

THE LAW TALKS

Contemporary Environmental Law in Cambodia and Future Perspectives

Edited by
Kong Phallack
Bin Rasmeykanyka
Georgina Lloyd Rivera
Hoy Sereivathanak Reasey

March | 2020





ABOUT KONRAD-ADENAUER-STIFTUNG

Freedom, justice and solidarity are the basic principles underlying the work of the Konrad-Adenauer-Stiftung (KAS). The KAS is a political foundation, closely associated with the Christian Democratic Union of Germany (CDU). As co-founder of the CDU and the first Chancellor of the Federal Republic of Germany, Konrad Adenauer (1876-1967) united Christian-social, conservative and liberal traditions. His name is synonymous with the democratic reconstruction of Germany, the firm alignment of foreign policy with the trans-Atlantic community of values, the vision of a unified Europe and an orientation towards the social market economy. His intellectual heritage continues to serve both as our aim as well as our obligation today. In our European and international cooperation efforts we work for people to be able to live self-determined lives in freedom and dignity. We make a contribution underpinned by values to helping Germany meet its growing responsibilities throughout the world.

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FORWARD

Cambodia is a constitutional monarchy with two houses of parliament - the Senate and the National Assembly -, a multi-party system, elections at national and commune level and a rule of law system. After three decades of international conflict, civil warfare and political unrest, democratic structures are now being rebuilt. The country is in need of broad political reforms in different policy areas. The support for the development of the legal system in Cambodia has been one of the main priorities of the work of Konrad-Adenauer-Stiftung in Cambodia for many years. One of the essential elements of such a process is a flourishing discussion between different generations and experts on legal topics. Such discussion has been difficult in Cambodia for many years due to its historical legacy and the legal vacuum during the Khmer Rouge regime. It seems particularly important to continue to cultivate a culture of legal discussion in the spirit of academic freedom and freedom of expression. The Law Talks were designed as one element of such support.

The Royal Government of Cambodia has been working on the drafting of the Environmental Code for the country. Environmental Education, teaching resources and materials at the universities are limited and quite challenging because it is not a popular subject among Cambodians in particular the young generation. For this reason, there is a need to promote the discussion on the field of Environmental Law. During the 18th Law Talk, with the purpose of identifying the current status of environmental law and policy, the implementation and challenges and recommending for a better regulations and implementation professors, researchers and experts were invited to submit and present their papers.

One particular aim of the publication has been to motivate Cambodian scholars to academically engage with legal questions and contribute with their articles towards the analysis, evaluation, challenges and recommendation of the environmental law.

We would like to express our gratitude to those who have made this publication possible. A special appreciation is directed to Professor Kong Phallack, Dr. Georgina Lloyd Rivera and Professor HOY Sereivathanak Reasey for their efforts into making this important academic resource which serves the interest of the public in academic sphere with the interest in environmental law.

Phnom Penh, March 2020

Daniel Schmuecking, Country Representative

Rasmeykanyka Bin, Program Manager

Konrad-Adenauer-Stiftung e.V.



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ABOUT THE LAW TALK

Law Talk is an academic forum which aims to support the legal discussion and analysis on different themes. Participants are invited from different walks of life such as academicians, scholars, researchers, students, sometime politicians, public officers, NGOs workers, embassies and International Organizations to meet and discuss on the particular legal matters. The Law Talk enables the group to discuss legal topics freely in the form of presenting their papers, commenting on a certain law and suggesting recommendations for further revision of the law and understanding gaps. As a result, it is anticipated that those involved in the discussion return home with some lessons learned and spread the knowledge the further and most importantly, bring the recommendations to for further discussion at their own institutions. Different legal topics have been brought up in each Law Talk. Some of the legal topics that had been discussed during the past years are Constitutional Law, Labour Law, Human Rights, Environmental Law, Criminal Law, Law on Political Party and So forth. Partners we previously worked with were sometime public institutions: The Senate and the National Assembly and Constitutional Council of Cambodia and relevant ministries in Cambodia. We believe these institutions are the driven machine to move the country forward if good laws are initiated and adopted and an effective implementation of the good laws is ensured.

The theme of the 18th Law Talk is Environmental Law which is the current issue discussed locally, regionally and globally. Both experienced scholars and young researchers have been generous to contribute a chapter on different sub-topics of the Environmental Law. It was an opportunity to express their academic freedom and reach out to interested fellow legal practitioners. KAS Cambodia as the organizer wishes to continue the spirit and carry on the discussion on legal matters that concern Cambodia and the region.

BIOGRAPHY OF THE EDITORS AND AUTHORS

Editors:

Professor Kong Phallack

Prof. Kong Phallack holds LL.M. from Nagoya University, Graduate School of Law (Japan), LL.B. from the Royal University of Law and Economics (Cambodia) and Doctor of Dental Surgery (DDS) from the Royal University of Health Science (Cambodia).

Prof. Phallack has served as a Dean and taught laws at Faculty of Law and Public Affairs of Pannasastra University of Cambodia since 2001 and he has been promoted to be a Professor status in March 2016 after 15 years of involvement in teaching and research. He has conducted researches and published number of articles and books locally and internationally.

Prof. Phallack has extensive professional experience working with government, parliament, courts, development partners, private sectors, political parties, trade unions, civil societies and media for more than 16 years in the field of laws and policies development and training; and strategic plan development. His primary expertise is ADR (Negotiation, Mediation and Arbitration), business law, labor law, intellectual property law, civil law, and public private partnership. He recently has extended his research interest in business and human right, access to information, Environmental law (Environmental ADR), Law and religions.

Besides teaching and research, Prof. KONG Phallack serves as Attorney at law of KhmerLex Legal Solutions, an arbitrator, the Arbitration Council since 2003, an Arbitrator of Kuala Lumpur Regional Center for Arbitration, KLRC in Malaysia since 2012 (New appointment valid from 2017-2020); and a regional mediator of Compliance Advisor Ombudsman, an Independence Recourse Mechanism of IFC/MIGA, World Bank Groups since 2013, a PPP legal specialist of Asian Development Bank and social protection legal expert of GIZ.

Prof. Phallack has involved in teaching, working and providing pro bono services in Denmark, Laos, Vietnam, Singapore and Myanmar on specific topics such as model court project, clinical legal education, conflict resolution and mediation, employment and Labor Law, Rule of law and religion in Cambodia, Religious Conflict Resolution, Community and company mediation, and other legal trainings. He has joined PACL Team in drafting Principles of Asian Contract Law (PACL). PACL Team is composed of Professors from Japan, South Korea, China, Singapore, Philippines, Vietnam, Malaysia, Myanmar and Cambodia.

Bin Rasmeykanyka

Bin Rasmeykanyka is currently a program manager at Konrad-Adenauer-Stiftung Cambodia in charge of the Rule of Law and Youth Empowerment. She is currently pursuing a Master of Arts in International Human Rights Law. In addition, she holds a Bachelor Degree of Arts majoring in Politics, Philosophy & Economics (PPE) from Asian University for Women, Bangladesh and a minor in Division of Economics from Sookmyung Women's University, South Korea. During her time with KAS Cambodia she has organized annual legal training programs, of which one of them is the Environmental Law Training Program with the legal practitioners, lawyers, judges and legal students and relevant stakeholders.

Dr. Georgina Lloyd Rivera

Dr. Georgina Lloyd Rivera is the Regional Coordinator (Asia and the Pacific) of Environmental Law and Governance for the United Nations Environment Programme (UNEP). She joined the UNEP Regional Office after spending 12 years based in Siem Reap, Cambodia. During her time in Southeast Asia, she has conducted research on environmental law and policy, heritage law, heritage and tourism management, and the development of good environmental governance. Georgina has been involved in capacity building for environmental law within Southeast Asia and has provided advice to government and non-government stakeholders on environmental law and policy issues.

Georgina has conducted both doctoral and postdoctoral research on heritage law and policy at Angkor World Heritage Site. During this time, she has been the recipient of an Endeavour doctoral research fellowship and UNESCO research fellowship. Her doctoral research examined legal and policy approaches for the safeguarding of intangible cultural heritage across Asia and particularly in Cambodia. During her postdoctoral fellowship she collaborated with the management authority for the Angkor World Heritage Site, the APSARA Authority, to develop safeguarding policies.

In recent years Georgina has been the Director of the SFS Center for Conservation and Development Studies in Cambodia where her work focused on community based natural resource management, protected areas management, climate change, traditional practice and environmental governance. Georgina holds a PhD in Law, Master in Environmental Law and Bachelor in Environmental Science (Hons 1) from the University of Sydney. She can be contacted at georgina.lloyd@un.org

Professor Hoy Sereivathanak Reasey

Professor Hoy Sereivathanak Reasey, Head of Department of Natural Resource Management and Development (NRMD), Royal University of Phnom Penh (RUPP) received his Engineer in Agronomy (year 2000), B.Lit. in English Literature (year 2003), M.A. in Natural Resource Preser-

vation and Rational Exploitation (year 2004) from Vietnam National University. Graduate Diploma in Environmental Governance and Development in Australia National University (ANU, year 2011), and currently he is pursuing Ph.D. in Environment and Resource Management at Vietnam Academy of Science and Technology. He has more than 10 years of teaching experience as a senior lecturer in Environmental Law and Policy, and Conflict Management in Natural Resource Management. He was trained to be a regional training specialist in transboundary water conflict management by UNESCO-IHE, Netherlands and MRC since 2009. With his active manner in management, teaching and research, he has honor awarded the Royal Medal of Chevalier year 2011.

AUTHORS:

Dr. Spoann Vin

Dr. Spoann Vin got Master Degree of Science (2005) in Urban Environmental Management, Asian Institute of Technology, Thailand; and obtained PhD degree (2019) from Okayama University, Japan. His doctoral research assessed the performance of public-private partnership and local government capacity on solid waste management in Phnom Penh. He is the head of Department of Economic Development, Faculty of Development Studies of the Royal University of Phnom Penh. In mid-2019, he has been selected and working as visiting professor at the Graduate School of International Development, Nagoya University and the chair of Oversea Field Work Program in Cambodia. Before having appointed as the head of department, he has been working as a researcher and lecturer for the Department of Environmental Science and he has taught several courses, including environmental policy and regulation, waste economy, urban environment and infrastructure management, environment and development. From 2001-2019 working at the Royal University of Phnom Penh, has been involved in various research projects in the fields of urban infrastructure and solid waste management, water supply, integrated coastal management, climate change and valuation of ecosystem services. Recently, he has published Waste Management and Research in SAGE publication and Sustainability, MDPI.

Dr. Meas Bora

Dr. Meas Bora got both Master and Doctoral Degree in Law from Nagoya University Graduate School of Law, Japan, after graduation from Faculty of Law and Economic Sciences in 1998, Phnom Penh. He obtained the United Nations International Law Fellowship Program to study international law at The Hague Academy of International Law, the Netherlands, in 2011. In 2015, he was a visiting researcher at the Centre for Asian Legal Exchange in Japan on Criminal Liability of Legal Person.

He is the president of the Cambodian University for Specialties (CUS) since October 2018. He has given lectures on international law, human rights, international criminal justice to the

universities and the Bar Association of the Kingdom of Cambodia. He wrote several articles in English on extradition, human rights, criminal procedure, the rights of accused, and one book in Khmer on introduction to public international law.

He was a legal team leader of Office of the Co-Investigating Judges of the Extraordinary Chambers in the Courts of Cambodia (ECCC). Since 2015, he is a member of the Council of Jurists of the Council of Ministers, Royal Government of Cambodia and in 2018, was appointed as one of the members of National Committee of Cambodia ASEAN Law Association (ALA).

He was admitted to the Bar Association of the Kingdom of Cambodia in 2012, and in 2017 a vice-chair of the international law and human rights commission thereof. Before this, he was a consultant for UNICEF in Cambodia on the edition of draft report on the implementation by the Kingdom of Cambodia of the Convention on the Rights of the Child, and for the Cambodian National Council for Children on Analysis of Legal Framework for the Protection of Children in Cambodia.

Matthew Baird

Matthew Baird has over 27-year experience in environmental and planning law in Australia and in Asia. He was called to the NSW Bar in 1991. Matthew has consulted for a number of organisations including the Asian Development Bank, Vermont Law School, United Nations Development Program, IGES, Mekong Partnership on the Environment, and Earthrights International on environmental law issues. He currently advises both the Ministry of Natural Resources and Environmental Conservation (Myanmar) and the Ministry of Environment (Cambodia) on environmental law.

In September 2016, he was appointed as Visiting Scholar of the Myanmar Environmental Governance Program of Vermont Law School.

He was one of the drafters for the Environmental and Natural Resources Code for Cambodia and the Guidelines for Public Participation and Access to Information in EIA in both Cambodia and Myanmar

Matthew was Chair of the Environment and Planning Law Group of the Law Council of Australia from 2008-2012. He is the deputy-chair of LAWASIA's Standing Committee on Environmental Law and a member of the International Union for the Conservation of Nature (IUCN) Commission on Environmental Law.

He lectures part-time at University of New South Wales on Sustainable Energy Law, including teaching on Nuclear Energy Law.

Two recent publications that he has worked on are the Environmental Impact Assessment in the Mekong Region: Materials and Commentary (First Edition), September 2016 and Draft Regional Guidelines on Public Participation in Environmental Impact Assessment, Mekong Partnership on the Environment, January 2016. Both are available at <http://matthewbaird.com.au/category/papers>.

Phan Daro

Lecturer Phan Daro is an Assistant Dean of the Standard Testing and Global Education Institute, Paññāsāstra University of Cambodia (PUC) and a law lecturer at the Faculty of Law and Public Affairs, PUC. Prior to joining PUC, Daro worked as a contracted official at the Administrative Office of the Phnom Penh Municipal Court. He received his Master of Laws (Comparative Law) from Graduate School of Law, Nagoya University, Japan in 2017.

Chacrit Sitdhiwej

Chacrit Sitdhiwej is a lecturer, Faculty of Law, Thammasat University, Bangkok, Thailand. His expertise and research interests include law and policy on environment, natural resources, climate change, energy, public administration and law drafting.

Prior to his lectureship, Chacrit served as a legal officer of the Council of State of Thailand—whose major roles include preparing draft laws for and giving legal opinions to the Council of Ministers and State agencies of Thailand. Chacrit also gives legal advice to various domestic, foreign and international entities, both in the public and private sectors.

Chacrit holds Bachelor of Law degree from Ramkhamhaeng University in Bangkok, Thailand and Master of Environmental Law degree from The University of Adelaide, South Australia.



Introduction To Contemporary Environmental Law In Cambodia

Kong Phallack, Bin Reaksmeykanyka, Georgina Lloyd

and Hoy Sopheak Reasey

The Environmental law is a new emerging area of law that has recently developed and there are not yet many experts and interests in environmental law education and practice despite, from 2014 till present, the Ministry of Environment of Cambodia took a lead to prepare the first ever Environmental Code aiming at building a sufficient environmental legal framework for the country if the code is adopted and promulgated.

Like most countries around the globe, the Cambodian legal system has been influenced by foreign legal systems. The current legal system is a combination of Cambodian customs, the French based legal system (an influence from French colonization), and the common law system, which is an influence arising from foreign aid assistance to legal and judicial reform in Cambodia.¹ For various cultural reasons, Cambodian society is not a litigious society and generally courts are used only when non-judicial mechanisms fails.

The Cambodian law is based on the 1993 constitution, four fundamental codes (Criminal Code, Code of Criminal Procedures, Civil Code and Code of Civil Procedures and various primary legislations adopted and reviewed by the Cambodian-bicameral legislative institutions and the secondary legislation that make up the regulatory system in Cambodia. The court's judgements are not yet to be published. The concepts of precedents/ jurisprudence are not officially considered an element of Cambodian regulatory framework. However, this concept has been used and implemented by the Arbitration Council, a quasi-judicial body whose jurisdiction is to solve collective labor disputes enshrined in the 1997 Labor Law.

The CONSTITUTION provides that state property notably consists of land, undergrounds, mountains, sea, sea-bed, undersea-bed, coastline, airspace, islands, rivers, canals, streams, lakes, forests, natural resources, economic and cultural centers, national defense bases, other building facilities belonging to the state. The Administration, utilization and the assignment of State's properties shall be determined by the law.² Furthermore, the CONSTITUTION stipulates that the State shall preserve and protect the environment and the balance of natural resources, by organizing a precise planning for the management, especially of the land, water, atmosphere, air, geology, ecological system, mines, energy, petroleum, and gas, rocks, sands, gems, forests and forest by-products, wildlife, fish and aquatic resources.³

In response to the implementation of constitutional provisions, more than five hundred laws have been made and put into practice according to the National Assembly's website.⁴ Among them, there are national environmental laws and international environmental law (Treaties, agreements, conventions, protocols) ratified by Cambodia. However, how effective have those legislations been implemented is not answered in this publication. This publication is written with a purpose neither to analyze the draft environmental code nor the status quo of the environmental law implementation, but to develop a gateway for research and development for the

1 HOR Peng, KONG Phallack, Joerg MENZEL (eds), Introduction to Cambodian Law, 2012, KAS, p.8

2 Constitution (1993), Article 58

3 Constitution (1993), Article 59

4 National Assembly of Cambodia, List of Law, <http://national-assembly.org.kh/group-law/114>

environmental law and policy in the years to come when Cambodia tries to reform her environmental administration system. The publication is the collection of articles submitted by Cambodian and foreign professors and experts who are interested in the area of the environment law. The articles do not represent the opinions of the editors and the Konrad-Adenauer-Stiftung, Cambodia.

The publication is comprised of six papers written by three Cambodians and three foreigners. Five papers examine contemporary implementation on environmental laws and regulations of Cambodia and one paper examines the latest developments of public participation in the Thai legislation on environmental impact assessment. These six papers summarized as follows:

1. **Solid Waste Management Politics: Reforming Legal and Institutional Frameworks for Sustainable Waste Management in Cambodia.** This paper aims to review the progress of decentralized MSWM system in Cambodia and examine the institutional and legal aspects after the reform of solid waste management policy established in late 2015.

2. **Prevention of Environmental Pollution through Criminal Sanctions: Preliminary Legal Framework Perspective.** This paper is written with the purpose to investigate the scope of relevant laws, and possible gaps in criminal law sanctions if there is any in relation with environmental prevention and protection in Cambodia.

3. **Environmental Impact Assessment in Cambodia – Law and Practice.** This paper examines the legal and policy framework on environmental impact assessment (EIA) in Cambodia. Cambodia's EIA system is currently outdated having been developed in 1997. Since 2013, Cambodia has undertaken a process of modernising the EIA system. This resulted in a Draft EIA Law in 2015. This Draft EIA Law was then incorporated into the Draft Environmental and Natural Resources Code of Cambodia. The EIA system is described in the paper and a number of recommendations are provided to make the EIA system more effective.

4. **Addressing Climate Change Migration with Loss and Damage Mechanisms: International Law and Opportunities for Practice in Cambodia.** This paper will explore the application of this international mechanism to Cambodian laws and policies. Through a presentation of current policies, laws and regulations and exploration of the synergies and gaps with international approaches, this paper will provide recommendations for the future development of Cambodian environmental law to address the substantial consequences of climate change migration.

5. **The Apparent Transfer of Environmentally Sound Technologies to Cambodia: Shouldn't Cambodia improve its intellectual property system?** This article attempts to propose a few new insights and suggestions which are formulated using the flexibilities found in the international intellectual property (IP) regime. These suggestions are offered after reviewing

two major international climate change agreements and one international IP Agreement.

6. **Latest Developments of Public Participation in the Thai Environmental Impact Assessment Legislation.** This paper is aimed to discuss the latest developments of public participation in the Thai environmental impact assessment process. Implementation and challenges regarding such development, particularly those under the 1992 Enhancement and Conservation of the National Environmental Quality Act, as well as certain policy and legal instruments, guidelines and practices are deliberated

The six papers are not purely academic papers which are required thorough and deep critical analysis on specific issues raised, but rather provide general points of views that the authors have examined and require further research and improvements. The publication is the first pilot test of Law Talk Series aiming at producing environmental resources in Cambodia.

These papers do not necessarily reflect the opinions and views of the editorial team and the Konrad-Adenauer-Stiftung. Hence, assumptions made in the articles are not reflective of any other entity other than the author(s) – and, since we are critically thinking human beings, these views are always subject to change, revision and rethinking.

The editor review articles before commencing her employment with UN Environmental Program and is therefore acting in her personal capacity and not as a representative of the UN. The contents of this report do not necessarily reflect the views or policies of the United Nations Environment Programme.

We expect these papers will establish a gateway for further research and development on environmental law in Cambodia and useful documents for researchers, professors and students.



Solid Waste Management Politics: Reforming Legal and Institutional Frameworks for Sustainable Waste Management in Cambodia

Vin Spoann & Takeshi Fujiwara

Abstract

Management of municipal solid waste (MSW) is a major challenge in cities of Cambodia. Overall responsibility for waste management has rested with municipality and district authorities and private operators. Providing waste services is a major challenge for both the public and private sectors due to the increasing waste volume and low service quality. While several strategies, regulations, and policy have been introduced for efficient municipal solid waste management (MSWM) in Cambodia, their performance level, practices and motivation level have not been critically investigated. This paper aims to review the progress of decentralized MSWM system in Cambodia and examine the institutional and legal aspects after the reform of solid waste management policy established in late 2015. We used sustainable waste management performance indicators involving qualitative assessment of institutional, legal and political aspects for system evaluation. Information was collected through literature reviews, scientific papers, and

published documents from government offices. The case studies mainly from Phnom Penh city and some major cities in Cambodia were discussed. Solid waste-related regulations and policies established from 1999 to 2017 are the key domains for the evaluation. Shortfalls in financial, manpower, and political commitment, and on-going-efforts to enhance local government's capacity are a great barrier to address solid waste management (SWM) reform's objective. New reform requires behavioral change on the part of sub-national government administrations and related specialized departments, so that, communication and coordination with stakeholders function as enabling and supporting factors. Political, economic interest and will of municipal/district administration is the function of the levels of public and stakeholder participation and motivation. It suggests that reinforcing of Local Government Authorities' performance, with the response to the SWM reform's goals, there should establish proper administration for monitoring; controlling procedure and enforcing waste regulations. This critical review has essentially practical implications for SWM, promotion of synergies between sub-national and others; and creating value via sustainable waste management and circular economy opportunities.

Introduction

Growing of economics activities, increasing industries, rapid urbanizations generate prosperity and contribute to improving the livelihood of Cambodian citizens. With these trends of agglomeration economy coupled with high urban population have brought to increase consumptions as well as, at the same time, produce waste in the cities of Cambodia from 0.397 million tons in 2006 to 1.178 million tons in 2015.¹ The increased amount of waste generation becomes a burden to the local government and has owed the local economy. There is no doubt that solid waste management (SWM) in Cambodia is a very complex issue, particularly when the institutional and legal aspects are part of the reform where the country needs to enhance the institutional capacity of SWM institution and other responsible organizations from weak enforcement and performance. To promote solid waste management and implementation, the Royal Government of Cambodia (RGC), formulated sub-decree#113 on urban solid waste management and enforced in July 2015.² This new regulation aims to sustainably improve MSWM in a transparent and accountable manner in order to ensure environmental safeguard and stability. Another coherent of this regulation is the joint ministerial circular between MOI & MOE in 2015,³ attempts on ensuring the efficiency and effective implementation of sub-decree #113 and minimizing challenges on urban solid waste management at the sub-national government.

Since these regulations have been introduced to local government units, there were not

1 Seng, B. Solid Waste management status and challenges in Cambodia. The presentation presenting for a national workshop on towards a circular economy innovative solid waste solutions. UNDP, Phnom Penh. 2018.

2 RGC, Sub-decree on urban solid waste management. Phnom Penh, Kingdom of Cambodia, August 27, 2015.

3 Joint ministerial circular between MOI and MOE on the implementation of sub-decree #113, November 12, 2015

been well- spelled out and implemented by LGAs. The recent study indicated that the major challenge of SWM in Cambodia is inefficient service quality due to a soundly less-proactive legitimacy. Consequently, the transfer of functions to local government administration on urban solid waste management is likely not attainable and achieved to the common goals. The Asian Development Bank pointed out that the legal and regulatory framework is the backbone for reforms as it provides the rules of operation for different levels of government—administrative, political, and financial⁴. On the other hand, shortfalls of institutional arrangement are clear indications of lacking efficiency and effectiveness and become a main challenge for institutional capacity to enhance the solid waste program and its implementation. In this context, the better understanding of how we could move from waste politics to practices effectively and are the waste management regulations closed with the need of local government administration towards sustainable SWM system? The study suggests that the way forward to overcome the greatest challenges for local government administration is to strike for the right balance between legislative and institutional frameworks, and governance in waste management.

The information collection is derived from the goal of the study and; performance assessment of the public sector agencies (local government units and related departments) is conducted. Stakeholders' involvement is known as waste processors, while the key issues on legal and institutional landscape of sub-national government units are examined. The case study approach allows the evaluation of qualitative indicators of legal, policy and institutional aspects and offers the chance to unfold the causal link between actions and outcomes in existing SWM system situation in Cambodia, especially from case studies in Penh Penh and some major cities. The data/information is drawn from a combination of reviewing the literature and key informant interviews and discussion during the project implementation.

Decentralized solid waste management regulations in Cambodia

To which extent should related SWM organizations be encountered versus roles and responsibilities? This is an important question that has confronted municipal planner, waste manager, and waste collection operators since 1994. In Cambodia, pollution control mandate is under the Ministry of Environment which has the main authority for environmental protection in the country.⁵ The Ministry comprises five general directorate departments; including Directorate of Environment Protection, which itself comprises eight departments including department of solid waste management and department of inspection. The department of solid waste man-

4 Naizi, H., (2011). Deconcentration and Decentralization Reform in Cambodia: Recommendation for Institutional Framework. Asian Development Bank, the Philippine. Accessed May, 2018: www.adb.org/sites/default/files/publication/28879/deconcentration-decentralization-cambodia.pdf

5 GMS Environment Operations Center (2016). Estimating Industrial Pollution in the Kingdom of Cambodia. Final Report (September 2016). GMS Core Environment Program. Bangkok, Thailand.

agement plays vital roles in preparing solid waste legal instruments and monitoring and control (of) all activities concerning the solid waste sector. The department of inspection is another department providing the enforcement work, environmental quality standard assessment, and compliance inspection throughout the country; and issue licenses or giving certificates of discharge that complied with national effluent standards. According to the Law on Environmental Protection and Natural Resource Management was adopted in 1996,⁶ Article#13 of the Law, the mandate of this law provides an opportunity to create sub-decrees as following by the proposal from the Ministry of Environment. Particularly, there were a sequence of sub-decrees were adopted in various years to govern SWM including sub-decree on solid waste management (1999),⁷ E-waste management (2016) garbage and urban solid waste management (2015),⁸ and plastic bag management (2017).⁹ Besides, government sub-decree(s), the responsible Ministries, Ministry of Environment (MOE) and Ministry of Interiors (MOI), have consecutively issued the joint ministerial declarations, Prakas, circulars, guideline, and environmental code and other specific legal instruments related to solid waste management. These are an indication of growth efforts and commitments of the Ministry of Environments and other related departments on promoting sustainable solid waste management in Cambodia. In the light of new sub-decree #113 on urban solid waste management and joint circular of MOE and MOI, a tier under national levels is known as provincial, municipal and Sangat authorities have established Deika (Notification) on garbage and solid waste in their provinces and in the reflection to their local appropriately context (Figure 1)

This study attempts to review and discuss on the Sub-decree #113 on urban garbage and solid waste management in Cambodia adopted on August 27, 2015, which is legal basis regulation for the advance of the functional transfer of waste management to subnational administrations. This sub-decree consists of 9 chapters and 55 Articles, aims at improving the solid waste management in urban areas in the way of sustainable, transparent and accountable manner in order to ensure environmental soundness, public health, and urban aesthetes.¹⁰ The objectives of sub-decree are specifically to:

- To strengthen the role and responsibility of the sub-national government administrations and stakeholders involved in urban solid waste management;
- To delegate the duties of solid waste management in urban areas to municipal, city and district administrations and to decentralize the urban solid waste management system and functional transfer from the capital to district/khan administrations;
- To take action on management measures to ensure the effectiveness and safeguard in

6 RGC (the Royal Government of Cambodia) (1996). Law on Environment Protection and National Resource Management, November 18, 1996. Kingdom of Cambodia

7 RGC (1999) Sub-decree on Solid Waste Management, Phnom Penh, Kingdom of Cambodia

8 RGC. (2015). Sub-decree on urban solid waste management. Phnom Penh, Kingdom of Cambodia.

9 RGC. (201). Sub-decree on plastic bag management. Phnom Penh, Kingdom of Cambodia.

10 RGC. (2015). Sub-decree #113 on urban solid waste management. Article#1

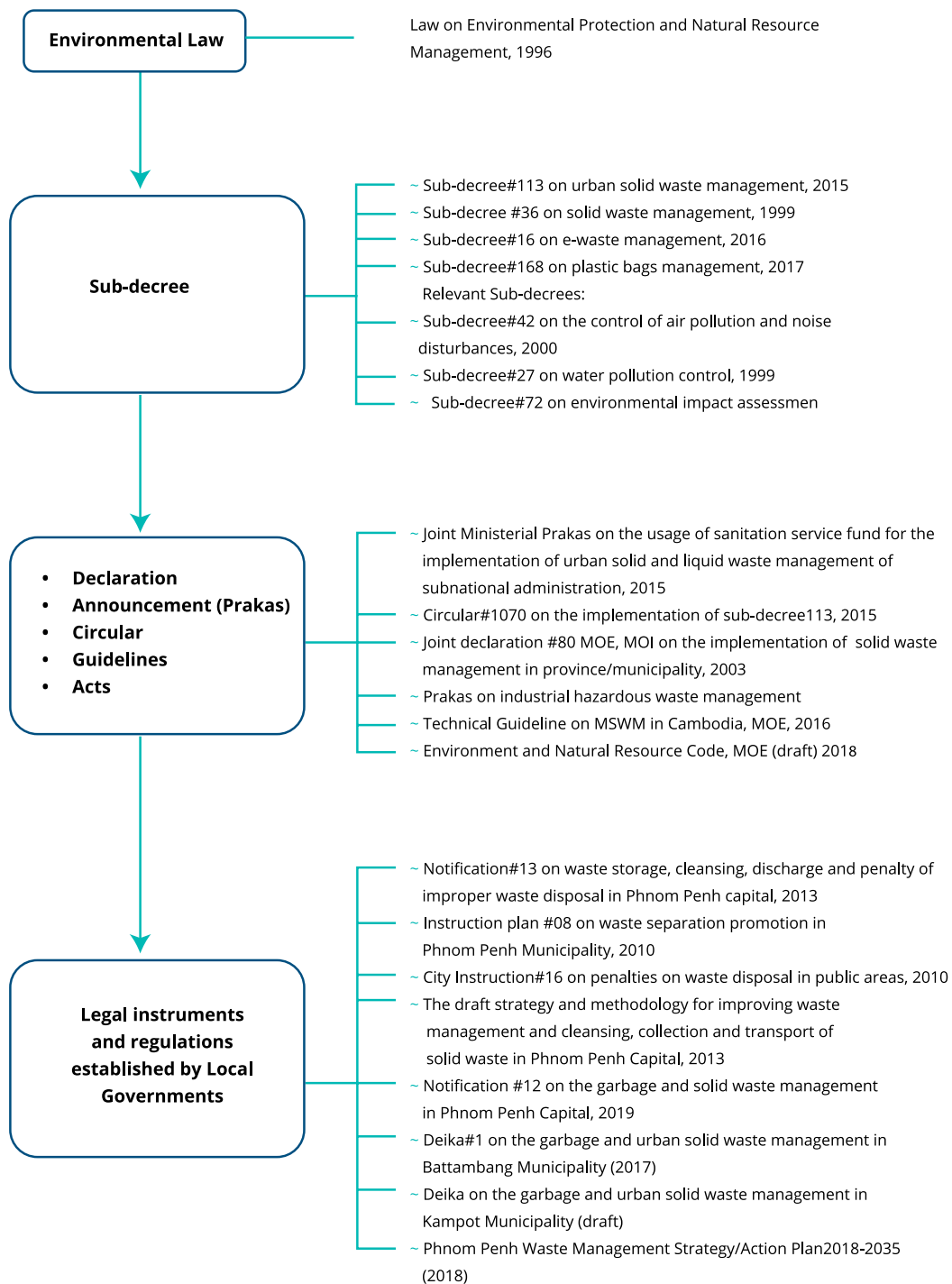


Figure1. Legislation and Regulations related to Solid Waste Management in Cambodia

urban solid waste management; and

- To promote public awareness and participation in managing and implementing measures for improving solid waste management in urban areas.¹¹

The functional transfer to local government for SWM was considered as the devolution of the management system since other regulations, example sub-decree #36 on solid waste management April, 27,1999), has not been soundly effective implementing. This new sub-decree provides more power to local government administration to exercise their responsibilities as delineated in a legal framework.¹² We summary the legal framework in terms of role, responsibilities, and resources from this sub-decree are: 1) prepare annual management, action, and budget plans, 2). Plan and implement tasks for SWM, 3) establish and manage the waste collection, transport and dumpsites, 4) advise the people on sanitation practice and waste service usage, 5) educate the people about environmental safeguards and promote the consumption of recycled productions. These responsibilities are functioned by right and resources including 1). Issues warrants or other legal instruments, 2) directly manage and contract out for SWM management service to private operator, 3) cooperate with other sub-national administrations for effective service delivery, 4) delegate and assign tasks to Sangkat administrations for implementation, 5) determine fees for waste services, 6) use municipal funds for SWM and 7) approve organizational and individual requests for SW resource recovery.¹³

Challenges and Progress in Implementation of Decentralized SWM Regulations

SWM is considered as the crosscutting issues that affect an impact various areas of sustainable development in each of three sustainability domains: ecology, economy, and society. At least 12 Sustainable Development Goals (SDGs) and their pertinent targets have a direct link to SWM.¹⁴ RGC and MOE have developed numbers national policies and legislations in the sense of responses to SDGs, as well as navigating the ministries and sub-national government administration to formulate and prioritize their development strategies such as sub-national solid waste management strategy and action plan 2018-2035. Concerning SWM policy, it is seen that MOE has put big effort to move beyond the status quo by the establishment of sub-decree#113 and a joint ministerial circular between MOI&MOE on implementation of sub-decree#113 in 2015. The recent joint circular aims at support and facilitates local government authorities and related organizations or agencies for effective implementation of solid waste management in

11 Ibid. Article#2

12 Vong, M. (2016). Progress and Challenges of Deconcentration in Cambodia: The Case of Urban Solid Waste Management. Phnom Penh: CDRI, Phnom Penh, Cambodia.

13 RGC. (2015). Sub-decree #113 on urban solid waste management. Article#9,10,11

14 Rodić, L., & Wilson, D. (2017). Resolving governance issues to achieve priority sustainable development goals related to solid waste management in developing countries. *Sustainability*, 9(3), 404.

their province or cities. This pool of legislations and regulations has been elucidated based on the performance of the previous works and effectiveness of the certain enforceability. It can be seen that the existing legal foundation on solid waste management would lead to proper management.¹⁵ The legal challenges in urban SWM were considered as the forcing variable. The finding suggested that the existence of legal instruments and law enforcement are a strong driving power to regulate both public sector and private operator.¹⁶ Therefore, law enforcement is one of the most important roles of government authorities.¹⁷ The result of imperial studies on solid waste management in Cambodia pointed out that the number of legal instruments introduced by the government of Cambodia did not certainly act effectively in terms of implementation and enforcement. There was some weakness due to limited functional roles and responsibilities for sub-national levels such as for municipal, cities and commune levels.^{18,19} The outcome of the weaknesses and ineffectiveness of previous enforcement provides a lesson to promote the recent decentralization of MSWM, as enforced by RGC's sub-decree 113. Despite the adoption of new sub-decree 113, the challenges and resource constraints appear to slow down and interlock to some particular functions of local government administrations. According to the recent studies by COMPED (2014), Spoann et al. (2018), and Vong (2016) noticed that the competence of regulatory agencies seems to be limited to achieve fruitful enforcement and disproportionately effective by complying with the said legislations.²⁰ The decentralized reform of the solid waste sector, with legislation framework, appear in place and it is generally—and openly and delegated—admitted that its effective implementation has been challenging and has suffered from political affiliation's role and lacking manpower and national budget allocation. For instance, Only Phnom Penh City has been firstly released this SWM strategy in late 2018, nevertheless, the national SWM strategy is still under developing by MOE. It is suggested that the waste management policies would be an interdependent to national program²¹, and the sustainable waste management laws necessarily need the support from legislators and politicians, because they would play a significant role in shoring up the waste management strategy.²²

15 Rushbrook PE & Finney EE (1988) Planning for future waste management operations in developing countries. *Waste management & research* 6(1): 1-21.

16 Spoann, v. (2019) Assessment of municipal solid waste capacity of local government authorities and contracted waste collection services: a case study of Phnom Penh Capital, Cambodia. PhD. Dissertation September, 2019. Okayama University, Japan.

17 Spoann, V., Fujiwara, T., Seng, B., & Lay, C. (2018). Municipal solid waste management: Constraints and opportunities to improve the capacity of local government authorities of Phnom Penh Capital. *Waste Management & Research*, 36(10), 985–992. <https://doi.org/10.1177/0734242X18785722>

18 Vong, M. (2016). Progress and Challenges of Deconcentration in Cambodia: The Case of Urban Solid Waste Management. Phnom Penh: CDRI, Phnom Penh, Cambodia.

19 COMPED (2014). Study and Analysis on Institutional and Legal Framework of Solid Waste Management and the Development of the Current Landfill Operation and Management in Phnom Penh, Final Report for the Asian Foundation. Phnom Penh

20 Ibid.

21 Vesilind, P.A., Worrell, W.A., Reinhart, D.R., 2002. *Solid Waste Engineering*. Brooks/Cole, CA, USA.

22 Joseph K (2006) Stakeholder participation for sustainable waste management. *Habitat International*. 30: 863-871.

Progress and Challenges in Institutional Framework on the reform of SWM Policy

In Cambodia, the urban solid waste service in most of the cities has been operated by private contracted companies. The waste private contractors take up almost overall responsibilities for waste management including collection, transport, disposal of waste and even fee collection, municipal administration is mainly responsible for monitoring and control (of) waste collection program of a waste contractor. It is no doubt that government institutions were not solid in the rules of operation. With a bulk of operation rule to private contractors and with a single long-term contract²³, many concerns about inappropriate management has led to global efforts in order to reorient municipal solid waste management systems towards sustainability given the limited resources (manpower and funding) and needs for social acceptability and preventing public interest aligning the incentives for the waste processors and waste generator.^{24, 25, 26}

Against this backdrop, sub-national governance of Cambodia has reformed and transformed into decentralization and de-concentration policy since 2008. This reform has transferred the administrative functions to sub-national government levels (the provincial and municipal local authority administrative layer)²⁷ (IGES, 2018) based on a law adopted in 2008.²⁸ This organic law was passed and requires the establishment of new sub-national structure and systems to ensure its provisional goals.²⁹ When a function is deconcentrated, the central ministry retains policy and fiscal directions while sub-national government administrations are responsible for implementing the function and control the personnel transferred from the ministry.³⁰ There are some complaints from local government authorities on the allocation of budgeting and public financial management for solid waste management activities as this was subsumed in the sanitation component. It is clear that the solid waste management fund for municipal/Khan Authority is not sufficient and sustained for enhancing the capacity of the organization. ADB report noticed that the National program established in 2010 for supporting the reform is not

23 Spoann, V., Fujiwara, T., Seng, B., Lay, C., & Yim, M. (2019). Assessment of Public-Private Partnership in Municipal Solid Waste Management in Phnom Penh, Cambodia. *Sustainability*, 11(5), 12-28.

24 Arbulú, I., Lozano, J., & Rey-Maqueira, J. (2016). The challenges of municipal solid waste management systems provided by public-private partnerships in mature tourist destinations: the case of Mallorca. *Waste management*, 51, 252-258.

25 Shekdar, A. V. (2009). Sustainable solid waste management: an integrated approach for Asian countries. *Waste Management*, 29(4), 1438-1448.

26 Spoann, V., Fujiwara, T., Seng, B., & Lay, C. (2018). Municipal solid waste management: Constraints and opportunities to improve the capacity of local government authorities of Phnom Penh Capital. *Waste Management & Research*, 36(10), 985-992. <https://doi.org/10.1177/0734242X18785722>

27 IGES (Institute for Global Environmental Strategies) (2018). State of Waste Management in Phnom Penh, Cambodia, Technical Report, June 2018.

28 Naizi, H. (2011). Deconcentration and Decentralization Reform in Cambodia: Recommendation for Institutional Framework. Asian Development Bank, the Philippine. Accessed May, 2018: www.adb.org/sites/default/files/publication/28879/deconcentration-decentralization-cambodia.pdf

29 Ibid

30 Vong, M. (2016). Progress and Challenges of Deconcentration in Cambodia: The Case of Urban Solid Waste Management. Phnom Penh: CDRI, Phnom Penh, Cambodia.

strong enough due to financial interests and a variety of stakeholders' interest. A senior MOE official emphasized that the challenge needs to pay serious attention was the renovation of the governance structure for solid waste management.³¹

Since the reform of SWM policy has shifted to local government administrations, the challenges have mostly happened in the earlier phase of the reform. For instance, there were some indicative cases in Kampong Chhnang, Krong Khmerakphumin, Battambang, and Phnom Penh municipality on mandate of local government administration and operational framework on solid waste management as delegated functions (assignments) are not only about the assigned role and obligation, but there are big barriers and limitations of technical and financial resources. Similarly, a study conducted by National League of Local Councils (NLLC) provided the substantial investigation on the causes of municipal/khan authorities encountered and had small numbers of sub-national government level integrated the solid waste program into their development and investment plans. With its new assignments, it is needed to instructions and clear guidelines from above/supervised institution before they could take action and avoid mistakes.^{32,33} It is generally proved that the development of solid waste strategies/plan at municipal/khan administration must go beyond institutional and legislative considerations to better address the technical and financial challenges.

The challenges of institutional arrangement— role and responsibility, coordination and co-operation and monitoring to public-private operation, were weighted by the recent study.³⁴ This study urged that the institutional framework for urban SWM in Cambodia was an enabling factor that driving the enforceability of waste regulations. These variables are strongly driving and dependent in promoting the implementation of waste management policy. According to the RGC's development strategy, the private sector has the prime role as the locomotive and driving force for investments and economic growth. Thus, it suggests that full efforts for strengthening and deepening the harmonious and symbiotic relationships with private sector are necessarily needed and the laws and regulations are also strictly enforced³⁵. From this backdrop of national strategy and sub-decree No. 113 premise, the Ministry of Environment and Ministry of Interior are together established a joint ministerial circular-No.1070 for the effective implementation of sub-decree number 113 in late 2015. The aims of circular are to progress the functional role of sub-national government administration and minimize the challenges and constraints currently facing to the implementations of SWM in their cities.³⁶

31 Ibid

32 NLLC (National League of Local Councils)(2016). Survey Report on Waste Management Practices at the Municipality/District Level. Phnom Penh, Cambodia

33 Vong, M. (2016). Progress and Challenges of Deconcentration in Cambodia: The Case of Urban Solid Waste Management. Phnom Penh: CDRI, Phnom Penh, Cambodia.

34 Spoann, v. (2019) Assessment of municipal solid waste capacity of local government authorities and contracted waste collection services: a case study of Phnom Penh Capital, Cambodia. PhD. Dissertation September, 2019. Okayama University, Japan.

35 RGC (2009) National Strategic Development Plan-2009-2013, Phnom Penh

36 MOE&MOI (2015) circular on implementation of sub-decree on urban solid waste management in Cambodia. Circular No.1070 (វ.វ.វ.វ.). Ministry of Environment and Ministry of Interior, November 2015. Phnom Penh, Kingdom of Cambodia

Another shortfall on the institutional arrangement is the link between political party, state, and civil services also contribute to institutional complexities. Like most complex issues, it has to be well-understood and tackled from different points of view. Vong (2016) pointed out that the reform has interacted with political reality over time,³⁷ whereas Spoann et al. (2018) concluded that the results of insufficient decentralization power and allocation of fund and workforce for promoting technological and environmentally sustainable practice in SWM are derived from limited institutional capacity and its performance toward the assigned functions.³⁸ However, in some cases, e.g solid waste collection in Phnom Penh has proved that politically and practically difficult for a regulatory government unit to enforce compliance with regulations, where regulatory agencies ignored and worked out with less commitment.^{39,40} Weighing up these issues, some constraints to remove the anti-competitive behavior which rendering unaccountable responsibilities, despite the increase of attention of reform policy. It was understood that the right balance must be struck between the interests of the stakeholders and actual reform implementation.

Conclusion and Policy Implications

The legal, regulatory and institutional framework is the backbone for reforms as it assigns the rules, roles, and rights for operating solid waste management at provincial, and municipal/ khan administration levels. The challenges for decentralization on solid waste management are legitimacy issues, institutional arrangement, and service quality. Shortfalls in financial, manpower, and political commitment, and on-going efforts to enhance local governments' capacity are of big concern to national government bodies in the transition period of functional transfer to provincial and municipal/khan administration. The decentralized solid waste management policy has not preserved financial estimate which inclined to reduce the capacity for monitoring and legal remedies. The legal framework is likely not to overthrow anti-competitive behavior and preventing political interest. Moving from legislation to practice, government bodies need to ensure the right balance. In addition, functional transfer without ensuring financial arrangement and resource reallocation mechanisms to the implementation of waste managements are seemingly ruined the premise of regulations and institutionalization processes. Last but not least, the findings of the study is an indicative of which can be extended to study deeply of specific urban or city's contexts that based on their existing adherence of law and regulations

37 Ibid

38 Spoann, V., Fujiwara, T., Seng, B., & Lay, C. (2018). Municipal solid waste management: Constraints and opportunities to improve the capacity of local government authorities of Phnom Penh Capital. *Waste Management & Research*, 36(10), 985-992. <https://doi.org/10.1177/0734242X18785722>

39 Kum V, Sharp A and Harnpornchai N (2005) Improving the solid waste Management in Phnom Penh city: A strategic approach. *Waste Management*25:101-109.

40 Spoann, V., Fujiwara, T., Seng, B., Lay, C., & Yim, M. (2019). Assessment of Public-Private Partnership in Municipal Solid Waste Management in Phnom Penh, Cambodia. *Sustainability*, 11(5), 12-28.

related to solid waste management.

For the promotion of sustainable institutional and legislative framework, the Government of Cambodia may focus on some priority actions and policy implication towards sound institutions and proactive policies. In a very impressive way for this critical movement, the proper waste management would need the locally appropriated legal instruments and reinforcing of LGA's performance. Thus, there should establish proper monitoring, controlling procedures and enforcing waste management regulation (e.g sub-decree 113 on MSWM) by enshrining in new local legal instrument such as Deika on MSWM. Enabling and supporting factors for provincial and municipal/district administration and specialized departments to promptly change their behaviors in communication and exchange with stakeholders are necessary for the require new reform of decentralized SWM.

The institutional support through enhancing skilled personnel, providing appropriate rules of operations in parallel to the regulations may help to reduce the burden on local government administration. Promoting synergies between local development strategies and solid waste management plan to achieve the outcomes associated with the agreed strategy's objective and ensure successful stakeholder participation.

Selected Bibliography

- Naizi, H., (2011). Deconcentration and Decentralization Reform in Cambodia: Recommendation for Institutional Framework. Asian Development Bank, the Philippine. Accessed May, 2018: www.adb.org/sites/default/files/publication/28879/deconcentration-decentralization-cambodia.pdf
- Vesilind, P.A., Worrell, W.A., Reinhart, D.R., 2002. Solid Waste Engineering. Brooks/Cole, CA, USA.
- UNCHS/UN (1994). Promotion of Solid Waste Reuse and Recycling in the Developing Countries of Asia.
- Grosso, M. (2016) Sound, and Advanced Municipal Waste Management: Moving from Slogans and Politics to Practice and Technique. Waste Management & Research. Editorial. Vol.34-977-979
- Teshager, A, K. (2017). Formal and Informal Actors in Addis Ababa's Solid Waste Management System. IDS Bulletin, 48:53-70.
- Spoann, V., Fujiwara, T., Seng, B., Lay, C., & Yim, M. (2019). Assessment of Public-Private Partnership in Municipal Solid Waste Management in Phnom Penh, Cambodia. Sustainability, 11(5), 12-28.
- GMS Environment Operations Center (2016). Estimating Industrial Pollution in the Kingdom of Cambodia. Final Report (September 2016). GMS Core Environment Program. Bangkok, Thailand.
- RGC (the Royal Government of Cambodia) (1996). Law on Environment Protection and National Resource Management, November 18, 1996. Kingdom of Cambodia
- RGC (1999) Sub-decree on Solid Waste Management, Phnom Penh, Kingdom of Cambodia
- RGC . (2015). Sub-decree on urban solid waste management. Phnom Penh, Kingdom of Cambodia.
- MOE, MOI and MEF (Ministry of Environment, Ministry of Interior and Ministry of Economy and Finance) (2015) Joint Ministerial Prakas on the Usage of Sanitation Service Fund for the Implementation of Urban Solid and Liquid Waste Management of Subnational Administrations.
- MOI (Ministry of Interior) (2016) Decision on "Establishment of Inter-ministries Working Group on the Discussion and Facilitation on transferring functions of Urban Solid Waste Management". Cambodia
- Rushbrook PE & Finnecy EE (1988) Planning for future waste management operations in developing countries. Waste management & research 6(1): 1-21.
- Spoann, v. (2019) Assessment of municipal solid waste capacity of local government authorities and contracted waste collection services: a case study of Phnom Penh Capital, Cambodia. PhD. Dissertation September, 2019. Okayama University, Japan.
- Spoann, V., Fujiwara, T., Seng, B., & Lay, C. (2018). Municipal solid waste management: Constraints and opportunities to improve the capacity of local government authorities of Phnom Penh Capital. Waste Management & Research, 36(10), 985-992. <https://doi.org/10.1177/0734242X18785722>

- Rodić, L., & Wilson, D. (2017). Resolving governance issues to achieve priority sustainable development goals related to solid waste management in developing countries. *Sustainability*, 9(3), 404.
- COMPED (2014). Study and Analysis on Institutional and Legal Framework of Solid Waste Management and the Development of the Current Landfill Operation and Management in Phnom Penh, Final Report for the Asian Foundation. Phnom Penh
- MOE&MOI (2015) circular on implementation of sub-decree on urban solid waste management in Cambodia. Circular No.1070 (ស.ជ.ណ). Ministry of Environment and Ministry of Interior, November 2015. Phnom Penh, Kingdom of Cambodia
- Vong, M. (2016). Progress and Challenges of Deconcentration in Cambodia: The Case of Urban Solid Waste Management. Phnom Penh: CDRI, Phnom Penh, Cambodia.
- Arbulú, I., Lozano, J., & Rey-Maqueira, J. (2016). The challenges of municipal solid waste managementsystems provided by public-private partnerships in mature tourist destinations: the case of Mallorca. *Waste management*, 51, 252-258.
- Shekdar, A. V. (2009). Sustainable solid waste management: an integrated approach for Asian countries. *Waste Management*, 29(4), 1438-1448.
- IGES (Institute for Global Environmental Strategies) (2018). State of Waste Management in Phnom Penh, Cambodia, Technical Report, June 2018.
- Kum V, Sharp A and Harnpornchai N (2005) Improving the solid waste Management in Phnom Penh city: A strategic approach. *Waste Management* 25:101-109.
- NLLC (National League of Local Councils)(2016). Survey Report on Waste Management Practices at the Municipality/District Level. Phnom Penh, Cambodia
- Denney, L. (2016). Working Politically in Practice Series - Case Study No. 8 - Reforming Solid Waste Management in Phnom Penh, San Francisco, USA: The Asia Foundation and the Overseas Development Institute.
- Joseph K (2006). Stakeholder participation for sustainable waste management. *Habitat International*. 30: 863-871.
- PPCA, IGES, Nexus, UN Environment, CCCA (2018). Phnom Penh Waste Management Strategy and Action Plan 2018-2035. Phnom Penh, Cambodia
- RGC (2009) National Strategic Development Plan-2009-2013, Phnom Penh, Cambodia



Prevention of Environmental Pollution through Criminal Sanctions: Preliminary Legal Framework Perspective

Dr. Meas Bora

Abstract

Climate change caused by environmental pollution is a common issue affecting all countries around the globe. Cambodia is not spared.

There are many laws and regulations as well as mechanisms preventing such pollution, such as administrative fine or criminal sanction. Cambodia has criminal laws and other laws providing prevention of pollution and protection of environment.

There are not yet any academic articles focusing on enforcing environment law through criminal sanctions to see to what extent that laws and regulations are. This short text is purposed to investigate scope of relevant laws, and possible gaps in criminal law sanctions if any in relation to environmental prevention and protection. The paper found that there are detailed provisions on criminal sanctions of drafted Environment and Natural Resources Code (ENR) as well in relaxant laws. Although there are not completely prescribed, they might help deterrence preventing future pollution of environment through broad construction of norms. Judges should weight much on intangible effect of breaches of environmental norms in deciding level of penalties or fine.

Introduction

The climate change is one of environmental issues encountered by the globe. Its negative impact is without border; therefore, it is common problem that all States need to take concerted effort to prevent or reduce such a problem.

Cambodia is not devoid of climate change impact, and has taken various actions to respond, including criminal sanctions. This is a purpose of this text to present, to what extent, criminal sanction can help to prevent or reduce environmental pollution. The text will provide a brief background on laws and environment measures undertaken by Cambodia before discussing criminal law sanctions mainly focusing on criminal liability of legal persons, whose activities are main sources of pollution in the field of environment. In the sphere of discussion, the paper will as well cover type of offences and penalty and form of liability. The drafted Environment and Natural Resources Code (ENR) will be consulted as well given current laws and regulations are limited in the environment issue.

Current Institution and Legal Environment Framework

There are many relevant laws in which environment related aspects are prescribed, such as land law.¹ In addition, regulations to help enforcement of such laws are produced.² The Royal Government of Cambodia adopted several policies for guidance on environment protection on which further laws, regulations and guidelines will be developed, together making prevention of pollution effectively and efficiently.³

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- 1 Law on Environmental Protection and Natural Resources Management (1996), land law (2001), Law on Mineral Resource Management and Exploitation (2001), law on water resources management (2007), Law on Fisheries (2006), Law on Forestry (2002), Law on Protected Areas in the Tonle Sap Lake (2001), law on protected area (2008), law on pesticide and Chemical Fertiliser Control (2001).
 - 2 Sub-decree No 72 ANRK.BK on Environmental Impact Assessment (1999), Sub-decree on Solid Waste Management (1999), Sub-decree on Water Pollution Control (1999), Sub-decree on Air pollution and Noise Disturbance control (2000), sub-decree on the management of Ozone depleting substance (2005), Sub-Decree on State Land Management (2005), sub-decree on economic land concession (2009), sub-decree on community fisheries (2007), sub-decree on forest concession management (2000), sub-decree on community forestry management (2003), sub-decree on the establishment of the protected forest for biodiversity Conservation in Koh Kong province (2004), sub-decree on timber and non-timber forest product allowed for export and import (2006), Decree on the protection of natural areas (1993), Sub-decree on management of Drainage and Wastewater Treatment System (2017), Sub-Decree on Plastic Bag Management (2017), Sub-Decree on Electronic and Electricity Equipment Waste Management (2016), Sub-Decree on Management of Garbage and Solid Waste of DOWNTOWN 2015).
 - 3 National Forest Programme (2010-2029), Cambodia Climate Change Strategic Plan (2014-2023), National Green Growth Roadmap (2009), National Adaptation Plan of Action to Climate Change (2006), Strategy for Agriculture and Water (2006-2010), National Action Plan for Coral Reef and Seagrass Management in Cambodia (2006-2015), Strategic Plan on Management of Mercury in Artisanal and Small scale gold mining (2012-2016), National Policy on Mineral Resources (2018-2028), Phnom Penh Green Strategic Plan (2016-2025), National Environmental Strategy and Action Plan (2016-2023), Environmental Guideline on Solid Waste Management (2006), Phnom Penh Waste Management Strategy and Action Plan of Phnom Penh (2018-2035), Council of Ministers Petroleum Regulations (1991), Establishment of National Committee of Coastal Area Management and Development (2012), National Biodiversity Strategy and Action Plan 2002.

Given one of the less developed countries that technical assistance is in needs, Cambodia decided to become a party to many conventions or agreements related to subfield of environment.⁴ Finally, in terms of mechanism, besides the creation of the Ministry of Environment (MoE) and its function, the Government created other commission/committees and offices under competent institutions to directly perform conservation and protection of environment.⁵

Regulations, ratified agreements and laws linked or pointed out criminal sanctions whereby prevention of pollution and protection of environment are ensured.

Criminal Offenses and Legal Liability of Legal Person

Criminal offences are contrary to civil wrongs. The latter affect individual interest, and based on the doctrine of autonomy, victim might or not seek for redress while the former needs the intervention by State authority to pursue litigation to sanction wrongdoer even victim decided not to file complaint. This is because criminal offence causes social turmoil in society that offender must be brought to justice to signal her/her peer not to follow him.

Criminal law offences are divided into infraction, misdemeanor and crime. This categorization based on extent of effect and was reflected by level of criminal sanction. For example, crime deserves imprisonment from more than five years to life imprisonment.⁶ Imprisonment is one of principal sentence in addition to fine. Moreover, General Criminal Code imposes additional penalty upon offenders as well.

Both principal and additional ones are also applicable to legal persons, such as companies upon liability were proved. Article 42 provided liability, said: *where expressly provided by law and statutory instruments, legal entities, with the exception of the State, may be held criminally responsible for offences committed on their behalf by their organs or representatives.*⁷

Given the fact that sstate cannot put company, an abstract entity, into jail, the principal sanction applied is only fine.⁸ Additional sentence are also applied to legal persons pursuant to special characteristics of entities, and those penalties are already set forth in the law attached

4 Kyoto Protocol to the United Nations Framework Convention on Climate Change (2002), UN framework Convention on Climate Change (1995), Initial National Communication (2000), Convention on Biological Diversity (1995), Cartagena Protocol on Biosafety (2003), UN Convention on Combat Desertification (1997), Ramsar Convention on Wetlands (1999), Convention on International Trade in Endangered Species of Wild Fauna and Flora (1997), World Heritage Convention (1991), ASEAN Heritage Convention (2003), International Convention for the Prevention of Marine Pollution from Ships (1994), ASEAN Measures on Prevention of Climate Change, Ozone Depletion, on Freshwater Resource Protection and on Sustainable Forest (1999), Stockholm Convention on Persistent Organic Pollutants (2001), Basel Convention on Control, Transport and Disposal of Transboundary Hazardous Waste (2001), ASEAN Declaration of Hazardous Chemicals and Wastes Management (2017), Convention on the Protection of the underwater cultural heritage (2007), Convention of the Regulation of Whaling and Protocol (2014), Vienna Convention and Montreal Protocol on Substances that Deplete Ozone Layer (2001).

5 National Committee of Coastal Area Management and Development, 2012.

6 2009 Cambodian Criminal Code, Article 46.

7 The 2009 Criminal Code of Cambodia.

8 The 2009 Criminal Code of Cambodia, Article 167.

to each type of offence that the legal entity might be criminally liable.⁹ One of these sentences is its dissolution.¹⁰

Environmental Offence and Legal Person Liability

Law on protection of environment 1996 is specific law if compared with other general ones, such as land law, in which a few provisions mentioned environmental issue. The 1996 Law criminalizes some acts affecting environment as criminal offence. However, it is related to limited aspects of environment. Criminal sanction is not much severe, might not lead to deterrence of offence commission. For example, court might impose penalty or/and fine.¹¹ If fine is adopted, it will be hard to make company whose act causing water pollution via pouring waste into river deterrent since they can afford to pay fine while earning many benefits from not creating waste treatment system. Remarkably, there was not any provision indicating criminal liability of company. Criminal Code of 2009, whose above quoted article 42, is not retroactively applied.

Currently, the Ministry of Environment (MoE) has drafted ENR (Khmer Version 11.1). It is a long code in the history of Cambodian Legal System.¹² It is detailed and technical one, providing all aspects of environment: Environment Impact Assessment (EIA),¹³ environment fund,¹⁴ species,¹⁵ air and water pollution,¹⁶ waste management,¹⁷ public participation,¹⁸ protection of cultural heritage,¹⁹ sustainable management of resources.²⁰ When adopted, the code will replace most of previous provisions of laws and regulations.²¹ Provisions of the code will be prevailed and applied as *lex specialis*.²²

Different from the criminal code, the code-considered as special law- details on many types

9 The 2009 Criminal Code of Cambodia, Article 42.

10 The 2009 Criminal Code of Cambodia, Article 170.

11 Law on the Environmental Protection and Natural Resource Management (1996), Article 22.

12 Mekong Region Land Governance (MRLG), Discussion Note, March 2019, <https://www.mrlg.org/publications/review-comments-and-recommendations-on-the-draft-environment-and-natural-resources-code-version-11-of-cambodia>, p.1.

13 Drafted ENR Version 11, Book 2, Title 2 (Drafted ENR).

14 Drafted ENR, Book 8, Title 1, Chapter 3.

15 Drafted ENR, Book 4, Title 5.

16 Drafted ENR, Book 6, Title 5.

17 Drafted ENR, Book 6, Titles 3 and 4.

18 Drafted ENR, Book 1, Title 2.

19 Drafted ENR, Book 5.

20 Drafted ENR, Book 4.

21 Drafted ENR, Book 12.

22 Drafted ENR, Articles 1075 and 1086.

of offences related to public participation,²³ sustainably environmental management,²⁴ EIA,²⁵ cultural heritage,²⁶ waste and pollution,²⁷ less or nothing about coastal management offence.²⁸ The offences are categorised into five types from the 1 class to the last class 5 which is lowest sanction or fine.²⁹

Second, clearer than previous laws, article 1048 introduced so called “strict liability”.³⁰ It is strongly welcome as other State laws, especially ones of the west part of the globe, which consider some fields, such as food, environment, whose effects of breaches cause serious, irreparable and irrecoverable harm.³¹ This type of liability demands shift of burden of proof to offender if they want to be acquitted (affirmative defence).³²

Finally, public interest complaint, different from declaratory one, was recognized. The former can file complaint to higher court, are allowed.³³

Criminal Liability of Legal Persons

The Drafted Code provides criminal liability of legal persons³⁴ in various offences along with individual perpetrators who might be their agents or officials.³⁵

Legal entities shall be held criminally or civilly responsible for crimes against the environment committed on their behalf by their agents or representatives acting in the course of their duty for the benefit of the legal entity. Liability may also be imposed personally on the legally authorized representatives.

Inclusion of term “agent” in this article represents more extent of scope of individual whose acts lead to liability of legal entities if compared to one of article 42 of the 2009 Criminal Code.

23 Drafted ENR, Articles 1125 and 1126, for example.

24 Drafted ENR, Articles 1144 and 1149.

25 Drafted ENR, Article 1130.

26 Drafted ENR, Book 11, Chapter 5 (Articles 1189-1256).

27 Drafted ENR, Book 11, Chapter VI.

28 Drafted ENR, Article 1183.

29 Drafted ENR, Article 1119.

30 Liability for environmental compensation shall not require proof of intention or knowledge and shall apply to: a) Any natural person or legal entity whose actions or failures to act are more likely than not to result in harm to the environment; and b) Any government official at any level of government who acts beyond his or her authority or in contravention of this Code or any relevant legal instruments whose action is more likely than not to result in harm to the environment, drafted ENR, Article 1115.

31 Pelma Jacinth Rajapakse, Contamination of Food and Drinks: Product Liability in Australia, 21(1) Deakin Law Review, 2016, pp. 46-47.

32 Normally prosecutor has burden of proof to prove that defendant is at fault.

33 Drafted ENR, Articles 22 and 1047.

34 Drafted ENR, Article 1116.

35 Id.,

Agent can be commercial unit³⁶ or natural person.³⁷ It is not clear if agent covers normal staff. They must act during official work, and for benefit of entities. These last criteria shall be cumulative. This makes more clear circumstances that legal entity shall be responsible. Agent might gain his own benefit during acting in capacity of and during official working times. This will not fall within liability of legal entities.

Principal sentences for legal entity are fine and additional sentences.³⁸ Some offences impose only transitional fines; one day of payment is 2 million riels.³⁹ Although provisions on sentence mention both imprisonment and fines,⁴⁰ specific offence provision imposes only fine or imprisonment.⁴¹ There are no provisions of joint liability of wrongdoers.

Few Highlighted Comments

Offence and penalty: The highest imprisonment sentence is 30 years on the ground that it causes death or disability. This is not logic or much reasonable since some of environmental pollution has vast effect beyond death of one person. Therefore, in future case, court should take much account of intangible and tangible of acts.

Transitional Fine: Examining all relevant provisions, fine is most popular linked to all offences. Fine is lower if considering benefit from act at expense of environment. Of course, some provisions allowing fine daily of 2 million riels if companies do not remove negative effect/act,⁴² for example; however, it is unclear if it can be exceeded fine range mentioned in Article 1120.⁴³

Article 1109 said: the ministry or institution responsible for environment shall have the rights to implement transitional fines for an offence under this Code. A transitional fine shall be implemented in cases where the perpetrator admits guilt and agrees to pay a transitional fine in accordance with provisions under this Code. Payment of a transitional fine shall lead to the extinguishment of a criminal complaint for the specific offence for which the transitional fine was paid. If an offender refuses to pay the transitional fine, the ministry or institution responsible for environment shall file a case of the offence to lodge in court in accordance with the Code of Criminal Procedure of the Kingdom of Cambodia. Procedures and documentation for

36 HAP Phalthy, Translation of Legal Terminology, pp. 83-84, available at: <https://phalthy.wordpress.com/documentatio/legal-terminology-ch-1-30/> (accessed on June 10, 2019).

37 Id.,

38 Drafted ENR, Article 1118

39 Drafted ENR, Articles 1127.

40 Drafted ENR, Articles 1120.

41 Drafted ENR, Articles 1127.

42 Article 1120: 20000 – 2 million riels (fine for offence class 5), 2 millions – 20 millions (fine for offence class 4), 20 millions- 200 millions (fine for offence class 3), 200 millions -400 millions (fine for offence class 2) and 400 millions-800 millions (fine for offence class 1). Article 1127 on obligation to produce environment and national resource information (class 4 offence), in case of continuing commission of such offence, fine shall be 2 millions riels per day.

43 For example, Class 4 offence, the fine range is between 2 millions -20 millions, Drafted ENR, Article 1120.

transitional fines shall be defined by a legal instrument of the ministry or institution responsible for environment.

This provision is broad, and might suggest that paying would end all criminal offences regardless of how serious crimes are. Without referring to other provision in the Article 1109, it might cause confused interpretation. This author suggests that this article is only applied to other offences with mentioning of this type of fine.

Liabe persons: Some provisions mention both natural and legal persons who might be responsible;⁴⁴ however, some of them only include natural persons.⁴⁵ For example, it is in case of offence of animal hunting. It might be intent of drafter not to cover legal liability of legal person in some of offences or unforeseeable loopholes. Anyway, in either case, possible extension to impose such a liability is workable though legal construction of the term “person” that the glossary attached to the drafted code refers to both natural and legal person.⁴⁶

Alternative redress: The code mentions clearly two possible types of litigations⁴⁷ and even mention of non-contractual liability (tort).⁴⁸ Thus, victims can still resort to tort litigation if criminal litigation is barred. In this connection, section of civil code on tort is applicable, including joint liability.⁴⁹

Summary

Within the current drafted Code version 11, with expectation of less change in future, the code is legally advanced and detailed. However, whether criminal sanction helps much conservation and protection of environment, we need to wait for actual implementation. The author, given the protection of environment is important for death or life of human and the code complicated, commentary on the code should be made to help judiciary in deciding cases in hand, and some recommendations above of this author might be of assistance.

44 Drafted ENR, Article 1072 on Breach of Obligation to Avoid Environmental Harm, said: the natural person or legal entity who breaches the provisions of this code...

45 Hunting (only natural person)...All person affected by decision...(participation, article 5). No resin harvesting permit will be issued to any person who sued to commit any illegal activities inside a Biodiversity Conservation Corridor or Natural Protected Area, Drafted ENR, Article 336.

46 Glossary Attached to the Drafted ENR.

47 Drafted ENR, Articles 22 and 916.

48 Drafted ENR, Articles 1139 and 916.

49 2007 Civil Code of Cambodia, Article 743.



Environmental Impact Assessment in Cambodia – Law and Practice

Matthew Baird

Abstract

This paper examines the legal and policy framework on environmental impact assessment (EIA) in Cambodia. Cambodia's EIA system is currently outdated having been developed in 1997. Since 2013, Cambodia has undertaken a process of modernising the EIA system. This resulted in a Draft EIA Law in 2015. This Draft EIA Law was then incorporated into the Draft Environmental and Natural Resources Code of Cambodia. The EIA system is described in the paper and a number of recommendations are provided to make the EIA system more effective.

Introduction

The primary legal requirements for EIA in Cambodia are set out in the Law on Environmental Protection and Natural Resource Management, 1996 (Chapter III) (EPNRM Law) and the Sub-Decree on Environmental Impact Assessment, 1999 (EIA Sub-Decree). To implement the EIA Sub-Decree, the Royal Government of Cambodia (RGC)

Since 2015, the RGC has been developing a new Environmental Code. A draft EIA law, which was in the process of being finalized in 2015, has now become part of the new Environmental Code. It is expected that the Environmental Code will be submitted to the National Assembly in late 2019. The new Environmental Code, as with all Cambodian law, will need to comply with the Constitution, which includes a requirement for environmental protection.

The National Environment Strategy and Action Plan 2016-2023 (NESAP) was adopted by the Royal Government in 2017, in accordance with Article 59 of the Constitution to “help Cambodia to achieve sustainable development goals and strengthen cooperation between ministries, institutions and stakeholders who are responsible for sustainable development goals given that environment is a cross-cutting issue.” NESAP is a commitment to sustainable development. The vision of NESAP is: “To strengthen enabling conditions and leverage for the environment and natural resources management and conservation for sustainable and stable socioeconomic development in Cambodia.” (NESAP p.26). Objective 1.5 is to support the implementation of the Environmental Code and focus to “strengthen technical capacity and guidelines to apply Strategic Environment and Social Assessment (SESA), Cumulative Impact Assessment (CIA), Integrated Impact Assessment Process, Multi-criteria Assessment, and Costs and Benefits Analysis to assess impacts and identify alternative development scenarios.” (NESAP p.30) NESAP also refers to the Strategic Plan on Environmental Impact Assessment 2016 -2018 was developed for promoting the development of regulations and law enforcement, enhancing the efficiency in reviewing and commenting on ESIA reports for development projects and strengthening the efficiency in monitoring and evaluating of the implementation of projects (NESAP p.16).

The Cambodia Climate Change Action Plan 2016 – 2018 identified the updating of the relevant environmental law and EIA laws as priority areas to mainstream climate change into the regulatory framework of Cambodia. The incorporation of climate change considerations into the EIA framework is considered a strategic priority (Action 15).

Paper research methodologies

The research methodology used is a constructivist approach examining the framework laws and policies in Cambodia. The researcher has then relied on a number of research papers developed by the Institute for Global Environmental Governance (IGES) in 2016 which examined the EIA systems in seven Asian countries, including Cambodia (IGES 2016a and IGES 2016b). This report providing some key findings on ways to strengthen EIA in Asia. The researcher was also the primary legal drafter for the draft EIA Law, working directly with the Ministry of Environment

(MoE) and Vishnu Law Group, and in particular with the Director of the Department of EIA (DEIA) H.E Danh Serey.

Legal Framework and Policy on EIA in Cambodia - Procedure for IEIA and EIA under Cambodian Law

The Constitution of Cambodia under Article 59 provides that:

The State shall protect the environment and balance of abundant natural resources and establish a precise plan of management of land, water, air, wind, geology, ecological system, mines, energy, petroleum and gas, rocks and sand, gems, forests and forestry products, wild-life, fish and aquatic resources.

Under the current framework EPNRM Law 1996, all investment-project applications and all projects proposed by the state shall have an Initial Environmental Impact Assessment (IEIA), report of pre-feasibility study, or an Environmental Impact Assessment as specified in Article 6 of EPNRM Law (Articles 6 and 7). A copy must be submitted to the Project Approval Ministry/ Institution and the Ministry of Environment (MoE).

There are also a number of other Prakas¹ and other guidelines on the procedures implementing the EIA Sub-Decree 1999. The following are the main regulations on EIA (a more complete list prepared by Vishnu Law Group is contained in Annexure 1):

The EIA Sub-Decree was prepared by the Ministry of Environment and issued by the Prime Minister of Cambodia in 1999. The Objects of the EIA Sub-Decree are set out in Article 1.

The EIA Sub-Decree applies to all public and private projects or activities in Cambodia. The EIA Sub-Decree identifies the specific project types covered by EIA. In total these cover four areas: industry, agriculture, tourism, and infrastructure. Under each area there are a number of specific projects types listed. This list has been attached as an annex to the EIA Sub-Decree. According to the list, the current screening process in Cambodia is project-based rather than by reference to significant environmental impact.

The key difference in the Cambodian approach to screening in the EIA process (compared to the other Mekong countries) is that all projects in the screening list annexed to the Sub-Decree go through an Initial Environmental Impact Assessment (IEIA) to determine whether an EIA is required. Article 6 provides that a project owner must conduct IEIA in accordance with the Annex.

Cambodia adopts the following steps in the IEIA/EIA Process:

1. Project screening;
2. Project scoping,
3. Preparation of the EIA Report and Environmental Management Plan (EMP),

¹ A Prakas is a regulation promulgated by a Ministry to implement a law.

4. Reviewing and assessment of EIA report;
5. Approval or Refusal of EIA Report;
6. Construction, operation
7. Project monitoring, compliance and enforcement.

Under the EIA Sub-Decree the Project Owner submits the IEIA to the MoE for screening consideration. The MoE will determine whether the project will require an EIA or if the IEIA is sufficient. The MoE must also determine if a project requires an EIA within 30 days.

The Project Owner is then required to submit the IEIA to the MoE for assessment of the Report (Article 7) or to the Provincial EIA Department if the project is to be determined at the Provincial level. The Prakas on Delegation of Power in Decision Making Representing the Ministry for the Investment Plan to Provincial/Municipal Department No: 230 BS. KB. 29- 07 -2005 (Article 2,3,4,5,6,8) provides that, for projects with less than US\$2 million in investment, the responsibility for reviewing and monitoring is delegated to the provincial department of environment.

The MoE is to review and provide recommendations on the IEIA or the EIA to the competent organization. If the MoE does not respond to the findings and recommendations within a 30-day period, the Project Approval Ministry/Institution will assume that the revised IEIA or EIA report has complied with the criteria of this sub-decree (Article 18). This Article acts as a deemed compliance with the EIA process although it is not clear that this would operate as a deemed approval of the project. This is one matter that is being addressed in the revised EIA law in the Environmental Code. In future it is proposed that no construction activity can occur until the MoE has issued a document approving the EIA or IEIA.

The EIA Sub-Decree provides for 30 days as the timing for the processing an EIA and responding to the Project Proponent and relevant ministry. The project owner must acknowledge the findings and recommendations of their IEIA / EIA report(s) that have been approved by the MoE, before they can proceed with project implementation.

The MoE has developed Prakas to assist in the preparation of IEIA and EIA and also for the establishment of the process for reviewing and comment on EIA Reports.

Preparation of EIA/IEIA Report

The Prakas on General Guidelines for Conducting Initial and Full Environmental Impact Assessment Report, 2009, provides general guidelines on the development of IEIAs and full EIAs (Article 1). The Prakas also includes a general guideline on the content of an IEIA or EIA Report and a check-list for scoping adverse impacts and mitigation measures. The Prakas also provides some definitions for the EIA process.

Under the 2005 Prakas on delegation, approval for project of less than \$2 million has been delegated to the Provincial Departments of the Environment. The EIA process is similar irrespective of whether a project is assessed at national level or at sub-national level.

The EIA Department of MoE (or the relevant Provincial Department) will also be required to carry out a site visit, which includes the opportunity for public comment within the screening

process (Article 7). The EIA Department of MoE has developed a practice to conduct a site meeting at the screening stage to assist in this determination and also to assist with the scoping of the project.

Assessment of IEIA/EIA Report

Under the 2009 Prakas, once an IEIA or EIA is submitted to the Ministry it must be assessed within 30 days. Within this timeframe there is a requirement for a site visit and consultation with Project Affected Persons (PAP) and other stakeholders. Article 9 provides that the relevant national or Provincial Departments shall review and comment on the IEIA or full EIA Report.

The MoE has established a review process for IEIA/EIA Reports. This a two-stage review process firstly by EIA Coordination Working Group referred to as EIACWG, which is in framework of MOE providing initial assessments followed by an inter-Ministerial Review process. The Decision on the Composition and Duty Revision of EIA Condition Working Group No. 013 2015 for Reviewing and Commenting on EIA Report established the EIACWG for the review and consideration of IEIA and EIA reports for investment projects. The Department of EIA of MoE is the secretariat of the EIACWG (Article 3).

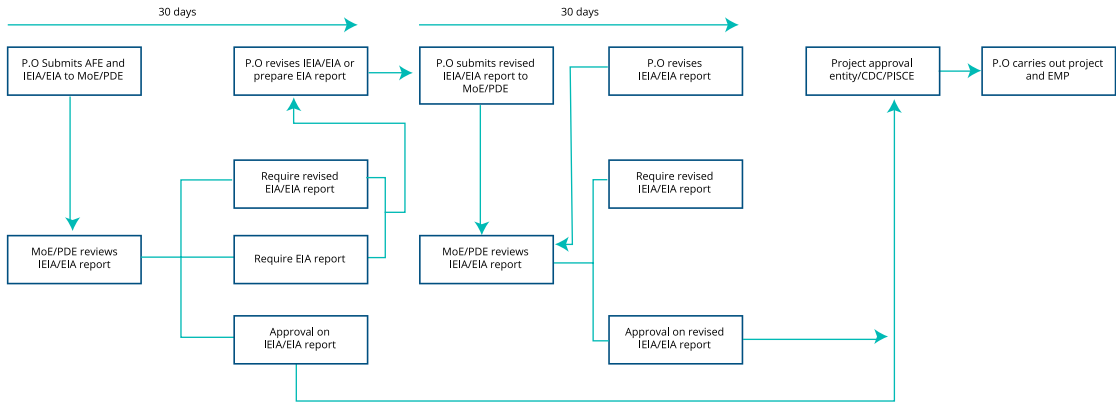
The EIACWG the following duties:

- examine and decide on EIACWG internal regulation
- examine and comment on reports of Environmental and Social Impact Assessment (ESIA) of proposed project and other existing and processing private or public development activities by depending on the result from examination and initial comment from Department of EIA
- decide on report of Initial Environmental and Social Impact Assessment (IESA)
- report to the Minister of the Ministry of Environment on result of the meeting of giving comment on reports of Environmental and Social Impact Assessment

This group is the body responsible for the assessment and consideration of the IEIA or EIA reports. The EIACWG is able to ask for written opinions on IEIA or EIA reports from other experts including national and international NGOs, professors of universities or research institutes (Article 4).

Following this technical review there is a further multi-stakeholder meeting that includes other Ministries and relevant stakeholders, during which the recommendations will be considered. Following this meeting there will be the final recommendation to the Minister of Environment whether to approve or reject the IEIA or EIA. There will be an EIA Approval Certificate which will be issued together with any conditions imposed on the project.

Process of EIA Clearance for proposals with endorsement from project approval entity/CDC or by provincial Investment Sub-committee



Note

IEIA: Initial Environmental Impact Assessment
EIA: Full Environmental Impact Assessment
CDC: Council for Development of Cambodia
EMP: Environmental Management Plan
MoE: Ministry of Environment

PISC: Provincial Investment Sub-committee
PDE: Provincial Department of Environmental
AFE: Application Form of Environment
P.O: Project Owner

Unofficial Translation by Mr. Danh Serey, EIA Department

Figure 1: Flow chart for EIA Process from Prakas on General Guidelines 2009²

Public Participation in EIA

The EPNRM Law also makes provision general for public participation and access to information. Article 16 of the EPNRM Law provides that the MOE shall encourage public participation in “environmental protection and natural resources management.” Article 17 also requires the MOE to develop a sub-decree on public participation and access to information. The MOE has developed Prakas on preparing an EIA report that includes more detailed requirements on public participation.

With respect to public participation, public involvement is “encouraged” in the EIA Sub-Decree but no concrete requirements are stipulated. Additionally, the Sub-decree contains no requirements for consideration of alternatives or information disclosure. These have been further outlined in the relevant Prakas. The existing Prakas provide for NGOs to be represented at

2 Baird and ERI (2016), p.42 from Prakas on General Guidelines 2009

multi-stakeholder meetings to review the EIA and IEE lodged with the Ministry or the Provincial Department of Environment.

Law on Mineral Resources Management and Exploitation Article 20 authorizes Minister to release information on environmental and social issues to the public.

The Law on Forestry 2004, Article 4 requires details of EIA to be made available for public comment. Requires public participation in “any government decision” that might impact forests. Public participation is also required under Article 6 of the Law on Forestry 2004.³

According to Prakas (Declaration) on General Guidelines for Conducting Initial and Full Environmental Impact Assessment Reports 2009 (No.376 BRK.BST 2009), Articles 11 and Articles 12 provide for the review of comments and public submissions at two multi-stakeholder meetings (either chaired by the Minister of Environment or the Director of the Provincial Department of Environment).

The Ministry of Environment has developed a Prakas on public participation in EIA. The draft of this Prakas and attached Guidelines were released for public comment in July 2016. The Prakas and Guidelines are due to be finalised by the end of 2019 in line with the draft Environmental Code.

Other references to requirements for EIA

Other sector specific legislation, such as the Law of Forestry 2002, Law on Mineral Resource Management and Exploitation 2001, Law on Water Resources Management of the Kingdom of Cambodia 2007, Law on Protected Areas 2008, the Law on Land Management, Urban Planning and Construction 1994, Law on Petroleum and Petroleum Production 2019, contain specific provisions on the need to undertake environmental and social impact assessment. Under the existing law is not clear from these references whether MoE retains sole power to review and approve EIA and IEIA. From the EIA Sub-Decree the MoE has the power to approve EIA and IEIA but other laws also refer to decisions by the Royal Government. The draft EIA Law and the draft Environmental Code make clear that MoE has the power to approve or refuse EIA or IEIA and to issue approvals for EIA. The Law on Forestry 2002 (Article 4) and the Sub-Decree 146 on Economic Land Concessions (ELC) 2005 (Article 7) both make reference to the requirement for EIA to be conducted for project coming within the applicable subject matter. A full EIA is required for activities that are likely to cause a “medium or high degree of adverse impact.”

Monitoring and Compliance

³ Forestry Law 2004

Article 4. This law shall be implemented to ensure public participation in any government decision that has the potential for heavy impact on concerned general citizens, livelihoods of local communities and forest resources of the Kingdom of Cambodia.

Article 6. The Forestry Administration shall perform its duties in a manner consistent with principles of transparency, thereby ensuring the right of the public to participate in decisions regarding the management, sustainable use and conservation of the forests.

The responsibility for follow-up and compliance and enforcement is also shared depending on which level of Government (national or provincial) was the approval body for the project. Additional provisions for monitoring, record-keeping and inspections are also found in the EPNRM Law. Under Chapter VI, the MoE is to collaborate with other concerned ministries on monitoring, recording keeping and inspection (see Articles 14 and 15). There is an obligation under Article 15 there is an obligation for inspectors to report any breaches to the competent institution to take action in accordance with the law.

Enforcement - Penalties for breach of the EIA process

Both the EPNRM Law and the EIA Sub-Decree provide for the provision of penalties for the failure to comply with the environmental protection laws of Cambodia. Article 20 of the EPNRM Law enables the MoE to issue a written order to require corrective action for any behaviour that is in breach of the law. In addition, the MoE could also issue an order to stop any activities until the offence is corrected and may order the clean-up of pollution.

It is unclear if any such orders have been issued. The MoE is not required to maintain a register of any orders or a list of any complaints that have been brought to the attention of the MoE.

The EIA Sub-Decree specifies offences for the failure to comply with the provision of the Sub-Decree. These are contained in Chapter 7 and includes the failure to submit the EIA Report, the provision of false or misleading information or the violation of any provision of the EIA Sub-Decree. Chapter 7 also provides that any environmental official who has breached the MoE regulations shall have committed an offence and be subjected to administrative or criminal punishment.

It is not clear if any enforcement action has been commenced under the EPNRM Law or the EIA Sub-Decree. As note above there is no requirement for the MoE to maintain a register of enforcement actions taken or orders issued.

Actual Implementation and Challenges

Many challenges have been identified in EIA practice in Cambodia. Since 2015, the Director of the DEIA, H. E Danh Serey, has adopted a number of new Prakas and administrative measures (outlined above) to improve the practice and performance of EIA in Cambodia under the existing EIA Sub-Decree. The process of reforming the EIA process in Cambodia and the drafting of a new EIA law has been ongoing since 2015. The EIA draft law has now been incorporated into the draft Environmental and Natural Resources Code.

Many of the criticisms of the EIA system relate to the lack of clear legal requirements in the EIA Sub-Decree.⁴ The ADB 2015 found many areas where there was a lack of equivalence be-

4 See for example ADB 2015. This was a comparative analysis of the Cambodia legal framework and the ADB Safeguard Policy State-

tween the ADB Safeguard Policy and the EIA Sub-Decree.

Chanty and Grunbuhel (2015) identified a number of issues, including:

- Quality of ESIA⁵ reports
- Lack of opportunities for international consultants
- Rent seeking from national ESIA consultants and officials
- Political influences of local elites in the ESIA process
- Limited time and money spent on the ESIA preparation
- Limitations on the capacity of EIA consultants
- Failure to follow the EIA procedure including ESIA conducted after project approval
- Little trust in the ESIA consultants by the project proponents themselves.

The EIA law reform process was designed to address a number of these key problems and legal gaps. It was to develop a strong EIA law that was consistent with modern principles of EIA and implement strong mandates for public participation, access to information, and provide greater transparency and clarity in decision-making (PACT Case Study).

Examples provided in IGES (2016b) demonstrate that the DEIA has sought to develop good practice in public participation and in the development of a practice of community consultation at the screening stage in the EIA process. The multi-country report prepared by IGES (IGES 2016b) contained a detailed Cambodia country report that identified four major challenges: Quality of EIA Reports; information disclosure and public participation; environmental management and monitoring, and; lack of strategic environmental assessment.

Many of these issues are addressed in the relevant provisions of the draft Environmental Code and others can be addressed through amendments to the Prakas and practice of EIA. The key is that the EIA Sub-Decree 1997 is now over 20 years old and does not contain strong legal provision for key elements of a modern EIA system. IGES 2016a and IGES 2016b, identify key issues surrounding effective EIA in the Asian region include: lack of information disclosure; difficulties in meaningful public participation; lack of implementation of EMP, the need for stronger monitoring, compliance and enforcement; better adoption of Strategic Environmental Assessment as a planning tool; and better training for EIA consultants which could include certification of EIA consultants.

Conclusion and Recommendations

The primary conclusion is that in order to further enhance the law and practice of EIA, the Royal Government and the National Assembly should adopt the draft EIA Law or the provisions of the Draft Environmental and Natural Resources Code. Whilst it is clear that significant reforms have been undertaken by the MoE and the DEIA these are constrained by the significant limitations

ment. It also included an analysis of the Draft EIA Law.

5 Chanty and Grunbuhel (2015) use ESIA – environmental and social impact assessment in their article.

of the EIA Sub Decree. This is not surprising given the age of the EIA which is now twenty-years old. Until the law is updated it is difficult to implement further EIA reforms. This must be the first priority.

In addition to the need for updating legislation, further guidelines are needed. These include Public Participation and Access to Information, Strategic Environmental Assessment (SEA) and Transboundary Notification and Consultation. These Guidelines would ensure that the Cambodia EIA system was at best practice and up to international standards.

Vishnu Law Group and the DEIA, funded by the Mekong Partnership for the Environment, prepared a draft Guideline on Public Participation in EIA in 2016. This Guideline was based on the Guidelines on Public Participation in Environmental Impact Assessment in the Mekong Region (First Edition)⁶ published by PACT and the Mekong Partnership for the Environment in 2017. This was developed over a period of three years and six consultative meetings with participation of both government and civil society from the five Mekong countries.

Under the Environmental Code Project, a draft Sub-Decree on SEA was prepared by Vishnu Law Group for consideration by the MOE. It is not known if any work has been done on the preparation of a process for notification and consultation for EIA and SEA that may have transboundary impacts.

Whilst DEIA and MOE have made significant attempts to modernise the practice of EIA in Cambodia using administrative means, the deficiencies in the existing EIA Sub-Decree require legislation amendment to bring the EIA law in line with modern professional principles and practice.

6 <http://matthewbaird.com.au/wp-content/uploads/2017/05/Regional-EIA-Guidelines-Final.pdf>

References and Legislation

- Law on Environmental Protection and Natural Resource Management, 1996
- Sub-Decree on Environmental Impact Assessment, 1999
- Prakas on General Guidelines for Conducting Initial and Full Environmental Impact Assessment Reports (No.376 BRK.BST 2009)
- Prakas on Registration of Consulting Firms for Studying and Preparing Environmental and Social Impact Assessment Report (No.215 Brk MoE 2014)
- Prakas on Delegation of Authority to the Provincial Departments of Environment on Matters Related to Investment Project on Behalf of the Ministry of Environment (No. 230 BRK.BST, 29 July 2005)
- Inter-ministerial Prakas on screening on for project of all kinds of construction minerals exploitation or other minerals with the characteristic of handicraft or small exploitation (No 191, 26 April 2016).
- Decision on the composition and duties of the EIA Coordination Working Group (8 July 2015)
- Royal Government of Cambodia Climate Change Action Plan 2016 – 2018
- Royal Government of Cambodia National Environment Strategy and Action Plan 2016-2023
- Baird and ERI (2016) Environmental Impact Assessment in the Mekong Region, Materials and Commentary (First Edition), Earthrights International, September 2016.
- Chanthy and Grunbuhel (2015) Critical challenges to consultants in pursuing quality of Environmental and Social Impact Assessments (ESIA) in Cambodia, Sam Chanthy and Clemens M Grunbuhel, Impact Assessment and Project Appraisal, 33:3, 226-232.
- IGES (2016a) Strengthening EIA in Asia, working paper prepared for the Asia EIA Conference 2016 in Nagoya, Japan. Institute for Global Environmental Strategies, Ministry of Environment, Japan. 2016.
- IGES (2016b) Good Practices on EIA systems and implementation, Paper prepared for the Asia EIA Conference 2016 in Nagoya, Japan. Institute for Global Environmental Strategies, Ministry of Environment, Japan. 2016.
- MOE (2018) Draft Environmental and Natural Resources Code of Cambodia (Version 9.1).
- MOE (2012) Guidebook on Environmental Impact Assessment in the Kingdom of Cambodia, Ministry of Environment and NGO Forum of Cambodia, 2012.
- ONEP (2018) EIA Guidelines for Business Project Development in ASEAN Economic Community, Office of Natural Resources and Environmental Policy and Planning, Ministry of Natural Resources and Environment, Thailand, 2018.
- PACT Case Study Cambodia EIA Law: Case Study. Stakeholder Consultation in Cambodia's Draft Environmental Impact Assessment (EIA) Law: lessons and experience from the public consultation process. PACT MPE. Undated.
- ADB (2015) <http://countrysafeguardsystems.net> accessed June 2019.



Addressing Climate Change Migration with Loss and Damage Mechanisms: International Law and Opportunities for Practice in Cambodia

Georgina Lloyd¹

Abstract

The fast and slow onset events of climate change are increasingly shown to be drivers for the movement of populations. The costs and consequences of migration within the context of climate change can present major challenges for developing nations often causing social, economic and cultural harms amongst vulnerable populations. At the international level, within the Warsaw International Mechanism on Loss and Damage under the United Nations Framework Convention on Climate Change (UNFCCC) there is a strategic workstream on mobility. The

¹ The author wrote this article before commencing her employment with UN Environmental Program and is therefore acting in her personal capacity and not as a representative of the UN. The contents of this report do not necessarily reflect the views or policies of the United Nations Environment Programme.

work stream aims to provide recommendations to address, avert and minimise human migration, displacement and relocation related to the adverse impacts of climate change. This paper will explore the application of this international mechanism to Cambodian laws and policies. Through a presentation of current policies, laws and regulations and exploration of the synergies and gaps with international approaches, this paper will provide recommendations for the future development of Cambodian environmental law to address the substantial consequences of climate change migration.

Introduction

Environmental factors have long been drivers for the migration and displacement however anthropogenic climate change has been shown to be exacerbating the displacement of people, through both slow onset changes such as sea level rise and saltwater intrusion, and rapid onset disasters such as the increasing severity and regularity of tropical storms and flooding. It has been estimated that up to 200 million persons will become displaced in the context of climate change over the next 40 years² with 10 million being displaced in the Mekong Delta.³ And these estimates may be conservative. The Global Network on Internal Displacement annual report published in May 2019 provided that there were more displacements from natural disasters in 2018 (over 17 million new displacements) than from conflict.⁴ The report provided that Cambodia had 37000 new internal displacements in 2018 all of which were from weather related disasters.⁵ Research conducted on the Tonle Sap Lake in 2018 provided evidence of climate migration currently taking place in Cambodia as a result of a decline in natural resources upon which local livelihoods depend.⁶ There is no doubt that climate migration is taking place and the impact of climate change on the migration and displacement of people is worsening.⁷ This issue

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- 2 Docherty, B and Giannini, T. 2009. Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees. *Harvard Environmental Law Review*. 33: 349.
 - 3 Mekong Migration Network and Asian Migrant Center. 2013. *Climate Change and Migration: Exploring the Impacts of Climate Change on People's Livelihoods and Migration in the Greater Mekong Sub-region (GMS)*. Mekong Migration Network, HCM.
 - 4 The report states that there were almost two thirds more internal displacements triggered by disasters than conflict and violence. Internal Displacement Monitoring Center. 2019. *Global Report on Internal Displacement*. <http://www.internal-displacement.org/global-report/grid2019/> [Accessed 3 June 2019]
 - 5 The IDMC predicts that Cambodia may have an annual average of 193,000 internally displaced persons as a result of sudden onset climate events such as tropical storms and flooding placing it at high risk of disaster-induced displacement. *Ibid*.
 - 6 Lloyd Rivera, G., Raisle, M. and Reeder, A. 2018. *Climate Change Migration in Cambodia: identifying protection gaps and opportunities in law and policy*. 31st Lawasia Conference, November 2-5. See also Bylander, M. 2013 *Depending on the Sky: Environmental Distress, Migration and Coping in Rural Cambodia*. *International Migration*. 53(5): 135-147.
 - 7 The Asia Development Bank similarly acknowledges "In Asia and the Pacific, large numbers of people are displaced every year due to floods, droughts, soil degradation, typhoons, and cyclones..... Climate change will accentuate the impact of the environment on human displacement." Asian Development Bank. (2012). *Addressing Climate Change and Migration in Asia and the Pacific*. <https://www.adb.org/sites/default/files/publication/29662/addressing-climate-change-migration.pdf> [Accessed 20 May 2019], p.3

is one that has not, until recently,⁸ received adequate attention despite posing threats to human rights, regional development, food security and cultural integrity and having serious geo-political implications.⁹ The Asian Development Bank provides;

*“it is expected that Asia and the Pacific will be the region where climate induced migration will be the most significant and needs to be addressed urgently... [yet] the policy responses and normative frameworks that address climate induced migration remain scattered and highly inadequate”.*¹⁰

Given that migration in the context of climate change will be such a significant issue and an existing and worsening reality facing countries in Southeast Asia with low climate change resilience, one approach to address migration is to draw on the concepts of loss and damage. The loss and damage discourse particularly as it relates to migration and displacement, has developed across a number of international platforms including under the United Nations Framework Convention on Climate Change (UNFCCC).¹¹ While these terms do not have clearly accepted definitions under the UNFCCC, loss and damage relates to impacts of climate change that cannot, or will not, be addressed through mitigation and adaptation. The terms have been equated both with liability and compensation (largely by developing countries) and with risk management and insurance (largely by developed countries).¹² The migration and displacement of people as a result of climate change is an unavoidable impact that many countries are suffering and thus is both a source of, and maybe a response to, loss and damage. It has been argued that the connection between migration and loss and damage can be framed in different ways from migration as a means to reduce loss and damage (thus an adaptation) to migration as a source of loss and damage for both the migrants and host communities.¹³ Both these framings may be of relevance for countries such as Cambodia who are yet to develop detailed legal and policy responses to address climate migration.

There is an urgent need to examine climate migration responses and to provide solutions for policy development as climate migration and displacement continues to increase in magnitude. Through an exploration of international law and Cambodian climate change policy this paper seeks to assess the application of loss and damage concepts to address climate change

8 Singh, H. 2018. World Wakes up to Climate Migration. India Climate Dialogue. <http://indiaclimatedialogue.net/2018/06/06/world-wakes-up-to-tackle-climate-migration/> [accessed 28 May 2019]

9 Displacement as a result of climate change also raises ethical issues of social justice, global inequality, responsibility and uneven distribution of impacts.

10 Asian Development Bank. (2012). Addressing Climate Change and Migration in Asia and the Pacific. <https://www.adb.org/sites/default/files/publication/29662/addressing-climate-change-migration.pdf> [Accessed 20 May 2019], p.4.

11 It has also been developing under the Platform on Disaster Displacement (PDD) and through regional policy platforms such as through the Alliance of Small Island States.

12 Kreienkamp, J. and Vanhala, L. 2017. Climate Change Loss and Damage. Global Governance Institute, London.

13 Mayer, B. 2016. Migration in the UNFCCC Workstream on Loss and Damage: An Assessment of Alternative Framings and Conceivable Responses. *Transnational Environmental Law*. 6(1): 107-129.

migration. The methodology used in this paper included an analysis of literature and directional law and policy related to migration and loss and damage both at the international level and at the national level for Cambodia. This involved reviewing existing legal documents and policy instruments for their inclusion of climate change loss and damage clauses and the relation of these clauses to migration and displacement.¹⁴ To address the existing gap in knowledge on policy responses to climate migration in Cambodia, this paper will first establish the international framework for climate change loss and damage then explore the inclusion of these terms in Cambodian national law and policy. Finally, it will propose ways in which loss and damage clauses may be implemented and potential limitations. This paper thereby seeks to fill an existing gap in literature and policy research.

Legal Framework and National Policy on Climate Change Loss and Damage

International Law

The application of concepts of loss and damage (L&D) to address climate migration and displacement have most notably gained traction under the mechanisms of the UNFCCC. It was representatives of the Alliance of Small Island States that first raised the issue of loss and damage in the international climate change policy arena through UNFCCC negotiations.¹⁵ However, it was not until the 18th Conference of the Parties to the UNFCCC in Doha in 2012 that the inclusion of climate induced migration under the umbrella of loss and damage was made explicit. The decision made at the COP, “acknowledges the further work to advance the understanding of and expertise on loss and damage, which includes (vi) How impacts of climate change are affecting patterns of migration, displacement and human mobility”.¹⁶ This decision provided the framework for the establishment of the key mechanism for loss and damage which was created in 2013. At the 19th Conference of the Parties (COP19), the Warsaw International Mechanism for Loss and Damage Associated with Climate Change Impacts (WIM) was established “to address loss and damage associated with impacts of climate change, including extreme events and slow onset events, in developing countries that are particularly vulnerable to the adverse effects of climate change”.¹⁷ It has been argued that recognition that residual risk remains even after mitigation and adaptation is the;

14 This paper partially draws upon an earlier analysis of migration and climate change in Cambodian Law and Policy. See Raisle, M and Reeder, A. 2018. Climate Change Migration in Cambodia: Law and Policy from an International, Regional, and Local Perspective. Unpublished thesis. The School for Field Studies Center for Environmental Research in Conservation and Development Studies., Cambodia

15 Kreienkamp and Vanhala (2017) note that Vanuatu proposed an international insurance scheme to address loss and damage in 1991. Kreienkamp, J. and Vanhala, L. 2017. Climate Change Loss and Damage. Global Governance Institute, London.

16 Decision 3/CP.18, paragraph 7.a.(vi)

17 Decision 2/CP.19, paragraph 1

“reason that L&D has become an increasingly important aspect of negotiations under the United Nations Framework Convention on Climate Change (UNFCCC). And it is also the reason for the establishment of the Warsaw International Mechanism for Loss and Damage (WIM).”¹⁸

A decision made at COP21 of the UNFCCC further underscored the increasing importance of loss and damage and the WIM with a separate article within the Paris Agreement being dedicated to it.¹⁹ Of similar significance was the establishment at COP21 of a Taskforce under the WIM to “develop recommendations for integrated approaches to avert, minimize and address displacement related to the adverse impacts of climate change”.²⁰ Human mobility has become a strategic workstream within the WIM and comprises migration, displacement and planned relocation related to the adverse impacts of climate change. The latest development under the UNFCCC was at COP24 in December 2018 when recommendations to address migration and displacement was adopted.²¹ Such recommendations provide guidance for legal obligations of States Parties under the UNFCCC. Recommendation 1g(i) provides that Parties should “consider formulating laws, policies and strategies, as appropriate, that reflect the importance of integrated approaches to avert, minimize and address displacement related to the adverse impacts of climate change and in the broader context of human mobility, taking into consideration their respective human rights obligations and, as appropriate, other relevant international standards and legal considerations”.²²

“The recommendations are the result of the joint efforts undertaken by the Task Force on Displacement involving a broad range of stakeholders. Their implementation will help Parties, stakeholders and affected communities to better understand displacement, address displacement risks and be better prepared to respond to displacement challenges. They reference a range of actions and policy instruments that aim to strengthen policies, institutional frameworks, tools and guidelines on climate change and other type of action, as well as the preparedness and other capacities of national and local governments. The recommendations also recognize the importance of action and support to enhance knowledge, data collection and

18 Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ). 2018. Climate risk assessment and management (Loss and Damage). <https://www.giz.de/en/worldwide/32322.html> [Accessed 1 June 2019]

19 Article 8 provides that States Parties “recognize the importance of averting, minimizing and addressing loss and damage associated with the adverse effects of climate change” (paragraph 1) and “should enhance understanding, action and support, including through the Warsaw International Mechanism” (paragraph 3).

20 Decision 1/ CP.21, paragraph 49

21 Another noteworthy development at COP24 was that the mandate of the taskforce of displacement was further extended and encouraged to continue its work on human mobility at COP24. See Decision 10/CP.24 paragraph 4 and paragraph 5(b).

22 Decision 10/CP.24 Annex paragraph 1g(i). Other recommendations called for the integration of “climate change related human mobility challenges and opportunities into national planning processes” in paragraph 1g(iv) and support and enhancement of “regional, subregional and transboundary cooperation, in relation to averting, minimizing and addressing displacement related to the adverse impacts of climate change” in paragraph 1h(ii).

monitoring of risks, including coordination and policy coherence.”²³

While the decision adopted by the Parties in December 2018 does not require that Parties develop laws and policies, under paragraph 10(a) Parties are invited to develop “policies, plans and strategies... to facilitate coordinated action and the monitoring of progress... to avert, minimize and address loss and damage”.²⁴ Thus there is substantial momentum under the UNFCCC to compel countries, particularly disproportionately affected countries, to address displacement in the context of climate change.

One of the remaining issues pertaining to action under the UNFCCC is the question of financing for measures to address migration and displacement under the umbrella of loss and damage. While the need for funds to support activities has been alluded to,²⁵ there is yet to be a clear framework to ensure contributions from Parties that have resources and support for those Parties that do not have sufficient financial capacity to put in place necessary measures to address the losses and damages incurred as a result of migration and displacement from climate change impacts. Huq, S. (2019) notes that “despite positive developments on loss and damage, there has been a distinct lack of progress on the issue of funding loss and damage (beyond insurance)” and this needs to be addressed further at the next Conference of the Parties in Santiago (COP25).²⁶ The availability of funding has particular implications for the implementation of measures as discussed further below.

Cambodian Law and Climate Change Policy

The following section outlines the inclusion of loss and damage clauses and references to migration and displacement in the context of climate change within Cambodian law and policy.

State Party Documents under UNFCCC

Cambodia ratified the UNFCCC in 1996 and from analysis of Cambodian State Party submissions under the UNFCCC, it is shown that there is no direct reference within its first national communication²⁷ nor the (Intended) Nationally Determined Contribution ((I)NDC)²⁸ to displacement or

23 Platform on Disaster Displacement (PDD). 2018. Key Messages for the 24th session of the UNFCCC Conference of the Parties (COP24). <https://disasterdisplacement.org/staff-member/key-messages-for-the-24th-session-of-the-unfccc-conference-of-the-parties>

24 Decision 10/CP.24 paragraph 10(a).

25 See for example Decision 10/CP.24 paragraphs 11 and 12.

26 Huq, S. 2019. A Talking Point for COP25; A Realistic Approach Needed to Fund Loss and Damage from Climate Change. *Acclimatise News*. <http://www.acclimatise.uk.com/category/climate-change-impacts/> [Accessed 3 June 2019]

27 Royal Government of Cambodia, 2002. Cambodia's Initial National Communication under the United Nations Framework Convention on Climate Change. Ministry of Environment.

28 Royal Government of Cambodia. 2015. Cambodia's Intended Nationally Determined Contribution.

migration in the context of climate change.²⁹ However, there is reference to displacement in the second national communication.³⁰ Furthermore, within all three documents there is inclusion of loss and damage and reference to impacts to human settlements. Given the framing of human mobility under the Warsaw International Mechanism on Loss and Damage, this reference to loss and damage provides a valuable opportunity for Cambodia to initiate action, and interpret existing legal and policy documents, to address displacement and migration. There are numerous references within the national communications to loss and damage incurred as a result of climate change impacts. Examples include, “the country frequently experiences floods and droughts, that cause considerable economic losses and social and environmental impacts”³¹ and “extreme climatic events have caused serious damage to the welfare of the Cambodian people and to the economy... Under a changing climate, these natural hazards may occur more frequently, and the poor are likely to be disproportionately affected”.³² The 2015 (I)NDC establishes that one of the Cambodia Climate Change Strategic Plan (CCCSP) (2014 – 2023) objectives is to “Promote adaptive social protection and participatory approaches in reducing loss and damage due to climate change”.³³

Law

As of mid-2019, within national legislation there is no existing legal text that makes direct reference to migration or displacement in the context of climate change. However, the 2015 Law on Disaster Management (NS/RKM/0715/007) does reference the need to address loss and/or damage in both pre³⁴ and post³⁵ disaster management “focusing on top priorities and basic needs of the affected people and Communities”.

Policy

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- 29 IOM found that only 33 countries made reference to climate induced migration in their INDCs submitted prior to COP21 in Paris. International Organization for Migration (IOM). 2016. Reference to Human Mobility in Intended Nationally Determined Contributions (INDCs)
- 30 “sea level rise may displace populations and cause damage to infrastructure” Royal Government of Cambodia, 2015. Cambodia’s Second National Communication Submitted under the United Nations Framework Convention on Climate Change, Ministry of Environment. Page 45
- 31 Royal Government of Cambodia, 2002. Cambodia’s Initial National Communication under the United Nations Framework Convention on Climate Change. Ministry of Environment. Page xi
- 32 Royal Government of Cambodia, 2015. Cambodia’s Second National Communication Submitted under the United Nations Framework Convention on Climate Change, Ministry of Environment. Page 27.
- 33 Royal Government of Cambodia. 2015. Cambodia’s Intended Nationally Determined Contribution. Annex page 13.
- 34 See Article 11 “preparedness activities shall focus on the pre-disaster period by taking action to develop early warning systems, strategies, contingency plans and emergency response plans for mitigating disaster losses”
- 35 Article 27

Cambodia has developed a broad range of policy documents including strategic plans,³⁶ action plans,³⁷ guidelines³⁸ and strategies³⁹ to address climate change and many of these include loss and damage clauses. Some clauses connect loss and damage with displacement, forced relocation or migration. The 2004 Policy Document of the National Committee for Disaster Management makes explicit reference to measures for displacement within Section IV(4) outlining that “selected safe areas have been recommended to be installed in high ground throughout target provinces, in order to receive flood victims, evacuated from flooded areas, and set up a systematic management to ensure the security, food supplies, water and sanitation of the evacuated people”.⁴⁰ There are several clauses within the 2006 National Adaptation Programme of Action to Climate Change (NAPA) which reference loss and damage including potential for migration⁴¹ and the 2014 Guidelines for Integrating Climate Change Considerations into Commune Development Planning presents options to “relocate some properties and infrastructure to locations which can be better protected from increasing climate change impacts”.⁴² As mentioned previously, Strategic Objective 6 of the Cambodia Climate Change Strategic Plan (CCCS) connects social protections for communities with loss and damage⁴³ and while this strategy area is currently focused on adaptation measures it can clearly be interpreted to include activities pertaining to planned relocation, forced displacement or environmental driven economic migration. Finally, the Climate Change Action Plan (CCAP) for Rural Development Sector (2014-2018) establishes that “Climate change (including natural disaster) is [a] key threat to rural infrastructure and people wellbeing in both rural areas and urban periphery”⁴⁴ and “the loss of low-lying landmass in coastal areas, which could be ravaged by severe storms and increased sea-level rises, is likely to lead to displacement of populations, loss of life and damage to rural infrastructure”.⁴⁵ The current iteration of the CCAP for Rural Development proposes adaptation measures through village development committees to address these threats however this is not sufficient to address the significant issue of climate change migration and displacement.

36 See the Cambodia Climate Change Strategic Plan (2014-2023), the Climate Change Strategic Plan for Agriculture, Agro-industry, Animal Production, Fisheries and Forestry (2013-2018) and the Strategic Planning Framework for Fisheries (2010-2019)

37 The 2013 Climate Change Strategic Plan (2014-2023) mandated the creation of Climate Change Action Plans for line ministries. Fifteen such plans have been developed.

38 For example, the 2014 Guidelines for Integrating Climate Change Considerations into Commune Development Planning.

39 Such as the 2006 National Adaptation Programme of Action to Climate Change (NAPA) and 2016 National Biodiversity Strategy and Action Plan

40 Page 6

41 An example of a clause which aligns loss and damage to local communities is; “Traditional resignation to climate change and to climate extremes should not be equated to preparedness and adaptation. People may be used to yearly losses of lives, damages to property and agricultural fields, but a habit of acceptance does not imply successful adaptation. For large proportions of the population, coping mechanisms simply consist of praying for rain or planting as usual.” Page 6.

42 Page 23

43 Specifically the objective is to “Promote adaptive social protection and participatory approaches in reducing loss and damage due to climate change”

44 Page 10

45 Page 12

Within current policy documents, there are no existing guidelines or actions established to plan, respond and/or address the issue of migration and displacement in the context of climate change. While Cambodian law and climate change policy does make reference to climate change loss and damage, and even links this to the relocation of communities, there remains a need to create concrete implementable actions to address losses and damages that occur with climate change migration and displacement.

Implementation of Loss and Damage Mechanisms

From the existing international, national and sub-national legal and policy framework, there is scope to interpret text pertaining to loss and damage in a way that provides directives to address migration and displacement in the context of climate change. While there is currently insufficient implementation of loss and damage clauses, or resulting action plans, in relation to climate migration within Cambodia, there are opportunities to develop and put into practice a range of measures under the umbrella of climate change loss and damage. Within national legislation, it is suggested that appropriate clauses relating to loss and damage and migration in the context of climate change should be incorporated into the ultimate draft of the Environment and Natural Resource Code of Cambodia which is currently being finalized.

The delegated authorities mandated to develop and implement climate change policy responses, principally the Department of Climate Change (DCC),⁴⁶ housed under the General Secretariat for Sustainable Development within the Ministry of Environment (MoE), and the National Committee for Disaster Management (NCDM)⁴⁷ should collaborate to prepare a national policy and action plan on climate migration and displacement.⁴⁸ Such a plan should take into account the scope of climate migration and displacement as it may relate “to temporary or permanent migration, to the migration of individuals or groups, to voluntary or forced migration”,⁴⁹ to pre-emptive planned relocation or disaster displacement and to internal and international migration. The DCC should establish a clear mandate within their department to oversee and promote national and sub-national responses to understand the extent of climate migration and displacement and address these appropriately. Furthermore, within the Ministry of Environment Climate Change Action Plan (2013-2018), Action Area 11 was established to implement Strategic Objective 6 of the CCCSP⁵⁰. If this action area is carried across to the next iteration

46 The Department of Climate Change is the delegated authority to ensure the implementation of the Climate Change Strategic Plan (2014-2023)

47 Article 6 of the 2015 Law on Disaster Management (NS/RKM/0715/007) establishes that “The National Committee for Disaster Management... shall be established.... to lead, administer and coordinate all disaster management activities”

48 There are a number of national level climate migration and displacement policies that have been created within Southeast Asia and the Pacific that may provide some insight for Cambodia such as Kiribati’s Migration with Dignity policy.

49 Mayer, B. 2015. Climate Change, Migration and International Law in Southeast Asia. In Koh Kheng, L. et al. (eds). Climate Change Adaptation: ASEAN and the World. World Scientific. 337-358. Page 341 Action Area 11 seeks to “promote and improve the adaptive capacity of communities to respond to climate change”

50 Action Area 11 seeks to “promote and improve the adaptive capacity of communities to respond to climate change”

of the MoE CCAP, it may be used, with DCC as the implementing department, as a platform to incorporate and implement measures to address migration and displacement particularly in partnership with affected communities.

It is also suggested that through appropriate UNFCCC State Party contact points, Cambodia may look for options through the international mechanism of the WIM to obtain funding for activities to address aspects of human mobility particularly in developing national policy approaches and studying the potential scope and nature of future displacement in the context of climate change across key priority zones (i.e. coastal zone, tonle sap zone, low income rural communities). Within the strategic workstream on mobility a priority activity established for 2019-2021 has been “to identify capacity needs and support the efforts of developing countries to avert, minimize and address human mobility associated with the adverse effects of climate change”.⁵¹ Within its 2018 Annual Report, the Executive Committee of WIM explicitly provides that it “will facilitate the mobilization of financial resources for developing country Parties to avert, minimize and address displacement related to the adverse effects of climate change”.⁵² While the funding available needs further clarification, there would be opportunities to seek support for enhanced legal and policy approaches and their practical implementation in Cambodia.

Conclusion

There is no doubt that migration and displacement in the context of climate change is currently taking place across many countries including Cambodia. Such migration poses a significant environmental governance issue as it impacts regional security, economic development and the health and wellbeing of communities. In its 1990 Assessment Report the Intergovernmental Panel on Climate Change (IPCC) declared that “the gravest effects of climate change may be those on human migration as millions are displaced by shoreline erosion, coastal flooding and severe drought”.⁵³ In order to appropriately address the grave consequences of climate change migration and displacement, Cambodia may draw upon the evolving international legal and policy framework of loss and damage. There is sufficient incorporation of loss and damage within existing Cambodian policy to provide a platform for developing national approaches to address climate change migration. Furthermore, with recent and ongoing developments under the UNFCCC, particularly driven by the taskforce on displacement, the international legal framework

51 See the Five Year Rolling Workplan developed by the Executive Committee of the Warsaw International Mechanism; <https://unfccc.int/default/files/resource/Detailed%20workplan%20by%20strategic%20workstreams.pdf>.

52 FCCC/SB/2018/1 paragraph 39. This activity was endorsed by States Parties at COP 24. See Decision 10/CP.24 paragraph 5(b).

53 Intergovernmental Panel on Climate Change (IPCC). 1990. First Assessment Report, Policymaker Summary of Working Group II (Potential Impacts of Climate Change). Page 103, paragraph 5.0.10 https://www.ipcc.ch/site/assets/uploads/2018/05/ipcc_90_92_assessments_far_full_report.pdf [Accessed 3 June 2019]

now exists to support measures developed at the national level. As Dino Ionesco, IOM Head of Migration, Environment and Climate Change has said "If we invest in climate action today, we reduce the risks of displacement due to climate change for future generations, it will mean reducing losses and damages that occur when migration is a tragedy and a last resort".⁵⁴

54 As quoted in Singh, H. 2018. World Wakes up to Climate Migration. India Climate Dialogue. <http://indiaclimatedialogue.net/2018/06/06/world-wakes-up-to-tackle-climate-migration/> [accessed 28 May 2019]



The Apparent Transfer of Environmentally Sound Technologies to Cambodia: Shouldn't Cambodia improve its intellectual property system?

Phan Daro

Abstract

As a developing country in Southeast Asia, Cambodia has to use environmentally sound technologies (ESTs) to meet its obligations under major international climate change agreements. By reviewing the implementation of Cambodia's major climate change policies and reports, the chapter found that the transfer of ESTs to Cambodia has been slow, not fully funded, and weak. This has posed a great difficulty for Cambodia to have access to ESTs and to meet its obligations under those international climate change agreements. To remedy such challenges, this chapter attempts to propose a few new insights and suggestions which are formulated using the flexibilities found in the international intellectual property (IP) regime. These suggestions are offered after reviewing two major international climate change agreements and one international IP Agreement.

Introduction

The increase of Greenhouse Gas (GHG) emissions has led to many serious climate catastrophes such as increases in global temperature, increased frequency and intensity of extreme weather-related events, and a rise in global sea levels.¹ Several international climate change indices have considered Cambodia as one of the countries most vulnerable to climate change. Specifically, the Global Climate Risk Index 1995–2015 and the World Risk Index 2016 placed Cambodia in the 13th and the 8th place respectively among the most vulnerable countries in the world.² In light of this vulnerability, Cambodia signed the Paris Agreement in 2016 in addition to the United Nations Framework Convention on Climate Change (UNFCCC) in 1995 and the Kyoto Protocol in 2002. By becoming a country party to the Paris Agreement, Cambodia has assumed yet another obligation which is to contribute to maintaining the global temperature rise at below 2°C above pre-industrial levels while at the same time obtain an additional right to receive support from developed countries for their capacity building to address the impact of climate change.³

To meet all of its obligations arising from all of the major international climate change agreements, Cambodia has designed and developed its regulations and policies, with the support from developed countries. For instance, the Cambodian Climate Change Strategic Plan (CCCSP) 2014-2023 is the most thorough policy, addressing climate change effects. While the goals of the CCCSP were formulated based on the analysis of institutional capacity, observed climate change impacts, and climate change projections, this chapter particularly emphasizes only CCCSP's goals that are related to the transfer of environmentally sound technology (ESTs).⁴ As Prof. Sarnoff noted, the transfer of ESTs is a key pillar of the international framework for addressing global climate change.⁵ Therefore, how well Cambodia responds to climate change will depend on rapid development and dissemination of a wide variety of new ESTs. The controversial aspect of technology transfer relates to intellectual property rights (IPRs). As some commentators have observed the legal and problematic aspect lies in the fact that most ESTs are innovated by developed countries aiming to recover costs and generate profits while also securing prospects for future research in climate change technologies.⁶ However, Cambodia and other developing countries who are in need of ESTs actually lack strong IPR system that would otherwise facilitate

1 For a more detailed account of climate change consequences, see Hall, Bronwyn H and Christian Helmers, "The Role of Patent Protection in (Clean/Green) Technology Transfer," Working Paper no. 16323 (National Bureau of Economic Research, September 2010), 487–532.

2 GSSD, "National Adaptation Plan Financing Framework and Implementation Plan" (General Secretariat of National Council for Sustainable Development/Ministry of Environment, Kingdom of Cambodia, Phnom Penh, 2017), 3.

3 "Paris Agreement - Status of Ratification | UNFCCC," accessed 4 June 2019, <https://unfccc.int/process/the-paris-agreement/status-of-ratification>.

4 For all of the goals of CCCSP, see GSSD, "Cambodia Climate Change Strategic Plan 2014 – 2023" (National Climate Change Committee, 2013).

5 Sarnoff, Joshua D., "The Patent System and Climate Change," Rochester, NY, SSRN Scholarly Paper ID 1780499 (Social Science Research Network, 4 March 2011), 301–38, <https://papers.ssrn.com/abstract=1780499>.

6 Shashikant, Sangeeta and Martin Khor, "Intellectual Property and Technology Transfer Issues in the Context of Climate Change," TWN, Intellectual Property Rights Series 14, 2010, 80.

technology transfer from developed countries.⁷ Additionally, developing countries like Cambodia do not have financial support to pay a significant amount of royalty or license fees to the patent holders.⁸ Therefore, IPRs increase the costs of acquiring ESTs, restricting developing countries' ability to use ESTs. This has posed a great difficulty for Cambodia and other developing countries to meet their obligations under the major international climate change agreements.

To remedy such challenges in the context of Cambodia, this chapter aims to propose a few suggestions which are formulated using the flexibilities found in the international intellectual property regimes. These suggestions should be considered when Cambodia plans to develop another climate change policy and to have better access to ESTs. Before making the suggestions, this chapter begins with a legal framework under which it reviews three international agreements: UNFCCC, Paris Agreement, and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). After that, this chapter goes on to analyze National Adaptation Plan Financing Framework and Implementation Plan 2017, along with Cambodia Climate Change Strategic Plan 2014 – 2023 to see how Cambodia implements its obligations and to determine the challenges. Finally, the chapter ends with the suggestions.

Legal Framework on Climate Change and Technology Transfer

This part of the chapter briefly reviews the UNFCCC, the Paris Agreement, and the TRIPS Agreement by explicitly discussing a few articles related to technology transfer obligations.

UNFCCC and Technology Transfer

Cambodia ratified the UNFCCC in 1996. Article 4.3 of the UNFCCC imposes an obligation on developed countries to provide financial resources for developing countries to enable them to undertake GHG emissions reduction activities and to help vulnerable countries to adapt to the adverse effects of the climate change.⁹ Additionally, Article 4.5 of the UNFCCC imposes another obligation on developed countries to provide, promote, facilitate, and finance the transfer of ESTs and know-how to developing countries.¹⁰ More importantly, Article 4.7 of the UNFCCC points out the roles of developed and developing countries in technology transfer by stating that “the extent to which developing country parties will effectively implement their commit-

7 For how developing countries lacking strong IPR protection system respond to the transfer of technology, see Bazilian, Morgan et al., “Considering Technology within the UN Climate Change Negotiations,” *Iop Conference Series: Earth and Environmental Science* 6 (1 December 2008). See also, “World Development Report 2010 : Development and Climate Change,” accessed 4 June 2019, <https://openknowledge.worldbank.org/handle/10986/4387>.

8 For how developing countries have little access to IPRs, see Falvey, Rod, Neil Foster, and David Greenaway, “Intellectual Property Rights and Economic Growth,” *Review of Development Economics* 10, no. 4 (1 November 2006): 700–719.

9 Article 4.3 of the UNFCCC.

10 Article 4.5 of the UNFCCC.

ments under the Convention will depend on the effective implementation by developed country Parties of their commitments related to financial resources and transfer of technology”.¹¹

The 2015 Paris Agreement and Technology Transfer

Cambodia ratified the 2015 Paris Agreement in 2016. In its essence, the Paris Agreement aims to restrict the increase of temperatures to 2 °C above pre-industrial levels at an absolute maximum and to facilitate action to further increase this limitation to 1.5 °C above pre-industrial levels. The long-term adaptation goal of the Paris Agreement is to address the effects of climate change through the collective actions of all countries through their common but differentiated responsibilities and perspectives¹² Article 10 of the Paris Agreement addresses the topic of technology.¹³ Particularly, Article 10.1 provides that “Parties share a long term vision on the importance of fully realizing technology development and transfer in order to improve resilience to climate change and to reduce greenhouse gas emissions”.¹⁴

All of these provisions explicitly indicate a legal basis for Cambodia to make a direct demand for the technology transfer from developed countries. Because the topic of technology transfer is not well discussed and included in the climate change agreements, some IP scholars have suggested that all countries parties to international climate change agreements have to look at the TRIPS Agreement to facilitate the transfer of ESTs.¹⁵ The TRIPS Agreement sets out the minimum international standards for the protection and enforcement of IPRs among member states. Developing countries acceded to the demands of stronger IPR protections in exchange for greater access to core technologies created by developed countries.¹⁶ Therefore, TRIPS is an important mechanism to promote the transfer and dissemination of climate change technology.

TRIPS Agreement and Technology Transfer

By becoming a member of the World Trade Organization (WTO) in 2004, Cambodia is required to comply with the TRIPS Agreement. This agreement provides its member states some flexibilities to protect IPRs in light of their local needs and interests, which can be used to facilitate the transfer of ESTs. Article 7 of TRIPS highlights the importance of protection and enforcement of

11 Article 47 of the UNFCCC.

12 Article 2(b) of the Paris Agreement.

13 For a detailed discussion on Paris Agreement and Technology Transfer, see Rimmer, Matthew, “The Paris Agreement: Intellectual Property, Technology Transfer, and Climate Change,” in *Intellectual Property and Clean Energy: The Paris Agreement and Climate Justice* (33-68: Springer Nature Singapore Pte Ltd., 2018).

14 Article 10.1 of the Paris Agreement.

15 Kariyawasam, Kanchana and Matthew Tsai, “Intellectual Property, Climate Change and Technology Transfer in South Asia,” in *Intellectual Property and Clean Energy: The Paris Agreement and Climate Justice* (Springer Nature Singapore Pte Ltd., 2018), 207–34.

16 J. Hutchison, Cameron, “Does TRIPS Facilitate or Impede Climate Change Technology Transfer into Developing Countries?,” *University of Ottawa Law and Technology Journal* 3 (18 October 2012).

IPRs and the transfer and dissemination of technology.¹⁷ This provision attempts to balance the interests of all stakeholders. Article 8.2 of TRIPS recognizes members' right to take action against abusive IPRs practices by rights holders, creating a reciprocal obligation for developed nations to actively facilitate technology transfer, particularly to developing countries that are in need of ESTs.¹⁸ Furthermore, Article 31(b) of TRIPS acknowledges the balancing act between the need for the public to allow member states to make laws permitting access to inventions without authorization in cases of national emergency or other circumstances of extreme urgency or in cases of public non-commercial use".¹⁹

Section Summary

In summary, a general observation from the above brief discussion is that all the above international laws acknowledge the need for the development and transfer of technology from developed countries to developing countries. However, there has been no agreement on how this should be achieved or to what extent. Strictly speaking, the extent to which developing country like Cambodia make use of the TRIPS flexibilities yet been accurately determined as will be discussed in more detail below by reviewing and analyzing Cambodia's major climate change policies and their implementation.

The Implementation of Climate Change Policy

This chapter takes the position that the actual implementation of Cambodia's obligations to the major climate change agreements manifests in its climate change policies. Thus, this part of the chapter examines and discusses the National Adaptation Plan Financing Framework and Implementation Plan 2017, along with the Cambodia Climate Change Strategic Plan 2014 – 2023 by showing the projects of the two major climate-oriented ministries: Ministry of Environment (MoE) and Ministry of Agriculture, Forestry and Fisheries (MAFF).

Climate Change Policies

To meet its obligations under the international climate change agreements, Cambodia has designed and implemented its climate change policies. CCCSP 2014-2023 has gathered fifteen Cambodia's ministries and institutions together to develop Climate Change Action Plans (CCAP)

17 Article 7 of the TRIPS Agreement.

18 Rimmer, Matthew, "Intellectual Property and Climate Change: Inventing Clean Technologies," *Intellectual Property And Climate Change: Inventing Clean Technologies*, 4 July 2011.

19 Article 31(b) of the TRIPS Agreement.

with adaptation and mitigation projects to be implemented from 2014-2018.²⁰ CCAP constitutes an integral part of Cambodia's climate change obligations and contributes to the successful implementation of the CCCSP 2014-2023 through a number of strategic actions and plans, including those aiming at building the required capacity within the General Secretariat of National Council for Sustainable Development.²¹ In 2017, Cambodia prepared National Adaptation Plan Financing Framework and Implementation Plan to bring the National Adaptation Plan process in Cambodia closer to its execution and with a specific aim to increase the possibilities for Cambodia to access additional adaptation finance.²²

The Implementation of Climate Change Projects

The Council of Ministers and the National Council for Sustainable Development guided MoE to make the Climate Change Action Plan (CCAP) 2016-2018. MoE proposed seventeen projects aiming at mitigation and adaptation activities for the period between 2016-2018. The cost of the proposed project was USD 27,670,000.²³ However, only eight projects are fully funded.²⁴ The project on establishing a low carbon technology hub for food, water, and energy security was not funded and was just planned by MoE.²⁵ This illustrates the lack of support from developed countries to facilitate and promote the transfer of ESTs to Cambodia. On the other hand, this could also mean that Cambodia is not ready and does not have the capacity to utilize low-carbon technologies.

Moreover, MAFF proposed twenty-nine projects to be implemented between 2014-2018. The requested budget amounted to USD 187,550,00.²⁶ Those projects focused more on adaptation than mitigation and aiming at human and institutional capacity, the capacity of farmers to cope with new technology, GHG emissions, fisheries management, and crop production. However, only one project had been partially funded while other projects were left unfunded. For example, the project on promoting post-harvest technology for cereal and tuber crops and conducting research and appropriate post-harvest technology transfer was put on hold.²⁷

The Challenges of the Implementation

There has not been a lot of studies on the challenges faced by the two ministries and other

20 GSSD, "Cambodia Climate Change Strategic Plan 2014 – 2023."

21 GSSD, "Climate Change Action Plan 2016 – 2018" (Ministry of Environment, 2016).

22 GSSD, "National Adaptation Plan Financing Framework and Implementation Plan," 1.

23 Ibid. at 11.

24 Ibid. at 13.

25 Ibid. at 15.

26 Ibid. at 11.

27 Ibid. at 18-19.

ministries. Nevertheless, there was an attempt to explore those challenges. That study showed that the two ministries faced the same challenges in implementing climate change projects in Cambodia.²⁸ Those challenges include financial constraints, limited human capacity, a lack of reliable and comprehensive data sets and research, and a lack of technology transfer and awareness.²⁹ This shows that the lack of technology transfer becomes a key constraint for Cambodia in implementing climate change project. This is so obvious because advanced technologies were often created outside of Cambodia and were often expensive. For instance, MoE faced a barrier in promoting the use of solar energy because it currently had no facilities to test photovoltaic (PV) systems or PV panels for solar systems. Meanwhile, MAFF faced a similar barrier in implementing and promoting biomass gasification in rural areas due to the lack of technology and capacity building in operating and maintaining technical equipment.³⁰

These were the challenges found in the studies back in 2017 and 2018. In March 2013, Cambodia also submitted its Technology Needs Assessment and action plan on mitigation and adaptation to the UNFCCC, illustrating similar challenges.³¹ However, the same challenges still remain and are faced during the implementation of climate change policies. In 2017, Cambodia yet attempted to improve the situation by developing its National Adaptation Plan (NAP) Financing Framework and Implementation Plan. This policy is designed to bring the National Adaptation Plan process in Cambodia closer to its execution and with a specific aim to increase the possibilities for Cambodia to access additional adaptation finance.³²

Section Summary

In summary, Cambodia finds mitigation and adaptation to climate change a major social and economic issue despite its apparently promising climate change policies. Simply put, Cambodia does not have the necessary financial resources to adapt to climate change, let alone ESTs. Particularly, Cambodia is still highly underdeveloped in the area of renewable energy. It requires technology initiatives and training of experts to tap into the potential for solar, hydropower, biomass gasification and wind power. In adaptation technology, water resources need much more attention.³³

28 For a more detailed discussion on the challenges, see Un, Seyma, "Review of Implementation Challenges Posed by the Climate Change Action Plan 2014-2018 in Cambodia: Case Studies of Three Ministries," ed. Jan, Taylor (Parliamentary Institute of Cambodia (PIC), 2018).

29 GSSD, "Cambodia's Second National Communication under the United Nations Framework Convention on Climate Change" (General Secretariat, National Council for Sustainable Development/Ministry of Environment, Kingdom of Cambodia, Phnom Penh, 2015), 78-82.

30 Ibid.

31 Ibid. at 81.

32 GSSD, "National Adaptation Plan Financing Framework and Implementation Plan."

33 GSSD, "Cambodia's Second National Communication under the United Nations Framework Convention on Climate Change," xviii.

Conclusion and Recommendation

As the previous part of the chapter has discussed, Cambodia still has many constraints to deal with to fulfill its obligations under the major international climate change. In all of the major climate change policies, this chapter has not found specific sections dedicating to using and implementing the flexibilities found in the TRIPS Agreement in relation to the major international climate change agreements to demand developed countries for better access to ESTs. The possible reasons of the underuse of the flexibilities include some domestic considerations and pressures at bilateral and multilateral levels.³⁴ Another barrier to technology transfer is the weak coordination and sharing of information between stakeholders. There is a need to strengthen relevant stakeholders to coordinate and share information on activities, projects and other information related to climate-friendly technology development and transfer.³⁵ To fill that gap and for further improvement, this part ends the chapter by offering a few suggestions formulated using the TRIPS flexibilities, hoping that Cambodia would consider them when designing its new climate change policies.

Despite the high and uniform level of protection, the TRIPS Agreement offers some flexibilities, allowing member countries to restrict the scope of patents and to grant exceptions to promote public interests or abusive IPR practices.³⁶ Those flexibilities include compulsory licensing, parallel importation, patent pool, and a clearinghouse. However, this chapter only suggests two flexibilities that seem applicable if Cambodia is ready to take them seriously.

Compulsory Licensing

Compulsory licensing is one of the flexibilities of TRIPS to overcome IP hurdles. Under this system, applicants apply to the government to be granted a compulsory license when a patent holder reuse to license the use of technology on terms that are fair, reasonable, and non-discriminatory. Article 31 of the TRIPS Agreement acknowledges compulsory licensing. In line with Article 31 of the TRIPS Agreement, member states have the right to make such laws permitting the use of patented material without authorization by the patent holder through compulsory licensing in the case of national emergency, other circumstances of extreme urgency, and public non-commercial use.³⁷ In the United States under the Clean Air Act 1970, the government can grant compulsory licenses to control air pollution, allowing industries greater access to air pollution control technologies.³⁸ Under Cambodian Patent law, there are also similar provisions

34 For the reasons why TRIPS's flexibilities are underused, see Kariyawasam and Tsai, "Intellectual Property, Climate Change and Technology Transfer in South Asia."

35 GSSD, "Cambodia's Second National Communication under the United Nations Framework Convention on Climate Change," xviii

36 Kariyawasam and Tsai, "Intellectual Property, Climate Change and Technology Transfer in South Asia," 207-34.

37 Article 31 of The TRIPS Agreement.

38 A Yosick, Joseph, "Compulsory Patent Licensing for Efficient Use of Inventions," University of Illinois Law Review 5 (1 January 2001).

regarding compulsory licenses.³⁹ Since ESTs are often developed outside Cambodia, looking at the TRIPS seems more applicable. Regardless of its effects on technology transfer, Cambodia has not used compulsory licensing. The use of compulsory licensing and the national legislative provision for compulsory licensing are paramount for aiding Cambodia to address climate change and fulfill its obligations under the international agreements.

Clearinghouse

Another suggestion would be to become a member of a regional patent clearinghouse. A clearinghouse is a mechanism that helps match patent holders with those in need of the technology. A patent clearinghouse could help developing countries to have fair access to ESTs while ensuring a fair economic return to the patentees or developers.⁴⁰ Its role is to be a middleman in the market for technology that facilitates exchanges between intellectual property owners and users. For Cambodia, the advantage comes as minimizing the transaction costs spent on negotiation, reducing search and bargaining costs, and preventing exorbitant licensing prices.⁴¹

39 See Section 11 and 12 of Chapter 2 Patents, Law on the Patents, Utility Model Certificates and Industrial Designs (2003).

40 "(PDF) Creating a Patent Clearinghouse in Canada: A Solution to Problems of Equity and Access," accessed 5 June 2019 r., https://www.researchgate.net/publication/265579403_Creating_a_Patent_Clearinghouse_in_Canada_A_Solution_to_Problems_of_Equity_and_Access.

41 Baltzer, Kourtney, "A Clearinghouse: The Solution to Clearing Up Confusion in Gene Patent Licensing," *Harvard Journal of Law & Technology* 24, no. 2 (22 March 2011): 519.

References

International Agreements and National Laws

- The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).
- The Paris Agreement.
- The United Framework Convention on Climate Change (UNFCCC).
- Law on the Patents, Utility Model Certificates, and Industrial Designs (2003).

National Climate Change Policies and Reports

-
- GSSD. "Cambodia Climate Change Strategic Plan 2014 – 2023." National Climate Change Committee.
- ———. "Cambodia's Second National Communication under the United Nations Framework Convention on Climate Change." General Secretariat, National Council for Sustainable Development/Ministry of Environment, Kingdom of Cambodia, Phnom Penh.
- ———. "Climate Change Action Plan 2016 – 2018." Ministry of Environment.
- ———. "National Adaptation Plan Financing Framework and Implementation Plan." General Secretariat of National Council for Sustainable Development/Ministry of Environment, Kingdom of Cambodia, Phnom Penh.

Articles and Research Papers

- A Yosick, Joseph. "Compulsory Patent Licensing for Efficient Use of Inventions." *University of Illinois Law Review* 5 (1 January 2001).
- Baltzer, Kourtney. "A Clearinghouse: The Solution to Clearing Up Confusion in Gene Patent Licensing." *Harvard Journal of Law & Technology* 24, no. 2 (22 March 2011): 519.
- Bazilian, Morgan, Heleen de Coninck, Mark Radka, Smita Nakhoda, William Boyd, Iain Macgill, Amal-Lee Amin, et al. "Considering Technology within the UN Climate Change Negotiations." *Iop Conference Series: Earth and Environmental Science* 6 (1 December 2008).
- Falvey, Rod, Neil Foster, and David Greenaway. "Intellectual Property Rights and Economic Growth." *Review of Development Economics* 10, no. 4 (1 November 2006): 700–719.
- Hall, Bronwyn H, and Christian Helmets. "The Role of Patent Protection in (Clean/Green) Technology Transfer." Working Paper no. 16323. National Bureau of Economic Research.
- Kariyawasam, Kanchana, and Matthew Tsai. "Intellectual Property, Climate Change and Technology Transfer in South Asia." In *Intellectual Property and Clean Energy: The Paris Agreement and Climate Justice*, 207–34. Springer Nature Singapore Pte Ltd.
- Rimmer, Matthew. "The Paris Agreement: Intellectual Property, Technology Transfer, and Climate Change." In *Intellectual Property and Clean Energy: The Paris Agreement and Climate Justice*. 33-68: Springer Nature Singapore Pte Ltd.

- J. Hutchison, Cameron. "Does TRIPS Facilitate or Impede Climate Change Technology Transfer into Developing Countries?" *University of Ottawa Law and Technology Journal* 3 (18 October 2012).
- Rimmer, Matthew. "Intellectual Property and Climate Change: Inventing Clean Technologies." *Intellectual Property And Climate Change: Inventing Clean Technologies*, 4 July 2011.
- Shashikant, Sangeeta, and Martin Khor. "Intellectual Property and Technology Transfer Issues in the Context of Climate Change." *TWN, Intellectual Property Rights Series* 14, 2010, 80.
- Sarnoff, Joshua D. "The Patent System and Climate Change." Rochester, NY, SSRN Scholarly Paper ID 1780499. Social Science Research Network. <https://papers.ssrn.com/abstract=1780499>.
- Un, Seyma. "Review of Implementation Challenges Posed by the Climate Change Action Plan 2014-2018 in Cambodia: Case Studies of Three Ministries." edited by Jan, Taylor.
-

Online Resources

- "Paris Agreement - Status of Ratification | UNFCCC." Accessed 4 June 2019. <https://unfccc.int/process/the-paris-agreement/status-of-ratification>.
- "(PDF) Creating a Patent Clearinghouse in Canada: A Solution to Problems of Equity and Access." Accessed 5 June 2019. https://www.researchgate.net/publication/265579403_Creating_a_Patent_Clearinghouse_in_Canada_A_Solution_to_Problems_of_Equity_and_Access.
- "World Development Report 2010 : Development and Climate Change." Accessed 4 June 2019. <https://openknowledge.worldbank.org/handle/10986/4387>.



Latest Developments of Public Participation in the Thai Environmental Impact Assessment Legislation

Chacrit Sitdhiwej

Abstract

This paper is aimed to discuss the latest developments of public participation in the Thai environmental impact assessment process. Implementation and challenges regarding such developments, particularly those under the 1992 Enhancement and Conservation of the National Environmental Quality Act, as well as certain policy and legal instruments, guidelines and practices, are deliberated. Recommendations for future improvements are also discussed.

Introduction

Environmental impact assessment (EIA) is an essential process. It produces an environmental impact statement (EIS) that advises a decision-maker the environmental consequences of each development project or activity. EIA particularly facilitates the decision-maker to consider the environmental impacts of such a proposed development project or activity, as well as their mitigation measures, before each major decision is made whether to proceed with such development.

Public participation (PP) is one of the key elements of successful EIA. It involves those potentially affected by an actual development project or activity in the process. PP helps gather and include feedback and even collective intellects regarding environmental impacts and possible mitigation measures of such a proposed project or activity during the process. PP enables each decision-maker to have a better view and understanding of the proposed development. Undoubtedly, if well designed and implemented, PP in EIA can help ensure every decision-maker to make a better decision toward each proposed development project or activity.

This paper employs the documentary research approach by observing the relevant legislation, and guidelines.

Legal Framework

The developments of EIA legislation in Thailand can be chronicled into three waves.

First Wave (1978-1992)

EIA was vaguely introduced to Thailand for the first time under section 5(3) of the 1975 Enhancement and Conservation of the National Environmental Quality Act (1975 Act).¹ Section 5(3) posed a duty on the then National Environment Board of Thailand (NEB) to give its opinions to the Council of Ministers or the relevant State agencies regarding projects that may adversely impact the environment.

The 1978 Enhancement and Conservation of the National Environmental Quality Act (1978 Amendment)² added the 'screening criteria' into the 1975 Act by empowering the Prime Minister, as recommended by NEB, to issue notification prescribing types and sizes of projects or activities subject to EIS preparation during their feasibility studies. Such an EIS shall have been submitted to the Office of Natural Resources and Environmental Policy and Planning (ONEP) for approval.

1 Published in the Government Gazette on February 19, 1975, and, in accordance with section 2, it entered into force on February 20, 1975. The Thai text is available at <http://www.ratchakitcha.soc.go.th/DATA/PDF/2518/A/040/39.PDF> at October 1, 2019.

2 Published in the Government Gazette on December 31, 1978. The Thai text is available at <http://www.ratchakitcha.soc.go.th/DATA/PDF/2521/A/156/1.PDF> at October 1, 2019.

Despite the passages of the 1975 Act and 1978 Amendment, even the issuance of the 1981 Ministerial Notification, the history was not really made until the issuance of the 1984 Ministerial Regulation No 2 Issued Under the 1975 Enhancement and Conservation of the National Environmental Quality Act (1984 Ministerial Regulation),³ in pursuant to section 19 paragraph three, to prescribe the application and issuance of licenses, qualifications of experts, suspension and revocation of licenses and control of the operation of licensed experts. This Ministerial Regulation truly made history. It allowed the preparation of EIS in Thailand becoming possible for the first time.

Second Wave (1992-2018)

The 1992 Enhancement and Conservation of the National Environmental Quality Act (1992 Act)⁴ replaced the 1975 Act. The 1992 Act, inter alia, overhauled the Thai EIA by introducing a brand-new part on EIA, comprising six sections, ie sections 46-51, to constitute a rather proper EIA in Thailand.

In addition to paragraph one that empowered the then Minister of Science, Technology and Environment, now the Minister of Natural Resources and Environment (the Minister), to prescribe types and sizes of projects or activities subject to the EIA process already introduced by the 1978 Act discussed above, section 46 paragraph two of the 1992 Act empowered the Minister to prescribe criteria, procedures, practices and guidelines in relation to the preparation of an EIS.

Numerous ministerial notifications had been issued since. Most ministerial notifications prescribed types and sizes of projects or activities subject to the EIA and criteria, procedures, practices and guidelines concerning the preparation of an EIS in general, while the others prescribed so for specific areas, particularly the environmentally sensitive or heavily industrialised areas.

Third Wave (2018 onward)

The 2018 Enhancement and Conservation of the National Environmental Quality Act (2018 Amendment),⁵ which entered into force on July 20, 2018, inter alia, overhauls the EIA process. Noticeably, this amendment adds a definition of EIA. It acknowledges existing strategic environmental assessments (SEAs) and requires health impact assessment (HIA) where necessary. PP in EIA is also clearly required for the first time.

Under the 2018 Amendment, section 46 defines the term “EIA” for the first time as a process

3 Published in the Government Gazette and entered into force on December 12, 1984. The Thai text is available at bit.ly/32YAdgw at October 1, 2019.

4 Published in the Government Gazette on April 4, 1992, and, in accordance with section 2, it entered into force on June 5, 1992. The unofficial English translation is available at http://web.krisdika.go.th/data/document/ext809/809866_0001.pdf at October 1, 2019.

5 Published in the Government Gazette on April 19, 2018, and, in pursuant to section 2, it entered into force on July 20, 2018. The Thai text is available at <http://www.ratchakittha.soc.go.th/DATA/PDF/2561/A/027/29.PDF> at June 17, 2019.

of study or assessment, integrated with public participation, of direct or indirect adverse impacts to natural resources, quality of the environmental, health, sanitation, quality of life, or any other interest of the public or communities that may arise from a project, business or operation in order to prescribe preventative or mitigative measures for such impacts. This section also provides that the documented result of the study or assessment shall be called “environmental impact statement (EIS).” Besides, section 46 defines the terms “permit” and “proponent.”

Section 47 acknowledges the existing SEAs. As a result, it stipulates that the existing SEAs, if any, shall be taken into consideration while carrying out an EIA process. Nevertheless, no SEA has existed in Thailand.

Section 48 paragraph one empowers the Minister, with approval of NEB, to prescribe projects, businesses or operations as environmental-impacted, maybe-natural-resources-impacted, maybe-quality-of-the-environment-impacted, maybe-health-impacted, maybe-sanitation-impacted, maybe-quality-of-life-impacted, or maybe-other-interest-of-the-public-or-community-impacted projects, businesses or operations, of which proponent shall prepare an EIS. Paragraph two further requires the Minister, in the issuance of such a ministerial notification, to include at least a description of the proposed project, business or operation, description of the environmental baseline, consideration of alternatives, prediction of impacts, PP and mitigation. In addition, paragraph three requires proponents of projects, businesses or operations prescribed under paragraph one to prepare HIAs following criteria, procedures and conditions as prescribed by ministerial notification, with approval of NEB, as add-on to the preparation of EISs under paragraph two.

To ensure that the projects, businesses or operations prescribed by the ministerial notifications issued under paragraph one are always up-to-date, paragraph four of section 48 dictates ONEP to propose NEB to review each ministerial notification once every five years, or sooner.

It should be noted that PP was not directly stipulated in the 1975 Act, 1978 Amendment or 1992 Act. It is explicitly required under section 48 paragraph one upon the 2018 Amendment.

Actual Implementation and Challenges

Although PP was not stipulated under the 1975 Act, 1978 Amendment, nor 1992 Act, the competent state agencies were required to undertake PP by a series of rules of the Office of the Prime Minister, eg the 1996 Rule of the Office of the Prime Minister on Public Hearing (1996 Rule),⁶ 2005 Rule of the Office of the Prime Minister on Public Consultation (2005 Rule),⁷ issued in pur-

6 Published in the Government Gazette on February 2, 1996. The Thai text is available at <http://www.ratchakitcha.soc.go.th/DATA/PD-F/2539/E/002/17.PDF> at October 1, 2019.

7 Published in the Government Gazette on July 27, 2005. The Thai text is available at <http://www.ratchakitcha.soc.go.th/DATA/PDF/2548/00167861.PDF> at October 1, 2019.

suant to section 11(8) of the 1991 State Administration Act.⁸ The said section 11(8) empowers the Prime Minister to specify rules to achieve effective public administration matters. Public administration matters involve only among state agencies and State officials. As a result, the 1996 and 2005 Rules did not apply to any individual. That is, only competent and relevant State agencies and State officials were subject to PP, but not any proponent of private entity. Rather, an individual may have been indirectly subject to PP only in their capacity of an applicant of a development permit. This complication added unnecessary struggles in implementing PP in EIA for over twenty years.

Under the 2018 Amendment, in pursuant to sections 48 and 51/4, the Minister of Natural Resources and Environment has issued two ministerial notifications, ie the 2019 Notification of the Ministry of Natural Resources and Environment Prescribing Projects, Businesses or Operations Subject to the Preparation of an Environmental Impact Statement, Criteria, Procedures, and Conditions for the Preparation of an Environmental Impact Statement⁹ and the 2019 Notification of the Ministry of Natural Resources and Environment Prescribing Projects, Businesses or Operations which May Severely Impact Natural Resources, Quality of the Environment, Health, Sanitation, Quality of Life of Members of Community Subject to the Preparation of an Environmental Impact Statement and Criteria, Procedures, and Conditions for the Preparation of an Environmental Impact Statement,¹⁰ to replace numerous ministerial notifications issued prior to the enactment of the 2018 Amendment.

The former ministerial notification prescribes projects, businesses or operations subject to the preparation of an EIS. It also includes the criteria, procedures, and conditions for the preparation of such an EIS, while the latter prescribes those which may severely impact natural resources, quality of the environment, health, sanitation, quality of life of members of community which are subject to the preparation of an EIS.

Noticeably, sub-clause 8(1)(c) of the former ministerial notification delegates ONEP to issue guidelines regarding PP in EIA. As a result, ONEP has issued the 2019 Notification of the Office of Natural Resources and Environmental Policy and Planning on Guideline for Public Participation in the Preparation of Environmental Impact Assessment (Guideline)¹¹ to guide PP in EIA. The Guideline elaborates scope, benefits, categories and processes of EIA. Scope, principles, processes, practices, techniques and presentation of the results of PP are also explained.

Fundamentally, the Guideline values the so-called “4S” principles of PP, ie Starting Early, Stakeholders, Sincerity and Suitability. The Guideline also suggests that a good plan, comprising preparation, planning and implementation, shall be conducted for every successful PP. Trans-

8 Published in the Government Gazette on September 4, 1991. The Thai text is available at <http://www.ratchakitcha.soc.go.th/DATA/PDF/2534/A/156/1.PDF> at October 1, 2019

9 Published in the Government Gazette and entered into force on January 4, 2019. The Thai text is available at http://www.ratchakitcha.soc.go.th/DATA/PDF/2562/E/003/T_0001.PDF at October 1, 2019.

10 published in the Government Gazette and entered into force on January 4, 2019. The Thai text is available at http://www.ratchakitcha.soc.go.th/DATA/PDF/2562/E/003/T_0012.PDF at October 1, 2019.

11 Published in the Government Gazette and entered into force on February 8, 2019. The Thai text is available at http://www.ratchakitcha.soc.go.th/DATA/PDF/2562/E/036/T_0031.PDF at October 1, 2019.

parent disclosure of details of the proposed development, eg purposes and rationale, outputs and outcomes, proponent, site location, processes, benefits and adverse impacts, is one of the most important keys to every successful EIA. Appropriate timing of the disclosure is also vital to the success of every EIA.

The Guideline identifies that stakeholders of PP include impacted persons, those in-charge of EIS preparation, EIS reviewers, relevant State agencies, non-governmental organisations, independent academia, public media and members of the public. As members of the public are identified as stakeholders, it means that any person can identify themselves as a stakeholder of any proposed development.

The Appendix of the Guideline is worth an observation. It well summarises the essential PP processes in a single matrix.

Conclusion and Recommendations

Despite the very short term of implementation, it is hoped that the recent issuance of the ministerial notifications and Guideline in late 2018 and early 2019, plus some twenty years of challenges and experiences Thailand faced and accumulated would be valuable lessons for Cambodia while considering adopting has PP in its EIA legislation.

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