

## *Notes on Current Developments*

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### Developing an Environmental Code for Cambodia

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#### Introduction

In 2012, the Government of Cambodia decided to initiate environmental governance reform in order to promote environmental sustainability and maintain the country's economic development. As part of this reform process, Cambodia embarked on a significant revision of many of its environmental and natural resources laws. Most of these laws had been drafted in the 1990s and reflected the need for the government to promote economic development during the rebuilding of the country following its destruction and the collapse of the rule of law under the Khmer Rouge regime during the late 1970s.

The Environment and Natural Resources Code ('the Code') aims to create an enabling legal and policy environment that will make it possible to achieve environmental protection while supporting sustainable economic development. The final draft of the Code includes provisions to strengthen the conservation of natural resources and wildlife, build climate resilience, promote the use of renewable energy, and build sustainable urban environments with the capacity to effectively deal with waste management and pollution.

### Draft EIA Law

From 2012–2015, Vishnu Law Group (Vishnu) collaborated with the Ministry of Environment (MoE) to draft a new Environmental Impact Assessment Law (EIA Law).<sup>1</sup> The aim of this drafting process was to promote a participatory and transparent approach in which all concerned stakeholders could voice their opinions. During the process of consultation, two national consultation workshops were held in Phnom Penh, and regional consultation workshops were conducted in Siem Reap, Mondulhiri, Sihanoukville and Battambang. Additional workshops were held with the private sector (including EIA consultants) and with NGOs and civil society.

A final national consultation workshop was held in early 2015. That consultation was to serve as a precursor to the eventual finalization of the EIA Law.<sup>2</sup> Despite the success of the process to develop an updated EIA Law for Cambodia, the Minister of Environment, H.E. Say Samal, laid out more ambitious plans for environmental governance reform and requested Vishnu's assistance in the drafting of an Environment Code for Cambodia, of which the draft EIA Law would be included as a major component.

### The Process of Developing the Code

The Minister of Environment initiated the development of the Code in mid-2015. The Minister, having obtained support from Prime Minister Hun Sen for the Code, provided significant Ministry of Environment resources to support the drafting activity.<sup>3</sup> The terms of reference for the Code included redefining the concepts of environmental protection and natural resource conservation in Cambodia, touching on all relevant environmental sectors. The mandate was for the Code to cover all Ministries with an interest in sustainable development. It was also seen as an opportunity to incorporate Cambodia's commitment to the United Nations Sustainable Development Goals (SDGs), concluded in 2015.<sup>4</sup>

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1 This was to update the existing EIA Sub-Decree 1999.

2 <http://www.vishnulawgroup.com/index.php/publications/21-seven-draft-law-on-eia-for-national-workshop-on-17-18-2015-kh>.

3 The Code project also received funding from the United Nations Development Programme (UNDP) and a number of other sources.

4 United Nations Department of Economic and Social Affairs, *Sustainable Development Goals*, <https://sustainabledevelopment.un.org/sdgs> accessed 15 February 2017.

A Technical Working Group (TWG) for the preparation of the Code was created through a ministerial decision. That decision also created a Permanent Secretariat to the TWG and six Sub-Technical Working Groups (STWGs) to handle specific matters on a sectoral basis. The STWGs were created for the purpose of providing draft content and general feedback on Code development as well as analyzing international expert recommendations to ensure clarity in terms of the Cambodian context.

The STWGs were: Sustainable Cities and Green Economy; Waste and Pollution Control; Biodiversity and Ecosystem Conservation and Natural Resource Management; Cultural and Natural Heritage Conservation; Energy and Extractive Industries (including EIA and Strategic Environmental Assessment), and Environmental Education and Information.

### *Activating the STWGs*

The STWGs convened their first meeting with participants from the MoE, Vishnu and three representatives from the Ministry of Agriculture, Forestry and Fisheries (MAFF) in late July 2015. NGOs and private sector entities were included in the STWG process in order to foster transparency and an inclusive drafting process. The following guidelines were set out for STWGs: they would conduct research and compile documents relevant to their sector; engage in or were expected to have extensive correspondence with legal professionals to help with research requirements; and review and provide recommendations relevant to their mandate

A workshop was convened in August 2015 at which the Minister provided opening remarks. MoE and Vishnu presented the structure of the STWGs, the workplan, and the overall scope of the Code. Afterwards, each STWG assembled for small group discussions. This was the first time that donors, local and international NGOs, law firms and private companies were able to informally interact within the STWG structure.

In order to encourage maximum diversity, on behalf of the Secretariat, Vishnu invited international participants to participate in the STWGs. Over seventy stakeholder representatives were selected from a wide variety of sectors and a diversity of concerns related to the Code.

After the STWGs commenced, Vishnu mobilized its team of experts to draft a series of General Principles<sup>5</sup> to provide a framework and guide the development of the Code. This involved a coordinated research effort by the Vishnu team, national and international experts, and students from the American

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5 The General Principles can be found at <http://www.vishnulawgroup.com/index.php/publications>.

University Washington College of Law, culminating in a workshop in December 2015 at which the Secretariat presented a series of proposed General Principles, along with detailed research on the context and application of each principle for the Cambodian context.

### **Jurisdictional Review**

In addition, a thorough jurisdictional review of existing legislation and mandates was carried out. All Cambodian laws relating to the environment, conservation, and natural resources were analyzed, documenting all aspects of current jurisdictional arrangements. As part of this process, the Minister of Environment also engaged in high-level discussions on jurisdictional structures with his ministerial counterparts. The jurisdictional review made it increasingly clear that there was real political space for significant modification to current jurisdictional arrangements in the environmental, conservation, and natural resources management sphere.

### **Public Consultations and Drafting**

In April 2016, Vishnu held a *National Workshop on the First Draft of the Environmental Code*. The workshop allowed the MoE to explain the methodology and responsibilities for the members of the various STWGs. Most importantly, the process for raising issues to be included in the Code was thoroughly described. For the purpose of receiving recommendations from all concerned stakeholders, Vishnu developed a feedback submission form. The latter half of the workshop was spent allowing the STWGs to meet for the purpose of identifying issues to be addressed in the next phase of the Code development process.

Vishnu was responsible for facilitating expert interactions with the STWGs and international experts across the world. The STWGs began the process of meeting 2–3 times per month to address outstanding jurisdictional overlap issues and to assign work responsibilities in a staged commenting and drafting process.

As a result of the difficulties in drafting of the Code by the STWGs and the looming December 2016 deadline for a final draft of the Code, Vishnu decided to revise the consultation strategy to rely more on outside experts to draft provisions for consideration by the STWGs. STWG members were still responsible for meeting with these experts on an individual or group basis to advise these visiting experts on the Cambodian legal and policy context, as well as to provide feedback on their draft provisions.

The *Second National Workshop on the Draft of the Environmental Code* was held in July 2016, again with every effort made to involve all relevant stakeholders, sending invitation emails and placing announcements in local newspapers in English and Khmer. Altogether nearly 250 people participated in the workshop.

Participants attending the workshop that had not been previously involved in a specific STWG were given the chance to voice concerns and ideas. Many members of this additional group were from the Prey Lang Community Network (PLCN) and other indigenous communities that have a stake in the management of protected areas, co-management of forest resources, and other issues that concerned them in the Code.

### *Inter-Ministerial Cooperation*

Vishnu devoted a significant amount of time in September and October 2016 to ensure inter-ministerial cooperation to promote the development of the Code, coordinating closely with the Minister of the Environment to accomplish this. The level of inter-ministerial cooperation that has resulted from the transparent development of the Code was unprecedented for Cambodia. Ministries in Cambodia, particularly the more powerful ministries that are able to exert control over valuable resources, have traditionally acted autonomously, and have resisted any potential loss of power or mandate. The Prime Minister's backing of the Code resulted in a unique level of participation, despite an initial reluctance from many ministries and other institutions.

### **Adoption of the Environmental Code**

A final two-day public consultation workshop was held in November 2016 at the Ministry of Environment. Comments and questions were raised and discussed by over 200 participants, including government ministries, NGOs and interested members of the public, and indigenous communities. Following this consultation workshop, a final draft was prepared and submitted to the Minister of Environment on 30 December 2016.

The seventh, and final, draft of the Code totaled 440 pages. It was released in English and a complete translation into Khmer was completed in March 2017. The final draft will be submitted to the Minister of Environment, who will then bring the proposed legislation to the Council of Ministers and Prime Minister. It is expected that the Code will be introduced into the National Assembly in mid-2017. In addition to the Environmental Code, a number of Sub-Decrees, Regulations, and other legal instruments are required to ensure the effective implementation and enforcement of Code provisions.