

ON THE PATH TO SUSTAINABLE DEVELOPMENT: An Assessment of Cambodia’s Draft Environmental Impact Assessment Law[†]

WILLIAM J. SCHULTE & ASHLEE STETSER¹

I. INTRODUCTION..... 98

2. BACKGROUND ON CAMBODIA’S DEVELOPMENT, PEOPLE,
AND NATURAL RESOURCES..... 101

 2.1. Cambodia’s Recent History and Development 101

 2.2. Geography, People, and Natural Resources 103

 2.2.1. Agriculture..... 104

 2.2.2. Hydropower..... 108

 2.2.3. Mining..... 111

3. CAMBODIA’S DRAFT ENVIRONMENTAL IMPACT ASSESSMENT
LAW 113

 3.1. Clarity with Regard to Institutional Authority and EIA Process... 114

 3.2. Public Participation and Information Disclosure..... 116

 3.3. Requirements Regarding Impacts and Issues to Be Considered in an
 EIA 120

[†] This Article was made possible by the support of the American People through the United States Agency for International Development (USAID). The contents of this Article are the sole responsibility of the US-Asia Partnerships for Environmental Law at Vermont Law School and do not necessarily reflect the views of USAID or the United States Government.

¹ William J. Schulte holds a J.D. from Rutgers School of Law at Newark and is a member of the bar in the United States (New Jersey). Mr. Schulte is currently an LLM Fellow with the US-Asia Partnerships for Environmental Law at Vermont Law School. Ashlee Stetser is a third-year J.D. candidate at Vermont Law School and is currently the Managing Editor of the *Vermont Law Review*. Both Mr. Schulte and Ms. Stetser previously worked as Legal Interns at the Documentation Center of Cambodia in Phnom Penh. The authors would like to express their gratitude to Matthew Baird for his very helpful and insightful comments on this Article.

3.4. Monitoring and Enforcement	123
4. CONCLUSION.....	125

I. INTRODUCTION

The Kingdom of Cambodia is currently undertaking a process to overhaul its Environmental Impact Assessment (EIA) laws and regulations. In the two decades since Cambodia emerged from years of conflict and civil war after the establishment of the United Nations Transitional Authority (UNTAC), it has achieved phenomenal economic growth, raised living standards, reduced poverty, and successfully attracted significant foreign investment. However, Cambodia’s leaders recognize that its success is exerting “ever increasing pressure” on its rich natural resources, “causing high potential risks and hazards to the public health and the environment, and . . . jeopardizing the long-term development of the country.”² In 2009, the Royal Government of Cambodia promulgated a National Sustainable Development Strategy that outlines its long-term vision for sustainable development to 2030, including a “shift of the development paradigm favoring a holistic approach that integrates all dimensions of development, including the environment and natural resources.”³ One of the “major strategic measures” proposed to achieve that vision is a strengthened EIA system.⁴

An EIA process is a “universally recognized strategy for sustainable development.”⁵ The purpose of an EIA is “to identify any potentially adverse environmental consequences of a development action, so that they may be avoided, reduced, or otherwise taken into account during planning and design.”⁶ The United States pioneered the EIA concept in 1970 with the adoption of the National Environmental Policy Act (NEPA).⁷ Since that time, the EIA process has become widely accepted and recognized around the world in both international and domestic environmental law. For example, the 1992 United Nations Rio Declaration on Environment and Development emphasized EIA as a central

2 ROYAL GOV’T OF CAMBODIA, NATIONAL SUSTAINABLE DEVELOPMENT STRATEGY FOR CAMBODIA I, 4 (2009), available at www.rfcap.ait.asia/nsds/uploadedfiles/file/Publication%202-NSDS%20Cambodia.pdf.

3 *Id.* at 5.

4 *Id.* at 22.

5 Jesse Moorman & Zhang Ge, *Promoting and Strengthening Public Participation in China’s Environmental Impact Assessment Process: Comparing China’s EIA Law and U.S. NEPA*, 8 VT. J. ENVTL. L. 281, 284 (2007).

6 Environmental Assessment in Developing and Transitional Countries I (Norman Lee & Clive George eds., 2000).

7 National Environmental Policy Act, 42 U.S.C. § 4321 (1970); see also *National Environmental Policy Act (NEPA): Basic Information*, EPA.gov, www.epa.gov/compliance/basics/nepa.html (explaining the origins of NEPA as well as its implementation and process).

component of sustainable development strategies,⁸ and the Convention on Biological Diversity, to which Cambodia is party, requires member states to conduct EIAs for proposed projects that may have significant adverse impacts on biodiversity.⁹ As of 2005, over 100 countries had adopted some form of domestic EIA legislation or regulation.¹⁰

EIA is an especially important tool in developing countries undergoing rapid development, such as Cambodia and the other Greater Mekong Sub-region countries. A 1997 study on EIA in Asian developing countries by the Asian Development Bank (ADB) noted that while “[e]conomic growth may alleviate poverty and lead to a higher quality of life,” it also may lead to increased rates of environmental degradation and may compromise “the sustainability of ecological and economic systems.”¹¹ Indeed, although Cambodia has achieved an impressive average annual GDP growth rate of 7% since the early 1990s,¹² such growth has often come at the expense of Cambodia’s people, environment, and rich natural resources.¹³ A robust EIA process would help address these issues “through its ability to contribute to environmentally sound and sustainable development.”¹⁴

Even though Cambodia’s 1996 Law on Environmental Protection and Natural Resource Management (LEP) and 1999 Sub-Decree on Environmental Impact Assessment Process (EIA Sub-Decree) contain EIA requirements, they have proven inadequate as a tool to promote sustainable development.¹⁵ A major factor is non-compliance with the current requirements. At a 2012 workshop on

8 United Nations Conference on Environment and Development, Rio de Janeiro, Braz., June 3-14, 1992, *Rio Declaration on Environment and Development*, U.N. Doc. A/CONF.151/26/Rev.I (Vol. I) (Aug. 12, 1992) (stating that “[e]nvironmental impact assessment, as a national instrument, shall be taken for proposed activities that are likely to have a significant impact on the environment”), available at www.unep.org/Documents/Multilingual/Default.asp?DocumentID=78&ArticleID=1163.

9 Convention on Biological Diversity, art. 14, June 5-14, 1992, 1760 U.N.T.S. 79 (entered into force Dec. 29, 1993), available at https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-8&chapter=27&lang=en.

10 Jennifer C. Li, *Environmental Impact Assessments in Developing Countries: An Opportunity for Greater Environmental Security?* 4-5 FOUND. FOR ENVTL. SEC. & SUSTAINABILITY (USAID, Working Paper No. 4, 2008), available at www.fess-global.org/workingpapers/eia.pdf.

11 Bindu N. Lohani et al., *Environmental Impact Assessment for Developing Countries in Asia*, ASIAN DEV. BANK I (1997), available at www.adb.org/sites/default/files/publication/29779/eia-developing-countries-asia.pdf.

12 Hal Hill & Jayant Menon, *Trade Policy Challenges in a Small, Open, Fragile, Post-Conflict Economy: Cambodia 2* (Asian Dev. Bank, Working Paper Series on Regional Economic Integration No. 141, 2014), available at http://aric.adb.org/pdf/workingpaper/WP141_Hill_Menon_Trade_Policy_Challenges.pdf.

13 See generally European Union Delegation to Cambodia, *Country Environment Profile: Royal Kingdom of Cambodia* (Apr. 2012), available at http://eeas.europa.eu/delegations/cambodia/documents/publications/country_env_profile_cam_april_2012_en.pdf.

14 Lohani, *supra* note II, at 4.

15 Simon Lewis & Khuon Narim, *Few Companies Conduct Environmental Studies*, CAMBODIA DAILY, Nov. 5, 2012, available at www.cambodiadaily.com/archives/few-companies-conduct-environmental-studies-6288/.

the draft EIA law discussed in this article, the deputy director of the Ministry of Environment (MOE)'s EIA department stated that from 1999 to 2003 essentially no projects conducted required EIAs, and from 2004 to 2011 only 110 out of nearly 2,000 projects conducted an EIA.¹⁶ Even after the MOE issued the EIA Sub-Decree,¹⁷ the MOE found that compliance remained weak.¹⁸

A number of other factors also contribute to the inadequacy of Cambodia's current EIA regime, including: implementation of EIA too late in the project development process (thereby negating its value as a planning tool); underestimation of adverse social and environmental impacts; lack of coordination among government agencies and clarity with respect to their responsibilities and authority; resource and capacity limitations; insufficient public participation; and a simple lack of political will.¹⁹ Additionally, the early spread of EIA laws into less-developed countries such as Cambodia was often due to "external pressure by international conventions, international environmental organizations, [and] the international donor community," rather than "domestic drivers for the adoption of better environmental protection."²⁰ As a result, EIAs were "adopted more as a standardized, bureaucratized, procedural formality than as a real solution for intertwined environmental and socio-economic problems."²¹ Cambodia is currently undergoing a domestically driven process to draft a new EIA law and address some of these issues. If adopted, the draft EIA law would arguably be the most robust EIA law in the Greater Mekong Sub-region and could raise the bar for other countries.

The origins of the draft EIA law began with a 2011 study tour to China organized for the MOE's EIA Department personnel, representatives from some of Cambodia's civil society organizations, and legal staff from Vishnu Law Group (Vishnu), Cambodia's leading public interest law firm.²² Participants in the tour realized that Cambodia needed a new EIA law, and the MOE and Vishnu agreed to work together to draft the new law.²³ A "key priority" for Vishnu was that the draft EIA law be developed "in the most transparent and participatory manner possible," a priority the MOE fully supported.²⁴ To that end, Vishnu and the MOE

16 *Id.*

17 Sub-Decree on Environmental Impact Assessment Process (No. 72 ANRK.BK Aug. 11, 1999) (Cambodia), available at www.opendevdevelopmentcambodia.net/pdf-viewer/?pdf=download/law/Sub-Decree%20No.72%20on%20the%20Environmental%20Impact%20Assessment%20Process_August_11_1999_Eng.pdf [hereinafter EIA Sub-Decree].

18 See Lewis & Narim, *supra* note 15.

19 Li, *supra* note 10, at 6-7.

20 *Id.*

21 *Id.* at 6.

22 *Project to Create a New EIA Law*, VISHNU LAW GRP., www.vishnulawgroup.com/index.php/what-we-do/project-to-create-a-new-eia-law.html# [hereinafter Vishnu Law Group].

23 *Id.*

24 *Id.*

have worked together to widely distribute the draft EIA law to a variety of stakeholders and have held five separate public consultation meetings on it from 2012 to the most recent held in Battambang in October 2014.²⁵ Numerous stakeholders, including “representatives from the business and investment community, civil society, community networks and different government ministries,”²⁶ have provided comments that are incorporated into the current fifth draft, which is reviewed below.

This article will first provide a brief background on Cambodia’s recent history and development situation. Next, it will describe some of the challenges Cambodia faces in the agriculture, hydropower, and mining sectors in order to establish a context within which to appreciate the integral importance of a robust EIA regime to Cambodia’s ability to pursue a sustainable development path. The article will then describe and assess four prominent beneficial features of the draft EIA law: (1) clarity with regard to institutional authorities and responsibilities; (2) public participation and information disclosure; (3) requirements of impacts to be considered; and (4) monitoring and enforcement. While there are additional elements of the draft EIA law that would offer vast improvements over Cambodia’s current EIA regime, they are beyond the scope of this Article.

While this Article assesses the most current fifth draft of the EIA law (Draft EIA Law),²⁷ more public consultations are planned before the law is presented to the National Assembly next year. Therefore, the content of the law could change. However, this draft appears to have widespread support. If Cambodia truly wants to begin pursuing a sustainable development path, the most prominent features of the Draft EIA Law discussed in this Article should remain intact.

2. BACKGROUND ON CAMBODIA’S DEVELOPMENT, PEOPLE, AND NATURAL RESOURCES

2.1. Cambodia’s Recent History and Development

In order to fully appreciate modern-day Cambodia and the challenges it faces in its pursuit of a sustainable development path, it is essential to understand Cambodia’s recent history, which has been influenced by colonialism, the destructive Khmer Rouge era, Vietnamese intervention, and civil war. Even after over two decades of relative stability and impressive economic growth, Cambodia’s

25 *Environmental Law and Environmental Impact Assessments*, OPEN DEV. CAMBODIA, www.opendevelopmentcambodia.net/briefing/eia/ [hereinafter *Environmental Law and EIAs*].

26 VISHNU LAW GROUP, *supra* note 22.

27 Draft Law on Environmental Impact Assessment, 5th revision (Cambodia), available at www.opendevelopmentcambodia.net/pdf-viewer/?pdf=download/law/5th_Revision_EIA_%20Draft_Law_Eng.pdf [hereinafter Draft EIA Law].

government institutions and legal system are still relatively very young.²⁸ This makes it all the more necessary for the country to craft and adopt an EIA that is suitable to its current conditions and capacities.

In the wake of the Vietnam War, the Khmer Rouge overthrew the Lon Nol regime in April 1975 and proceeded to inflict untold destruction on Cambodia's economy, infrastructure, and people.²⁹ Among other acts, the Khmer Rouge "banished money, blew up the central bank and many court houses, destroyed government documents, dismantled the education system, and massacred millions."³⁰ It is estimated that up to two million Cambodians died under the Khmer Rouge's rule within the span of a few of years.³¹ No legal system existed during the Khmer Rouge's reign, and the majority of people in the country with any legal education or training fled or were murdered.³²

The Khmer Rouge's reign of terror ended when the Vietnamese entered the country in late 1978. However, the decade of Vietnam's control of Cambodia was largely characterized by "intermittent civil war, international isolation, and sanctions."³³ By the time of the signing of the Paris Agreements in 1991 marking the official end of war, and the establishment of the UNTAC in 1992, Cambodia had "become one of the poorest countries in the world."³⁴

Out of these ashes Cambodia rose, experiencing remarkable stability and economic growth over the last two decades. Subject to some brief periods of volatility, from 1992 to the present Cambodia's Gross Domestic Product (GDP) has grown at an average of 7% per year, "faster than almost any other postconflict society."³⁵ Cambodia's per capita GDP has risen ten-fold in that time, increasing from \$216 per capita in 1992³⁶ to an estimated \$2600 in 2013.³⁷ Cambodia has also achieved impressive reductions in poverty rates from 47% in 1992 to a predicted 19% in 2015.³⁸

28 THE KHMER ROUGE TRIBUNAL 36 (John D. Ciorciari ed., 2006).

29 *Id.* at 11-16.

30 Rebecca Povarchuk, *Cambodia's WTO Accession: A Strenuous but Necessary Step for a Poor Nation Seeking Economic Prosperity*, 13 PAC. RIM L. & POL'Y J. 645, 647 (2004).

31 Stephen P. Marks, *The New Cambodian Constitution: From Civil War to Fragile Democracy* 26 COLUM. HUM. RTS. L. REV. 45, 55 (1994).

32 Hill & Menon, *supra* note 12, at 1.

33 *Id.*

34 *Id.*

35 *Id.* at 2.

36 KINGDOM OF CAMBODIA, THE CAMBODIAN GOVERNMENT'S ACHIEVEMENTS AND FUTURE DIRECTION IN SUSTAINABLE DEVELOPMENT: NATIONAL REPORT FOR RIO+20 UNITED NATIONS CONFERENCE ON SUSTAINABLE DEVELOPMENT 13 (2012), available at <http://sustainabledevelopment.un.org/content/documents/I022cambodia.pdf> [hereinafter Rio+20 Report].

37 *The World Factbook: Cambodia*, CIA.GOV, <https://www.cia.gov/library/publications/the-world-factbook/geos/cb.html> [hereinafter CIA.GOV].

38 Rio+20 Report, *supra* note 36, at 41.

Cambodia's macroeconomic stability during this period also improved investor confidence and led to a steady increase of foreign direct investment (FDI) in the country. FDI's share of GDP rose steadily from 2% in 1993 to 11% in 2011.³⁹ Much of this increase has been do to the attractiveness of Cambodia's natural resources and relatively cheap labor, but has also been facilitated by Cambodia's 1994 Law on Investment, which established a relatively "open and liberal foreign investment regime."⁴⁰

As mentioned earlier, while Cambodia's sustained economic growth has resulted in gradual increases in Cambodia's living standards and reductions of poverty, it has come with great "environmental and social cost[s]."⁴¹ These include increased deforestation; land grabs and land evictions; and relatively little progress on reducing inequality in the country.⁴² Additionally, Cambodia's rapid development has contributed to land degradation, biodiversity loss, and degradation of the country's extremely valuable inland aquatic resources.⁴³

2.2. Geography, People, and Natural Resources

Cambodia is located in Southeast Asia in the Lower Mekong Region. It is nestled between Thailand to the west, Laos to the north, Vietnam to the east, and has 443 kilometers of coastline along the Gulf of Thailand to the south. Cambodia has a total land area of 181 square kilometers.⁴⁴ Its terrain is characterized by low-lying flat plains in the central and coastal areas, and mountains in the north and the southwest.⁴⁵ Some of Cambodia's most dominant geographical features are the Tonle Sap (Great Lake), and the Bassac River and Mekong River, which flow from the northern part of the country to the south.⁴⁶ The Tonle Sap is the largest freshwater lake in Southeast Asia, varying in size from 2600 km² in the dry season to 13,000 km² in the wet season.⁴⁷ It is sometimes referred to as the "beating heart" of the country.⁴⁸

Approximately 80% of Cambodia's 15.5 million people live in the country's rural areas, and around 70% depend on agriculture and forestry for their

39 *Id.* at 15.

40 U.S. DEP'T OF STATE, 2013 INVESTMENT CLIMATE—CAMBODIA, available at www.state.gov/e/eb/rls/othr/ics/2013/204614.htm.

41 Rio+20 Report, *supra* note 36, at 16.

42 *Id.*

43 MINISTRY OF ENV'T, CAMBODIA ENVIRONMENT OUTLOOK 70-73 (2009), available at http://geodata.rrcap.unep.org/all_reports/cambodia_081010.pdf [hereinafter CAMBODIA ENVIRONMENT OUTLOOK].

44 CIA.GOV, *supra* note 37.

45 *Id.*

46 CAMBODIA ENVIRONMENT OUTLOOK, *supra* note 43, at 3.

47 *Id.* at 4.

48 European Union Delegation to Cambodia, *supra* note 13, at 18.

livelihoods.⁴⁹ While Cambodia has an abundance of arable land and natural resources such as timber and minerals, until recently its “history of internal conflict has stunted development” of these resources.⁵⁰ However, as Cambodia’s economy, FDI, and population continue to grow, so will the immense pressure on and exploitation of these natural resources. The decisions it makes today regarding the development and management of its natural resources will have an enormous impact on its success in pursuing a sustainable development path. The following section will briefly highlight some of these issues in the context of the agriculture, hydropower, and mining sectors and, where applicable, include some case studies to demonstrate the value that a robust EIA law could have.

2.2.1. Agriculture.

Simply put, “agriculture is central to the Cambodian economy and a critical source of employment.”⁵¹ As stated earlier, agriculture provides employment for about 70% of Cambodia’s population.⁵² Although agriculture’s overall share of the economy has fallen from about 55% in the early 1990s,⁵³ it has grown about 4-5% annually in recent years and now accounts for about 34% of the economy.⁵⁴ Most of Cambodia’s farmers are engaged in managing “small plots of land to produce rice for subsistence or small-scale commercial purposes.”⁵⁵ Indeed, from 1994 to 2006, “rice contributed up to 50 per cent of total crop growth” and accounted for more than 10% of Cambodia’s total export value in 2007.⁵⁶ The majority of the rice produced in Cambodia is still destined for local consumption.⁵⁷

Until relatively recently, large-scale agricultural production of more export-oriented crops such as cassava, rubber, and forestry products had been “held back due to a lack of investment.”⁵⁸ In 2005, however, the Cambodian government began to actively promote investment in the agricultural sector.⁵⁹ A major component of this strategy is Sub-Decree No. 146 on Economic Land Concessions, “which sets out the criteria, procedures, mechanisms and institutional arrangements for initiating, granting, monitoring and reviewing [Economic

49 Hem Sochet, *Foreign Investment in Agriculture in Cambodia: A Survey of Recent Trends*, INT’L INST. FOR SUSTAINABLE DEV. 2 (2012), available at www.iisd.org/tkn/pdf/foreign_investment_ag_cambodia.pdf.

50 *Id.* at 1.

51 *Id.* at 13.

52 *Id.* at 2.

53 Hill & Menon, *supra* note 12, at 3.

54 Rio+20 Report, *supra* note 36, at 14.

55 Sochet, *supra* note 49, at 4.

56 *Id.*

57 *Id.*

58 *Id.* at 1.

59 *Id.* at 7.

Land Concessions (ELCs)]” under the 2001 Land Law.⁶⁰ An ELC is essentially “a long-term lease that allows the beneficiary to clear land in order to develop industrial agriculture.”⁶¹

According to Article 3 of the Sub-Decree on ELCs, ELCs are intended to, among other things, develop industrial agriculture in Cambodia and provide increased employment opportunities in Cambodia’s rural areas.⁶² In addition to this Sub-Decree, the Cambodian government’s policy of promoting investment in the agricultural sector has included the provision of favorable conditions and tax incentives.⁶³ Taken together, these policies led to a marked increase in foreign investment in the agriculture sector beginning in 2005.⁶⁴ ELCs are essential to foreign investment in agriculture because foreigners cannot own land in Cambodia.⁶⁵ By 2009, foreign investors were granted over a third of all ELCs.⁶⁶ Although there is “a widely acknowledged lack of transparency in the way ELCs are granted, [and] it is difficult to assess exactly how many ELCs have been approved,”⁶⁷ the available data indicates that Chinese companies hold about 20% of ELCs granted to foreign investors, which is by far the most among foreign investors.⁶⁸ The website of Open Development Cambodia keeps some of the most up-to-date information on ELCs in Cambodia, including interactive mapping of ELCs and a database of projects.⁶⁹ Although it is effectively impossible to gather data on all ELCs, the Cambodian League for the Promotion and Defense of Human Rights (LICADHO) has verified and located at least 2.1 million hectares of ELCs, and provides a striking time-lapse map of these ELCs.⁷⁰

Widespread concerns have been expressed both internationally and domestically regarding the adverse environmental and social impacts of ELCs.⁷¹ In 2012, the European Union Delegation to Cambodia reported: “The problem in natural resources management that overshadows all others is the distribution of land, and especially the allocation of nominal state land (mainly forests) to

60 *Id.* at 9.

61 *Economic Land Concessions*, OPEN DEV. CAMBODIA, www.opendevdevelopmentcambodia.net/briefing/economic-land-concessions-elcs/ [hereinafter *Economic Land Concessions*].

62 Sub-Decree on Economic Land Concessions (No. 146 ANK/BK Dec. 27, 2005) (Cambodia), available at www.cambodiainvestment.gov.kh/sub-decree-146-on-economic-land-concessions_051227.html.

63 Sochet, *supra* note 49, at 4.

64 *Id.* at fig.3.

65 *Id.* at 9.

66 *Id.* at 13.

67 *Economic Land Concessions*, *supra* note 61.

68 Sochet, *supra* note 49, at tbl.6.

69 *Economic Land Concessions*, *supra* note 61.

70 *Visualizing Land Concessions over Time*, LICADHO-CAMBODIA.ORG, www.licadho-cambodia.org/concession_timelapse/.

71 *Economic Land Concessions*, *supra* note 61.

concessions for mines or industrial agriculture.”⁷² Forests in concession areas are often cleared wholesale with heavy machinery, which has “glaringly negative environmental consequences for soil erosion and fertility, for surface and groundwater, as well as for biodiversity.”⁷³

Additionally, the clearing of forests is “regularly associated with involuntary or forced resettlement” of local communities, threatening social stability.⁷⁴ The Cambodian Ministry of Environment and the United Nations Development Program reported in 2001 that “land conflict is a persistent feature of rural Cambodia.”⁷⁵ Indigenous minority communities are often adversely affected by ELCs, “losing access to spirit forests and areas they have traditionally used for agriculture, and losing resin trees that they have harvested for many years.”⁷⁶ For example, in October 2014 over 250 ethnic Bunong families from Mondolkiri province petitioned Prime Minister Hun Sen seeking to cancel a 728-hectare rubber plantation concession based on allegations that the company had cleared hundreds of hectares of sacred forests and resin trees outside the designated concession area.⁷⁷ The situation has gotten so precarious that it has been described as “anarchic.”⁷⁸ Indeed, possessing an ELC does not even appear to guarantee an exclusive right to use of the land. In April 2012 the European Union Delegation to Cambodia noted that “land grabbing” for ELCs “has reportedly reach levels where the original holder of an ELC cannot be sure not to be overpowered by ‘bigger fish’ and lose the ELC.”⁷⁹

In another striking example of the problems posed by ELCs, the *Phnom Penh Post* reported in November 2014 that former residents of two villages in Koh Kong province are preparing a complaint to submit to Prime Minister Hun Sen regarding the razing of their homes by security guards for a Chinese company.⁸⁰ The company, Union Development Group, was granted the concession to construct a “sprawling \$3.8 billion beachside tourist development” inside Botum

72 European Union Delegation to Cambodia, *supra* note I3, at 3.

73 *Id.* at 4.

74 *Id.*

75 *Building Resilience: The Future for Rural Livelihoods in the Face of Climate Change: Cambodia Human Development Report*, U.N. DEV. PROGRAMME 40 (2011), available at http://hdr.undp.org/sites/default/files/cambodia_2011_nhdr.pdf [hereinafter *Human Development Report*].

76 *Economic Land Concessions*, *supra* note 61.

77 Aun Pheap, *Mondolkiri Villagers Seek Cancellation of Rubber Concession*, *CAMBODIA DAILY*, Oct. 31, 2014, available at www.cambodiadaily.com/news/mondolkiri-villagers-seek-cancellation-of-rubber-concession-71463/.

78 *Human Development Report*, *supra* note 75, at 40.

79 European Union Delegation to Cambodia, *supra* note I3, at 8.

80 Taing Vida, *Evictees Prepping Complaint*, *PHNOM PENH POST*, Nov. 17, 2014, available at <http://phnompenhpost.com/national/evictees-prepping-complaint>.

Sakor National Park.⁸¹ The security guards allegedly attacked the villagers with stones, axes, and knives,⁸² and were armed with AK-47s.⁸³ The company evicted over 1,000 families that “supported themselves on the land by farming and fishing.”⁸⁴ Although \$10 million out of the \$3.8-billion project was allocated for relocation and compensation,⁸⁵ the villagers were forced to a site 20 km inland with no access to water or electricity.⁸⁶

Examples such as these highlight the problems identified by the International Institute for Sustainable Development of a “lack of communication between companies, local authorities, and local communities.”⁸⁷ In many instances, local residents do not even receive notice that their land will be cleared,⁸⁸ let alone notice that an ELC is under consideration in the first place. When they are forced to resettle or have land taken from them, the compensation is often inadequate. On top of that, the companies often exceed the boundaries of their ELCs and take additional land and resources without providing any compensation. In April 2014 it was estimated that such land disputes have adversely impacted around half a million people around Cambodia.⁸⁹

In an attempt to address some of these widespread issues, the Cambodian government announced in May 2012 that it would suspend granting new ELCs, and one month later Prime Minister Hun Sen initiated a campaign to issue land titles to people living on state land in order afford them a greater level of security in living on and using the land.⁹⁰ Nevertheless, “new disputes have continued to be reported.”⁹¹ In July 2014, the MOE announced a new initiative to “begin assessing existing and proposed [ELCs], cancelling or rejecting those that have negative social or environmental impacts.”⁹² The MOE will form a working group to oversee ELCs that will, among other things, offer advice on developing EIAs for

81 Hul Reaksmey, *UDG Guards Again Accused of Violent Evictions*, CAMBODIA DAILY, Nov. 3, 2014, available at www.cambodiadaily.com/news/udg-guards-again-accused-of-violent-evictions-71628/.

82 Vida, *supra* note 80.

83 Reaksmey, *supra* note 81.

84 *Id.*

85 Vida, *supra* note 80.

86 Reaksmey, *supra* note 81.

87 Socheth, *supra* note 49, at 12.

88 *Id.*

89 May Titthara, *Tougher ELC Oversight Pledged*, PHNOM PENH POST, July 30, 2014, available at www.phnompenhpost.com/national/tougher-etc-oversight-pledged.

90 *Economic Land Concessions*, *supra* note 61.

91 Titthara, *supra* note 89.

92 *Id.* In October 2014, Environment Minister Say Sam Al announced the cancellation of ELCs comprising 62,000 hectares held by II companies “because they ha[d] failed to develop the land or adversely affected villagers living there.” Chhay Channyda, *Another 11 Land Concessions Cancelled*, PHNOM PENH POST, Oct. 18, 2014, available at www.phnompenhpost.com/post-weekend/another-11-land-concessions-cancelled.

proposed projects.⁹³ However, according to a representative from the rights group Adhoc, unless the MOE's review process itself is transparent and involves the affected public, its effectiveness in reducing land disputes may be very limited.⁹⁴

While certainly not a panacea, if enforced, a robust EIA law could go a long way toward ameliorating some of these problems. By conducting a transparent review process, disclosing information about the proposed concessions early and often, and involving affected communities, a strong EIA law would reduce the risk of social instability and could even lead to cooperation among communities and project developers. Moreover, strong EIA reviews would anticipate potentially adverse impacts of forest clearing, soil degradation and loss, and other potential impacts early in the process and identify measures to mitigate and manage these impacts.

2.2.2. *Hydropower.*

Since 2007, Cambodia's overall energy consumption has outpaced domestic production.⁹⁵ As a result, Cambodia imports up to 60% of the energy it consumes and has some of the highest electricity prices in the region.⁹⁶ Moreover, almost 90% of Cambodia's domestic power plants use imported light diesel and heavy fuel oil to produce energy.⁹⁷ Since these fuels are expensive and unreliable, Cambodia is "increasingly turning to hydropower as the key to break free from its developmental constraints."⁹⁸ As of 2009, only 4% of Cambodia's electricity was produced by hydropower.⁹⁹ However, "aggressive development of hydroelectric potential in the Great Mekong Sub-region"¹⁰⁰ aims to increase hydroelectric power "to account for 77% of Cambodia's total electric generating capacity by 2030."¹⁰¹ To reach this goal, Cambodia plans to construct 10 dams between 2010

93 Titthara, *supra* note 89.

94 *Id.*

95 Catherine Beck, *The Push and Pull for Hydropower in Vietnam and Cambodia*, WILSON CTR. 4 (Jan. 15, 2014), available at www.wilsoncenter.org/publication/the-push-and-pull-for-hydropower-vietnam-and-cambodia.

96 Sim Vireak, *Cambodia's Hydroelectric Question: China Power and the Environment*, THE DIPLOMAT, July 30, 2014, <http://thediplomat.com/2014/07/cambodias-hydroelectric-question-china-power-and-the-environment/>.

97 Beck, *supra* note 95, at 4.

98 *Id.*; see also Neou Vannarin, *Hun Sen Says Hydropower Is the Key to Stable Electricity Prices*, CAMBODIA DAILY, Feb. 25, 2013, available at <http://sahrika.files.wordpress.com/2013/02/english13.jpg>.

99 Beck, *supra* note 95, at 4.

100 THE INSTITUTE OF ENERGY ECONOMICS, THE 3RD ASEAN ENERGY OUTLOOK 22 (Feb. 2011), available at <http://aseanenergy.org/media/filemanager/2012/06/14/t/3/t3aao-complete-outlook.pdf>.

101 *Chinese Investments Play Large Role in Southeast Asia Hydroelectric Growth*, U.S. ENERGY INFO. ADMIN. (Aug. 16, 2013), www.eia.gov/todayinenergy/detail.cfm?id=12571 [hereinafter U.S. ENERGY INFORMATION ADMINISTRATION].

and 2019, which will “add[] 2,045 [megawatts] of capacity.”¹⁰²

A 2003 National Sector Review for Hydropower found 60 potential sites for hydropower development.¹⁰³ Out of the total potential of 10 gigawatts from these sites, “50% is located on the mainstream Mekong, 40% on its tributaries, and 10% in the southwestern part of the country.”¹⁰⁴ Investors and donors such as the World Bank, the ADB, and Western donors have been hesitant to provide funding for Cambodia’s planned dams largely due to concerns over environmental and social impacts and economic feasibility.¹⁰⁵ Instead, such donors and investors have chosen “to handle less sensitive projects such as electricity transmission and distribution systems.”¹⁰⁶ In the mid-2000s, however, China began providing financing for hydropower projects.¹⁰⁷ To date, “Chinese companies have invested over 1.6 billion US dollars to construct six hydroelectric dams with a total capacity of 928 megawatts in Cambodia.”¹⁰⁸ Four of these dams have been completed and the remaining two are expected to be completed in 2015.¹⁰⁹

The potentially enormous adverse environmental and social impacts of large-scale hydropower generating stations are well known.¹¹⁰ They can “destroy livelihoods and food security, exacerbate poverty and lead to human rights violations.”¹¹¹ In addition to the obvious impacts of submerging large tracts of land underwater, large-scale hydropower dams can severely reduce soil fertility by impeding sediment flows, disrupt the seasonal flow fluctuations of the Mekong basin that so many farmers and fishermen have come to depend on, and adversely impact fish migration patterns.¹¹² Indeed, in April 2014 Vietnam’s Prime Minister made a plea for a halt to dam construction on the Mekong mainstream due to the increased salinity of the Delta resulting from reduced water and sediment flows.¹¹³

In 2005, Cambodia issued an approval for its first major hydropower dam, the Kamchay Dam, to China’s Sinahydro Corporation, and construction was

102 *Id.*

103 Mark Grimsditch, *China’s Investments in Hydropower in the Mekong Region: The Kamchay Hydropower Dam, Kampot*, 4 BANK INFO. CTR. (Jan. 2012), available at www.bicusa.org/en/Document.I02893.pdf.

104 *Id.*

105 *Id.* at 6.

106 Vireak, *supra* note 96.

107 U.S. ENERGY INFORMATION ADMINISTRATION, *supra* note 101.

108 Vireak, *supra* note 96.

109 *Id.*

110 See generally Dam Problems – Environmental Impacts, WWF GLOBAL, available at wwf.panda.org/what_we_do/footprint/water/dams_initiative/problems/environmental/.

111 Simon Marks, *Chinese Dam Project in Cambodia Raises Environmental Concerns*, N.Y. TIMES, Jan. 16, 2012, available at www.nytimes.com/2012/01/17/business/global/17iht-rbog-cam17.html?pagewanted=all&_r=0.

112 See, e.g., Beck, *supra* note 95, at 2-3.

113 Kraisaak Choonhavan, *Vietnam Screams for Halt to Mekong Dams as Delta Salts Up*, THE NATION, Apr. 30, 2014, available at www.nationmultimedia.com/opinion/Vietnam-screams-for-halt-to-Mekong-dams-as-delta-s-30232520.html.

completed in 2011.¹¹⁴ The Kamchay Dam submerged over 2,000 hectares of the Bokor National Park, “home to a number of endangered species and an important resource to local communities.”¹¹⁵ The international non-government organization (NGO) International Rivers reported that the EIA for the dam was completed in 2011 “only months before the dam became fully operational,” seriously calling into question the EIA’s utility as a planning tool for sustainable development and management of natural resources.¹¹⁶ Field research on the Kamchay Dam conducted by World Resources Institute found that “community awareness of the project was quite low” even four years into construction.¹¹⁷

More recently, conflict arose over the construction of the Lower Sesan II Dam. Cambodia approved the 400-megawatt, \$781-million-dollar project in 2012¹¹⁸ after an EIA was completed in 2010.¹¹⁹ The government “acknowledge[s] that the dam would impact the environment, but assure[s] lawmakers that studies would be done ahead of its construction.”¹²⁰ Estimates show that 5,000 ethnic minorities will be displaced to clear the dam’s 130-acre reservoir.¹²¹ The number of people affected by the dam increases to hundreds of thousands when considering “those whose livelihoods rely on fishing, farming in floodplains and other activities linked to the Mekong River.”¹²² Other studies show that fish stocks in the Mekong Basin could drop almost 10% as a result of the dam’s construction.¹²³ The 2010 EIA has been widely criticized for failing to meet Cambodian and international standards,¹²⁴ including for vastly underestimating the impacts on local culture and livelihoods and for a wholly inadequate public consultation process.¹²⁵ More recently, International Rivers has reported that Hydrolancang, the Chinese company constructing the dam, has “redesigned the Lower Sesan 2 Dam with

114 Cambodia, INT’L RIVERS, available at www.internationalrivers.org/campaigns/cambodia.

115 *Id.*

116 *Id.*

117 Grimsditch, *supra* note 103, at 27.

118 *Fact Sheet: Lower Sesan 2 Hydropower Project, Northeastern Cambodia*, INT’L RIVERS (Aug. 5, 2013), www.internationalrivers.org/files/attached-files/lower_sesan_2_factsheet_english.pdf; but see *Lower Sesan 2 Dam*, INT’L RIVERS, available at www.internationalrivers.org/campaigns/lower-sesan-2-dam [hereinafter *Lower Sesan 2 Dam*] (noting that the project cost is upward of \$816 million).

119 Joshua Lipes, *Cambodia’s Parliament OKs Dam Compensation Plan*, RADIO FREE ASIA, June 19, 2014, www.rfa.org/english/news/cambodia/dam-06192014195419.html.

120 *Id.*

121 Coco Liu, *China-led Hydropower Project Faces Resistance in Cambodia*, E & E PUBL’G, June 10, 2014, www.eenews.net/climatewire/stories/1060000986/print.

122 *Id.*

123 Lipes, *supra* note 119.

124 River Coalition of Cambodia, *Proposed Lower Sesan 2 Dam, Cambodia Fails to Uphold Best Practice*, INT’L RIVERS (Aug. 19, 2009), available at www.internationalrivers.org/resources/proposed-lower-sesan-2-dam-cambodia-fails-to-uphold-best-practice-3787 [hereinafter *River Coalition of Cambodia*].

125 *Id.*

significant changes towards structure and the height of the dam.”¹²⁶ As a result, a number of NGOs have called on the Cambodian government to “halt the dam’s construction, put the new design into the public domain, while also carrying out a new [EIA], which also considers transboundary impacts, before a decision is made over whether construction should proceed.”¹²⁷

If ultimately adopted by the National Assembly, Cambodia’s Draft EIA Law will represent a major step toward solving some of these problems. In addition to the common issues related to underestimation of impacts and public participation processes, the Draft EIA Law’s clear mandate to prohibit any construction activities until *after* an EIA has been approved will help to ensure that EIAs actually begin to serve their purpose as tools to anticipate impacts and promote sustainable development, rather than mere justifications for predetermined outcomes.¹²⁸ Moreover, due to the interconnectedness of the Mekong region countries and their dependence on the Mekong River and its invaluable resources, the Draft EIA Law’s transboundary EIA requirements,¹²⁹ if adopted, will help ensure that development of hydropower in the region does not threaten the continued viability of these resources.

2.2.3. Mining

Although Cambodia is rich in mineral resources such as gold, iron, bauxite, manganese, silica sand, limestone, rubies, coal, and construction materials,¹³⁰ the development of Cambodia’s mining sector “lags far behind its neighbors” due to “[y]ears of civil war, the presence of land mines and unexploded ordnance, inadequate infrastructure and other issues.”¹³¹ There are some active “small-scale quarries” that are producing construction materials, but “[t]o date there has been no industrial scale extraction of precious minerals” in Cambodia.¹³² This situation is beginning to change, however, and the Cambodian government seems optimistic that investments in mineral resource extraction will become a significant source of

126 See *Lower Sesan 2 Dam*, *supra* note 118.

127 *Id.*

128 See *infra* note 161.

129 See *infra* notes 224-32.

130 MINISTRY OF INDUSTRY, MINES AND ENERGY, CURRENT SITUATION OF MINING INDUSTRY IN CAMBODIA, I (Mar. 6, 2013), available at http://mric.jogmec.go.jp/public/kouenkai/2013-03/briefing_I30315_02b.pdf [hereinafter MINING INDUSTRY].

131 *Cambodian Mining Sector*, OPEN DEV. CAMBODIA (Aug. 2014), www.opendevdevelopmentcambodia.net/briefing/mining-licenses/ [hereinafter *Cambodian Mining Sector*]; see also Kate M. Lazarus, *In Search of Aluminum: China’s Role in the Mekong Region*, INT’L INST. FOR SUSTAINABLE DEV. 2 (2009), available at www.iisd.org/sites/default/files/pdf/in_search_of_aluminum.pdf.

132 *Cambodian Mining Sector*, *supra* note 131.

revenue for the country in the next few years.¹³³ Indeed, in March 2013 the Ministry of Industry Mines and Energy reported that as of that date it had licensed “around 91 companies” to conduct 139 mineral exploration projects, and that 17 of those were confirmed positive for the presence of exploitable minerals.¹³⁴ Additionally, 13 of those 91 companies (five from China, five from Thailand, and three domestic companies) had been licensed to begin conducting mining projects for gold, iron, coal, limestone, and phosphate.¹³⁵

Large-scale, industrial development of Cambodia’s mineral resources, while certainly a potential source of revenue for the country, is also “an inherently disruptive enterprise which poses potential threats to the integrity of the environment and to the well-being of local communities.”¹³⁶ A large portion of Cambodia’s mineral resources reportedly lies within the northeastern provinces of Mondulkiiri, Ratanakkiri, and Kratie, which are “home to diverse ecosystems and extremely sensitive biodiversity.”¹³⁷ Reportedly, as of 2008, 22% of protected wildlife sanctuaries and forests in Mondulkiiri province were in fact covered by mining concessions.¹³⁸ There are also reports that the biologically diverse and sensitive Cardamom Mountains in the southwest of Cambodia hold valuable deposits of titanium,¹³⁹ but the 2011 cancellation of a planned titanium mine due to “concerns of the impact on the environment, biodiversity, and local livelihoods” offered an encouraging sign that economic development may not always take precedence over social and environmental protection.¹⁴⁰

There is widespread concern among communities and civil society in Cambodia with regard to the “secretive manner” in which mining deals are made.¹⁴¹ This is due in large part to the fact that Cambodia’s legal framework for mining is “still largely undeveloped” and “in need of modernizing if it is to cope with expansion of the industrial mining sector.”¹⁴² Indeed, secrecy and lack of transparen-

133 *After Long Wait, Cambodia Opens to Mining*, VOICE OF AMERICA: KHMER, Mar. 18, 2010, www.voacambodia.com/content/a-40-2010-03-18-voa7-90235907/1358202.html.

134 MINING INDUSTRY, *supra* note 130, at 2.

135 *Id.*

136 *The Expansion of Mining Activities and Indigenous Peoples’ Rights in Mondulkiiri Province*, COOPERATION COMM. FOR CAMBODIA 7 (Oct. 2010), http://www.ccc-cambodia.org/downloads/research-report/Round20_Mining_Study_Final_Report_Oct2010_Revised_En.pdf.

137 *Cambodian Mining Sector*, *supra* note 131.

138 *Id.* (quoting *Forests, Plantations, and Concessions*, in NGO Position Papers on Cambodia Development in 2007-08: Monitoring the Implementation of 2007 CDCF Joint Monitoring Indicators and the National Strategic Development Plan 2006-10, Phnom Penh, Nov. 2008).

139 European Union Delegation to Cambodia, *supra* note 13, at 17.

140 *Cambodia Mining Sector*, *supra* note 131 (quoting Jeremy Hance, *Cambodian Prime Minister Cancels Titanium Mine Project Citing Impact on Biodiversity and Local People*, MONGABAY.COM, Apr. 11, 2011, http://news.mongabay.com/2011/0410-hance_titanium_cambodia.html#sthash.kHfqV6cy.dpbs).

141 *Cambodian Mining Sector*, *supra* at 131.

142 *Id.*

cy are actually built into Cambodia's Law on Mineral Resource Management and Exploration (Mining Law), which explicitly guarantees the confidentiality of all "application forms, reports, plans and notices."¹⁴³ Although the law nominally requires all mining license holders to conduct an environmental impact study, it also states that it is up to the discretion of the Minister of Industry Mines and Energy whether to release, after notification to the license holder, "information related to environmental and social issues."¹⁴⁴ The EIA Sub-Decree, on the other hand, ostensibly requires the release of such information. It thus appears that there are some contradictions with regard to the legal framework for public participation and information disclosure in the mining sector. Cambodia's Draft EIA Law, as detailed below, would go a long way toward clearing up some of these contradictions and putting the development of its mining sector on a more sustainable path.

3. CAMBODIA'S DRAFT ENVIRONMENTAL IMPACT ASSESSMENT LAW

Until the draft EIA law is finalized and enacted, the requirements and procedures for EIA as laid out in the 1996 Law on Environmental Protection and Natural Resource Management (LEP),¹⁴⁵ the 1999 Anukret on Environmental Impact Assessment Process (EIA Sub-Decree),¹⁴⁶ and the 2009 Prakas on General Guidelines for Initial and Final Environmental Impact Assessment Reports¹⁴⁷ still apply. Generally speaking, the current EIA process requires project proponents to submit an Initial Environmental Impact Assessment (IEIA) to the MOE for review, after which the MOE may determine that a full EIA report is required if it concludes that the project may "have serious impact to the natural resources, ecosystem, health or public welfare."¹⁴⁸ The current EIA law also provides for public participation and gives some monitoring authority to the MOE. However, as detailed below, Cambodia's current EIA process is simply not a sufficient tool to steer Cambodia toward a sustainable development path.

This section of the article will describe some features of the fifth draft of the

143 Kingdom of Cambodia, Law on Mineral Resource Management and Exploitation, Preah Reach Kram NS/RKM/0701/09, art. 19 (July 13, 2001), available at http://www.opendevdevelopmentcambodia.net/download/law/Law%20on%20Mineral%20Resource%20Management%20and%20Exploitation_May_30_2001_Eng.pdf.

144 *Id.*, art. 20.

145 Law on Environmental Protection and Natural Resource Management (Preah Reach Kram NS/RKM/I296/06 Dec. 24, 1996) (Cambodia), available at www.opendevdevelopmentcambodia.net/laws_and_regulations/environment-land-and-nrm-laws/?post_type=law [hereinafter Law on Environmental Protection].

146 EIA Sub-Decree, *supra* note 17.

147 *Environmental Law and EIAs*, *supra* note 25.

148 EIA Sub-Decree, *supra* note 17, art. 8.

new EIA law and assess how they offer improvements over the current regime on the following issues: clarity with regard to institutional authorities and responsibilities; public participation and information disclosure; requirements regarding impacts to be considered; and monitoring and enforcement.

3.I. Clarity with Regard to Institutional Authority and EIA Process

Cambodia's Draft EIA Law remedies some of the ambiguities and deficiencies of the current EIA regime with respect to the MOE's authority and the overall review process. This is a crucial element of the Draft EIA Law because the effective implementation of EIA in Cambodia has been hampered by, among other things, "a lack of awareness (or concern) from a number of important ministries about the importance of the EIA process."¹⁴⁹ According to Sam Chamroeun, then Director of the Department of Environmental Planning and Legal Affairs at the MOE, "The significance of EIAs is not fully recognized by . . . many of the government ministries responsible for infrastructure or industrial and agricultural development."¹⁵⁰ Moreover, in general the MOE "is a relatively powerless agency in natural resource matters, especially when compared with the Ministry of Agriculture, Forestry, and Fisheries."¹⁵¹ As explained below, the Draft EIA Law will help to solve this problem by clarifying the overall process and greatly enhancing the MOE's authority with respect to EIA implementation and approval.

The current EIA Sub-Decree requires the project proponent to submit a copy of the IEIA or EIA report to the MOE and the "Project Approval Institution" simultaneously.¹⁵² However, the Sub-Decree does not explicitly give the MOE authority to approve or reject the EIA document. Instead, the MOE is authorized only to review the EIA document and provide its "findings and recommendations" to the project proponent and the project approval institution.¹⁵³ If the MOE fails to do so within thirty days, the project approval institution can assume that the EIA report complies with all of the requirements of the Sub-decree and may move ahead with the project.¹⁵⁴ If the MOE does provide findings and recommendations to the project approval institution, the project approval institution is only required to "consider" them prior to approving the project.¹⁵⁵ Given the inherent resource and capacity limitations that developing countries such as Cambodia face, deeming EIA reports approved *unless* the MOE reviews and comments on them within thir-

149 Grimsditch, *supra* note 103, at 36.

150 *Id.*

151 Li, *supra* note 10, at 12.

152 EIA Sub-Decree, *supra* note 17, art. 14.

153 *Id.*, art. 15.

154 *Id.*

155 *Id.*, art. 4.

ty days presents the risk that project sponsors will take advantage of such capacity limitations and draft inadequate EIAs that fail to account for the potential environmental and social impacts. This, of course, would defeat the purpose of an EIA regime to promote sustainable development.

The EIA Sub-Decree's lack of clarity with respect to both the MOE's authority to approve EIA reports and the project approval institution's obligation to follow the "findings and recommendations" of the MOE, seriously calls the entire EIA process into question. One case is illustrative in this regard. In 2000, the Ministry of Agriculture, Forestry, and Fisheries (MAFF) received an application for a 300,000-hectare land concession from a Cambodian company, Pheapimex Fuchan Cambodia Co., Ltd, that planned to contract with a Chinese investor to cultivate eucalyptus trees and build a paper factory.¹⁵⁶ The Minister of the provincial office of the MAFF concluded that allowing commercial scale agriculture would actually benefit the area in question because of "overexploitation by unauthorized parties and the government's inability to invest the capital and technology required to instill proper management."¹⁵⁷ On the other hand, the reviewing MOE inspectors recommended refusing the project because of its potential adverse impacts on the environment.¹⁵⁸ Thus, it appears that MOE's review of potential environmental impacts and subsequent recommendations did not actually influence the ultimate outcome in this case, rendering the EIA process meaningless.

The Draft EIA Law eliminates this problem by placing authority to review and issue approvals for EIA documents squarely in the hands of the MOE.¹⁵⁹ It also establishes a new "EIA Unit" within the MOE for overall implementation and enforcement of the EIA law, including review and approval of EIA documents.¹⁶⁰ Importantly, the law also states explicitly, for the first time, that project proponents may not engage in any pre-construction or construction activities until they have obtained an EIA Approval Certificate from the MOE.¹⁶¹ This requirement will address the problem exemplified by the Kamchay Dam described above, where the project's EIA was not approved until some four years *after* construction had begun.¹⁶² Moreover, the draft law removes the provision in the EIA Sub-decree stating that if the MOE does not provide comments or otherwise respond to the project

156 Andy Weiner, *The Forest and the Trees: Sustainable Development and Human Rights in the Context of Cambodia*, 151 U. PA. L. REV. 1543, 1546-47 (2003).

157 *Id.* at 1548.

158 *Id.* at 1581.

159 Draft EIA Law, *supra* note 27, arts. 17 & 22.

160 *Id.*, arts. 8-12.

161 *Id.*, art. 23. Additionally, EIA Approval Certificates are made valid for five years, after which they may be renewed. *Id.*

162 Grimsditch, *supra* note 103, at 37.

proponent's EIA documents within thirty days, then the EIA documents are deemed to be in accordance with the EIA law.¹⁶³ Instead, the Draft EIA Law gives the MOE sixty days to review an Initial Environmental Examination (IEE)¹⁶⁴ and ninety days to review full EIA reports.¹⁶⁵ Therefore, the Draft EIA Law makes clear both that projects may not begin construction until EIA documentation (including Environmental Management Plan and/or Environmental Protection Agreement) is approved, and that the MOE is the institution with authority to grant such approval.

Additionally, under the Draft EIA Law, full EIA reports are required to undergo an additional level of review by an Expert Review Committee.¹⁶⁶ The Expert Review Committee must consist of individuals with "appropriate qualifications and experience" from the MOE, other relevant government ministries, and local and/or international independent experts.¹⁶⁷ The Committee would be established on a project-by-project basis with its members reimbursed by the project proponent.¹⁶⁸ This Committee would seem to have considerable power: The MOE may not issue an EIA Approval Certificate until it has received written comments from "all members" of the Committee¹⁶⁹; the Committee may impose conditions on the EIA Approval Certificate, which are then binding on the project proponent¹⁷⁰; and it is an actionable offense for the MOE to grant an EIA Approval Certificate without taking into consideration the recommendation of the Committee or without having the necessary document(s).¹⁷¹

3.2. Public Participation and Information Disclosure

Public participation is "a cornerstone of the EIA process."¹⁷² Among other benefits, strong public involvement in the EIA process "encourages the preparation of robust and defensible EIA studies and reports" and "promotes equitable and informed choice, leading toward better and more acceptable social and environmental outcomes."¹⁷³ Cambodia's Draft EIA Law very prominently promotes pub-

163 EIA Sub-Decree, *supra* note 17, art. 18.

164 The 1999 EIA Sub-Decree referred to the first level of review as an Initial Environmental Impact Assessment (IEIA), whereas the Draft EIA Law refers to it as an Initial Environmental Examination (IEE).

165 Draft EIA Law, *supra* note 27, arts. 17 & 22.

166 *Id.*, art. 21.

167 *Id.*

168 *Id.*

169 *Id.*, art. 23.

170 *Id.*

171 *Id.*, art. 76.

172 UNITED NATIONS ENV'T PROGRAMME, ENVIRONMENTAL IMPACT ASSESSMENT AND STRATEGIC ENVIRONMENTAL ASSESSMENT: TOWARDS AN INTEGRATED APPROACH, at 28 (2004), available at www.unep.ch/etu/publications/textONUbr.pdf [hereinafter United Nations Env't Programme].

173 *Id.*

lic participation and information disclosure as an integral component of the EIA process, and offers a significant improvement over the previous requirements. The 1996 LEP only requires the MOE to “encourage participation of the public in the environmental protection and natural resource management,”¹⁷⁴ which, according to one scholar, “is basically a meaningless statement.”¹⁷⁵ Likewise, the 1999 EIA Sub-Decree states that one of its objectives is to “encourage public participation in the implementation of [the] EIA process and take into account . . . their conceptual input and suggestion[s] for re-consideration prior to the implementation of any project,”¹⁷⁶ but is silent with regard to specific procedures required to make this happen. Both the LEP and the EIA Sub-Decree are similarly deficient with regard to procedures and requirements for information disclosure.

In contrast, the Draft EIA Law explicitly requires both public participation and information disclosure at all stages of the EIA process. One of the main objectives of the law, as stated in Article 2, is to “promote public participation and information disclosure.”¹⁷⁷ Article 7 reinforces the Cambodian peoples’ Constitutional right to “participate actively in the political, economic, social and cultural life of the nation”¹⁷⁸ by emphasizing that “[n]atural persons, legal entities, civil society, and project-affected people have the *right* to receive information and participate in the EIA process.”¹⁷⁹

To operationalize this right, the Draft EIA Law explicitly requires public participation during the project-planning phase prior to the submission of the IEE or EIA report to the MOE for review and during the EIA review stage, and implicitly requires it in post-construction project monitoring.¹⁸⁰ The Draft EIA Law places the obligation on the project proponent to include “public involvement and consultation” at the project planning phase in order to: “identify areas of cultural and social significance; collect opinions of stakeholders and integrate such opinions into the decision making process; review the project proposal and explain social and environmental impacts; [and] consider a wider range of alternatives and mitigation measures.”¹⁸¹ The project proponent is also obligated to ensure that the public receives information about the project “in Khmer” and is “given the opportu-

174 Law on Environmental Protection, *supra* note 145, art. 1.

175 QI GAO, A PROCEDURAL FRAMEWORK FOR TRANSBOUNDARY WATER MANAGEMENT IN THE MEKONG RIVER BASIN 212 (2014).

176 EIA Sub-Decree, *supra* note 17, art. 1.

177 Draft EIA Law, *supra* note 27, art. 2.

178 THE CONSTITUTION OF THE KINGDOM OF CAMBODIA art. 35 (Sept. 21, 1993), available at http://cambodia.ohchr.org/klc_pages/KLC_files/section_001/section_01_01_ENG.pdf [hereinafter CONSTITUTION].

179 Draft EIA Law, *supra* note 27, art. 7 (emphasis added).

180 *Id.*, art. 30.

181 *Id.*

nity to fully participate in public consultation meetings.”¹⁸² Such meetings must be arranged by the project proponent, in consultation “with the MOE and relevant ministries, institutions, local authority, civil society, community representatives and project-affected people in the EIA process.”¹⁸³ Additionally, for projects involving the resettlement of affected populations, such as the Lower Sesan II Dam project described above, it is the project proponent’s responsibility to “ensure that project affected persons are involved in any resettlement planning to minimize the adverse effects of resettlement.”¹⁸⁴ The Draft EIA Law requires the MOE to issue a sub-decree stipulating the “procedure of resettlement and solution of compensation to the affected/impacted community.”¹⁸⁵

A novel and progressive feature of the Draft EIA Law is the requirement that the project proponent proactively “identify measures to improve the livelihood and assist project affected persons” and to gain the “consent of project-affected communities to the proposed mitigation measures □ based on the free, prior, and informed consent principle (FPIC).”¹⁸⁶ What this means is that the project proponent must present its proposed mitigation measures to the project-affected community *before* the IEE or EIA is submitted to the MOE for review, allowing “sufficient time” for consideration.¹⁸⁷ The project-affected community must then be given the opportunity to “approve the proposed mitigation measures without pressure or coercion from any natural person or legal entity.”¹⁸⁸ Although the law is silent with regard to the timeline along which public participation during the project planning phase must occur, this is to be addressed in the “further Guidelines for procedures for public participation and access to information” that the Draft EIA Law requires the MOE to issue.¹⁸⁹

Although the current version of the draft law clearly requires public participation at the project planning phase for both IEEs and EIA reports, it only requires project proponents conducting an EIA report to “record the public participation” and to include in their EIA report “the details of the public impact and whether those concerns are accepted or rejected.”¹⁹⁰ Additionally, if any public concerns are rejected, the project proponent must “provide the clear reasons why those concerns are rejected in the EIA report.”¹⁹¹ The EIA report must also “focus on the issues

182 *Id.*
183 *Id.*
184 *Id.*, art. 32
185 *Id.*
186 *Id.*
187 *Id.* Annexure I.
188 *Id.*
189 *Id.*, art. 33.
190 *Id.*, art. 31.
191 *Id.*

raised by women and those most vulnerable potentially impacted by the proposed project.”¹⁹² While this arrangement is certainly an improvement over Cambodia’s current EIA requirements, it would be optimal for the Draft EIA Law to require the project proponent to record and respond to public concerns and comments in the preparation of an IEE as well as a full EIA report.

During the IEE or EIA report review stage, it is the MOE’s responsibility to “ensure a fair hearing process to enable public involvement.”¹⁹³ The MOE must “invite relevant ministries/institutions, civil society and impacted persons to attend such hearings and provide comments to the proposed project.”¹⁹⁴ Although the Draft Law does not provide any more specificity on public participation during the review stage, this is to be addressed in a subsequent Prakas of the MOE.¹⁹⁵ With regard to information disclosure, the MOE must make an IEE or EIA report publicly available once it is received from the project proponent, including on a website accessible to the public.¹⁹⁶ The MOE must also ensure that “stakeholders and project-affected communities have access to clear and sufficient information.”¹⁹⁷ Decisions of the MOE to accept or reject an IEE or EIA report, including any “conditions or reasons as the case may be,” must be made “available to the public both on its website and by publication in a regional or national newspaper.”¹⁹⁸ Additionally, the MOE must make publically available any EIA Approval Certificates and associated Environmental Management Plans that it issues on its website.¹⁹⁹

Finally, while the Draft EIA Law does not explicitly state that the public has a right to participate in post-construction project monitoring, it implies as much by stating that public participation during the project monitoring stage will be stipulated in a subsequent Prakas.²⁰⁰ The Draft Law does require the project developer to prepare annual environmental reports after construction; the developer must provide the annual reports “to the public on request, without charge.”²⁰¹ The project developer must also provide electronic copies of its annual reports to be placed both on an MOE website and a publicly accessible website made by the developer.²⁰²

192 *Id.*
193 *Id.*, arts. 17 & 22.
194 *Id.*
195 *Id.*, art. 30.
196 *Id.*, art. 33.
197 *Id.*
198 *Id.*, arts. 17 & 22.
199 *Id.*, art. 23.
200 *Id.*, art. 30.
201 *Id.*, art. 39.
202 *Id.*

3.3. Requirements Regarding Impacts and Issues to Be Considered in an EIA

In order for an EIA to be an effective tool for planning and achieving sustainable development, it must include consideration of the full spectrum of potential project-related impacts.²⁰³ Neither the LEP nor the 1999 EIA Sub-Decree provides any guidance or requirements on the specific types of environmental or social impacts that must be considered during the course of an EIA. In 2009, the MOE issued a Prakas on General Guidelines for Initial and Final Environmental Impact Assessment Reports, pursuant to Article IO of the Sub-Decree,²⁰⁴ which attempted to fill this void but is nevertheless insufficient to create a truly robust EIA regime that meets international standards. As explained by Open Development Cambodia, an annex to the Prakas states that the initial EIA is mainly based on already existing and available data on the study area, whereas a full EIA report is “a more detailed study, and is based on primary data gathered in and around the project site.”²⁰⁵ In turn, a full EIA report must contain the following elements: project overview; methodology and scope of study; summary of the relevant framework; full description and action plan; description of existing environmental resources (including physical, ecological and socio-environmental resources); detailed information on the results of public consultation; environmental impact mitigation measures; environmental management plan; economic analysis compared with environmental costs; and conclusions and recommendations.²⁰⁶ However, the current regime’s lack of defined specificity with regard to issues such as alternatives to the proposed action (including the “no action” alternative), indirect and cumulative impact analyses, public health and social impacts, and transboundary impacts has led to a chronic underestimation of proposed projects’ impacts, thereby seriously undermining the entire purpose of an EIA.²⁰⁷

Even though the Draft EIA Law does not provide a general definition of environmental or social impacts,²⁰⁸ it improves on the current regime by explicitly requiring the assessment of specific types of potential impacts and making these requirements applicable to all development projects. To begin with, the Draft Law states that all development projects, business activities, and investment activities “must properly assess the impacts on the environment, economy, society, health, and culture.”²⁰⁹ While other sector-specific laws such as the Law on Mineral Re-

203 See, e.g., UNITED NATIONS ENV’T PROGRAMME, *supra* note 172, at 40.

204 *Environmental Law and EIAs*, *supra* note 25.

205 *Id.*

206 *Id.*

207 See, e.g., River Coalition of Cambodia, *supra* note 124.

208 In contrast, see NEPA’s definition of impacts. 40 C.F.R. § 1508.8.

209 Draft EIA Law, *supra* note 27, art. 6.

source Management and Exploitation²¹⁰ and the Law on Forestry²¹¹ do require social impact assessments, this requirement in the Draft EIA Law would represent the first time that project proponents in all sectors across the board must assess potential impacts on society, health, and culture in addition to the economy and environment.

The Draft EIA Law also specifically requires for the first time the assessment of climate change impacts, cumulative impacts, and health impacts, devoting an entire section to each subject.²¹² Additionally, it requires projects that may have significant transboundary environmental impacts to conduct a transboundary EIA (TbEIA),²¹³ and requires Strategic Environmental Assessments that consider the potential impacts resulting from “policies, programs, and strategic plans of the Royal Government.”²¹⁴ Though the Draft Law states that the “form and content” of IEE reports will be defined in a subsequent Prakas to be issued by the MOE,²¹⁵ it nevertheless obligates IEE projects to consider and assess some of these impacts, as detailed below.

With regard to climate change, all projects for which a full EIA report is being conducted must analyze and assess both the project’s potential contribution to climate change and the project’s vulnerability to the impacts associated with climate change.²¹⁶ The project proponent is responsible for proposing “emergency response planning and technology choices to prepare for climate change impacts” as well as measures to mitigate the project’s contribution to climate change “in order to achieve low-carbon economic development which is a primary target of Green Growth.”²¹⁷ These requirements do not apply to projects undergoing IEE’s. However, both IEE’s and EIA’s must include a calculation of the project’s carbon footprint and must “investigate low GHG energy options and the need to mitigate climate induced changes to water supply.”²¹⁸

210 Law on Mineral Resource Management and Exploitation art. 11(6) (Preah Reach Kram NS/RKM/0701/09 July 13, 2001) (Cambodia), available at www.opendevdevelopmentcambodia.net/download/law/Law%20on%20Mineral%20Resource%20Management%20and%20Exploitation_May_30_2001_Eng.pdf.

211 Law on Forestry, art. 4 (Preah Reach Kram NS/RKM/0802/016 Aug. 31, 2002) (Cambodia), available at www.opendevdevelopmentcambodia.net/download/law/Law%20on%20Forestry_August_31_2002_Eng.pdf.

212 Draft EIA Law, *supra* note 27, arts. 26-29.

213 *Id.*, arts. 42-45.

214 *Id.*, art. 41. The Strategic Environmental Assessment provision in the Draft EIA Law is based on the Protocol on Strategic Environmental Assessment to the Espoo Convention. See Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context, U.N. Doc. ECE/MPEIA/2003/2 (May 21, 2003).

215 Draft EIA Law, *supra* note 27, art. 15.

216 *Id.*, art. 26.

217 *Id.*

218 *Id.*, art. 27.

The terminology used in the current Draft EIA Law does not make it entirely clear whether both IEEs and EIAs require cumulative impact analyses, but it implies that the requirement only applies to full EIA reports.²¹⁹ Under this section, project proponents must “analyze and evaluate the cumulative impact caused by existing and future projects in the surroundings of the Project.”²²⁰ Project proponents must also consider measures to mitigate or offset potential significant cumulative impacts.²²¹

The Draft EIA Law is very clear, however, that both IEEs and EIAs must include health impact assessments (HIA).²²² A project’s HIA must include baseline data on the health of the project-affected population, a description of potential health impacts “due to construction, population influx, and changes to the environment,” proposed mitigation measures to offset or eliminate adverse health impacts, and issues related to health monitoring in both the short and the long term.²²³

Finally, the Draft EIA Law contains a novel provision requiring any project that “has potentially significant trans-boundary environmental impacts” to conduct a TbEIA.²²⁴ In 2010, the International Court of Justice held for the first time that an obligation exists under customary international law to perform a transboundary EIA for any project that may adversely affect the environment of another State.²²⁵ If the Draft EIA Law were adopted, Cambodia would be the first among the Mekong region countries to require a TbEIA under its domestic law. Although Cambodia, Thailand, Laos, and Vietnam are obligated as members of the Mekong River Commission (MRC) to follow the Prior Notification, Prior Consultation, and Agreement (PNPCA) process for projects that may have adverse transboundary impacts on the Mekong,²²⁶ the parties’ refusal to cooperate has thus far rendered the process largely ineffective. For example, despite repeated calls to initiate the PNPCA process with respect to the aforementioned Lower Sesan II Dam, Cambodia’s government has refused.²²⁷ Similarly, the construction of the

219 *Id.*, art. 28.

220 *Id.*

221 *Id.*

222 *Id.*, art. 29.

223 *Id.*

224 *Id.*, art. 42.

225 *Pulp Mills on the River Uruguay (Arg. v. Uru.)*, Judgment, ¶¶ 204-05 (Apr. 20, 2010), available at www.icj-cij.org/docket/files/135/15877.pdf.

226 Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin, art. 5, Cambodia-Lao-Thai-Viet., Apr. 5, 2014, available at www.mrcmekong.org/assets/Publications/policies/agreement-Apr95.pdf.

227 See, e.g., Mekong River Commission, Report: Informal Donor Meeting, ¶ 7 (June 27-28, 2013), available at www.mrcmekong.org/assets/Publications/governance/Report-IDM-2013-Complete-set-final.pdf.

Xayaburi Dam on the mainstream of the Lower Mekong in Laos presented the MRC with its first true test case but the MRC process in this instance was fraught with procedural problems.²²⁸

In its current form, the Draft EIA Law's section on TbeIA contains procedures for notifying neighboring countries when a project may have significant transboundary environmental impacts and for entering into discussions with such countries regarding "procedures and timetables for comments on the proposed project."²²⁹ These procedures are based on the United Nations Economic Commission for Europe's (UNECE) 1991 Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention).²³⁰ The project proponent must propose mitigation measures to reduce transboundary impacts taking into account comments received from "all potentially affected parties," and then must "develop an appropriate EMP to manage the predicted trans-boundary impacts."²³¹ Regarding monitoring, the Draft Law states that involved countries should "mutually determine how best to conduct monitoring...during preparatory groundwork, construction, operation and decommissioning, as relevant to the proposed project and its agreed upon EMP."²³²

3.4. Monitoring and Enforcement

According to the International Association for Impact Assessment's "Principles of Environmental Impact Assessment Best Practice," an effective EIA process must include "follow up" in order to ensure that the conditions in the project's EIA approval are met, monitor the effectiveness of the mitigation measures, and perform environmental audits "to optimize environmental management."²³³ Cambodia's current EIA regime does not adequately address the "follow up" process. The 1999 EIA Sub-Decree places full responsibility with the MOE for monitoring projects and taking "appropriate measures to ensure a Project Sponsor will comply with the Environmental Management Plan (EMP) during

228 See, e.g., Xayaburi Dam, INT'L RIVERS (Apr. 2014), www.internationalrivers.org/campaigns/xayaburi-dam.

229 Draft EIA Law, *supra* note 27, art. 43.

230 United Nations Convention on Environmental Impact Assessment in a Transboundary Context Espoo, Fin., Feb. 25, 1991, 1989 U.N.T.S. 309, https://treaties.un.org/Pages/ShowMTDSGDetails.aspx?src=UNTSOnline&tabid=2&mtmsg_no=XXVII-4&chapter=27&lang=en#Participants.

231 Draft EIA Law, *supra* note 27, art. 44.

232 *Id.*, art. 45.

233 *Environmental Impact Assessment Best Practice*, INT'L ASSOC. FOR IMPACT ASSESSMENT (Jan. 1999), available at www.iaia.org/publicdocuments/special-publications/Principles%20of%20IA_web.pdf. Organized in 1980, the International Association for Impact Assessment is "the leading global network on best practice in the use of impact assessment for informed decision making regarding policies, programs, plans, and projects." See www.iaia.org/.

project construction, implementation, and closure.”²³⁴ Additionally, the Sub-Decree empowers the MOE to issue a “stop work order” for projects that have “failed in implementing the [EMP] as approved in the EIA report” and to “report and file a complaint against any Project Sponsor found in violation of provisions of [the Sub-Decree].”²³⁵ The EIA Sub-Decree is otherwise silent with respect to monitoring and enforcement.

The Draft EIA Law builds significantly on the EIA Sub-Decree’s framework, establishing a robust monitoring and reporting system that, if implemented, could greatly strengthen the implementation of EIA in Cambodia. The project proponent would have a clear obligation to ensure effective monitoring and self-reporting.²³⁶ Moreover, to provide clarity on institutional organization and responsibility, the Draft EIA Law stipulates that the EIA Unit to be established within the MOE “has the authority to monitor, check, inspect, investigate, research, advise, and take actions itself or in cooperation with relevant stakeholders on all project and activities.”²³⁷ The EIA Unit may examine environmental management records and documents and require “administrators, employees and agents of development projects and operations to provide all information and/or records related to the environmental management of the Project Proponent.”²³⁸ Additionally, the EIA Unit may enter any premises to exercise its inspection powers and seize documents or other property if necessary to the investigation, including taking samples for environmental examination.²³⁹ It also must meet “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.”²⁴⁰

To enhance the EIA Unit’s ability to perform its functions, all development projects must prepare both quarterly and annual Environmental Monitoring Reports for submission to the EIA Unit, and the annual reports, as mentioned earlier, must be made available to the public on request as well as on the MOE’s website and a website created by the project proponent.²⁴¹ On top of that, all development projects with an EIA Approval Certificate (i.e., those that completed an IEE or EIA)²⁴² must also produce monthly reports.²⁴³ Finally, projects with “significant

234 EIA Sub-Decree, *supra* note 17, art. 4.

235 *Id.*, arts. 28 & 30.

236 *See infra*, notes 241-44.

237 Draft EIA Law, *supra* note 27, art. 8.

238 *Id.*, art. 12.

239 *Id.*

240 *Id.*

241 *Id.*, art. 39.

242 *Id.*, art. 23.

243 *Id.*, art. 40.

environmental or social impacts” must be audited by an external environmental auditor in accordance with a Prakas to be issued by the MOE.²⁴⁴

The Draft EIA Law also establishes a strong enforcement regime that is lacking in the current EIA system. First, the Law devotes two separate chapters to specific EIA offenses and penalty provisions, respectively.²⁴⁵ Second, the Law stipulates the competencies of the EIA Unit, the MOE, and Cambodian courts with respect to the various forms of punishments and penalties they may mete out.²⁴⁶ Third, for the first time an EIA law empowers citizens to be involved in the enforcement process by establishing a complaint procedure for persons affected by EIA offenses.²⁴⁷ Importantly, the Draft EIA Law explicitly provides judicial access to persons who have exhausted the administrative complaint procedure established by the Law but are still not satisfied with the ultimate decision.²⁴⁸ In order to ensure that such complaints are addressed effectively, the Law provides for the accreditation of “EIA Judicial Police Officers” who “have the mission of receiving complaints, examine [sic] offenses, investigating and compiling case file to submit to a competent court.”²⁴⁹ Any attempt by an accredited EIA Judicial Police Officer to “avoid or not fulfill their duties” is an actionable offense.²⁵⁰

4. CONCLUSION

In the early 1990s, Cambodia emerged from years of turmoil and has since achieved remarkable economic growth and development. However, Cambodia’s leaders—and perhaps more importantly its people—recognize that such growth is not sustainable and brings immense environmental and social costs. If the current Draft EIA Law is adopted and implemented, it would represent a major step for Cambodia toward a sustainable development path. As demonstrated, the Draft EIA Law improves on Cambodia’s current EIA regime by firmly establishing the MOE as the institution with authority over EIAs, preventing any construction until a project’s EIA has received approval, greatly enhancing public participation and information disclosure requirements, requiring the consideration of a broad range of environmental and social impacts, and setting up a thorough monitoring, reporting, and enforcement mechanism.

Cambodia’s MOE and the Vishnu Law Group have several more public

244 *Id.*, art. 38.

245 *Id.*, arts. 65-93.

246 *Id.*, art. 54.

247 *Id.*, arts. 50-56.

248 *Id.*, art. 51.

249 *Id.*, art. 59.

250 *Id.*, art. 69.

consultations planned before the law is presented to the National Assembly for adoption sometime in 2015. While it is possible that some aspects of the law may be removed or weakened, it is also possible that they could be further improved. For example, project proponents should be required to more fully analyze alternatives to the proposed action, including the no-action alternative. In order to maximize the transparency of the EIA process, project proponents should also be required to record public participation and respond to public comments received during the preparation of an IEE. However, overall the fifth draft of the EIA law represents a sea change from Cambodia's current EIA regime and, if adopted, would become a major and integral component of Cambodia's strategy for sustainable development.