



# Report on Second National Workshop on the Draft of Environmental Code of Cambodia

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7<sup>th</sup>- 8<sup>th</sup>, July 2016, Sokha Hotel, Phnom Penh

**Participants:** 247 persons

**Purposes:** This Second National Workshop will coordinate discussion of the Draft of the Environmental Code by way of a public hearing. The Workshop will also review a detailed work plan for the next phase of creating the Code. Moreover, the Workshop will allow Sub-Technical Working Groups (STWGs) to identify issues to be addressed in the next phase, to assign responsibilities among STWG members, and to create internal timelines.

**Minute Takers:** OI Bunthoeun  
SANG Kimthach  
Vishnu Facilitators in each STWG

## ANNOTATED AGENDA

### I National Anthem

### II Welcoming Remark of Vishnu Law Group (*Atty. Sao Kagna, Manager of Vishnu Law Group and Deputy Head of the Permanent Secretariat*)

Ms. Sao Kagna was sure to note the ample cooperation between Vishnu Law Group and the Ministry of Environment in both establishing Environmental Code as well as in the process of Drafting Environmental Impact Assessments (EIA).

To facilitate the process of drafting the environmental code, the Ministry has created an inter-ministerial working group, a technical working group, and sub-technical working groups. These STWGs invite participation from public-private institutions as well as national and international experts to examine both technical issues and key international principles.



Other key features such as co-management on environmental issues, rights of communities, and rights of indigenous ethnic minorities etc. have also been incorporated into the code.

### III Remark from UNDP Cambodia (Ms. Claire Van Der Vaeren, Resident Coordinator of the UN, and Resident Representative of UNDP in Cambodia)

Ms. Van Der Vaeren referenced phase three of the Royal Government of Cambodia (RGC)'s triangle strategy which includes the government's goals of achieving sustainable development and poverty reduction. Environmental sustainability and sustainable natural resources management of triangle strategy were also prioritized as key points for the government.



Ms. Van Der Vaeren also expressed the belief that the presence of all participants at the workshop as well as the debates and discussions that would ensue will be a driving force for bettering the Environmental Code. The existence of this environmental code represents a big step forward in terms of environmental reform and concurrently has helped to establish The National Council of Sustainable Development, the National Environmental Strategy, and additional national plans that are all advancing under the perspective and leadership of H.E. Say Samal.

She continued that the purposes of this code are to support sustainable development in Cambodia through environmental protection and promote the sustainable use of natural resources. Moreover, this code will clarify the mandate and duties of relevant government institutions.

### IV Opening Speech (His Excellency (H.E.) Dr. Say Samal, Minister of Environment)

H.E. Dr. Say Samal gave thanks as well as high praise to the working groups of the environmental code. In addition, the Minister also acknowledged the development partners who







**VI Presentation on Progress of the Code to date, Overall Implementation Schedule for the Code, and Key Activities Going Forward (H.E. E Vuthy, Advisor to the Ministry of Environment and Chair of the Technical Working Group to Create the Environmental Code; Megan Quenzer, Expert to Vishnu Law Group)**

*H.E. E Vuthy, Advisor to the Ministry of Environment and Chair of the Technical Working Group to Create the Environmental Code*



H.E E Vuthy shared his insights on both the initial drafts of the code as well as the recent efforts in creating the blueprints for this new legislation. As well as acknowledging key initiatives put into action by the Minister of Environment, E Vuthy suggested that the 7 Sub-technical Working Group (STWG) current format be consolidated to accommodate only 6 STWGs. Further, he mentioned that questions of jurisdiction between the Ministry of Environment and the Ministry of Agriculture, Forestry, and Fishery will be settled from mandates set out in this code’s drafting process. The code also works out transfers of jurisdiction for all concession companies which were under the jurisdiction of the Ministry of Environment to the Ministry of Agriculture, Forestry and Fishery and vice versa, the latter gives conserved areas which are under its jurisdiction to the former.

H.E also noted that the Environmental Code is a law for everyone in the entire nation. It is thus important to ensure the code is implemented effectively and verify that any regulations contrary to this effect shall be modified.

***Megan Quenzer, Expert to Vishnu Law Group***

In her presentation, Ms. Quenzer gave additional insight into the process of developing the Environmental Code as well as the activities of all 6 STWGs while outlining the levels of participation from both national and international experts. So far there have been international experts working directly with each STWG including STWG 1 and 3/5. Many international experts have already come to Cambodia greatly assisted in the development to the code with STWGs and many more are scheduled to do so.



Ms. Quenzer also highlighted some key comments provided by more than 50 international experts working overseas. She also shared the five-step process of developing provisions within the Environmental code and presented a detailed plan for the next steps in the drafting process and for ultimately finishing the legislation.

**VII The Draft Environmental Code: Its Structure and Key Provisions (H.E. Sum Sokhamphou, Assistant to the Ministry of Environment and Head of the Permanent Secretariat; Brian Rohan, Advisor to Vishnu Law Group and Member of the Permanent Secretariat)**

***H.E. Sum Sokhamphou, Assistant to the Ministry of Environment and Head of the Permanent Secretariat***

H.E presented and reported on the development of Environmental Code in regards to both:

- the background and history of developing the code from 2013 to the present with the honored initiative from the Minister of the Ministry of Environment
- the results from this year's previous workshops on March 23 and July 7



Moreover, H.E. also asked for comments on the law's formality, structure, and final provisions. He also made sure to note that when synthesizing the longer previous draft into more concise versions, it is important to preserve the same definitions and meanings moving forward.

***Brian Rohan, Advisor to Vishnu Law Group and Member of the Permanent Secretariat***



Mr. Rohan presented on the following:

- Updates of key provisions
- Key points of research, such as: sustainable forest, land management, co-management, and public participation on EIA. All topics will be made available for public discussion via the next workshop on July 19, 2016.
- The next steps for analyzing existing law and legal instruments in Cambodia, facilitating inter-ministerial dialogue, group work among the

Technical and Sub-technical Working Groups and experts, as well as determining tools for Environmental Code and Prakas Implementation.

## VIII Question and Answer Period (Participants/ Speakers)



After the speakers' presentations, the floor opened for participants to put forth questions, comments, and suggestions to the presenters. Participants raised comments, worries, and questions related to implementation, procedure, and accountability as it pertained to the code. One of the main concerns raised by participants was that with such a short amount of time remaining before deadline of the code's first draft, there might be a high number of gaps or insufficient provisions that would result in jurisdictional and investment overlap.

There were also numerous recommendations that called for ensuring comprehensive participation from all relevant ministries in addition to sending explanations of provisions in the code to all the relevant ministries so as to achieve cross-ministerial understanding and ultimate success of the code.

## IX STWGs Review the Current Draft of the Code, Develop Comments and Plan Future Work, Including Internal timelines and Assignments of Responsibilities (Small Group Discussion, Led by the Chair or Deputy Chair of each of the STWGs)



**X Review of above mentioned results (Atty. Tep Neth, Deputy Manager of Vishnu Law Group and Member of the Permanent Secretariat to the Technical Working Group to Create the Environmental Code)**

*Atty. Tep Neth gave some final words on the morning's presentations and discussions. He provided a synopsis from the welcome remarks delivered by Atty. Sao Kagna, the remarks from*

UNDP Cambodia delivered by Ms. Claire Van der Vaeren, the Opening Speech delivered by H.E. Dr. Say Samal, the Presentation on Progress of the Code delivered by H.E. E Vuthy, Ms. Megan Quenzer's , presentation on the structure and key provisions of the Environmental Code, and reflections by H.E. Sum Sokhamphou and Mr. Brian Rohan.

In closing, Mr. Tep Neth also reviewed various points, comments, recommendations, and suggestions produced by the workshop participants.

## XI Reports from the STWGs on Comments on the Code, Future Work plan, and Assignments of Responsibilities

### STWG 1

- The Representative of the Ministry of Interior has suggested incorporating into the Code of the duty in, the implantation of the location and the local administrative structures, and the preparation of the conservation and the development, to all developer of island.
- The representative of Land Management, Urban Planning and Construction emphasising suggested to thorough review the law and all regulation still be enforced in the area of the urbanisation and construction (URBAN Planning of Capital Sub-Decree 42 -9 categories of urban classify) matching to the spirit of the Code and reinforce their implementation. At the same time, the request to separate and to create an individual book of sustainable city to cover all the aspects such as the integration of Transportation, Urban Plans which should focus the policy intervention like example of the traffic. In addition to that suggestion, the Deputy Director General of the Department of Urban Planning insisted that the Code should create the mechanism to monitor the implementation of the project/or the urban and construction plan regarding the Construction permits and the EIA mechanism should be matched. The Code should have the detail provisions of the Funds concerning: matched between the funds which the owner of the development project should paid the funds (Development Contribution fee) for Ministry of Land Management, Urban Planning and Construction and other funds so called Environmental-Social Funds, the protected area funds, Environmental restoration funds.
- Human Right-based language has to be incorporated in the code aligning with international law, treaties, or conventions
- Cambodia has ratified on many conventions but the secretary review what might affect these.
- Core Area definition on the Community Co-Management concept and the Core Area in the protected areas concept should be clearly identified and definite in the Code.
- Terminology: clearly definite
  - Local Environmental Plans vs. Local Land Use Plans
  - National Spatial Planning /Regional Spatial Planning
    - Implementation process vs. development plans is not consistent



- Climate Resilience:
  - Should be more attention to the Climate Issues
  - Pollution Control from industrial zone nearby the city or urban is also close to the climate resilience
- Green Industry (Promoted by the Ministry of Industry and Handicraft) need to review and find a way to incorporate to the Code.
- Nuclear Power Plant: is the new thing to be educated.

## STWG 2

### **Book 3: Environmental Management and Sustainable Mechanisms**

*STWG-2 wishes this book to include contents as follows:*

#### **Title: Hazardous Waste Management**

1. Hazardous waste determination, classification and labeling
2. Hazardous waste collection, packaging, storage, recycling and treatment
3. Disposal of hazardous waste (incineration, destruction, and landfill)
4. Monitoring and inspection of hazardous waste
5. Operational requirements for all hazardous waste facilities
6. Import and export of hazardous waste
7. Transitional provision
8. Administrative requirements (Registration, license, shipments, analytical methods, etc.)
9. Management of specific hazardous wastes (waste asbestos, oil, paint, etc.)
10. application of international conventions on hazardous waste
11. Standard for classification of hazardous waste
12. Standard for disposal of hazardous waste
13. Penalty

#### **Title: Management of Hazardous Chemical Substance to Environment**

1. Definition
2. Institutional Responsibility
3. Prohibition on Hazardous Substances
4. Research, Registration and Information Disclosure of Hazardous Substances
5. Inventory, Classification and Labeling of Hazardous Substances
6. Production, Distribution, Storage, Transportation, Usage and Disposal
7. Import and Export
8. Monitoring and Inspection of Hazardous Substances Safety Assessment
9. Accident Prevention, Preparedness and Responses
10. Application of International Convention on Hazardous substances
  - a. POPs Convention
  - b. Minamata Convention
  - c. International Agreements
11. Penalty

**Title: Directive for PRTR** *(to be included in titles on Hazardous Waste Management and Hazardous Substances Management)*

1. Interpretation (definition: pollutant, transfer, release, register, etc.)
2. Design and structure (materials list, form and environmental media release)
3. Reporting by generator/facilities (schedule for submission information/report...)
4. Estimation standard for emission release (to air, water, land, etc.)
5. Quality assurance and assessment
6. Access to information (public participation, awareness, raising)
7. Confidentiality
8. Penalty
9. Prosecution of offense

**Title: Water Pollution Control**

1. Responsible institutions
2. Measures to prevent water pollution
  - a. Permission of liquid waste discharge
3. Water pollution source control
4. Monitoring and evaluation of public water pollution
5. Sewage System and Sewage Treatment System management
  - a. Responsible institutions
  - b. Responsibilities of site owner
  - c. General measure to sewage management
  - d. Provision of sewage system management and sewage treatment system management services
  - e. Natural storing basin and Sewage Treatment System management
  - f. Penalty
6. Water pollution offenses

**Title: Marine Pollution Control** (*This title should be included in water pollution/coastal zone management/separate section?*)

1. Prevention of pollution by oil & oily water
2. Control of pollution by noxious liquid substances in bulk
3. Prevention of pollution by harmful substances carried by sea in packaged form
4. Pollution by sewage from ships
5. Pollution by garbage from ships
6. Prevention of air pollution from ships

**Title: Air pollution, Noise and Vibration Control**

**I. Air pollution source control**

1. Air pollution from mobile source
2. Air pollution from immobile source
3. Indoor air pollution

**II. Noise and Vibration Control**

1. Noise emission from mobile source
2. Noise emission from immobile source
3. Noise emission in workplaces/inside buildings

**III. Controlling and Monitoring of Atmospheric Quality**

**IV. Measures to prevent and reduce air pollution, noise and vibration**

**V. Transboundary pollution**

## VII. The Setting of Public Air Quality

### **Title: Ozone Layer Protection**

1. Importing and exporting of ozone depleting substances control
2. Exportation and usage of ozone depleting substances control
3. Cleaning up, recycling and destructing of ozone depleting substances control
4. Cooling substances and tools control
5. Program to eliminate ozone depleting substances control
6. Monitoring, controlling and managing of ozone depleting substances control
7. Formality of registration and license application

### **Title: Solid Waste Management**

1. Management plan and responsible jurisdiction
2. Responsibilities of waste owner
3. Service and transport management
4. 3Rs principle
5. Management of plastic bags and plastic packaging materials use reduction
6. Measures on disposal

## **STWG 3/5**

### Agenda:

1. Update on international and national experts, review of work so far, upcoming experts
  2. Needs/issues?
  3. Comments on the Code
  4. Workplan and timeline/deadline for the work
- Need to finish assigning members to issues
  - Need to set internal objectives and deadlines

## **Book 3 Environmental Management and Sustainable Mechanisms**

### **Title 1. Establishment of National Conservation Corridors**

Need to clarify concept, description of national conservation corridors. What are corridors connecting? How does the national conservation corridors concept relate to the existing classifications for Protected Areas? How do the corridors relate to the 4 established PA zones?

Well defined terminology throughout the Code necessary

Recommend ecosystem / landscape management perspective for Protected Areas

Should this section be revised to address not only conservation corridors, but Protected Areas in general, and include conservation corridors and the different management mechanisms or approaches for Protected Areas such as co-management?

### STWG Task:

Establish a small working group (of STWG members and local experts, with input from international experts) dedicated to addressing the issue of protected areas, including conservation corridors and co-management

## **Title 2. Biodiversity Management and Endangered Species Protection**

(Some provisions for biodiversity conservation and species protection under development by local experts)

Propose changing Title 2 name to “Biodiversity Conservation and Species Protection”—“endangered” is a technical term and use of it in the Code limits the species protected under the provisions

Articles on endangered species: Two alternatives: (1) adopting an international list (e.g., IUCN) or (2) Cambodian list

What is meant by “critical habitat” in the Code? Is a recommendation needed from the STWG for how critical habitat should be defined?

The position of the Code is unclear at this stage regarding prohibition of management of genetically modified organisms: Does a position need to be taken based on recommendations (e.g., position paper from STWG 3/5 with supporting rationale)?

In Cambodia, management plan and action plan mean different things, e.g., species management plan vs. species action plan. Which one is accurate for the Code? Definition of action plan and/or management plan need to be included in the Code.

Wetlands classification, management, conservation: Propose moving to Title 5 (Water Management)

Does “establishment of freshwater protection zones” = PAs for fish breeding?

What are the obligations under international agreements?

Need to keep in mind that there is often a bias towards wildlife species conservation and need to address protections for plants as well

## **Title 3. Community Management**

(Co-management legal instrument under development)

Does this section include, in addition to CFs and CPAs, Community Fisheries?

How will areas under MAFF jurisdiction be addressed?

Need to include participation from FA and FiA

How does the proposal for co-management differ from community management? Co-management is not the same as community management. How do they differ? Should this Title name be revised?

Co-management is one management option for Protected Areas? Should it be addressed under the section for Protected Areas?

How does co-management relate to the existing classifications for Protected Areas?

What areas will be eligible for Co-Management? What areas are appropriate for co-management?

Roles, responsibilities (capacity building), and rights of communities (with co-management) must be clearly defined

Clear mechanism for co-management at various government levels and for stakeholders

Where is the money coming from for management?

Mandate community participation? Voluntary?

What are indigenous rights / access to land with regards to PAs?

Should title extend past CF and CPA? Link with geography?

Commune, District, Province all have own plans, but have not been implemented: How can these be integrated into the Code? What kind of engagement? (Relates to Planning Book)

#### **Title 4. Cultural and Natural Heritage Management**

Are there official classifications and/or technical definitions of “natural heritage” site or a “cultural heritage” site?

Does status (e.g., official classification as natural heritage) change management?

How does how “natural heritage” is defined relate to issues addressed by STWG 3/5 as opposed to STWG 4?

What are the obligations (and guidelines) under international agreements? (e.g., Ramsar, World Heritage)

How can different management plan at different scales be integrated?

#### **Title 5. Water Management**

Chapter: Allocation and trade of entitlements to use water requires also integrating international water management (e.g., MRC), benefit sharing between countries

Proposed including wetlands in water management (currently in Title 2 Biodiversity Management and Endangered Species Protection)

Where does hydropower fit into water resources management? Hydropower is addressed by STWG 6, but water resources need to be considered for hydropower

Articles: Mandatory reporting of normal emissions and effluents; mandatory reporting of sudden discharges during maintenance or accidents: Do these articles belong in sections related to waste and pollution control?

Need to be sure to include both human and non-human uses and needs in water resources management, including biodiversity (e.g., aquatic wildlife/ fisheries), ecosystem functioning, watersheds, wetlands, etc.

#### **Title 6. Coastal Zone Management**

(Proposed provisions developed by expert from US DOI with input from STWG 3/5 members and local experts)

Need clarification/definition of coastal wetland

Should mangroves be included and protected?

Need to clarify marine area zoning

Coral reefs and pests should be addressed

Salt farming needs to be addressed

#### **Title 9. Energy**

Article: Standards for approval of proposed hydropower projects: Relates to Title 5 Water Resources Management

#### **Title 12. Sustainable Tourism and Ecotourism**

Distinction between sustainable tourism (STWG 1?) and ecotourism (STWG 3/5)

##### STWG Task:

Will provide feedback on the ecotourism draft proposal in development by US DOI expert Alan Robinson once completed

#### **Title 13. Sustainable Forestry**

Sustainable forest and PA financing recommendation submitted by STWG member/expert partnership

Working on multi-scalar and inter-ministerial cooperation and participation

##### STWG Task:

Will work with the expert from US DOI in August

#### **Title 14. Sustainable Marine Fisheries**

(Proposed provisions developed by expert from US DOI with input from STWG 3/5 members and local experts)

Sections on Marine National Park and Marine Life Conservation Area may need to be moved to section on Protected Areas

Noted that there is a distinction between freshwater and marine fisheries

Feedback from fisheries experts (FiA) needed on these provisions

#### **Title 15. Sustainable Freshwater Fisheries and Aquaculture**

Shrimp farming (in coastal zone) needs to be addressed

#### **Title 16. Land Management (STWG 1 and/or STWG 3/5?)**

#### **Title 17. Soil Protection and Management**

Which STWG should address soil protection and management?

#### **Book 4: Education, Enforcement and Awareness**

Should Enforcement be separate from Education and Awareness?

Proposed Alternative name: "Education, Awareness, and Enforcement"

#### **Title 1. Environmental Incentives, Fees, and Charges**

PES (e.g., Title 5 and Title 9); Fees (e.g., permitted activities), EIA (environmental fund development fee); financial incentives; tax policy

#### **Title 4. Investigation, Enforcement and Access to Remedies**

Fines

#### **Title 5. Environmental Offences and Remedies**

### **STWG 4**

In the afternoon of the first day of the workshop, STWG 4 discussed on Title 4 of Book 3 which is about "Cultural and Natural Heritage Management". The discussion decided to add a number of key issues to Title 4 of the draft Environmental Code, and the following result was presented by Mr. Seng Sort, Chairman of STWG 4 on the second day of the workshop.

- Chapter 1 "General Provision" which includes 3 articles as follows:
  - Article 1 "Objective" should include the following: To preserve, protect, and manage natural resource and to conserve cultural heritage in a sustainable way; To preserve, protect cultural identity of the nation which is the workmanship of our forefathers (intellectual property of national identity); To preserve the beauty and the protect the historical identity of the capital, province, urban area, ancient site and shrine (worship place); To preserve and conserve biodiversity and ecosystem; To create the balance of nature and society; To promote the development of tourism; To create the collaboration between the Ministry of Environment and relevant institutions as well as National and International Organizations and

development partners; To improve the livelihood, tradition, culture and custom of indigenous community; To create funds to preserve and protect cultural and natural heritage.

- Article 2 “Scope”: This provision has the scope of application throughout the Kingdom of Cambodia over both state land and private land.
  - Article 3 “Definition”: This article should include definitions of key terms such as Cultural and Natural Heritage and others.
- Chapter 2 “Zoning of Cultural and Natural Heritage Protection Area”: this chapters should include key issues such as Historical Parks, Cultural Landscape, Cultural Village, Site Museum, and Ancient Sites.
  - Chapter 3 “Criteria”: This Chapter should include key points as follows:
    - Copy from the guideline of UNESCO
    - Determination of cultural property (by determining the number of years, the age of the property, or based on its era for example French Colonization Era and Sangkim Reas Niyum Era)
    - A number of workmanship is not so old but it is of a special value which cannot be found elsewhere (of Mr. Van Molivann)
    - new innovation which is valuable to the society
    - Cultural property which is of a special value for the nation
    - A movement of architecture which reflect national identity
    - An architectural workmanship which influence the next generations
  - Chapter 4 consists of 2 sections: “Inventory and Classification”.
    - Section 1: Inventory should include key points as follows:
      - Article #: Competent Institutions shall prepare cultural property inventory
      - Article #: Cultural Property Inventory shall be updated every five years
      - Obligation of competent institutions
      - Obligation of owners of cultural property (1- Sell to the State; 2- Prohibition to any damage to the outside beauty; 3- Do not have the right to build any new or additional construction)
      - Preservation and usage of cultural property inventory
      - Budget used for the work on cultural property inventory
    - Section 2: Classification
      - Article #: Copy from the Law on Heritage Protection of 1996 and relevant sub-decrees;
      - The state pay a portion of the cost for repairing private building (built in Sangkum Reas Niyum Era)
      - The owners of the building must submit request for support to repair the building from the state
      - The state shall provide technical experts to help repair the building
  - Chapter 5: Should be about “Preventive and Salvage Excavation”

Because of the time limit, STWG 4 was not able to discuss other chapter headings under Title 4 of Book 3 of the draft Environmental Code and thus decided to leave them as they are.

## STWG 6

**According to the program outlined in the schedule, STWG 6 members were to meet and come up with main points and comments on the existing draft to be included into the next draft of the code. This was also for preparing to present during the next day's Public Hearing. The following is the summary of the minutes related to Book 3, Title 09 - Energy, Title 10 - Extractive Industry and the whole code structure.**

### 1. METHODS AND SPECIFIC COMMENTS:

- **MME:** Financial Cost, recovering cost, financial issues are quite complicated. We cannot explore or discuss enough. There need to be more small meetings between Ministries. Even after a year, the draft is not dealing with the issues specifically. There is a need for the right consultant; we cannot have consultants without expertise. We concern that things do not get across. We do not know enough to ask questions. In the experts' CVs, none has shown they have the direct and exact experience with extractive industry.
- **MME:** We doubt whether our points do not get across. Speaking through STWGs' coordinators and facilitators VS direct communication with the experts and drafter are quite different.
- **Kelvin Tang (Kris Energy):** There needs to be clarity for standards and "best practice" that is included within the Code.
  - Abandonment, decommissioning, and site closure is a place of overlap within the Code because this is included in the contract that is agreed to between the company and government.
  - The MoE has yet to establish guidelines on costs and taxes associated with industry operations.
  - The "superfund" that is referenced in the Draft Code must be defined and explicitly defined.
  - There is significant confusion between the principles that are outlined in the Code and the development of policy that will occur. As part of this, detail on policy and regulations must be enhanced by Prakas later on, after the Code is finalized.
  - Repeating the same thing "closure and remediation and restoration of extractive industry sites" in the text just means that we are to pay more fees.
  - Other than asking questions, there is nothing specific to substantially comment on.
  - While the code set out 10 principles, they are taken from standards or textbooks, and are used in countries with very advanced common law system. It is the whole sales of impartation of ideas and systems that do not work.
  - Now the drafters decide what policies while it should be the other way round. It is a need to put into a context that works for the country. According to the principles of the code, it requires a system that involves a lot of litigation, and platforms for layers to debate and fight over what this law means, otherwise, Cambodia is just creating a mess for itself.

- **The whole group:** Who should draft the laws? While legal experts, ministries, and people with direct experiences can draft, each group may have different focuses. The balance between environmental protection and sustainable natural resource management and profit must always be considered.
- **The whole group:** Whether or not the EIA Law will apply retroactively will be thoroughly clarified and worked out before the Code is sent for approval to the Council of Ministers.
- **The whole group:** Standards and fees must be clearly defined in the draft code.
- **The whole group:** The group should work on each product they want to improve, not just criticizing.
- **The whole group:** Which version of the code comes first (English or Khmer)
- **The whole group:** It was suggested that the draft code should detail whether it directs and makes ways for other laws to be implemented or the existing laws tell how, what, when, and why the code is to be written and passed.
- **MoE:** The MME is planning to create a specific working group to address issues related to the Code.
- **H.E. Sum Sokhamphou:** The code potentially will be the main tool that supports the relevant sectors, and will be a guide for sustainable protection, and natural resource management.

## 2. **TIMELINE** - The group also perceives that:

- The code may only be able to cover just the principles and the implementation may have to be done with other legal tools (Prakas, Sub-decree, instructions, etc)
- The given time frame is too short. More time must be allowed for further dialogues and consultation.
- Compared to other countries (like Malaysia and Thailand), it takes about 15 years. The time is too short and may result too few contents.

## 3. **CLARIFICATION BY H.E. SUM SOKHAMPHOU**

- Each group member may contribute through the following way:
  1. Sharing information related to the code, especially the existing relevant legal instruments;
  2. Drafting legal text for the code;
  3. Giving analysis and discuss with the available experts and make comments to be included into the code;
  4. Forming a small group (like MME) to draft the code
  5. Comments (whether positive or negative) will be needed for defending the code at the time of ratification by the parliament.

## 4. **SUGGESTED WAYS:**

- Having people with in-depth experience come to draft the law, share available experiences and give comments where appropriate;
- Setting up individual groups to discuss and draft the legal contents to be integrated into the code;
- Having a lot of STWG 6's meetings to specifically discuss what to take out of the draft code and what to be included into the draft code;
- Getting all the legal texts done by the experts first, and let the group discuss later;

## 5. CONCERNS:

- It will be harder for Cambodians to take lead in approving according to the standard. It will take a long time; Cambodia may have to work from lower standards due to its lack of human resource;
- Jurisdictional issue is still quite a potential to deal with;
- **MME and Kris Energy:** The Extractive Industries Transparency Initiative (EITI) is out of place in the Environmental Code as it is outlined in a separate law.

## STWG 7

### Book 4: Environmental Education, Enforcement, and Awareness

#### Title 1: Environmental Incentives, Fees and Charges (Didn't discuss)

#### Title 2: Environmental Education

- the study of environment is the obligation (is the separated basic subject or mainstreaming the basic subjects)
- the study of environment shall be incorporated into study programs at all educational level (general Knowledge, Tertiary Education, Professional and vocational trainings)
- mechanism for education coordination and training on Environment (Inter-agencies Committee on EE)
- Center for education/environmental Research/ Lab (or study Institution and environmental Research)
- center for the resource of environmental education (art hall, វិទ្យាស្ថានស្រុក Library, Museum) for public students to access to the study and understand environment.
- focal teacher of environmental education, especially at educational institutions
- the development of educational document/ diversified environment (including study materials)
- encouragement on environmental friendly activities at educational institution (environmental friendly school, environmental friendly pagoda...)
- environmental education fund/ Research Fund
- environmental campaign/ environmental day (Public Participation, environment related days)
- skill training/environmental knowledge training (policy making officers, commune council officer, relevant institution officers)
- minimum environmental certificate (for skilled workers)
- cooperation and networking among educational institutions and organizations

#### Title 3: Environmental Information and Public Awareness

- institution/ Unit/ Enterprise shall have mechanism to provide environmental information and guiding measure on environmental maintain to public/ customers

- mechanism for information dissemination/ environmental information dissemination program in all means (frequency, media, and information technology system) and all aspects (mobile library, information brochure, poster, field dissemination to the community...)
- center for receiving and dissemination of environmental information
- the determination of information types: is the information at national security level, professional level, company confidential information and information for citizens...
  - Ex. all environmental information that affects public health shall not be considered as confidential information.
- there are groups of journalists on environmental sector and providing training on environment (capacity, knowledge for environmental information disseminator group)
- Environmental information ethical rule
- rights to access to environmental information
- obligation to disseminate environmental information (plus punishment for hiding environmental information)
  - obligation for the public to disseminate information when seeing offense, environmental loss, leakage of environmental pollutant... etc.
  - obligation to dissemination information from business person or entrepreneur, driver or waste/ environmental hazardous waste makers or unintentional hazardous waste maker...
- participation from the public to provide environment related information
- maintain/protect copy rights and environmental information.
- information intellectual property
- intellectual property/ local community knowledge
- rights to receive protection for environmental information provider
- role of sub national level in disseminating environmental information, promoting awareness on environment, and pushing the participation from the public on environmental management

#### Title 4 Environmental and Natural Resources Study and Research

- shall have environmental and environmental science research studies (environmental, biodiversity, social-cultural and green technology pollutions)
- research and development of technology or science that support the environmental protection, biodiversity conservation and sustainable living
- resources center, biodiversity sample museum and Agua genetic species conservation park
- the research on geology
- the research on sea
- the research on local community and indigenous minorities knowledge
- encourage researchers/ research institutions including government, civil societies and private.

## Group: Community

In the afternoon of July 07, 2016, the Community Group discussed with each other and came up with the following comments and request which was presented by a representative of the group on the next day of the workshop:

- This code can cause impacts on the rotation farm land and tradition of indigenous people
- We don't want any policy to relocate the people when there is a development project in their area
- The environmental code does not have any provision that make the community people feel secure that protect their interest
- Please widely disseminate information about this code to local people
- Please include in this code the FPIC principle and the principle of decision-making by community (please make sure that it doesn't happen like in Areng where the conservation project forbids them from benefiting from the forest)
- Please include in this code a provision that protect the interest of community and that it does not only benefit individual interest
- Please ensure personal interest before putting the forest land and community land (for example rice fields of some people have become rice field of community which are called Community Forest which do not have any forest/trees)
- We are afraid of losing the forest because of mineral exploitation companies
- We are also afraid of the chemical that flow with the water from the operation sites of the mineral exploitation companies which adversely affect the health of communities
- This code should include provision that prevent the outsiders from entering and cutting down forests, for example Prey Long.
- There should be serious punishment for those who conspire with each other in selling community land and national park, for example Anlung Chrey Village, Anlung Chrey Commune, Thalabbarivatt District, Stung Treng Province; and O'Kreang Commune, Sambo District, Kratie Province.
- There should be an action effectively taken against officials who understand the land but do not implement it and conspire with the offenders
- There should be provision against companies who clear and bulldoze tombs and burial places of indigenous people
- There should be mechanism to enforce the law and make sure that the laws exist without any implementation
- Please make sure that this code is written clearly so that it cannot be arbitrarily interpreted and avoiding misunderstand or confusion
- The code should include a provision which entitle community people to be complainants and to bring a lawsuit against the offenders and to claim for compensation
- This code should include a provision that protect individuals or community people who are subject to threats and seizure of land which is committed by offenders of companies



- We would this code the stipulate a provision that gives the right to Prey Long Community to work in cooperation with the Ministry of Environment in protecting Prey Long Forest
- We request the Royal Government and the MoE to officially recognize Prey Long Community and Phoum Kbal Romeas Community (Kbal Romeas Commune, Se San District, Stung Treng Province)
- Please include a provision that provide the right to community to participate in making decision because the community people are the owner of the forest
- Please allow communities to have the right over the forest conservation in the annual development plan of the sub-national administration and please give the budget used in protecting natural resource to the communities (so far, there has been only plan without any implementation and the communities don't have the budget)
- We request that communities have the right to patrol with the MoE and to monitor the solution related to offenses
- Please give the right to community to manage the fund for protecting forest
- Please include a separate provision for indigenous people to use, protect and manage the forest

Please include a provision in this code the right of community people to disseminate information about relevant laws and the right to protect their interest.

**XII Public Hearing: All Interested Persons are Invited to Raise Issues or Concerns Related to the Environmental Code (All Interested persons; Comments will be received by the Code Secretariat)**

**QUESTIONS & ANSWERS:**

**A) Ms. Khon Sreypon (Community-member from Ratanakiri):**

1. When a community faces environmental problems, to what institution should the community report? Through whom?
2. Does EIA require community participation? Who has rights to be involved in it?
3. If an EIA is done and it is seen that the community environment is affected, will there be any principle for compensation? Who will pay for the compensation?

**H.E. Sum Sokamphou:**

1. The community should report to the following authorities:

- The local authorities
- If that does not work, then the community can go to the provincial Department of Environment, and authorities at the district level.
- MoE representatives



- NGOs can also help bring the community's complaint forward
- Otherwise, Facebook - some pollution problems have also been complained about through Facebook, for example Svay Alom case. It was shown through Facebook.
- The court if you trust it.

2. In regards to the EIA, yes the EIA law requires that input be solicited from the local community. Without the community's approval, the request is pushed back. Some communities may think the process does not work, doubting that the company hires some key people, not from MoE representatives, then the community must inform MoE. All other information should be passed on by the community as well. The MoE needs information from all to make the right decision.

3. Compensation is based on principles from Ministry of Economy and Finance. (namely how much are the land and resources on it worth based on current market price). Alternatively, the company may find replacement land which is equipped with proper infrastructure, water, and electricity for the affected community.

In terms of who should pay, the company or project owner will pay, but the state can help coordinate. If a community does not like this system, the community may work with the environmental consultant companies.

What need to be clarified here? That's why we are here today. The code is national since all sectors get involved. You may say you do not want the code, but the code is the law itself.

**B) Mr. Lo Rorng, A member of the Panorng ethnic community and representative from Cambodian Indigenous Alliance:**

1. We do not want to be the victims of any development project.
2. We want our traditions to still be accepted.
3. In Areng, some local people went to harvest resources from the forest and some were arrested. But under the ILO 1968, and the Cambodian Land and Forestry Laws, local communities in the areas are protected (able to legally use the natural resources), so why is this happening?
4. The Intellectual Property of the indigenous communities attracts the investors, but the private sectors take it, and make it their own business and spoil our identity. They falsify everything about us, putting our names on their products like wines (not ours), putting our pictures in Karaoke Songs. How can this be dealt with?
5. The code encourages public participation; thus more minority groups should be here.

**C) Mr. Meng Bunth Rith (Ministry Land Management, Urban Planning and Construction)**

As a new group member to STWG 1, the following three main points were raised by the officer:

1. DAA (Development Application Assessment) versus EIA: DAA is also called planning assessment in other country and it is to be under the state's management. Ministry of Land Management, Urban Planning and Construction (MLMUPC) is also drafting the

guideline for this. It has not yet become systematic. In England and Australia, they have the same system. EIA is for bigger projects. It must be detailed. Some development urban development projects may not need EIA. There will be some inter-ministerial meetings to decide the types and sizes of projects that need either one of the two assessments.

2. Sustainable Cities & Green Economy: Sustainable Cities seems to be under MLMUPC, but city planning is under an inter-ministerial management. This should be detailed in one separate Book. For now, the planning provisions in the code are organizationally messy: land use planning, land use management, and sustainable cities are in separate places of the draft code. With regards to city affairs, they are co-related. Also, cultural heritage management can be divided into two sections, namely built and natural heritage. How can it be classified?

3. Coastal Zone Management: MLMUPC, MoE and Tourism Ministry are all involved in regulating this area. It is a suggestion to look at the MLMUPC's existing Circular on Coastal Zone Development. The circular also mentioned the need for physical and soft skill developments and had its own definition of coastal zone. Also the definition of coastal zones needs to be clearer. When we say Coastal zone is an area that is 5 kilometers from waterline, is it too restrictive for industry? What will be the effects on the society and the development?

#### **H.E. E Vuthy (B&C):**

- The officer's speech was appreciated. All the concepts shared will be discussed internally among the related ministries.
- Joint Prakas then will announce the answers to the officer's concerns.
- If the officer has suggestions about formatting, then he may submit them in the proper format.
- To the community: We have accepted your comments on your traditions, and the persistent land problems. Solutions have been made and as you can see ELCs have been canceled. The code needs your viewpoints.

#### **Mr. Mathew Baird (Environmental Lawyer):**

The following comments were made:

- Compensation and resettlement do create a lot of issues
  - Efforts will be made for dealing with issues on public participation, right to protest in a non-violent way, and procedures need to be enacted to make sure that the offenders are arrested and right to participate is protected.
  - The strength of the code shall ensure that people who use violence to force people to consent to development projects are condemned. Indigenous people must come into agreement by consensus, not by force.



- The code does provide IP rights for their livelihood. So far, no governmental institution or private sector entity can legally destroy the environment or the persons or property of the indigenous people
- All resettlement and compensation must be agreed to by the IP.

**D) Kimheng from Oxfam:**

The four points raised by Dr. Baird I agree, but I am not clear whether they are in the code already. I just hope the four points have been or will be written into the code.

**E) Representative from Prey Lang Network in Kratie province:**

1. We see there is still a high rate of deforestation in Prey Long—what has been done about it?
2. How will the volunteer monitoring and enforcement group be protected under this new code?
3. Will community forestry networks be protected in the code or will there be any incentive for them? Representing the four provincial communities, I want them to be protected by the law.

**F) Mr. Long Serei, CEO of Forest Organization in Ratanakiri**

Agreed to Dr. Matthew four points the following questions were made:

1. While the community learns about the right to be consulted with (FPIC), local authorities seem to block this from happening, what can be done?
2. Of the EIAs that have been done in Cambodia many or all look the same. They just copy and paste. What then can Vishnu do to include the authorities' participation in EIA as well?

**G) Mr. Ot Long from the southern Tonle Sap Network (Komong Chnang and Battambang):**

1. There has been solid and liquid waste (including oil) discharged in the river areas, what is the government's solution?
2. Forest Reserves are being destroyed in the buffer zones of about 500 hectares (Pursat Province). How can the forests be protected? The commune and district authorities have been incapable.

**H.E. E Vuthy: In response to the above concerns:**

- Some concerns are right, but some are not true. Yes, before, the copy paste happened but for the past three years, this has been strengthened through the EIA process. We actually have involved the community and reviewed EIAs at the provincial levels, with

DPA and all involved, and only then do we decide on the project. the last three years, we have done a lot of sectorial guidelines and laws.

- So when the time to review the projects, we even invite the NGOs to participate. The NGOs and DPA are those who gather the information right on the sites. So all comments are considered before we approve a project. Thus, for the last 3 years, we are working on this and we are producing EIA for the available sectors, mine, energy, tourism etc. and guidelines as well, like Guideline On Public Participation for example.

**Mr. Brian Rohan:**

For Prey Long, in terms of IP rights, there is one thing will be included into the code process: we call it “co-management,” and it’s where local, national, village and all community people will have the opportunity for co-protection. We already made an agreement for the community to get involved and also the PM said we all must manage together. We have even prepared to include special rights to land as part of co-management as well. Overall for the management plan, it is a genuine



commitment from the government. The Prime Minister spoke clearly and the MoE minister also stressed, so I strongly encourage you to join and make the co-management become a reality..

**H.E. Sokamphou:**

Concerning the Tonle sap issues, and deforestation in the conservation forest, I will make bring it to MoE. Mr. Sophal, the representative for work can bring this to the Ministry as well. And it does need to be realistic in the code. We will also include the penalty section in the code.

**H) Ms. Cheourn Srey Mom from Community in Steung Treng:**

Throughout the communities, the authorities are not acting to stop environmental offenses; therefore, in the transition period before the code is implemented, what can be done to improve enforcement?

The companies paved over the grave land—is this not an abuse of the communities? As related ministries, how will you **respond?**

**I) Arn Hong, community (Ogrive, Kratie):**

Once the code is issued, then we (communities) want to know whether youth will get involved. There are livestock of fish we must have, areas full of biodiversity and community forests also. MoE should educate us and get the youth involved. Protected forests, biodiversity, water are wealth belonging to all of us; certain fishes (Trey Reach, Kul Reang,

Phsout (river dolphin)) must be protected. We also have the effort from the provincial governor to help protecting this.

**H.E. E Vuthy:**

I agree that the public participation of course will happen. The temporary procedures will help with protection and the co-management law will be done soon. So before it was pretty much the higher authorities in charge, but now we have the involvement from the communities in the areas, as well as the NGOs. So this then will be a shared duty of all stakeholders.

**J) Pheakdey from a community in Preah Vihea province:**

1. Regarding land issues, and market price, what shall we do when we do not want the price offered, or we think it is unfair to us?
2. Companies engaged in development projects should deposit some amount of money to spare for solving problems like pollution and other damages to the community or when the company commits an environmental offense. The deposit is still the company's money, but it is for the people to use to deal with pollution and damage issues, and may only be returned upon the safe completion of the project.

**K) Ms. Sorina Lilywhite from Corporation Committee of Cambodia:**



This comment was once raised in the April 6 meeting. We think that the general provisions of the code can be strengthened through the inclusion of reference to a Right Based Approach to sustainable development, and in particular, with reference to and in accordance with the UN guiding principles on business and human rights, which Cambodia is a signatory to.

We have also prepared some drafted texts, which will be forwarded through NGO forum and DPA colleagues with a definition of FPIC, and also wording for the FPIC provisions in accordance with the UN Declaration on The Rights of Indigenous People, which again the government is also a signatory to. We will also include additional definitions including Risk-based Due Diligence, and Access to Remedies. For resettlement, the IFC performance standard on land tenure, which is considered to be an absolute minimum, is in line with what Matthew said on resettlement or relocation. So these drafts texts will be collated and sent through the NGO Forum.

**Dr. Matthew: Main points made by Dr. Matthew include:**

- The Drafting Team Members and everyone involved know that the code will need to be enforced and applied.

- This why all comments or the comments from the MLM are quite important.
- The code is about everyone working together.
- It is exciting to know that we now have a development assessment for urban planning and smaller development projects separate from the EIA.
- It is clear that parts of the code must be clear that those who comply with the law are supported. Also the code must protect people impartially.
- It must be clear that ministries can investigate alleged offenses. And the penalty may not just be a fine, but all their profit will be taken away. All of the owners can be investigated. The commercial game does not happen. The company must have all their profit removed. So the penalty must be stronger than the profit they make.

**H.E. E Vuthy:**

- Not all questions have been answered, but they will be addressed later.
- If any comments need to be clarified, then we can deal with it later.

Closing Remarks

