

DRAFT LAW ON ENVIRONMENTAL IMPACT ASSESSMENT

CHAPTER 1 GENERAL PROVISIONS

Article 1: Objectives

This law has the purpose:

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

Article 2: Scope of Application

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

- After this law comes into effect, all state institutions, ministries, departments, and state public units ~~and Government~~ shall consider this law as the key implementing principle before granting approval, issuing licenses, and making decisions.
- All activities and development projects of natural persons, private legal entities, and public legal entities are obliged to comply with this law. The legal forms, implementation procedures and other technical standards which are not stipulated in this law are stipulated in sub-decrees, prakas, circulars, and directives to be issued by the government or Ministry of Environment.
- This law governs all investment projects and activities which have licenses, certificates, and decisions from various ministries and institutions that have failed to comply with the EIA.

Article 3: Exempted Projects

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

Article 4: Definitions, Glossary and Acronym

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

CHAPTER 2

PRINCIPLES AND AUTHORITY

Article 5: Provisions on Environmental Assessment

All development projects must conduct prior Environmental Impact Assessment (EIA) which encompasses impacts to the environment, economy, society, and culture before being sent to the government for approval. The type of development project required to have EIA shall be stipulated in the sub-decree. All development projects stipulated in annex of sub-decree must not start their construction activities without the EIA approval certificate issued by the MoE.

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

Article 6: Principles to be Applied

In order to achieve the objective of sustainable development, the following principles are to be applied in the Environmental Impact Assessment (EIA) process:

- there shall be a right of access to information provided to relevant ministries/institutions government departments, private sectors, civil society, project-affected people, and the public in order to contribute to the protection of the right of every person in the Kingdom of Cambodia, both present and future, to participate in the EIA process.
- In order to enhance the quality of environmental decision-making and to promote the transparency of environmental decision-making, every person in the Kingdom of Cambodia shall be entitled to participate in the EIA process and have access to justice in environmental matters.
- EIA process shall encourage and enable the public and civil society to participate in the protection of the environment in the EIA process.
- EIA process shall recognize that the participation of relevant ministries/institutions, private sector, civil society, the public, and of the project-affected-people as an integral aspect of environmental assessment.
- EIA process shall adopt and apply the precautionary principle, namely that where there are threats of serious or irreversible environmental damage, lack of full scientific certainty shall not be used as a reason for postponing measures to prevent environmental degradation.
- EIA process shall adopt and apply the ‘polluter pays’ principle that those who generate pollution and waste or cause harm to the environment should bear the cost of damage, containment, avoidance, or abatement.
- EIA process shall take into account climate change and the potential impacts of climate change on projects in the Kingdom of Cambodia.

Article 7: General Duty of Environmental Protection

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

CHAPTER 3

RESPONSIBLE INSTITUTION

Article 8: Competent Authorities

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

Article 9: General EIA Department

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

Article 10: Roles of General EIA Department

General EIA Department has the following roles:

- Being in charge of implementing this law under the supervision of Ministry of Environment
- Being in charge of screening the proposed projects, reviewing the scoping of project, the terms of reference, review EIA reports and all related documents, and ensure that public participation is conducted in accordance with the provision of the Law.
- Investigating and monitoring all project activities as set in the Environmental Management and Monitoring Plan (EMP) after the issuing of EIA Approval Certificate to ensure compliance with this law.

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

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

- **Establishing the Expert Review Committee**
- **Appointing Members of the Expert Review Committees**
- Issuing of the EIA approval letter and certificate
- Adopting Guidelines on Screening criteria
- Adopting Guidelines on EIA and/or EMP
- Using and implementing principles so far approved and implemented by the Ministry on EIA and/or EMP
- Adopting Guidelines for Public Participation in EIA process

- Issuing Prakas on Qualification and Registration of EIA Consultants
- Adopting trans-boundary EIA Framework for its Guidelines on how to carry out a trans-boundary impact assessment.

Article 12: Rights and Duties of Inspector of General EIA Department of the MoE¹

Inspectors of General EIA Department of the Ministry of Environment have the following roles:

- To inspect the implementation of regulations pertaining to environmental requirements, relevant laws and regulations;
- To inspect compliance with environmental requirements as defined in the laws and regulations, contracts, or applicable environmental standards and requirements;
- To examine environmental management records, documents, electronic data, and other records of development projects and operations;
- To require administrators, employees and agents of development projects and operations to provide all information and/or records related to the environmental management² of the project proponent.
- To enter any premises for any purpose of exercising inspection powers and duty where a violation of laws or regulations there under is suspected to have been committed and seize documents or other property connected with the suspected violation, including taking samples for environmental examination³;
- To meet with Boards of Directors and administrators of the development projects and operations at least once per year in order to assess the implementation of environmental law and other relevant regulations.

Article 13: Rights and Duties of Branches of the MoE

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

CHAPTER 4

ENVIRONMENTAL ASSESSMENT PROCESS FOR PROJECTS⁴

Article 14: Environmental Screening of Projects

An Initial Environmental Examination (IEE) or EIA Report is required for all Projects that are contained in the Screening Sub-decree.

For all development projects, not listed in the above Screening sub-decree for Development Projects and that, in the opinion of the General EIA Department, are likely to have a **significant** effect on the environment and/or society, the General EIA Department must identify the impacts, ⁵, in order to determine whether the projects require an IEE or EIA.

¹This Article 12 can be taken out to include in guideline if necessary.

²See MoE draft Articles 38 and 39.

³ See MoE draft Articles 36 – 39.

⁴For this Chapter the Law outlines the broad process to be followed. The details are contained in the relevant Guidelines that should be adopted at the same time as this Law. In addition there are technical guidelines that the MoE will be able to adopt to assist with the assessment process of the IEE, the EIA and the EMP.

⁵The projects described in the annex of the sub-decree include all projects that require to have EIA. If a project is required to have an EIA, it will not be required to have an IEE. If the IEE has an appropriate value, the project proponent can use it to check that project.

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

Article 15: Initial Environmental Examination

IEE shall be required for:

1. Projects listed in the Screening in the annex of sub-decree².
2. Projects with environmental protection agreement or EMP and decided by MoE that they do IEE.

When the proposed project is required to do IEE, the project proponent shall prepare the terms of reference in accordance with provisions and guidelines of MoE on EIA as well as the requirements for public participation.

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

The form and content of the IEE report is contained in Prakas issued by the MoE.

Article 16: Consideration of IEE

The MoE shall process the IEE report in accordance with the processes contained in Guidelines issued by the MoE within 90 days of receipt of IEE⁶.

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

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

Article 17: Environmental Impact Assessment (EIA)

An Environmental Impact Assessment shall be required for:

1. Projects listed in the annex of the subdecree;
2. Projects that have prepared an IEE⁷ and for which the decision of the MoE is that an EIA is required.

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

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

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

⁶ The question of the timeframes for making decisions by the MoE is very important. It is clear that the current time frames are too short. The PRC allows for 90 days for assessment of an EIA. However they have significant capacity for assessment. PRC Article 22 allows 60 days from receipt of written report on EIA. The suggested timetable would allow the Expert Review Committee 30 days to review the EIA and the MoE a further 30 days to review the Report of the Expert Committee and comments received from the public and other Ministries.

⁷These are projects that required an IEE and following review the MoE determines that the project requires an EIA.

Article 18: Natural Persons and Legal Entities Eligible to Undertake EIA Report

All natural persons and legal entities must be registered with the MoE before professionally preparing EIA for a fee. **Registration certificate shall be valid for a maximum period of 5 years and may be renewed.** Qualifications, **the procedure for registration and renewal of registration** and criteria of natural persons or legal entities that are eligible **for Registration** to prepare EIA report shall be defined by Prakas of the MoE.⁸

Article 19: General Content and Format of the EIA Report⁹

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

The EIA report shall also include a detailed Environmental Management and Monitoring Plan (EMP) based on the environmental and social impacts and mitigation measures of the project.

If basic EIA data is separately approved, the project proponent has to send the data to MoE.

Article 20: Establishment of an Expert Review Committee

The MoE shall be responsible for the establishment of an Expert Review Committee in accordance with the timetable and the processes set out in the EIA sub decree¹⁰.

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

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

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

Article 21: Review and Consideration of EIA Report¹¹

The MoE has the primary duty to review and consider the IEE or EIA report based on comments by relevant ministries/institutions, opinion of the public, and the Expert Review Committee.

The MoE must take into account the report of the Expert Review Committee prior to issuing an EIA Approval Certificate.¹²

The MoE is responsible to ensure a fair hearing process to enable public involvement and shall invite relevant ministries/institutions, civil society and impacted persons to attend such hearings and to provide comments to the proposed project.

⁸All of these qualifications are necessary to have stipulated in the guideline established by the MoE and from a section of the guideline.

⁹The form and content of the EIA Report and the general guidelines should be included in the Guidelines.

¹⁰There has been a request to include the processes of the expert group and duration in the sub-decree.

¹¹It is understood that the MoE does not approve projects. All projects are currently approved by the Government. The aim of the EIA Approval Certificate is to have a document that encompasses all the relevant conditions attached to the approval, including the Environmental Management Plan.

¹²Only projects requiring an EIA will have an Expert Review Panel appointed. All projects requiring an IEE or EIA will either be refused or be granted an EIA Approval Certificate.

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

Based on the IEE or EIA report, formal presentation by the Project Proponent, written comments from the Expert Review Committee, comments from public participation meetings and concerned ministries or agencies, and submissions received, the MoE shall consider the IEE or EIA report within 90 days of working day and consider criteria, size and sites of development project and determine one of the following actions:

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

Where the Minister of Environment issues an EIA Approval Certificate, the Minister of Environment may attach conditions to the EIA Approval Certificate.

Where the MoE rejects the EIA report, the MoE shall state the reasons for the decision.

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

Article 22: Issuing of EIA Approval Certificate

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

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

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

The MoE does not issue an EIA Approval Certificate before receiving written comments from all members of the Expert Review Committee. Comments and conditions set by the Expert Review Committee Members shall be included as Conditions in the EIA Approval Certificate issued by the MoE.

The EIA Approval Certificate shall be valid for a period of no more than five (5) years.¹³

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

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

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

¹³See Chinese PRC EIA Law Article 24. After 5 years there shall be an opportunity to renew the EIA Approval Certificate.

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

Article 23: Consideration on Development Projects Located in the Areas where Indigenous People/Ethnic Minority Group Live

Before the decision of granting a permit or EIA approval certificate to development projects which are located in the areas where the ethnic minority groups live, the MoE, members of the Expert Review Committee, and relevant stakeholders involved in the decision making, must take strong heed and special considerations about the project in order to avoid negative impact on the custom, tradition, culture, livelihood, and the property of the ethnic minority groups¹⁴.

CHAPTER5: PUBLIC PARTICIPATION PROCESS

Article 24: Public Participation Process¹⁵

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

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

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

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

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

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

The public participation process in stage of studying, reviewing, examining the EIA report and project monitoring will be stipulated by Prakas of the Ministry of Environment.

¹⁴Guidelines will be prepared by MoE for dealing with special issues of ethnic minority groups

¹⁵ See for example Cambodia Law on Environmental Protection, Article 1, Cambodia 1999 Sub-Decree on EIA Process, and PRC EIA Law 2003, Article 5. Also PRC SEPA Draft Measure for Public Participation, Regulation on Environmental Impact of Plans 2009.

Article 25: Report on Public Participation¹⁶

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

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

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

Article 26: Free, Prior and Informed Consent

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

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

The procedure of resettlement and solution of compensation to the affected/impacted community must be determined by a sub-decree.

The format and procedure of the payment for the damage to the impacted community must be determined by a joint declaration/prakas of the MoE and the Ministry of Economy and Finance.

The public participation process shall ensure that project affected communities ~~are able to~~ give free, prior and ~~free~~ informed and ~~free~~ consent ~~to the~~ proposed mitigation measures. ~~prior to the approval of the EIA Approval Certificate.~~

The public participation process shall ensure that the consent of the project affect communities to the proposed mitigation measures is based on the free, prior and informed consent principle (FPIC).

Glossary: FPIC mean that the public participation process shall require that the Project Proponent inform the community of the proposed mitigation measures before the IEE or EIA is submitted to MoE. The project proponent shall allow sufficient time for the projected affected communities to consider the proposed mitigation measures. The project affected communities shall approve the proposed mitigation measures without pressure or coercion from any natural person or legal entity.

Article 27: Access to Information

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

The MoE must ensure that relevant stakeholders including the projected affected communities have access to clear and sufficient information.

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

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

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

¹⁶This reflects the provisions of Article 21 of the EIA Law of the PRC.

CHAPTER 6

EIA ON PROJECTS IN OPERATION

Article 28: Projects in Operation

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

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

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

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

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

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

CHAPTER 7

ENVIRONMENTAL MANAGEMENT AND MONITORING

Article 29: Inspection Authority

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

Article 30: Environmental Management Plan

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

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

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

Article 31: Environmental Management and Monitoring by the Project Proponent¹⁷

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

¹⁷The details of the format for an Environmental Management Plan are in the Guidelines.

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

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

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

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

Article 32: Complaints by Project Affected Persons

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

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

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

Article 33: Monitoring by External Bodies (External Environmental Auditor)¹⁸

Those projects identified in the Prakas that have significant environmental or social impact shall be audited by an external environmental auditor as stipulated in Prakas. The environmental auditor shall:

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

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

Article 34: Publication and Disclosure

¹⁸The Equator Principles and Performance Standards of the IFIs require that an External Auditor be hired by the Project Proponent to serve as the Lender's Technical Assistance Team to audit the project on a regular basis and submit written reports to the bank.

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

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

Article 35: Reports to MoE

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

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

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

Article 36: Mediation of Environmental/Social Disputes (Public Grievance Procedures)

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

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

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

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

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

CHAPTER 8

SECTION 1

CLIMATE CHANGE IMPACTS

Article 37: Climate Change Considerations in Environmental Assessment

All **IEE and** EIA must analyze and assess the potential impacts and vulnerability of the Project, caused by climate change and development activities that are potentially imbalanced by affected environmental conditions, by finding measures to mitigate the potential risks associated with climate change impacts and in order to achieve low-carbon economic development which is a primary target of Green Growth.

All EIAs must include the assessment on the risks and vulnerability of climate change (using at least two scenarios of weather extremes). Project Proponents must propose and analyze mitigation measures in the EIA study which reduce climate change risks and include emergency response planning and technology choices to prepare for climate change impacts.

~~All EIAs must include the assessment on the risks and vulnerability of climate change, and analyze mitigation of environmental impact measures, emergency response planning and technology choices to prepare for climate change impacts.~~

~~A carbon footprint of the project must be calculated and included in the EIA utilizing analysis on low carbon emission, and sustainable products usage and supplies by including in the EIA¹⁹ for accomplishing Green Growth.~~

A carbon footprint of the project must be calculated and included in the IEE or EIA utilizing analysis on low carbon emissions, with the objective of sustainable products usage and supplies for accomplishing Green Growth.

Climate change provides a changed framework for consideration of water and energy needs. The Project Proponent should seek (a) low carbon energy options, (b) the need to mitigate climate induced changes to water supply, and (c) resulting changes in the project's carbon footprint.

SECTION 2 CUMULATIVE IMPACT ASSESSMENT

Article 38: Principles and Methodology of Cumulative Impact Assessment

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

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

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

SECTION 3: HEALTH IMPACT ASSESSMENT

Article 39: Principles for Health Impact Assessment

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

- baseline data on health in the project areas and of the affected population

¹⁹Climate change provides a changed framework for consideration of water and energy needs. The Project Proponent should seek low carbon energy options and the need to mitigate climate induced changes to water supply. Likewise, the possible contributions of the project to climate change, as measured by a carbon footprint analysis, shall be part of the environmental assessment as described in the Guidelines.

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

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

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

SECTION 4

STRATEGIC ENVIRONMENTAL ASSESSMENT (SEA)

Article 40: Objectives of Strategic Environmental Assessment

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

The objectives of Strategic Environmental Assessment are to:

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

Article 41: Scope of Application

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

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

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

The Strategic Environmental Assessment shall promote green growth and environmentally and socially sustainable development by anticipating and mitigating adverse effects, **including health impacts**, at the stage of project designing, planning, considering and identifying best practical

environmental options, using little natural resources for high output and ensuring that policies and plans are consistent with development goals and social and environmental protection.

A combination of SEA of strategic-level policy and EIA of project-level tools is required to address green growth particularly climate change as a planning challenge.²⁰ MoE and National Council on Green Growth will organize to utilize Strategic Environmental Assessment to evaluate the inter-linkages of environment, Economic, Social and culture of sectoral plans.

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

SECTION 5

TRANS-BOUNDARY IMPACTS

Article 42: Screening Criteria and Framework for Transboundary Environmental Impact Assessment

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

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

Article 43: Public Participation Provisions

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

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

Where the MoE receives a Screening Report for a project originating in Cambodia which may have significant environmental impacts on another country(ies), the MoE shall notify the designated authority of the potentially affected country(ies) to solicit and collate responses from its relevant authorities/agencies, and within 90 days of receipt of the Announcement to submit an Official Response to the announcement to the MoE of Cambodia (the country of origin). If no Official Response is received within this time frame, Cambodia may presume that the potentially affected country(ies) does not wish to be further involved in the TbEIA process.

Where the MoE receives a Screening Report (or equivalent EIA Report) from another country for a project that may have significant environmental impacts on Cambodia, it shall immediately enter into discussions with that country on procedures and timetable for comments on the proposed project.

The designated authority of the country of origin will permit Cambodia to solicit and collate responses from its relevant authorities/ agencies/ stakeholders/impacted parties, and within 60 days of receipt of Announcement, will submit an Official Response to the Announcement to the

²⁰These points are more relevant to the Guidelines.

designated authority of the country of origin. If no Official Response is received from Cambodia within this time frame, the country of origin may presume that Cambodia does not wish to be further involved in the TbEIA process.

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

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

Article 44: Project Mitigation Measures and EMP

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

These measures shall be reviewed and commented on by the public in Cambodia potentially affected according to the agreed procedures and time.

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

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

Article 45: Project Monitoring

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

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

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

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

CHAPTER 9

ENVIRONMENTAL PAYMENTS

Article 46: Obligatory Contribution of Payments for IEE and EIA

The Project Proponent is liable for all expenses incurred in preparation the Initial Environmental Examination (IEE) report or the Environmental Impact Assessment (EIA) report and

for the expenses of the Public Participation Process, the consideration and review of the IEE or EIA by the MoE, including the Expert Review Committee.

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

~~The Project Proponent will contribute payments to the MoE on annual basis to be used for capacity building, for Provincial and District Offices of the MoE, to enable MoE to carry out its duties to review monitoring reports, respond to requests for investigation of environmental complaints, and to carry out routine compliance monitoring during both construction and operation phases of the project.~~

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

Article 47: Fees and Service Charges

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

~~The Project Proponent will contribute fees and service charges payments to the MoE on annual basis to be used for capacity building, for Provincial and District Offices of the MoE, to enable MoE to carry out its duties to review monitoring reports, respond to requests for investigation of environmental complaints, and to carry out routine compliance monitoring during both construction and operation phases of the project.~~

~~50 % (fifty percent) of fees are to be paid to the national budget and 50 % (fifty percent) will be allocated to the MoE to cover EIA process and related MoE activities.~~

Article 48: Environmental and Social Fund

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

~~The Project Proponent shall be required to contribute a minimum of 1% of the Project costs, half (50%) to the Environment Endowment Fund, established under Article 19 of the Law on Environmental Protection and Natural Resource Management, and half (50%) to the Environmental and Social Fund of the Ministry of Environment prior to the commencement of the Project.~~

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

~~Project Proponents shall be required to contribute to these funds in accordance with MoE Guidelines on compulsory contributions to Environmental Funds~~

~~Such funds shall be used and managed by the MoE to preserve ecological resources and conserve the environment.~~

Article 49: Awards

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

CHAPTER 10

JUDICIAL POLICE OFFICERS

Article 50: Appointment as Judicial Police Officers

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

- Researching, monitoring, preventing, and suppressing offenses for any natural persons or legal entities which do not prepare EIA report, do not implement any measures written in Environmental Protection agreement, and other provisions concerning to EIA, are the authority of MoE.

- When starting researching, monitoring, preventing missions, and suppressing EIA offenses, EIA judicial police officers shall be wearing uniforms, holding identification card, rank, and a mission letter.

General EIA officers shall make an oath in front of Appeal Court in order to enquire accreditation to serve as judicial police officers. The format and procedure of the oath taking shall be in compliance with the code of criminal procedure.

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

Article 51: Judicial Police Officers of General EIA Department

The qualified judicial police officers of General EIA Department may hold in police custody the offenders involved with EIA offense. The duration and the procedure of holding in custody are in accordance with Article 96 of the Code of Criminal Procedure.

CHAPTER 11

OFFENSES AND PENALTY PROVISIONS

PART 1: GENERAL PRINCIPLE

Article 52: Offenses and Violation of the EIA Law

Offenses in this law include all activities of offenses, breaches, and various violations of natural persons or legal entities that cause negative impacts on the environment, economy, society and culture.

Article 53: Penalty of EIA Offenses

The penalty of EIA offenses consists of imprisonment, fine, transitional penalty, warning, seizure of evidence, reparation, restoration of damages, remedies, termination, temporary suspension, annulment of letter of permit or EIA approval certificate, seizure of licenses or letter of business or production permit, and contract annulment.

Article 54: Competence of Imposing Penalty

- **Court** (imposing penalty of imprisonment, fine, compensation for damages, reparation, restoration of damages in accordance with each case)
- **The MoE** (reparation, restoration of damages, temporary suspension, annulment of letter of permit or EIA Approval Certificate, and contract annulment)
- **General EIA Department and Provincial/Municipal Department of Environment** (warning, remedies, and seizure of evidence).

Article 55: Right of Reporting of Breaches²¹

Any natural person or legal entity shall be obligated to report activities that breach this Law to the local authorities of Commune/Sangkat, District/Khan, and Province/Municipality. Upon receiving the report, all level of authorities must relay/refer the report to the MoE on the activities of violations, of this law and the Guidelines, and that have a significant adverse impact on the environment. After receiving the report, the MoE/General EIA Department shall investigate and manage the case in compliance with the Law and Guidelines.

Article 56: ²²Compilation of Environmental Complaints

The compilation²³ of EIA complaints shall be in accordance with Code of Criminal Procedure.

The form and formality of making the record of the EIA offenses shall be determined by a joint proclamation/prakas of the MoE and the Ministry of Justice.

Article 57: Types of Offenses

The offenses related to EIA consist of:

- Administrative offenses
- Criminal offenses

PART 2: ADMINISTRATIVE OFFENSES

Article 58: Statute of Limitation

Statute of limitation of the offenses includes:

- Administrative complaint has a period of 01 (one) year
- Misdemeanor complaint has a period of 05 (five) years
- Felony complaint has a period of 15 (fifteen) years

The statute of limitation of the offenses is counted from the date on which the authority or competent officials receive complaints about the offenses.

²¹This Article is taken from Article 5 of the PRC EIA Regulation 2009

²²See Draft MoE Article 42

²³1st is the investigation and research of the offenses; 2nd is asking for the principle/permission from the prosecutor to keep the offenders in custody; 3rd is asking the prosecutor to lead the searching; 4th is the searching; 5th is forbidding; and 6th is the confiscation of evidence; 7th is recognizing the evidence; 8th is making the record of the answers of witnesses and those involved with the offenders; 9th is reporting on the incident; 10th making synthesized report.

Article 59: Penalty related to Inspection

Any **natural person or legal entity** which does not cooperate or allow or has the intention of avoiding inspectors of General EIA Department to meet with the Board of Directors and administrators in order to evaluate the implementation on the provision as stipulated in paragraph 6 of Article 12 of this law shall be subject to warning from the General EIA Department and Department of Environment of the MoE. In case of not resolving to cease committing the offense, the offenders will be punished with a fine of 2, 000, 000 (two million) Riels to 15, 000,000 (fifteen million) Riels.

Article 60: Offences and Penalties related to Report Making

Any **natural person or legal entity** that violates the requirements of preparing IEE or EIA report or Environmental Management Plan shall be subject to warning penalty. In case of not resolving to cease committing the offense, the offenders will be punished with a fine of 2, 000, 000 (two million) Riels to 15, 000 000(fifteen million) Riels. In the case where the projects or illegal activities still continue and substantially and adversely impact on the environment and society, the company owner shall receive criminal penalty according to the provision of this law and the evidence shall be confiscated and kept as state property.

Article 61: Violations, Not Fulfilling Obligations or Roles of Judicial Police Officers

Judicial police officers of General EIA Department who violate or reject or have an intention to avoid or do not fulfill their duties as stipulated in the 1st, 2nd, and 3rd paragraph of Article 50 and the 3rd paragraph of Article 8 of this law shall be punished with warning or temporary suspension from work or termination of position in serious cases. The termination of position shall not preclude the criminal penalty of the court. Other officials who violate and do not fulfill their duties shall be punished with administrative penalty.

Article 62: (Article 53²⁴) Offenses, Penalties

All proposed projects which have not received EIA Approval Certificate as stipulated in Article 22 of this law shall be punished and prohibited from building or operating the project activities. Any Project Proponent violating the above requirement shall be subject to penalty by payment of a fine, immediate suspension of the project, and the potential loss of project approval of the government.

In the case where the projects and construction sites have operated and negatively impacted on the environment and society, the project proponents shall provide reparation, restoration of damages and the projects can result in temporary suspension, annulment of letter of permit or certificate and contract, and seizure of licenses.

Issuing of an order to stop the operations will involve the consideration of the Committee for Planning and Investment (or municipal and provincial offices). As to the removal of the license of operation, it is involved with the consideration of the inter-ministry committee in reference to the proposal of the MoE/General EIA Department to confiscate the investment licenses of the project proponents.

²⁴This part is too detailed and maybe the MoE should be given the the authority to solve violation issues in accordance with the procedure.

When the project is prohibited from continuing its operation, the Project Proponent shall compensate for the damages done to the environment.

Article 63: Remedial Measures and Penalties

The remedial measures and penalties provided for infractions stipulated in the Law on Environmental Protection and Natural Resources Management or the EIA Law and other relevant provisions shall be determined in each particular case by the MoE. The action shall be based upon the severity of the infraction caused by the project or its operation or administrators or shareholders, or that operation has committed any mistake related to the offense and thus the stage at which the offense was detected and the appropriate measures to remedy or terminate the infraction require the MoE to:

- Issue written warnings;
- Conclude a written agreement with the Board of Directors providing for a program of remedial action;
- Issue written inspection orders to cease and desist from such infractions and to undertake remedial actions;
- Impose environmental requirements and conditions on the development project or operation to improve its environmental management;
- Revoke the EIA Approval Certificate of a project or its operation and order it to stop the operation until it receives approval for a new EIA Approval Certificate;

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

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

- First, to victims of the violation;
- Second, to defray the direct costs of the MoE for investigation, monitoring, and prosecution; and the balance shall be paid to the Ministry of Economics and Finance.
- If the Project Proponents do not improve the mitigation measures to meet with the requirements of the EMP within the agreed upon time limit, the Project is to be temporarily halted until the conditions are met and the Project Proponents fined a penalty equal to all social and environmental damages and costs caused by the project and borne by the impacted stakeholders.
- Impose fines on the project or its operation or administrators in an amount of from 1,000,000 (one million) Riels to 10,000,000 (ten million) Riels per day for each day that the infraction continues; this policy on fines shall be of similar amount for entities of the same type and for a similar infraction.

Article 64: Violation of EIA Law Committed by EIA Experts and EIA Consulting Firm

EIA consulting firm or any EIA expert who are legally registered or recognized by the MoE who deceives, fakes data/documents or take other people's data or violate the provision of this law shall be punished with a fine of 10, 000, 000(ten million) Riels to20, 000, 000 (twenty million) Riel and in serious cases will be removed from the list of EIA Report-Making Expert or forever forbidden from this profession.

PART 3: CRIMINAL OFFENSES

Article 65: Conditions to Impose Criminal Punishment and Fine as well as Sub-Penalties

People to be responsible for the offenses include:

- Anyone with decision-making power and anyone in charge of construction activities, investments, and commercial operations/business activities of natural persons, private legal entities.
- The instigator and the accomplice of the offense, anyone who hides or intervenes to cause the commission of the offense, and anyone who receives benefits from the offenses.
- Anyone who performs their assignments in accordance with the order of the management and leadership, technicians, professionals, and laborers who are aware of the offense but still commit it to gain abnormal fee.

Article 66: Offenses and Penalties for Obstructing Inspectors

Any person who does not collaborate with or who obstructs the inspectors of the General EIA Department from entering into the premises of the project site in order to do the inspection work as stipulated in the 5th paragraph of Article 12 of this law shall be punished with a fine of 2, 000, 000 (two million) Riel to 15, 000, 000 (fifteen million) Riels, and in cases where the physical integrity is violated, it shall be punished with a prison sentence from 1(one) year to 5 (five) years as well as a fine of 5, 000, 000 (five million) Riels to 15, 000, 000 (fifteen million) Riels. In cases where it causes death to human life, it shall be punished in accordance with Article 68 of this law.

Article 67: Offenses committed by Unregistered EIA Experts and EIA Consulting Firm

Natural person or legal entities who are not legally recognized as an EIA consulting firm or expert as stipulated in Article 18 of this law and professionally prepare an EIA shall be punished with prison sentence from 1(one) year to 3 (three) years as well as a fine of 10, 000, 000 (ten million) Riels to 20, 000, 000 (twenty million) Riels.

Article 68: Breaches by Judicial Police Officers

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

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

Article 69: Offenses that Cause Danger, Loss of Human Beings and Animals' Lives, and Disaster for Environment, Society, and Belongings

All project activities, construction sites, general buildings, commercial buildings, investments, and all activities, whether or not they have permission from General EIA Department, that do not follow the principle of EIA, or violate the law, or commit any acts that cause death to human beings, permanent physical and mental disabilities, severe destruction to animals' lives and environment are punished for a felony from 5 (five) to 10 (ten) years in prison.

Perpetrators and co-perpetrators shall be liable for compensation to the damage resulting from their offenses and shall be fined from 40, 000,000 (forty million) Riels to 100,000,000 (one hundred million) Riels as a contribution to the EIA fund of the Ministry of Environment. In serious cases, the directors and those responsible shall be subject to additional penalty.

Article 70: Offenses Committed by Armed Officials and Other Government Officials

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

Article 71: Implementation Procedures

Offenses and breaches of the said law shall be subject to application of the following procedures:

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

Article 72: Competence of Preventing and Suppressing Environmental Impact Assessment Offense

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

Article 73: Implementation of the Role of Judicial Police Officer in the Stage of Proceeding

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

2. After sending a case file to the prosecutor, the responsible judicial police officer holding a letter of assignment shall act and defend the case file as the case owner and complainant with high responsibility.

4. At the investigative stage of the investigating judge, a judicial police officer with the responsibility as the case owner and/or complainant shall appear to follow up, to defend the case file, to explain and provide all legal means and evidence for the benefit of defending the case file with careful attention, responsibility on the procedure and the case file so that the judgment will be full of justice.

5. At the stage of the hearing/trial:

In all case files of environmental impact assessment offense, the judicial police officer of environmental impact assessment, with the responsibility as the complainant and/or case owner, shall appear to provide a statement, make a report to defend evidence, facts, legal element of the offense complaint for the purpose of helping make a just trial; and in addition to this, the responsible police officer has the right to legally request and claim for things related to the case file.

6. Objection/appeal:

Regarding the objections and administrative decisions, the dissatisfied party may complain to the General EIA Department in accordance with its hierarchical structure. In case any party is not satisfied with the decision of the court, it may file a complaint to the higher court in compliance with the provisions of the Code of Criminal Procedures.

Article 74: Indemnity and Fine

1. Indemnity and fine for breach of the said law shall fall within the competence of the General EIA Department.
2. As for indemnity and fines generated from environmental impact assessment offenses implemented according to decisions, judgment, and final verdict, the court shall assign duties to the General EIA Department to claim and handle them.

CHAPTER 12

IMPLEMENTATION OF THE COURT DECISION

Article 75: Implementation of the Decision of the Court

The implementation of the judgment and final verdict of the EIA offense is the obligation of the competence officials of the MoE with the exception of the punishment of prison sentence.

Article 76: Handing over of the Judgment to Competent Ministry

All forms of judgments or verdicts of the EIA offenses are required to be copied for the officers of the MoE.

Article 77: Managing of Confiscated Evidence

After the judgments or verdicts finally come into effect, the confiscated evidence shall be managed in accordance with the procedures of the MoE.

CHAPTER 13

TRANSITIONAL PROVISION

Article 78: Transitional Provisions

Sub-decree No. 72 អនក្រឹត្យ.បក dated August 11, 1999 on the Process of EIA and legal regulations related EIA which are in force are still valid until there are new regulations to replace them in accordance with this law.

CHAPTER 14

FINAL PROVISIONS

Article 79: Final Provisions

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

This law was enacted by the National Assembly of the Kingdom of Cambodia on *Date*.....in its Xth Meeting of National Assembly of the 5th Legislature.

Phnom Penh, *Date*.....

Ani

PRESIDENT OF NATIONAL ASSEMBLY

Definition of the Law on EIA

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

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

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

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

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

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

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

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

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

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

Environmental Management Plan (EMP): means a plan stipulated in the EIA report on assessment of impacts on environment and society which defines environmental protection measures

and impact mitigation; responsibility and schedule for implementation of environment management plan; monitoring plan and assessment of impacts on the environment from the project that must be done including sufficient budget planning for environmental activities required during the construction period, operating and project termination (closure)

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

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

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

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

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

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

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

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

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

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

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

Project Proponent: Project Proponent is meant to infer the project owner or project developer and means any person, juridical person or organization that has the permission (approval) to study, explore, design, construct and implement a project. A Project Proponent may come from the private sector, government sector or be an organization responsible for a development project.

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

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

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

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

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

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

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

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

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