overlap within the Code because this is included in the contract that is agreed to between the company and government.
 - The MoE has yet to establish guidelines on costs and taxes associated with industry operations.
 - The "superfund" that is referenced in the Draft Code must be defined and explicitly defined.
 - There is significant confusion between the principles that are outlined in the Code and the development of policy that will occur. As part of this, detail on policy and regulations must be enhanced by Prakas later on, after the Code is finalized.
 - Repeating the same thing "closure and remediation and restoration of extractive industry sites" in the text just means that we are to pay more fees.
 - Other than asking questions, there is nothing specific to substantially comment on.
 - While the code set out 10 principles, they are taken from standards or textbooks, and are used in countries with very advanced common law system. It is the whole sales of impartation of ideas and systems that do not work.
 - Now the drafters decide what policies while it should be the other way round. It is a need to put into a context that works for the country. According to the principles of the code, it requires a system that involves a lot of litigation, and platforms for layers to debate and fight over what this law means, otherwise, Cambodia is just creating a mess for itself.
- **The whole group:** Who should draft the laws? While legal experts, ministries, and people with direct experiences can draft, each group may have different focuses. The balance between environmental protection and sustainable natural resource management and profit must always be considered.
- **The whole group:** Whether or not the EIA Law will apply retroactively will be thoroughly clarified and worked out before the Code is sent for approval to the Council of Ministers.
- **The whole group:** Standards and fees must be clearly defined in the draft code.
- **The whole group:** The group should work on each product they want to improve, not just criticizing.
- **The whole group:** Which version of the code comes first (English or Khmer)

- **The whole group:** It was suggested that the draft code should detail whether it directs and makes ways for other laws to be implemented or the existing laws tell how, what, when, and why the code is to be written and passed.
 - **MoE:** The MME is planning to create a specific working group to address issues related to the Code.
 - **H.E. Sum Sokhamphou:** The code potentially will be the main tool that supports the relevant sectors, and will be a guide for sustainable protection, and natural resource management.
2. **TIMELINE** - The group also perceives that:
- The code may only be able to cover just the principles and the implementation may have to be done with other legal tools (Prakas, Sub-decree, instructions, etc)
 - The given time frame is too short. More time must be allowed for further dialogues and consultation.
 - Compared to other countries (like Malaysia and Thailand), it takes about 15 years. The time is too short and may result too few contents.
3. **CLARIFICATION BY H.E. SUM SOKHAMPHOU**
- Each group member may contribute through the following way:
 1. Sharing information related to the code, especially the existing relevant legal instruments;
 2. Drafting legal text for the code;
 3. Giving analysis and discuss with the available experts and make comments to be included into the code;
 4. Forming a small group (like MME) to draft the code
 5. Comments (whether positive or negative) will be needed for defending the code at the time of ratification by the parliament.
4. **SUGGESTED WAYS:**
- Having people with in-depth experience come to draft the law, share available experiences and give comments where appropriate;
 - Setting up individual groups to discuss and draft the legal contents to be integrated into the code;
 - Having a lot of STWG 6's meetings to specifically discuss what to take out of the draft code and what to be included into the draft code;
 - Getting all the legal texts done by the experts first, and let the group discuss later;
5. **CONCERNS:**
- It will be harder for Cambodians to take lead in approving according to the standard. It will take a long time; Cambodia may have to work from lower standards due to its lack of human resource;
 - Jurisdictional issue is still quite a potential to deal with;
 - **MME and Kris Energy:** The Extractive Industries Transparency Initiative (EITI) is out of place in the Environmental Code as it is outlined in a separate law.

Book 4: Environmental Education, Enforcement, and Awareness

Title 1: Environmental Incentives, Fees and Charges (Didn't discuss)

Title 2: Environmental Education

- the study of environment is the obligation (is the separated basic subject or mainstreaming the basic subjects)
- the study of environment shall be incorporated into study programs at all educational level (general Knowledge, Tertiary Education, Professional and vocational trainings)
- mechanism for education coordination and training on Environment (Inter-agencies Committee on EE)
- Center for education/environmental Research/ Lab (or study Institution and environmental Research)
- center for the resource of environmental education (art hall, សោតទស្សន៍ Library, Museum) for public students to access to the study and understand environment.
- focal teacher of environmental education, especially at educational institutions
- the development of educational document/ diversified environment (including study materials)
- encouragement on environmental friendly activities at educational institution (environmental friendly school, environmental friendly pagoda...)
- environmental education fund/ Research Fund
- environmental campaign/ environmental day (Public Participation, environment related days)
- skill training/environmental knowledge training (policy making officers, commune council officer, relevant institution officers)
- minimum environmental certificate (for skilled workers)
- cooperation and networking among educational institutions and organizations

Title 3: Environmental Information and Public Awareness

- institution/ Unit/ Enterprise shall have mechanism to provide environmental information and guiding measure on environmental maintain to public/ customers
- mechanism for information dissemination/ environmental information dissemination program in all means (frequency, media, and information technology system) and all aspects (mobile library, information brochure, poster, field dissemination to the community...)
- center for receiving and dissemination of environmental information
- the determination of information types: is the information at national security level, professional level, company confidential information and information for citizens...
 - Ex. all environmental information that affects public health shall not be considered as confidential information.

- there are groups of journalists on environmental sector and providing training on environment (capacity, knowledge for environmental information disseminator group)
- Environmental information ethical rule
- rights to access to environmental information
- obligation to disseminate environmental information (plus punishment for hiding environmental information)
 - obligation for the public to disseminate information when seeing offense, environmental loss, leakage of environmental pollutant... etc.
 - obligation to dissemination information from business person or entrepreneur, driver or waste/ environmental hazardous waste makers or unintentional hazardous waste maker...
- participation from the public to provide environment related information
- maintain/protect copy rights and environmental information.
- information intellectual property
- intellectual property/ local community knowledge
- rights to receive protection for environmental information provider
- role of sub national level in disseminating environmental information, promoting awareness on environment, and pushing the participation from the public on environmental management

Title 4 Environmental and Natural Resources Study and Research

- shall have environmental and environmental science research studies (environmental, biodiversity, social-cultural and green technology pollutions)
- research and development of technology or science that support the environmental protection, biodiversity conservation and sustainable living
- resources center, biodiversity sample museum and Agua genetic species conservation park
- the research on geology
- the research on sea
- the research on local community and indigenous minorities knowledge
- encourage researchers/ research institutions including government, civil societies and private.

Group: Community

In the afternoon of July 07, 2016, the Community Group discussed with each other and came up with the following comments and request which was presented by a representative of the group on the next day of the workshop:

- This code can cause impacts on the rotation farm land and tradition of indigenous people
- We don't want any policy to relocate the people when there is a development project in their area
- The environmental code does not have any provision that make the community people feel secure that protect their interest
- Please widely disseminate information about this code to local people



- Please include in this code the FPIC principle and the principle of decision-making by community (please make sure that it doesn't happen like in Areng where the conservation project forbids them from benefiting from the forest)
- Please include in this code a provision that protect the interest of community and that it does not only benefit individual interest
- Please ensure personal interest before putting the forest land and community land (for example rice fields of some people have become rice field of community which are called Community Forest which do not have any forest/trees)
- We are afraid of losing the forest because of mineral exploitation companies
- We are also afraid of the chemical that flow with the water from the operation sites of the mineral exploitation companies which adversely affect the health of communities
- This code should include provision that prevent the outsiders from entering and cutting down forests, for example Prey Long.
- There should be serious punishment for those who conspire with each other in selling community land and national park, for example Anlung Chrey Village, Anlung Chrey Commune, Thalabbarivatt District, Stung Treng Province; and O'Kreang Commune, Sambo District, Kratie Province.
- There should be an action effectively taken against officials who understand the land but do not implement it and conspire with the offenders
- There should be provision against companies who clear and bulldoze tombs and burial places of indigenous people
- There should be mechanism to enforce the law and make sure that the laws exist without any implementation
- Please make sure that this code is written clearly so that it cannot be arbitrarily interpreted and avoiding misunderstand or confusion
- The code should include a provision which entitle community people to be complainants and to bring a lawsuit against the offenders and to claim for compensation
- This code should include a provision that protect individuals or community people who are subject to threats and seizure of land which is committed by offenders of companies
- We would this code the stipulate a provision that gives the right to Prey Long Community to work in cooperation with the Ministry of Environment in protecting Prey Long Forest
- We request the Royal Government and the MoE to officially recognize Prey Long Community and Phoum Kbal Romeas Community (Kbal Romeas Commune, Se San District, Stung Treng Province)

- Please include a provision that provide the right to community to participate in making decision because the community people are the owner of the forest
- Please allow communities to have the right over the forest conservation in the annual development plan of the sub-national administration and please give the budget used in protecting natural resource to the communities (so far, there has been only plan without any implementation and the communities don't have the budget)
- We request that communities have the right to patrol with the MoE and to monitor the solution related to offenses
- Please give the right to community to manage the fund for protecting forest
- Please include a separate provision for indigenous people to use, protect and manage the forest

Please include a provision in this code the right of community people to disseminate information about relevant laws and the right to protect their interest.

XII Public Hearing: All Interested Persons are Invited to Raise Issues or Concerns Related to the Environmental Code (*All Interested persons; Comments will be received by the Code Secretariat*)

QUESTIONS & ANSWERS:

A) Ms. Khon Sreypon (Community-member from Ratanakiri):

1. When a community faces environmental problems, to what institution should the community report? Through whom?
2. Does EIA require community participation? Who has rights to be involved in it?
3. If an EIA is done and it is seen that the community environment is affected, will there be any principle for compensation? Who will pay for the compensation?

H.E. Sum Sokamphou:

1. The community should report to the following authorities:

- The local authorities
- If that does not work, then the community can go to the provincial Department of Environment, and authorities at the district level.
- MoE representatives
- NGOs can also help bring the community's complaint forward
- Otherwise, Facebook - some pollution problems have also been complained about through Facebook, for example Svay Alom case. It was shown through Facebook.
- The court if you trust it.

2. In regards to the EIA, yes the EIA law requires that input be solicited from the local community. Without the community's approval, the request is pushed back. Some communities may think the process does not work, doubting that the company hires some



key people, not from MoE representatives, then the community must inform MoE. All other information should be passed on by the community as well. The MoE needs information from all to make the right decision.

3. Compensation is based on principles from Ministry of Economy and Finance. (namely how much are the land and resources on it worth based on current market price). Alternatively, the company may find replacement land which is equipped with proper infrastructure, water, and electricity for the affected community.

In terms of who should pay, the company or project owner will pay, but the state can help coordinate. If a community does not like this system, the community may work with the environmental consultant companies.

What need to be clarified here? That's why we are here today. The code is national since all sectors get involved. You may say you do not want the code, but the code is the law itself.

B) Mr. Lo Rorng, A member of the Panorng ethnic community and representative from Cambodian Indigenous Alliance:

1. We do not want to be the victims of any development project.

2. We want our traditions to still be accepted.

3. In Areng, some local people went to harvest resources from the forest and some were arrested. But under the ILO 1968, and the Cambodian Land and Forestry Laws, local communities in the areas are protected (able to legally use the natural resources), so why is this happening?

4. The Intellectual Property of the indigenous communities attracts the investors, but the private sectors take it, and make it their own business and spoil our identity. They falsify everything about us, putting our names on their products like wines (not ours), putting our pictures in Karaoke Songs. How can this be dealt with?

5. The code encourages public participation; thus more minority groups should be here.

C) Mr. Meng Bunth Rith (Ministry Land Management, Urban Planning and Construction)

As a new group member to STWG 1, the following three main points were raised by the officer:

1. DAA (Development Application Assessment) versus EIA: DAA is also called planning assessment in other country and it is to be under the state's management. Ministry of Land Management, Urban Planning and Construction (MLMUPC) is also drafting the guideline for this. It has not yet become systematic. In England and Australia, they have the same system. EIA is for bigger projects. It must be detailed. Some development urban development projects may not need EIA. There will be some inter-ministerial meetings to decide the types and sizes of projects that need either one of the two assessments.

2. Sustainable Cities & Green Economy: Sustainable Cities seems to be under MLMUPC, but city planning is under an inter-ministerial management. This should be detailed in one separate Book. For now, the planning provisions in the code are

organizationally messy: land use planning, land use management, and sustainable cities are in separate places of the draft code. With regards to city affairs, they are co-related. Also, cultural heritage management can be divided into two sections, namely built and natural heritage. How can it be classified?

3. Coastal Zone Management: MLMUPC, MoE and Tourism Ministry are all involved in regulating this area. It is a suggestion to look at the MLMUPC's existing Circular on Coastal Zone Development. The circular also mentioned the need for physical and soft skill developments and had its own definition of coastal zone. Also the definition of coastal zones needs to be clearer. When we say Coastal zone is an area that is 5 kilometers from waterline, is it too restrictive for industry? What will be the effects on the society and the development?

H.E. E Vuthy (B&C):

- The officer's speech was appreciated. All the concepts shared will be discussed internally among the related ministries.
- Joint Prakas then will announce the answers to the officer's concerns.
- If the officer has suggestions about formatting, then he may submit them in the proper format.
- To the community: We have accepted your comments on your traditions, and the persistent land problems. Solutions have been made and as you can see ELCs have been canceled. The code needs your viewpoints.

Mr. Mathew Baird (Environmental Lawyer):

The following comments were made:

- Compensation and resettlement do create a lot of issues
 - Efforts will be made for dealing with issues on public participation, right to protest in a non-violent way, and procedures need to be enacted to make sure that the offenders are arrested and right to participate is protected.
 - The strength of the code shall ensure that people who use violence to force people to consent to development projects are condemned. Indigenous people must come into agreement by consensus, not by force.



- The code does provide IP rights for their livelihood. So far, no governmental institution or private sector entity can legally destroy the environment or the persons or property of the indigenous people
- All resettlement and compensation must be agreed to by the IP.

D) Kimheng from Oxfam:

The four points raised by Dr. Baird I agree, but I am not clear whether

they are in the code already. I just hope the four points have been or will be written into the code.

E) Representative from Prey Lang Network in Kratie province:

1. We see there is still a high rate of deforestation in Prey Long—what has been done about it?
2. How will the volunteer monitoring and enforcement group be protected under this new code?
3. Will community forestry networks be protected in the code or will there be any incentive for them? Representing the four provincial communities, I want them to be protected by the law.

F) Mr. Long Serei, CEO of Forest Organization in Ratanakiri

Agreed to Dr. Matthew four points the following questions were made:

1. While the community learns about the right to be consulted with (FPIC), local authorities seem to block this from happening, what can be done?
2. Of the EIAs that have been done in Cambodia many or all look the same. They just copy and paste. What then can Vishnu do to include the authorities' participation in EIA as well?

G) Mr. Ot Long from the southern Tonle Sap Network (Komong Chnang and Battambang):

1. There has been solid and liquid waste (including oil) discharged in the river areas, what is the government's solution?
2. Forest Reserves are being destroyed in the buffer zones of about 500 hectares (Pursat Province). How can the forests be protected? The commune and district authorities have been incapable.

H.E. E Vuthy: In response to the above concerns:

- Some concerns are right, but some are not true. Yes, before, the copy paste happened but for the past three years, this has been strengthened through the EIA process. We actually have involved the community and reviewed EIAs at the provincial levels, with DPA and all involved, and only then do we decide on the project. the last three years, we have done a lot of sectorial guidelines and laws.
- So when the time to review the projects, we even invite the NGOs to participate. The NGOs and DPA are those who gather the information right on the sites. So all comments are considered before we approve a project. Thus, for the last 3 years, we are working on this and we are producing EIA for the available sectors, mine, energy, tourism etc. and guidelines as well, like Guideline On Public Participation for example.

Mr. Brian Rohan:

For Prey Long, in terms of IP rights, there is one thing will be included into the code process: we call it “co-management,” and it's where local, national, village and all community people will have the opportunity for co-protection. We already made an agreement for the community to get involved and also the PM said we all must manage together. We have even prepared to include special



rights to land as part of co-management as well. Overall for the management plan, it is a genuine commitment from the government. The Prime Minister spoke clearly and the MoE minister also stressed, so I strongly encourage you to join and make the co-management become a reality..

H.E. Sokamphou:

Concerning the Tonle sap issues, and deforestation in the conservation forest, I will make bring it to MoE. Mr. Sophal, the representative for work can bring this to the Ministry as well. And it does need to be realistic in the code. We will also include the penalty section in the code.

H) Ms. Cheourn Srey Mom from Community in Steung Treng:

Throughout the communities, the authorities are not acting to stop environmental offenses; therefore, in the transition period before the code is implemented, what can be done to improve enforcement?

The companies paved over the grave land—is this not an abuse of the communities? As related ministries, how will you **respond?**

I) Arn Hong, community (Ogrive, Kratie):

Once the code is issued, then we (communities) want to know whether youth will get involved. There are livestock of fish we must have, areas full of biodiversity and community forests also. MoE should educate us and get the youth involved. Protected forests, biodiversity, water are wealth belonging to all of us; certain fishes (Trey Reach, Kul Reang, Phsout (river dolphin)) must be protected. We also have the effort from the provincial governor to help protecting this.

H.E. E Vuthy:

I agree that the public participation of course will happen. The temporary procedures will help with protection and the co-management law will be done soon. So before it was pretty much the higher authorities in charge, but now we have the involvement from the communities in the areas, as well as the NGOs. So this then will be a shared duty of all stakeholders.

J) Pheakdey from a community in Preah Vihea province:

1. Regarding land issues, and market price, what shall we do when we do not want the price offered, or we think it is unfair to us?
2. Companies engaged in development projects should deposit some amount of money to spare for solving problems like pollution and other damages to the community or when the company commits an environmental offense. The deposit is still the company's money, but it is for the people to use to deal with pollution and damage issues, and may only be returned upon the safe completion of the project.

K) Ms. Sorina Lilywhite from Corporation Committee of Cambodia:



This comment was once raised in the April 6 meeting. We think that the general provisions of the code can be strengthened through the inclusion of reference to a Right Based Approach to sustainable development, and in particular, with reference to and in accordance with the UN guiding principles on business and human rights, which Cambodia is a signatory to. We have also

prepared some drafted texts, which will be forwarded through NGO forum and DPA colleagues with a definition of FPIC, and also wording for the FPIC provisions in accordance with the UN Declaration on The Rights of Indigenous People, which again the government is also a signatory to. We will also include additional definitions including Risk-based Due Diligence, and Access to Remedies. For resettlement, the IFC performance standard on land tenure, which is considered to be an absolute minimum, is in line with what Matthew said on resettlement or relocation. So these drafts texts will be collated and sent through the NGO Forum.

Dr. Matthew: Main points made by Dr. Matthew include:

- The Drafting Team Members and everyone involved know that the code will need to be enforced and applied.
- This why all comments or the comments from the MLM are quite important.
- The code is about everyone working together.
- It is exciting to know that we now have a development assessment for urban planning and smaller development projects separate from the EIA.
- It is clear that parts of the code must be clear that those who comply with the law are supported. Also the code must protect people impartially.
- It must be clear that ministries can investigate alleged offenses. And the penalty may not just be a fine, but all their profit will be taken away. All of the owners can be investigated. The commercial game does not happen. The company must have all their profit removed. So the penalty must be stronger than the profit they make.

H.E. E Vuthy:

- Not all questions have been answered, but they will be addressed later.
- If any comments need to be clarified, then we can deal with it later.

Closing Remarks

Submission Form

Recommendations from the STWGs to the Secretariat of the Project to Develop the Environmental Code of Cambodia

Email to: Lim Nalin at Vishnu Law Group: limn@vishnulawgroup.com

- *For comments on the draft Code, please copy and paste selected text into this form and use Track Changes.*
- *If needed, please submit large documents as an attachment.*
- *Please submit all comments in Khmer and English when possible.*

Date of Submission: 11. August 2016

Submitted by (provide individual and STWG contact information): Roath Sith

1. Issue:

Comment on structure of the code

2. Reference to Code Book and Chapter (if applicable):

3. Comparative Experience (including Cambodian and international examples and experience):

4. Recommendation:

Please see in the attachment.

5. Proposed Language to be Inserted into the Draft Code (optional) (Note: when proposing modifications to existing draft Code text, please extract the relevant text and insert here, in track changes if possible):

6. Cambodian Laws to be Abrogated or Modified (include specific articles and clauses):

7. Drafting Team Analysis/Response (to be included in public database):

ENVIRONMENTAL CODE OF CAMBODIA

Third Draft - DRAFT 3.0 -- 23 June 2016

BOOK 1 — General provisions

Title 1 - General provisions

Title 2 - Organization of jurisdictional institutions/jurisdictional issues

Title XX: Mandated for local governments in Environmental Management (if it is not include in title 2)

Title 3 – Public participation

Title 4 – Access to environmental information

Book 2 — Environmental strategy and planning

Title 0 (New) - General Provision (objective, scope, terminology, and implementation mechanism)

Title 1 – Making of national, sub-national and local environmental and natural resources plans

Title 2 – Urban land use planning

Title 3 – Environmental quality standards

Title 4 – Strategic environmental assessment

Title 5 – Environmental impact assessment

Title 6 – Environmental audits and environmental management reporting

Title 7 – Climate change adaptation and mitigation

Title 8 – Disaster risk reduction and disaster management

Book 3 — Biodiversity and biosafety management (Refer to Green Issues)

Title 0 (New) - General Provision (objective, scope, terminology, and implementation mechanism)

Title 1 – Establishment of national conservation corridors

Title 2 – Biodiversity management and endangered species protection

Title 3 – Community management

Title 4 – Cultural and natural heritage management

Title 13 – Sustainable forestry

Book 4 Water Resource Management (Refer to Blue Issue)

Title 0 (New) - General Provision (objective, scope, terminology, and implementation mechanism)

Title 5 - Water management (including reservoirs, parameter and their quality standards)

Title 6 - Coastal zone management

Title 14 - Sustainable marine fisheries (is it refers to fish stock protection?)

Title 15 - Sustainable freshwater fisheries and aquaculture

Title XX: Aquatic life and fisheries management (refer to protection and conservation)

Title XX: Water way transportation (refer to aliens species transportation and release),

Title XX: Marine Park Management

Title XX: Deep sea research and exploitation

Book 5 Environmental Pollution Management (Refer to Brown and Grey Issue)

Title 0 (New) - General Provision (objective, scope, terminology, and implementation mechanism)

Title 7 - Waste management (Solid and hazardous substances control and contaminated land)

Title 8 - Air pollution control and management

Title xx: Water Pollution, Parameters and Discharge Limitation to ensure natural water quality

Title XX: Environmental cleanup and remediation

Title XX: Discharge limitation (refer to quota of discharge by each facilities within local environment)

Title XX: Environmental Risk Management and emergency response

Title XX: Wastes reception facility and pollution escape management

Book 6: Renewable Resources and Environmental Sustainability Management

Title 0 (New) - General Provision (objective, scope, terminology, and implementation mechanism)

- Title 9 – Energy and Renewable Energy
- Title 10 – Extractive industries??
- Title 11 – Sustainable cities
- Title 12 – Sustainable tourism and eco-tourism
- Title 16 – Land use planning and management
- Title 17 – Soil protection and management

Title xx: Corporate Social Responsibility and green procurement (CSR and SCP, etc. It can move to Book 5 if most provision deal with waste management. If most provision deal with call back program, green procurement, and social participation, then keep it here)

Book 7 — Environmental Education, Research and Information Dissemination

Title 0 (New) - General Provision (objective, scope, terminology, and implementation mechanism)

Title XX: Environmental education, Awareness raising, and research

Title XX: Environment Information

Title XX: Environmental Friendly Practices and Rewards

Title XX: Environmental Event Management

Title XX: Environmental Institutions/Academy (including Environmental Resources Centers) and Green Campus Movement/Competition

Title 1 – Environmental incentives, fees and charges

Title 2 – Environmental public awareness and environmental education

Title 3 – Environmental and natural resources study and research

Title 4 – Investigation, enforcement and access to remedies

Title 5 – Environmental offences and remedies

Book 8 — Environmental Fund and Rewards

Title 0 (New) - General Provision (objective, scope, terminology, and implementation mechanism)

Title XX: Environmental Fund policy and mechanism

Title XX: Environmental tax and tax rebate policy,

Title XX: Environmental (Green) Certificate, Eco-Label and Rewards,

BOOK 9: Penalty Regime and Offences

BOOK 10 — Transitional Provisions

BOOK 11 — Final Provisions